TABLE OF CONTENTS

Appendix A-1

Court of Appeals of Maryland.

William A. DABBS, Jr., et al.

v.

ANNE ARUNDEL COUNTY

No. 23, Sept. Term, 2017

April 10, 2018

> "[D]espite reams of papers being filed, it is[, still to this day,] [ ] difficult to tease out [precisely what the Dabbs Class'] specific contentions are except for the assertion that they should receive a refund of some unspecified amount."

Memorandum Opinion (at 14), Senior Judge Dennis Sweeney (ret.), *Dabbs, et al. v. Anne Arundel County*, Circuit Court for Anne Arundel County, Case No. 02-C-11-165251 (14 January 2016).

This is the latest installment of a litigation saga (although perhaps we are nearing its end) traveling two quite kindred paths over more than fifteen years, (*Halle, et al. v. Anne Arundel County* ("*Halle*") and *Dabbs, et al. v. Anne Arundel County* ("*Dabbs*")) in Maryland's courts. Pursuant to the power vested in the government of Anne Arundel County, Maryland ("the County") through 1986 Md. Laws, ch. 350, the County imposed road and school impact fees according

to County districts beginning in 1987.[1] These fees were paid usually by land developers and builders.[2] Those who paid impact fees (like the *Dabbs* Class) might become eligible, under certain circumstances, for refunds of those fees. *See* Anne Arundel County Code § 17-11-210.[3] Refunds were contingent upon the

---

[1] Subtitle 2 of Title 11 of Article 17 of the Anne Arundel County Code (the "Impact Fee Ordinance") explains that its adoption was done

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

[2] Section 17–11–208 specifies that there "are three separate special funds, the Anne Arundel County Transportation Impact Fee Special Fund, the Anne Arundel County School Impact Fee Special Fund, and the Anne Arundel County Public Safety Impact Fee Special Fund." Moreover, § 17-11-209(d) announces also that "[f]unds collected from development impact fees shall be used for capital improvements within the *development impact fee district* from which they are collected, so as to reasonably benefit the property against which the fees were charged." (emphasis added).

[3] During Fiscal Years (FYs) 1997-2003 (the years in question here), § 17-11-210 provided:

> (a) Notice of refund availability. If fees collected in any district during a fiscal year have not been expended or encumbered by the end of the sixth fiscal year following collection, the Office of Finance shall give notice of the availability of a refund of the fees and refund the fees as provided in this section.
>
> (b) Publication of notice. Within 60 days from the end of a fiscal year during which fees become available for refund, the Controller shall cause to be published once a week for two successive weeks in one or more newspapers that have a general circulation in the County, a notice that development impact fees

Appendix A-3

County's failure to utilize or encumber within a specified time the collected fees for present or future eligible capital improvements, i.e., projects for the "expansion of the capacity of public schools, roads, and public safety facilities and not for replacement,

---

collected within a particular district for a preceding fiscal year are available for refund on application by the current owner of the property for which the fee was originally paid. The notice shall set forth the time and manner for making application for the refund.

(c) Refund application deadline. An eligible property owner shall file an application for a refund within 60 days of the last publication of notice. On proper application and demonstration that the fee was paid, the Controller shall refund the fees to the property owner with interest at the rate of 5 [percent] per year.

(d) Refund on pro rata basis. If only a portion of the fees collected in a district during a fiscal year have been expended or encumbered, the portion not expended or encumbered shall be made available for refund on a pro rata basis to property owners. Each eligible property owner who has properly applied for a refund shall receive a refund in an amount equal to the portion of the original fee that way not expended or encumbered.

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

Two bills, at the heart of this case, amended the Impact Fee Ordinance: Bill No. 27-07 (effective 22 May 2007, codifying the county's procedures for calculating and recording capital expenditures and encumbrances), and Bill No. 71-08 (effective 1 January 2009, amending the Ordinance, to remove prospectively the refund provision provided in § 17-11-210).

maintenance, or operations." § 17-11-209(a).[4] The *Dabbs* Class' claims are a demand for refunds of an unspecified amount of impact fees collected by the County between fiscal years (FY) 1997-2003.

FACTUAL AND PROCEDURAL BACKGROUND

I. The *Halle* Chronicles.

A total of 12 reported and unreported opinions, orders, and memorandum opinions have been issued to date collectively by this Court, the Court of Special Appeals, and the Circuit Court for Anne Arundel County, in the *Halle* litigation (the older sibling to the present case).[5] The core contention in *Halle* is relevant to the present case. In 2001, the *Halle* Class asserted that they were entitled to refunds of impact fees collected during FY 1988-1996 that were expended on what was ultimately determined to be ineligible capital improvements.[6] In *Halle*, the circuit court, on 15 December 2006, found $4,719,359 in refunds were "due to the current owners of specified fee paying properties," plus five-percent interest from

---

[4] Unless specified otherwise, all code references herein are to the Anne Arundel County Code.

[5] Many arguments asserted by the Dabbs Class were decided in Halle. We shall note and elaborate on prior holdings in Halle as they are intertwined with the certiorari questions before us.

[6] For a full history of Halle, see Anne Arundel County v. Halle Dev., Inc., 408 Md. 539, 543-51, 971 A.2d 214, 216-21 (2009); Halle Development v. Anne Arundel County, No. 1299, Sept. Term, 2016 at 1-10, 2017 WL 5629677 (Md. Ct. Spec. App. Nov. 22, 2017); Dabbs v. Anne Arundel County, 232 Md. App. 314, 321–28, 157 A.3d 381, 385-89 (2017), cert. granted Dabbs v. Anne Arundel Co., 454 Md. 677, 165 A.3d 473 (2017); Halle Development v. Anne Arundel County, No. 2552, Sept. Term 2006 at 1–8 (Md. Ct. Spec. App. Feb. 7, 2008).

the date of the payment of each initial fee.[7] The circuit court based its ruling in favor of the payors on its determination that the § 17-11-210(e) extension[8] decisions made by the County's Planning and Zoning Officer (PZO) were invalid. The *Halle* Class and the County cross-appealed. The County, on appeal, argued that the circuit court erred by refusing to permit the County to count the encumbrances in calculating the refund. In their cross-appeal, the [*Halle* Class] contended that (1) the circuit court improperly calculated the amount of impact fees available for refund by excluding funds that were spent on ineligible development projects; and (2) counsel for the property owners were entitled to the 40 [percent] contingency fee provided by their fee agreement with the named class representatives.

Halle Dev., Inc. v. Anne Arundel County, No. 1299, Sept. Term, 2016 at 6, 2017 WL 5629677 (Md. Ct. Spec. App. Nov. 22, 2017).[9] The intermediate

---

[7] Indeed,

> [t]he Circuit Court determined that because (1) $4,719,359 in impact fees collected from property owners were not thereafter timely paid or encumbered for capital improvements within the applicable district, and (2) the period to make capital improvements was not properly extended, the Owners were entitled to refunds.

Halle, 408 Md. at 543, 971 A.2d at 216 (footnote omitted).

[8] *See* § 17-11-210(e).

[9] This opinion includes references to unreported opinions in the *Halle* litigation, in which those litigants invoked many claims that are nearly identical to those posed in the *Dabbs* litigation, although different sets of class property owners and developers and a different stretch of fiscal years are involved in each line of cases. We may cite here or, in one instance, refer to persuasive reasoning, as appropriate, in certain of the *Halle* rulings because of their relevance and inextricable intertwinement with the

Dabbs Class' contentions and factual background. We do so under "the doctrine of ... collateral estoppel." Md. Rule 1-104(b); *Corby v. McCarthy*, 154 Md. App. 446, 481, 840 A.2d 188, 208 (2003).

Collateral estoppel provides that, "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Cosby v. Dep't of Human Res.*, 425 Md. 629, 639, 42 A.3d 596 (2012); *see also Rourke v. Amchem Products, Inc.*, 384 Md. 329, 359, 863 A.2d 926, 944 (2004) (quoting *re Murray Int'l Freight Corp. v. Graham,* 315 Md. 543, 547, 555 A.2d 502, 503 (1989) ("The functions of this doctrine, and the allied doctrine of *res judicata*, are to avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions.").

Four questions must be answered affirmatively before collateral estoppel may be apt to the situation: (1) Was the issue decided in the prior adjudication identical with the one presented in the action in question?; (2) Was there a final judgment on the merits?; (3) *Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?*; and, (4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue? *Colandrea v. Wilde Lake Cmty. Assoc.*, 361 Md. 371, 391, 761 A.2d 899, 909 (2000) (quoting *Washington Suburban Sanitary Comm'n v. TKU Assocs.*, 281 Md. 1, 18-19, 376 A.2d 505, 514 (1977)). Elaborating on the third question—mutuality—we explained in *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368–69, 135 A.3d 452, 458-59 (2016), that

> Traditionally, collateral estoppel contemplates a "mutuality of parties," meaning that an issue that was litigated and determined in one suit will have preclusive effect in a second suit when the parties are the same as, or in privity with, those who participated in the first litigation. The mutuality requirement has been relaxed, however, so long as the other elements of collateral estoppel are satisfied. *See Rourke*[, 384 Md. at 349, 863 A.2d at 938 (2004)]. If either the defendant or the plaintiff in the second proceeding was not a party

appellate court, in 2008, held, *inter alia* in an unreported opinion, that the circuit court erred in its formulation of the mathematical formula used to

---

to the first proceeding, we refer to that application of collateral estoppel as "non-mutual." *Id*. at 341[863 A.2d 926, 944] [ ]. Mutual and non-mutual collateral estoppel are further characterized as either "defensive" or "offensive": estoppel is "defensive" if applied by a defendant and "offensive" if invoked by a plaintiff. *See Shader v. Hampton Improvement Ass'n*, 443 Md. 148, 162-63, 115 A.3d 185 [, 193] (2015).

The species of collateral estoppel that is apt here is "defensive non-mutual collateral estoppel," which seeks to prevent a plaintiff from re [-]litigating an issue the plaintiff has previously litigated unsuccessfully in another action against a different party." *Rourke*, 384 Md. at 341, 863 A.2d at 933 (2004). We have recognized defensive non-mutual collateral estoppel where the party bound by the existing judgment had a full and fair opportunity to litigate the issues in question, even in a subsequent proceeding involving a different party. *See Pat Perusse Realty v. Lingo*, 249 Md. 33, 44, 238 A.2d 100, 107 (1968). Thus, although there are two different sets of plaintiffs (albeit similar in standing, the confluence of counsel, and many nearly identical claims), the defendant, i.e., the County, was the same defendant in both streams of litigation. *Halle* decided, with finality, many, if not most, of the claims asserted by the *Dabbs* Class. We believe also that the *Dabbs* class has had a full and fair adjudication of their issues.

In point of fact, the only question or argument in this case where we find the reasoning or conclusions of an unreported opinion in *Halle* persuasive is in our analysis of the argument that Bill No. 27-07 (*see infra* II.a.) should not be given its intended retrospective effect because the *Dabbs* Class members' rights to refunds had vested before the effective date of the legislation. Even there, this Court's 2009 reported opinion in *Anne Arundel County v. Halle Development*, 408 Md. 539, 559 n.7, 560, 971 A.2d 214 n.7 (2009), addressed virtually the same question, although Bill No. 27-07, which was law at that time, was not mentioned specifically by the parties in the briefing and argument or by the Court in its opinion.

calculate that $4,719,359 in refunds were due. The County was entitled, in fact, to count impact fee encumbrances[10] when determining impact fees available for refund. *Halle Development v. Anne Arundel County*, No. 2552, Sept. Term, 2006 at 8-9 (Md. Ct. Spec. App. May. 5, 2008) (the appellate court granted a motion for reconsideration to clarify its 7 February 2008 remand instruction); *Halle Development v. Anne Arundel County*, No. 2552, Sept. Term, 2006 at 52 (Md. Ct. Spec. App. Feb. 7, 2008) (the intermediate appellate court found that the circuit court erred by refusing to allow the County to count impact fee encumbrances in determining the amount of impact fee refunds to which Owners are entitled under § 17-11-210(b)). The intermediate appellate court, on remand, instructed the circuit court to recalculate appropriately the refunds with consideration given to the encumbered impact fees. *See id*. The County sought successfully a writ of certiorari from this Court to review that judgment. We affirmed, on 6 May 2009, the intermediate appellate court regarding its decision as to the encumbrances, and directed a remand to the circuit court to calculate available impact fee refunds. *See Anne Arundel County v. Halle Dev., Inc.*, 408 Md. 539, 971 A.2d 214 (2009).

On 25 March 2011, the circuit court reduced the refunds for which the payors were eligible from $4,719,359 to $1,342,360, plus interest. The *Halle* Class, in response, filed a petition for a writ of

---

[10] § 17-11-201(2) defines encumbrance as a legal commitment for the expenditure of funds, chargeable against the applicable appropriation for the expenditure, that is documented by a contract or purchase order.

certiorari with this Court. We denied the *Halle* Class' attempt to pole-vault over review by the intermediate appellate court. The *Halle* Class appealed then to the intermediate appellate court. In a 29 July 2013 unreported opinion, the Court of Special Appeals affirmed the circuit court's 25 March 2011 order. The *Halle* Class petitioned again for a writ of certiorari. We denied that petition also. The circuit court awarded, on remand on 13 May 2014, counsel fees in the amount of 39 percent of the $1,342,360 in refunds, plus five-percent interest on each refund, and, on 8 August 2016, issued its final judgment. The owners appealed to the intermediate appellate court, which, in an unreported opinion on 22 November 2017, affirmed the circuit court's 8 August 2016 order, explaining, "in prior opinions, [the intermediate appellate court and this Court] have already addressed all but one[11] of the arguments raised by the [*Halle* Class]." *Halle Development v. Anne Arundel* County, No. 1299, Sept. Term, 2016 at 1, 2017 WL 5629677 (Md. Ct. Spec. App. Nov. 22, 2017).[12]

II. The *Dabbs* trilogy.

We adopt, supplementing as needed, the intermediate appellate court's recitation of the procedural posture of this case as rendered in *Dabbs v. Anne Arundel County*, 232 Md. App. 314, 328-31, 157 A.3d 381, 389-91 (2017), cert. granted *Dabbs v. Anne Arundel Co.*, 454 Md. 677, 165 A.3d 473 (2017):

---

[11] This issue is irrelevant to the present appeal.

[12] The *Halle* class filed, once again, a petition for writ of certiorari to this Court following the intermediate appellate court's 22 November 2017 decision. The Court denied the petition on 26 March 2018. *See Halle Development v. Anne Arundel Co.*, Pet. Docket No. 444, denied 26 March 2018.

In the present case, involving impact fees collected in FYs 1997-2002, [the *Dabbs* Class] sought refunds on the ground that the impact fees were not expended or encumbered in a timely manner under § 17-11-210(b). [The *Dabbs* Class] also argued that the amendments to the Impact Fee Ordinance in Bill No. 27-07 and Bill No. 71-08 unconstitutionally interfered with their vested rights in refunds. After hearing from the parties, [the circuit court entered, ultimately, a declaratory judgment in favor of the County as to all issues raised in the proceeding.] [T]he circuit court ruled that the County had applied the Impact Fee Ordinance as required by this Court's 2008 opinion and found that there are no impact fees available for refund under § 17-11-210. Further, the circuit court rejected [the *Dabbs* Class'] constitutional and state law challenges to the Impact Fee Ordinance, finding that most of the challenges had already been resolved against the class plaintiffs in *Halle*.

More specifically, the circuit court found that the County prepared the six FY charts in the format approved by the *Halle* courts, properly comparing the amount of impact fees collected in each FY and district under review to the amount of impact fees expended (disbursed) and encumbered as of the end of the sixth FY following the FY of collection. Kurt Svendsen, the County's Assistant Budget Officer, who had been employed by the County since September 1, 1997, was

responsible for (a) the preparation of the County's Capital Budget portion of the Annual Budget and Appropriation Ordinance, and (b) the monitoring of encumbrances and expenditures recorded in connection with appropriations for capital projects. Because Svendsen monitored expenditures and encumbrances recorded against appropriations of capital projects on an almost daily basis, he was delegated the responsibility for conducting the six FY test under § 17-1-210(b).

In the present case, the County prepared six FY charts for FYs 1997-2002 in the same manner as the charts prepared in *Halle* for FYs 1988-2002, but also included impact fee expenditures on temporary classrooms. The charts indicated that all impact fees collected in FYs 1997-2002 were expended or encumbered within six FYs following the FY of collection and, thus, no impact fees collected in these FYs were available for refund.

Lastly, the circuit court found that, in applying the six FY test, the County properly interpreted the term "impact fees encumbered" in § 17-11-210(b) to mean:

> (1) the amount of impact fees collected in a district account in a FY which have not been expended on June 30 of the sixth FY following the FY of collection, for which there is

> (2) as of the same date, an encumbrance (purchase order) on an impact fee eligible capital project in the district.

According to the circuit court, this definition is the only logical one based on [generally accepted accounting principles (GAAP)], the applicable provisions of the County Charter, and Annual Budget and Appropriation Ordinances. Under GAAP, an appropriation states the legal authority to spend or otherwise commit a government's resources. *See* Stephen Gauthier, *Governmental Accounting Auditing and Financial Reporting* at 305 (Government Finance Officers Ass'n 2001). Meanwhile, § 715(a) of the County Charter provides that County officials and employees may not spend or commit funds in excess of appropriations, and § 17-11-201(2) defines an encumbrance as "a legal commitment for the expenditure of funds, chargeable against the applicable appropriation for the expenditure, that is documented by a contract or purchase order." Thus, the court concluded that when determining the amount of "impact fees encumbered," the County was correct in comparing the amount of unexpended impact fees in the district account at the end of the relevant FY to the encumbrances entered in relation to capital projects in the district that have been determined by the [Planning and Zoning Office] to be eligible in the district.

As pertinent to the certiorari questions for which we granted the petition in this case, the intermediate appellate court—in reliance on *Waters Landing, Ltd. P'ship v. Montgomery Cnty.*, 337 Md. 15, 650 A.2d 712 (1994)[13]—held unfounded the *Dabbs* Class' arguments that the County's Impact Fee Ordinance is subject to the "rational nexus/rough proportionality test" of *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), and *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987).[14]

The intermediate appellate court held, moreover, that Bill No. 27-07 had legitimate retrospective applicability. The court, although professing not to be bound by the law of the case doctrine,[15] explained it

---

[13] *Waters Landing, Ltd. P'ship v. Montgomery Cnty.*, 337 Md. 15, 40, 650 A.2d 712, 724 (1994), held that the rough proportionality test did not apply to a "development impact tax [imposed] by legislative enactment, not by adjudication."

[14] *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), held that "a unit of government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599, 133 S.Ct. 2586, 2591, 186 L.Ed.2d 697 (2013).

[15] The law of the case doctrine operates to bar litigants from raising arguments on questions that have been decided previously or could have been decided in that case. *See Reier v. State Dept. of Assessments & Taxation*, 397 Md. 2, 20-22, 915 A.2d 970, 981-82 (2007). The law of the case doctrine is rooted in appellate framework, and its purpose is to prevent piecemeal litigation, *Reier v. State Dept. of Assessments & Taxation*, 397 Md. 2, 21, 915 A.2d 970, 981 (2007), and without it "any party to a suit could institute as many successive appeals as the fiction of

was unable to reach a different conclusion in this regard than that reached in its 2008, 2011, and 2013 *Halle* opinions and this Court's 2009 *Halle* opinion. Specifically, given the close identity between the *Halle* Class' assertions and many of those advanced in the *Dabbs* Class action, the court "fail[ed] to see how [it could] reach a different conclusion." *Dabbs*, 232 Md. App. at 336, 157 A.3d at 394.

The court held valid also the prospective application of Bill No. 71-08, reasoning that "the repeal of a statute creating a right purely of statutory origin, such as [the right to a refund via] § 17-11-210, wipes out the right unless [it] is vested." *Dabbs*, 232 Md. App. at 341, 157 A.3d at 397. In so holding, the court rejected the *Dabbs* Class' argument that Bill No. 71-08 impaired their contractual and legal relationship with the County, also violating the rough proportionality/rational nexus doctrine. *Id*.

Finally, the court held valid also Bill No. 96-01, "which, effective February 3, 2002, authorized the County to use impact fees for temporary classroom structures provided they expanded the capacity of the schools to serve new development." *Dabbs*, 232 Md. App. at 338, 157 A.3d at 395. The court found that neither the rational nexus doctrine nor the takings clause applied to Bill No. 96-01. *Id*. The court noted further that "[t]he County's definition of [school] capacity is consistent with the enabling law for impact fees (1986 Md. Laws, ch. 350, § 1, codified at § 17-11-

---

his imagination could produce new reasons to assign as to why his side of the case should prevail, and the litigation would never terminate." *Id.* (quoting *Fid.-Baltimore Nat. Bank & Tr. Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 372, 142 A.2d 796, 798 (1958)).

214), and it is the County, not the State [Board of Education], that determines the scope of its Impact Fee Ordinance." *Id*.

On 31 July 2017, we granted the *Dabbs* Class' certiorari petition, *Dabbs, et al., v. Anne Arundel Co*., 454 Md. 677, 165 A.3d 473 (2017), to consider only the following questions:

I. Did the lower courts err in determining that "… the rough proportionality test [or the rational nexus test] has no application to development impact fees ... where monetary exactions are imposed," in contravention of *Howard County v. JJM*, 301 Md. 256, 482 A.2d 908 (1984)?

II. Did the lower courts err in permitting the retroactive application of legislation and not finding a taking under Article III, section 40 of the Maryland Constitution?

Standard of Review

Maryland Code (1973, 2006 Repl. Vol.), § 3-409(a) of the Courts and Judicial Proceedings Article provides that 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." We have made clear that the decision to issue a declaratory judgment is within the sound discretion of the trial court. *Sprenger v. Pub. Serv. Comm'n of Maryland*, 400 Md. 1, 20, 926 A.2d 238, 249 (2007). Such discretionary matters are "much better decided by the trial judges than by appellate courts, and the decisions of such judges should only be disturbed where it is apparent that some serious error or abuse of discretion or autocratic action has

occurred." *Northwestern Nat'l Ins. Co. v. Samuel R. Rosoff, Ltd.*, 195 Md. 421, 436, 73 A.2d 461, 467 (1950). An abuse of discretion

> occurs where no reasonable person would take the view adopted by the [trial] court, or when the court acts "without reference to any guiding rules or principles. We will find an abuse of discretion when the ruling is clearly against the logic and effect of facts and inferences before the court, when the decision is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an "untenable judicial act that defies reason and works an injustice.

Powell v. Breslin, 430 Md. 52, 62, 59 A.3d 531, 537 (2013) (internal citations and quotation marks omitted).

Analysis

I. *Nollan* and *Dolan*—Impact Fees & the Rough Proportionality/Rational Nexus Test.

The *Dabbs* Class argues that the intermediate appellate court erred in concluding that the rough proportionality test/rational nexus test of *Nollan* and *Dolan* has no application to the present case.[16] As this argument goes, the County must "demonstrate that its expenditure of impact fees was attributable

[16] The *Dabbs* Class argues sweepingly that *Nollan* and *Dolan* apply to the County's Impact Fee Ordinance, impact fee expenditures, and ineligible impact fee expenditures.

reasonably to new development and each such expenditure reasonably benefitted 'new development' and/or individual 'against whom the fee was charged.'"

The County responds, consistent with its position asserted in *Halle* and the lower courts in *Dabbs*, that, in *Waters Landing*, 337 Md. at 40-41, 650 A.2d at 724, we held that the individualized determination of rough proportionality required by *Dolan* is not applicable to development impact fees or taxes that are imposed legislatively and set on a general basis across a jurisdiction or district.

At the outset, it must be remembered that the Takings Clause of the Fifth Amendment and Article III, § 40B of the Maryland Constitution do not prohibit the government from taking property for public use; rather, it requires the government to pay "just compensation" for any property it takes. U.S. Const. amend. V; MD Constitution, Art. 3, § 40. For "just compensation" to be paid, however, an actual taking of property must occur. The *Nollan* and *Dolan* line of cases was expanded recently to apply to a narrow set of monetary exactions, i.e., a condition of the payment of money for favorable governmental action on a required permit application for a specific parcel of land. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599, 133 S.Ct. 2586, 2591, 186 L.Ed.2d 697 (2013).

In *Koontz*, the Florida legislature enacted a regulation making it illegal for anyone to " 'dredge or fill in, on, or over surface waters' " without a Wetlands Resource Management (WRM) permit acquired from the St. Johns River Water Management District (the District). *Koontz*, 570 U.S. at 601, 133 S.Ct. at 2592.

Moreover, Florida enacted the Water Resources Act, authorizing each district to regulate construction impacting waterways in the state. *Id.* Under this regulation, "a landowner wishing to undertake such construction must obtain from the relevant district a Management and Storage of Surface Water (MSSW) permit, which may impose 'such reasonable conditions' on the permit as are 'necessary to assure' that construction will 'not be harmful to the water resources of the district.' " *Id.*

Koontz proposed to develop the northern 3.7 acres of his 14.9 acre property, which would affect local waterways. *Id.* He applied to the District for WRM and MSSW permits. *Id.* The District reviewed Koontz's permit applications and approved them upon his agreement to either of two conditions:

> the District proposed that [Koontz] reduce the size of his development to 1 acre and deed to the District a conservation easement on the remaining 13.9 acres. To reduce the development area, the District suggested that [Koontz] could eliminate the dry-bed pond from his proposal and instead install a more costly subsurface storm water management system beneath the building site. The District also suggested that [Koontz] install retaining walls rather than gradually sloping the land from the building site down to the elevation of the rest of his property to the south. In the alternative, the District told [Koontz] that he could proceed with the development as proposed, building on 3.7 acres and deeding a conservation easement to the government on the remainder of the property, if he also

> agreed to hire contractors to make improvements to District-owned land several miles away. Specifically, [Koontz] could pay to replace culverts on one parcel or fill in ditches on another.

Koontz, 570 U.S. at 601-02, 133 S.Ct. at 2592-93. Koontz argued that the District's mitigation demands were excessive, and that he was entitled to money damages if the state agency's actions constituted a taking without just compensation. *Koontz*, 570 U.S. at 602, 133 S.Ct. at 2593. The Supreme Court held that a monetary exaction for mitigation as a condition for issuing a land-use permit to enable development of an individual property must meet the nexus and rough proportionality requirements of *Nollan* and *Dolan*. *Koontz*, 570 U.S. at 612, 133 S.Ct. at 2599. The Supreme Court stressed that the requirements of *Nollan* and *Dolan* were the same for monetary exactions as for when "the government approves a permit on the condition that the applicant turn over property or *denies* a permit because the applicant refuses to do so." *Koontz*, 570 U.S. at 606, 133 S.Ct. at 2595 (emphasis in original).

In *Koontz*, the Supreme Court explained that its holding was distinguished from *Eastern Enterprises v. Apfel*, 524 U.S. 498, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998) (plurality opinion),[17] explaining that "[u]nlike

---

[17] In *Eastern Enterprises*[ ] the United States retroactively imposed on a former mining company an obligation to pay for the medical benefits of retired miners and their families. A four-Justice plurality concluded that the statute's imposition of retroactive financial liability was so arbitrary that it violated the Takings Clause. Although Justice Kennedy concurred

the financial obligation in *Eastern Enterprises*, the demand for money at issue here '[operated] upon ... an identified property interest' by directing the owner of a particular piece of property to make a monetary payment." *Koontz*, 570 U.S. at 613, 133 S.Ct. at 2599. Thus, the District's proposed monetary exaction burdened Koontz's ownership and development of a *specific parcel of land. Id*. (emphasis added). The Court elaborated further that *Koontz* resembled cases holding "that the government must pay just compensation when it takes a lien—a right to receive money that is secured by a particular piece of property." *Koontz*, 570 U.S. at 613, 133 S.Ct. at 2599. In holding that the proposed monetary exaction in *Koontz* was subject to *Nollan* and *Dolan*, the Court emphasized that "[t]he fulcrum this case turns on [is] the *direct link* between the *government's demand and a specific parcel of real property*." *Koontz*, 570 U.S. at 613, 133 S.Ct. at 2599 (emphasis added).

The Court affirmed that taxes and user fees, however, are not takings subject to *Nollan* and *Dolan*, and assured that its holding did not affect the authority of governments to "impose property taxes, user fees, and similar laws and regulations that may

---

> in the result on due process grounds, he joined four other Justices in dissent in arguing that the Takings Clause does not apply to government-imposed financial obligations that d[o] not operate upon or alter an identified property interest. Relying on the concurrence and dissent in *Eastern Enterprises*, respondent argues that a requirement that petitioner spend money improving public lands could not give rise to a taking.

Koontz, 570 U.S. at 613, 133 S.Ct. at 2599 (internal quotation marks, citations, and parenthetical omitted).

impose financial burdens on property owners." *Koontz*, 570 U.S. at 615, 133 S.Ct. at 2601.

The *Dabbs* Class' surfeit of arguments relating to *Koontz's* application to the County's development impact fees does not convince us that they have a sound jurisprudential basis.[18] *Koontz* did not hold that land-use regulations are generally subject to a takings analysis under *Nollan* and *Dolan*; rather, it held that challenges to governmental demands for money (except application fees) in connection with the permit review process for a specific property are subject to nexus and rough proportionality analysis. *Koontz*, 570 U.S. at 618-19, 133 S.Ct. at 2603. The Court went out of its way to stress that it was not expanding *Nollan* and *Dolan* much beyond its narrow confines:

---

[18] The *Dabbs* Class asserts that

> this case is specifically directed at the restricted use of lawful collected special funds, separated into trust accounts, and their restricted use [ ] to ensure that the fees and all interest accruing to Special funds are designated for improvements reasonably attributable to new development and are expended to reasonably benefit the new development. [Additionally, the Impact Fee Ordinance] restricts the use of these special funds stating, development impact fees shall be used for capital improvements within the development impact fee district from which they are collected, so as to reasonably benefit the property against which the fees were charged. [Thus,] it is beyond dispute that the County's impact fee ordinance is a land use permitting ordinance, as without payment in money or land, no permit will issue to develop a particular property.

Simply making naked contentions such as these, without appropriate citation of authorities or cogent legal analysis, is unconvincing.

> [Koontz's] claim rests on the [ ] *limited proposition* that when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property, a per se [takings] approach is the proper mode of analysis under the Court's precedent.

Koontz, 570 U.S. at 614, 133 S.Ct. at 2600 (citing *Brown v. Legal Foundation of Wash.*, 538 U.S. 216, 235, 123 S.Ct. 1406, 1419, 155 L.Ed.2d 376 (2003)) (emphasis added and internal quotation marks omitted). Thus, that direct link lead the Court to conclude

> that this case implicates the central concern of *Nollan* and *Dolan*: the risk that the government may use its substantial power and discretion in land-use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed new use of the specific property at issue, thereby diminishing without justification the value of the property.

Id. The exactions concept protects citizens against abuses of power by land-use officials concerning proposed quasi-judicial or administrative action for permit or other development approvals relative to an individual parcel of land. There is no analogy to the *Koontz* scenario present here.[19] The County's

---

[19] *Koontz's* opinion did not alter *Enterprises v. Apfel*, 524 U.S. 498, 540, 118 S.Ct. 2131, 2154, 141 L.Ed.2d 451 (1998) (Kennedy, J. concurring), where Justice Kennedy, in a plurality

Development Impact Fee Ordinance is imposed broadly on all properties, within defined geographical districts, that may be proposed for development. The legislation leaves no discretion in the imposition or the calculation of the fee, i.e., the Impact Fee Ordinance demonstrates how the fees are to be imposed, against whom, and how much. The Ordinance is aimed at

> [a]ny person who improves real property and thereby causes an impact upon public schools, transportation, or public safety facilities shall pay development impact fees as provided in this subtitle [and] Any person who subjects an existing use to a change of use or improvement that causes any impact on public schools, transportation, or public safety facilities shall pay a fee based on the net increase in impacts attributable to the change of use or improvement.

---

concurrence, joined by four dissenters (Justices Stevens, Souter, Ginsberg and Breyer), held that the Coal Act, which imposed a financial burden on mine owners without regard to a specific parcel of property, did

> not operate upon or alter an identified property interest, and it is not applicable to or measured by a property interest. The Coal Act does not appropriate, transfer, or encumber an estate in land (e.g., a lien on a particular piece of property), a valuable interest in an intangible (e.g., intellectual property), or even a bank account or accrued interest.
>
> Until today, however, one constant limitation has been that in all of the cases where the regulatory taking analysis has been employed, a specific property right or interest has been at stake.

§§ 17-11-203, 206. Unlike *Koontz*, the Ordinance here does not direct a property owner to make a conditional monetary payment to obtain approval of an application for a permit of any particular kind, nor does it impose the condition on a particularized or discretionary basis. *See Monterey v. Del Monte Dunes at Monterey, Ltd*., 526 U.S. 687, 702, 119 S.Ct. 1624, 1635, 143 L.Ed.2d 882 (1999) ("[W]e have not extended [until the narrow holding in *Koontz*] the rough-proportionality test of *Dolan* beyond the special context of exactions—land-use decisions conditioning approval of development in the dedication of property to public use.).

The imposition of an impact fee under the Ordinance here, as the dissent in *Koontz* and the plurality dissent in *Eastern Enterprises* put it, applied on a generalized district-wide basis, making no determination as to whether an actual permit will issue to a payor individual with a property interest. *See Koontz*, 570 U.S. at 628, 133 S.Ct. at 2608 (Kagan, J. dissent) ("The majority might, for example, approve the rule, adopted in several States, that *Nollan* and *Dolan* apply only to permitting fees that are imposed ad hoc, and not to fees that are generally applicable"); *Eastern Enterprises*, 524 U.S. at 540, 118 S.Ct. at 2154 (Kennedy, J., concurring in the judgment and dissenting in part) ("[The Act] does not operate upon or alter an identified property interest, and it is not applicable to or measured by a property interest."). The legislatively-imposed development impact fee is predetermined, based on a specific monetary schedule, and applies to any person wishing to develop property in the district. *See* §§ 17-11-101, 203, 206, 209(d). This case falls squarely within *Dolan's* recognition that impact fees imposed on a generally

applicable basis are not subject to a rough proportionality or nexus analysis. *Dolan*, 512 U.S. at 385, 114 S.Ct. at 2316 ("the city made an adjudicative decision to condition petitioner's application for a building permit on an individual parcel," rather than involving an "essentially legislative determinations classifying entire areas of the city.").

The *Dabbs* Class obscures its argument further by looking for support in *Howard County v. JJM, Inc.*, 301 Md. 256, 281, 482 A.2d 908, 921 (1984), where we held "that in order to exact from a developer a setting aside of land for highway purposes there must be a reasonable nexus between the exaction and the proposed subdivision [of the parcel to be developed]." Although we utilized the rational nexus test there (as it was formulated circa 1984), we are not convinced that its application is apt in the present proceedings. In fact, *JJM* cuts against the *Dabbs* Class due to its explanation of the application of Maryland's taking jurisprudence. *See id*. (a statute requiring developers to reserve a right-of-way for a proposed state road was an unconstitutional taking of developer's property without just compensation.). *JJM's* application of the rational nexus test in a traditional taking analysis does not support the *Dabbs* Class' contention that the rational nexus text extends (or should extend) to the context of development impact fees.

The *Dabbs* Class maintains that, if we find inapplicable *Nollan* and *Dolan* to the present impact fee ordinance, we would be walking against the wind of the majority of our sister states that have held to the contrary. The *Dabbs* Class offers-up in this regard a single case from the Ohio Supreme Court, *Home Builders Ass'n of Dayton & the Miami Valley v.*

Beavercreek, 89 Ohio St.3d 121, 128, 729 N.E.2d 349, 356 (Ohio 2000), holding impact fee expenditures, or the imposition of an impact fee ordinance, subject to *Nollan* and *Dolan*.

This is waver-thin support for the *Dabbs* Class' contention that the rough proportionality/rational nexus test is the "most widely used standard for examining development [i]mpact fees or [ ] monetary exactions."[20] In fact, reality suggests the opposite conclusion.[21] We re-affirm our holding in *Waters*

---

[20] The *Dabbs* Class makes repeated assertions that the majority of courts in this country apply *Nollan* and *Dolan* to impact fees or monetary exactions. Yet, the *Dabbs* Class offers little to no legal basis for this assertions. For example, it asserts that:

> [the *Dabbs* Class] will demonstrate and review the fact that sister states have, to [the *Dabbs* Class]'s knowledge, all held *Nollan* and *Dolan* are embodied in the Rational/Dual Rational Nexus Test in deciding a challenge to impact fee expenditures[;]
>
> The rational nexus test or doctrine is the most widely used standard for examining development Impact fees or development monetary exactions[;]
>
> The Ohio Supreme Court and those of all sister states have each recognized, as does §§ 208, 209 and 210 of the County's Impact Fee Ordnance, that *Nollan* and *Dolan's* rough proportionality test is tantamount to the rational nexus test uniformly embraced by all Courts of Appeal[; and,]
>
> Respectfully, the Court [of Special Appeals] below, appears to have accepted at face value a mistaken premise argued by the County that was rejected not only by U.S. Supreme Court, but all Courts of Appeal who have held that, even prior to *Koontz*, the rational nexus test/dual rational nexus test was applied to impact fee exactions.

[21] *See California Bldg. Indus. Assn. v. City of San Jose*, 61 Cal.4th 435, 189 Cal.Rptr.3d 475, 351 P.3d 974, 991 n.11 (2015) (a post-*Koontz* case explaining that, despite *Koontz*, it agrees

with its prior cases holding "that legislatively prescribed monetary fees [of general application] that are imposed as a condition of development are not subject to the *Nollan*/*Dolan* test."); *Cityof Olympia v. Drebick*, 156 Wash.2d 289, 126 P.3d 802, 808 (2006) ("the dissent [fails to] mention that neither the United States Supreme Court nor this court has determined that the tests applied in *Nollan* and *Dolan* to evaluate land exactions must be extended to the consideration of fees imposed to mitigate the direct impacts of a new development, much less to the consideration of more general growth impact fees imposed pursuant to statutorily authorized local ordinances."); *Rogers Mach., Inc. v. Washington County*, 181 Or.App. 369, 45 P.3d 966, 978 (2002) (concluding "that the [Traffic Impact Fee] is [a applicable generally development fee imposed on a broad range of specific, legislatively determined subcategories of property], and [the court was] persuaded by the reasoning of other state courts, representing a nearly unanimous view, that *Dolan's* heightened scrutiny test does not extend to development fees of that kind."); *Krupp v. Breckenridge Sanitation Dist*., 19 P.3d 687, 698 (Colo. 2001) ("the [Plant Investment Fee] does not fall into the narrow category of charges that are subject to the *Nollan*/ *Dolan* takings analysis."); *Home Builders Association of Central Arizona v. City of Scottsdale*, 187 Ariz. 479, 930 P.2d 993 (1997) (explaining that *Dolan* is inapplicable because the case before it involved a generally applicable legislative decision by the city); *Ehrlich v. City of Culver*, 12 Cal.4th 854, 50 Cal.Rptr.2d 242, 911 P.2d 429, 446–47, 450–52 (1996) ("it is not at all clear that the rationale (and the heightened standard of scrutiny) of *Nollan* and *Dolan* applies to cases in which the exaction takes the form of a generally applicable development fee or assessment—cases in which the courts have deferred to legislative and political processes to formulate 'public program[s] adjusting the benefits and burdens of economic life to promote the common good.' " (quoting *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 124, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978))); *McCarthy v. City of Leawood*, 257 Kan. 566, 894 P.2d 836 (Kan. 1995) ("There is nothing in the opinion, however, which would apply the same conclusion to Leawood's conditioning certain land uses on payment of a fee. The landowners cite no authority for the critical leap which must be made from a fee to a taking of property.").

Landing,[22] and, thus, conclude that Koontz is inapplicable to the Impact Fee Ordinance in this case.

---

[22] *Waters Landing* held that a

> development impact tax is not a special benefit assessment because it is not a tax imposed by law on real property; rather, it is an excise tax imposed when an owner seeks to develop its land.... We think *Dolan*, which concerned the Fifth Amendment Takings Clause, is irrelevant to the issue of special benefit assessments and generally inapplicable to this case. [*Dolan*], specifically relied on two distinguishing characteristics that are absent in the instant case. First, the Court mentioned that instead of making "legislative determinations classifying entire areas of the city," the City of Tigard "made an adjudicative decision to condition [the landowner's] application for a building permit on an individual parcel." [*Dolan*, 512 U.S. at 385, 114 S.Ct. at 2316]. Second, the Court noted that "the conditions imposed were not simply a limitation on the use [the landowner] might make of her own parcel, but a requirement that she deed portions of the property to the city." *Id*. In contrast, Montgomery County imposed the development impact tax by legislative enactment, not by adjudication, and furthermore, the tax does not require landowners to deed portions of their property to the County.
>
> Furthermore, *Dolan* is inapplicable because it concerns the Takings Clause, which is not implicated in the case before us. To the extent that this tax is a regulation on the development of land, it is not a regulation that "'goes too far' " so as to be " 'recognized as a taking.'" *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, [1015], 112 S.Ct. 2886, 2893, 120 L.Ed.2d 798[ ] (1992) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 322 [ ] (1922)). A regulation does not "go too far" unless it either "compel[s] the property owner to suffer a physical 'invasion' of his property," or "denies all economically beneficial or productive use of land." [*Pennsylvania Coal*, 505 U.S.] at [1015], 112 S.Ct. at 2893[ ]; *see also*

Impact fees imposed by legislation applicable on an area-wide basis are not subject to *Nollan* and *Dolan* scrutiny.

II. But, Did the *Dabbs* Class' Rights to Refunds Vest Before the County Extinguished the Refund Process?

a. Bill No. 27-07.

The *Dabbs* Class argues (as best we are able to perceive) that: 1) "[r]etroactive Bill [No.] 27-07 cannot be applied to capital projects that were completed and closed long before its enactment as an emergency ordinance on [23 May 2007];" 2) "Bill [No.] 27-07 was not an emergency ordinance as alleged;" 3) "Bill [No.] 27-07 interfered with the judicial process;" and, 4) "Bill [No.] 27-07 affects substantive rights."[23]

> *Pitsenberger v. Pitsenberger*, 287 Md. 20, 34, 410 A.2d 1052[, 1060] (1980) ("To constitute a taking in the constitutional sense, so that the State must pay compensation, the state action must deprive the owner of all beneficial use of the property.").... Petitioners have not claimed, nor could they claim, that the impact tax has either of these two regulatory effects. Therefore, the Takings Clause being inapplicable, *Dolan* does not affect our decision.

337 Md. at 39-41, 650 A.2d at 724.

[23] The *Dabbs* Class relies, in support of this contention, on a *Halle* circuit court holding where a judge purportedly "found in his approved findings of fact and conclusions of law that 'Bill 27-07 [and its] retroactive effect ... provided a new definition for encumbrance of impact fees which was not part of the prior ordinance. It sought to eliminate the prior requirement for timely recording in capital project funds of unused impact fees encumbered. If applied retroactively, this provision would eliminate the right of many impact fee payers to refunds, and, thus, it presents a substantive and not merely a procedural change of the law.' " No citation of specific origin follows this

Restated, the *Dabbs* Class argues that the County counted improperly impact fees encumbered during the 1997-2003 FYs, and cannot remedy that error now through an unlawful retrospective application of Bill No. 27-07 in violation of their vested rights to obtain impact fee refunds.

The County responds that this Court, the Court of Special Appeals, and numerous adjudications by the circuit court rejected the *Dabbs* Class' argument regarding the County's "ineligible expenditures" and the retrospective nature of Bill No. 27-07. The Country avers that it has been decided, profusely, that "Bill No. 27-07, which did nothing more than codify the County's existing [administrative] procedures for counting impact fee expenditures and encumbrances [ ] did not retroactively change County policy or purport to take away an accrued cause of action for refunds."

We subscribe to the following from the circuit court's 14 January 2016 memorandum opinion regarding the *Dabbs* Class' argument regarding the retrospective effect of Bill No. 27-07:

> In pressing their retroactivity argument about encumbrances, [the *Dabbs* Class] seem to cling to an interpretation of the impact fee ordinance and its amendments that was made by their predecessor plaintiffs in the *Halle* litigation which counsel in this case[24] made with great vigor when representing those

---

quotation, which might aid us in appreciating its lineage. In any event, these findings run counter to the intermediate appellate court's 2017, 2013, and 2008 *Halle* opinions and this Court's 2009 *Halle* opinion.

[24] Lead counsel for the *Dabbs* Class here was also co-counsel for the *Halle* Class.

> plaintiffs. That argument was soundly rejected in great detail in an unreported opinion by Judge Lawrence F Rodowsky. [ ] *Halle* [ ], [ ] No. 2552, Sept. Term 2006 [at] 15-20.25[25] Since this litigation has different parties and a different period of time for the collection of the impact fees, it is technically not a law of the case holding applicable to this case nor as an unreported opinion it is not a citable holding that in binds this Court in this case.
>
> This Court's view is however identical to that of Judge Rodowsky's and there is no need in this document to rehash it or restate it except to say that the ordinance since its inception in 1987 has contained the terms "expended or encumbered" which were not otherwise defined in the Ordinance and that the way the County has interpreted these terms since the inception were the commonly accepted meaning of these terms under GAAP. The fact that the County eventually codified and refined its practices in Bill No. 27-07 does not mean that [the *Dabbs* class] are entitled to

---

[25] Judge Rodowsky found it unnecessary to determine "whether the express retroactivity of [Bill No. 27–07] is valid" because the definition of "encumbrance" used in present § 17–11–201(2) was the "pre-existing, generally accepted meaning of the term ..." and properly adherent to GAAP. *Halle*, No. 2552, Sept. Term, 2006 at 1-8. He, in determining that the circuit court erred in not considering encumbered impact fees in its impact fee refund analysis, held that the circuit court is to determine "the amount of impact fees that had been encumbered, but unexpended, within six years following their collection." *Id*. at 20.

> their own peculiar methods which would enhance the possibility of refunds.

We see no value in hashing anew the *Dabbs* Class' warmed-over and repetitious arguments. As was explained in great detail in the *Halle* chronicle,[26] the intermediate appellate court (in four separate

---

[26] *Halle Development, Inc. et al v. Anne Arundel County*, No. 1299, Sept. Term, 2016, at 16, 2017 WL 5629677 (Md. Ct. Spec. App. Nov. 22, 2017) ("To the extent that appellants attempt to reargue that the circuit court retroactively applied Bill No. 27-07 because of our use of its definition of 'encumbrance' in our 2008 opinion, we have already explained, in both our 2008 and 2013 opinions that" this case is not about vesting and the owners' rights in any specific refund award are not vested); *Halle Development, lnc. et al. v. Anne Arundel County*, No. 0956, Sept. Term 2011 at 11-14 (Md. Ct. Spec. App. 29 July 2013) ("[T]he law of the case doctrine precludes re-litigation of these issues." "The Court of Appeals' conclusion that Owners have no rights vested in impact fee refunds further buttresses our holding that the retroactivity of the Ordinance is not implicated here. Accordingly, we hold that Owners' arguments regarding the retroactivity provision of Bill 27-07 are not relevant to this case"); *Order* (at 6), Judge Philip Caroom, *Halle Development, lnc. et al. v. Anne Arundel County*, Circuit Court for Anne Arundel County, Case No. C–01–69418 (25 March 2011) (the circuit court found that we decisively ruled that, "because impact fee payer's rights are not vested, the County [ ] properly could provide for rules providing for retroactive accounting entries as to encumbrances. The law of the case doctrine ... [binds the court]."); *Halle*, 408 Md. at 560, n.7, 971 A.2d at 226, n.7 ("This case is not about vesting." "Accordingly, the determination by the Circuit Court as to the amount of the refund may be modified on remand, and the Owners' rights in any specific refund award are not vested."); *Halle*,[ ] No. 2552, Sept. Term 2006, [at] 15 n.15 ("Because we consider the definition in present § 17-11-201(2) simply to state the preexisting, generally accepted meaning of the term, 'encumbrance,' in the context, it is unnecessary for us to determine whether the express retroactivity provision of the amended ordinance is valid.").

opinions) and this Court ruled that the retrospective application of essentially Bill No. 27-07 has no applicability to the *Halle* litigation. We made clear that "[a] change in procedure or in a remedy, whether administrative or judicial, *which does not modify substantive rights*, is ordinarily applied to pending matters as well as to all remedial actions taking place after the effective date of the change." *State Admin. Bd. of Election Laws v. Bd. of Sup'rs of Elections of Baltimore City*, 342 Md. 586, 601, 679 A.2d 96, 103 (1996) (emphasis added).

We state, with hopeful finality, that Bill No. 27-07 does not work a substantive change in policy interfering with any vested rights of the *Dabbs* Class. As record evidence indicates, Bill No. 27-07 codified the County's pre-existing (though unwritten until Bill No. 27-07) administrative procedures for counting impact fee encumbrances and did not change County policy. *Cf. Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 643, 805 A.2d 1061, 1084 (2002). Bill No. 27-07 (effective 22 May 2007) defined, among other things, the word "encumbrance" as now used in § 17-11-201(2). The intermediate appellate court and the circuit court in *Halle*, and in the present litigation, pronounced that the definition utilized before the enactment of Bill No. 27-07 conformed to generally accepted accounting principles (GAAP).[27] Moreover, the intermediate appellate court declared in its 2008 opinion, the 2006 circuit court's reference to the County's procedure for showing an encumbrance (conforming to GAAP, but notwithstanding the 2006 circuit court's holding that the County shall not

[27] Under GAAP, an encumbrance is a legal commitment, such as a purchase order, entered in relation to an appropriation.

consider encumbrances in the budget process) for deploying impact fees, to be "a reasonable one." *Halle*, No. 2552, Sept. Term, 2006 at 15, 20 (overturning, nevertheless, the 2006 circuit court's decision and remanding "on the encumbrance issue for a determination of the amount of impact fees that had been unencumbered, but unexpended, within six years following their collection."). Suffice it to say, we agree.

In our 2009 *Halle* opinion, we contemplated that the *Halle* Class had no vested rights in impact fee refunds via the method of calculation codified in Bill No. 27-07:

> *This case is not about vesting*. It is about the [County's Planning and Zoning Officer's] [(]PZO's[ )] lack of authority under the impact fee ordinance to go back and made administrative decisions it failed to effectively execute when permitted. *Indeed, the Owners may not be vested in their right to a refund*. Whether they are entitled to a refund and in what amount will be determined by the Circuit Court on remand. The full refund amount determined by the Circuit Court may be reduced if the County is able to prove that it, in fact, encumbered the impact fee funds within six years.
>
> * * *
>
> The intermediate appellate court held in its May 7, 2008 unreported opinion that the Circuit Court, on remand, should re[-]determine the amount that the County had timely encumbered for eligible capital

> improvements, and in doing so, "should consider not only encumbrances for transportation projects, but for school projects as well when applying the six-year test." We did not grant certiorari as to this issue, and thus the decision of the [I]ntermediate appellate court is law in this case. *Accordingly, the determination by the Circuit Court as to the amount of the refund may be modified on remand, and the Owners' rights in any specific refund award are not vested.*

Halle, 408 Md. at 559, n.7, 971 A.2d at 226, n.7 (emphasis added). We are perplexed that we, the intermediate appellate court, and the circuit court have been called upon continually to beat, with a judicial gavel, the proverbial dead horse on this point. Although this case deals with impact fees collected from FYs 1997-2003, as opposed to the FYs implicated in *Halle* (1988-1996), given the closely intertwined and similar nature of the arguments and allegations advanced in the two litigation streams, we fail to see how (or any reason why) we should reach a different conclusion than that reached in *Halle*. Bill No. 27-07 did not interfere with any vested rights of the *Dabbs* Class. We decline to address any remaining arguments the *Dabbs* Class asserted relating to Bill No. 27-07.

b. Bill No. 71-08.

Finally, we confront a legitimately novel question. Neither we, nor any *Halle* court, have had the prior opportunity to consider whether Bill No. 71-08, i.e., repealing prospectively on 1 January 2009, the impact fee refund provision of § 17-11-210, interfered with any rights vested in a *Dabbs* Class member with

regard to impact fee refunds. The Dabbs Class argues "[t]his ordinance is yet another clear abuse of government power that attempts to dictate the outcome of this litigation by a rear[ ]view mirror exclusion of FYs 2002-2008 collected fees, making a ripeness argument." We understand this to mean that the *Dabbs* Class contends that a prospective application of the repeal means that the repeal applies only to impact fees collected after the effective date of Bill No. 71-08 (1 January 2009).

The County, on the other hand, contends that Bill No. 71-08 "eliminated [the *Dabbs* Class'] right to recover available refunds of fees collected after FY 2002, and did not interfere with vested rights of [the *Dabbs* Class]." Thus, the prospective repeal of a substantive right to assert a claim grounded within a statute bars any unvested claim before the effective date of the repeal of the availability of refunds effected by the statute.

Statutes are given presumptively purely prospective effect. *Grasslands Plantation, Inc. v. Frizz-King Enterprises*, LLC, 410 Md. 191, 226, 978 A.2d 622, 642 (2009) (explaining that "[t]he basic reason we presumptively apply new legislation prospectively is our concern that a retrospective application may interfere with substantive rights."); *Traore v. State*, 290 Md. 585, 593, 431 A.2d 96, 100 (1981). *Dal Maso v. Bd. of County Com'rs of Prince George's County*, 182 Md. 200, 206-07, 34 A.2d 464, 467 (1943), explained that

> [the] Legislature can amend, qualify, or repeal any of its laws, affecting all persons and property which have not acquired rights vested under existing law; all of the courts

> agree on this. It has been frequently held that this rule applies also to boards and agencies to which legislative power has been delegated and that they may undo, consider and reconsider their action upon measures before them. It is a general rule, subject to certain qualifications hereinafter noted, that a Municipal Corporation has the right to reconsider its actions and ordinances, and adopt a measure or ordinance that has previously been defeated or rescind one that has been previously adopted before the rights of third parties have vested. Moreover, in the absence of statute or a rule to the contrary, the Council may reconsider, adopt or rescind an ordinance at a meeting subsequent to that at which it was defeated or adopted, at least where conditions have not changed and no vested rights have intervened.

(internal citations and quotation marks omitted); *see also Waterman Family Ltd. P'ship v. Boomer*, 456 Md. 330, 344, 173 A.3d 1069, 1077 (2017). Indeed, "[a]bsent a contrary intent made manifest by the enacting authority, any change made by statute or court rule affecting a remedy only (and consequently not impinging on substantive rights) controls all court actions whether accrued, pending or future." *Aviles v. Eshelman Elec. Corp.*, 281 Md. 529, 533, 379 A.2d 1227, 1229 (1977); *see also State Admin. Bd. of Election Laws*, 342 Md. at 601, 679 A.2d at 103; *Grandison v. State*, 341 Md. 175, 257, 670 A.2d 398, 437 (1995) ("Despite the presumption of prospectivity, a statute affecting a change in procedure only, and not in substantive rights, ordinarily applies to all actions

whether accrued, pending or future, unless a contrary intention is expressed.").

Rights, of a purely statutory origin, untraceable to the common law, "are wiped out when the statutory provision creating them is repealed, regardless of the time of their accrual, unless the rights concerned are vested." *Selig v. State Highway Admin.*, 383 Md. 655, 676, 861 A.2d 710, 723 (2004) (quoting *Beechwood Coal Co. v. Lucas*, 215 Md. 248, 256, 137 A.2d 680, 684 (1958)). Thus, once the repealed sections of a statute fade into the mist, any claim to relief traced to a repealed section disappears as well. *McComas v. Criminal Injuries Comp. Bd.*, 88 Md. App. 143, 149, 594 A.2d 583, 586 (1991) (quoting *Aviles*, 281 Md. at 535, 379 A.2d at 1231) ("This rule of statutory construction is as applicable to an amendment that limits a purely statutory right as it is to one that completely repeals a right created by statute.").

A legislative body is free to react proactively to changing circumstances and repeal or supplement acts or ordinances it finds inadequate or inappropriate to address present-day circumstances. *See Waterman Family Ltd. P'ship*, 456 Md. at 344-45, 173 A.3d at 1078 ("Were it otherwise, legislative action would be frozen in time with local officials unable to react to changed circumstances or to pursue policies presently preferred over those previously adopted. The general power of a governing body to rescind a prior law or policy on a matter subject to its jurisdiction may be constrained in particular circumstances, as when a party has acquired a vested right in the governing body's prior policy decision. Absent such circumstances, the governing body retains the option of changing its mind.").

The right to rescind a statute, however, is not absolute. "If rights were to vest during the interim between the enactment of a resolution and its rescission, the County would lose its ability to rescind, at least to the extent that rights had vested." *Boomer v. Waterman Family Ltd. P'ship*, 232 Md. App. 1, 12, 155 A.3d 901, 908 (2017) (citing *Dal Maso*, 182 Md. at 206-07, 34 A.2d at 467) aff'd, 456 Md. 330, 173 A.3d 1069 (2017). We have explained "vested" to mean an accrued right or one that has been completed or "consummated so precocious" it becomes impossible to be eradicated statutorily. *See, e.g., Langston v. Riffe*, 359 Md. 396, 420, 754 A.2d 389, 401 (2000). In other words, to be vested, a right must be more than a mere expectation based on the anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand. *McComas*, 88 Md. App. at 150, 594 A.2d at 586. (quotation marks and brackets omitted).

We agree with the theoretical premise in the present proceeding that "claims for refunds of impact fees collected in FYs 1997-2002, which were not expended or encumbered within six [fiscal years] following the year of collection, were ripe prior to the repeal and may be pursued in this case," if any exist. *Dabbs*, 232 Md. App. at 342 n.8, 157 A.3d at 397 n.8. That premise is of no assistance to the *Dabbs* Class because the County's evidence (accepted as credible and convincing by the circuit court) demonstrated "that the impact fees collected in [FY 1997-2002] were in fact reasonably expended or encumbered during the following six-year period such that no refunds are available to the plaintiffs or the class they represent."

The *Dabbs* Class contends that all fees collected between FY 1997-2003 were ripe for refund at the time the trial in this matter took place in 2010-2011. We disagree; rather, refunds for impact fees collected and unexpended or unencumbered through 2003 were not ripe for collection.

McComas v. Criminal Injuries Compensation Board is convincing on this question. In *McComas*, the court considered whether the "amendment to Md. Ann. Code art. 26A (1987) [(of the Criminal Injuries Compensation Act]), are applicable to [McComas'] claim before the Criminal Injuries Compensation Board ("Board") which was filed before the effective date of the amendments."[28] *McComas*, 88 Md. App. at 145, 594 A.2d at 583-84. McComas, who filed a criminal injuries claim[29] and was heard by the Board before the amendments took effect, averred that the amendments should not be applied to his claim retrospectively because they affected his substantive rights. *McComas*, 88 Md. App. at 146-47, 594 A.2d at 584. The court began its analysis by noting the general rule that rights of pure statutory origin, "unless vested, are subject to repeal or amendment at the will of the legislature." *McComas*, 88 Md. App. at 147, 594 A.2d at 584-85. Moreover, the court explained that any claimant seeking compensation

---

[28] The only amendment at issue in *McComas* that is relevant to our present analysis limited the amount of compensation the Board may award a claimant.

[29] Before the amendment took effect, McComas "had been awarded compensation in the amount of $666.80 and had a pending claim for additional benefits." The pending claim for additional benefits awarded him $45,000—the amended statutory maximum. *McComas v. Criminal Injuries Comp. Bd.*, 88 Md. App. 143, 146, 594 A.2d 583, 584 (1991).

under the Criminal Injuries Compensation Act does not have a vested right to compensation from the State *until* the Board finds the claimant is eligible for such an award. *McComas*, 88 Md. App. at 148, 594 A.2d at 585 (emphasis added).

The court amplified, in *In Re Samuel M.*, 293 Md. 83, 95, 441 A.2d 1072, 1078 (1982), that:

> Treatment as a juvenile is not an inherent right but one granted by the state legislature [;] therefore the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved.

This is also supported by ... *Beechwood Coal Co.* [*v. Lucas*, 215 Md. 248, 255-56, 137 A.2d 680, 684 (1958),] wherein [we] stated:

> Our views are reinforced by the special rule of statutory construction that rights[,] which are of purely statutory origin and have no basis at common law are wiped out when the statutory provision creating them is repealed, regardless of the time of their accrual, unless the rights concerned are vested.

The court held ultimately that McComas "did not have a vested, legally enforceable right to compensation beyond $666.80 [and McComas'] award of compensation made after the amendments were enacted was correctly limited to $45,000." *McComas*, 88 Md. App. at 151, 594 A.2d at 586

We applied this principle of statutory construction in *Aviles* (in the context of a repeal of a mechanics' lien statute) that a mechanic's lien, a

creature purely of statute, is "obtainable only if the requirements of the statute are complied with." *Aviles*, 281 Md. at 536, 379 A.2d at 1231 (quoting *Freeform Pools v. Strawbridge*, 228 Md. 297, 301, 179 A.2d 683, 685 (1962)). Thus, claimants would be unsuccessful in seeking a mechanic's lien, under what was codified in Md. Code §§ 9-101-108, 9-111 and 9-113 of the Real Property Article (1974 & 1995 Cum. Supp.), because "the repealed sections of the statute as they existed prior to May 4, 1976, have disappeared as affecting this case to the same extent as though they never existed." *Aviles*, 281 Md. at 535, 379 A.2d at 1230.

The repeal of the impact fee provision of § 17-11-210 took effect on 1 January 2009. Under the prior amended § 17-11-210(b), within 60 days following the end of the sixth fiscal year[30] from when impact fees were collected, the County was to give notice to the public of the availability of impact fee refunds, if any. Upon the notice's publication, an eligible property owner must apply for a refund within 60 days of the publication of the last notice. The County, following an assessment that the applicant had paid rightfully the fees, would refund any available unexpended impact fees to the eligible property owner, with interest. Until such time, property owners in the district from which funds were collected were *not* entitled to refunds.

Here, impact fees collected from the *Dabbs* Class through FY 2003 (the last year in the applicable six-year period and which was the basis of the refund

---

[30] The parties agree that the relevant fiscal year here runs from July 1 through the following June 30.

claims asserted here) would be eligible for refunds (if any existed) on or about 29 August 2009, i.e., six years (and the 60-day notice period) following the fiscal year of impact fee collection. The effective date of the repeal of the refund provision of § 17-11-210 occurred well before any impact fees collected through 2003 became ripe for a refund claim. The rationales of *McComas* and *Aviles* evince a transparent legislative practice that if a party's rights have not vested before a statute's repeal, there can be no claim as of right to the relief the statute once granted. Here, as in *McComas*, the County, before paying any potential impact fee refunds, had to determine (after a petition by an eligible property owner) if refunds were due from the FY of relevant collection. Until such time, no eligible owner had vested rights in the refunds. Thus, the *Dabbs* Class' claims for refunds of impact fees collected through FY 2003 was not ripe until 29 August 2009—after the effective date of the repeal of the refund provision in § 17-11-210.

The *Dabbs* Class protests that this constitutes a "cooking of the books," i.e., the County misrepresented intentionally facts to the court, and the passage of Bill No. 27-07 and Bill No. 71-08 were done with intent to deprive the *Dabbs* Class of money they were owed. We disagree, and in response, associate ourselves with the eulogy pronounced by the circuit court in dispensing with this argument,

> [the *Dabbs* Class] seem to broadly suggest that when the Impact Fee Ordinance was enacted that those provisions that pertained to accounting of the fees paid and the possibility of a refund at some future time, *were somehow frozen in amber unable* to be

> revised or improved by the County as experience demonstrated a need. This would be a surprising result given that as explained above, development impact fee provisions were novel in Maryland and in the County and in some respects were an on going experiment in fiscal funding of the needs arising from development projects. It is exactly the type of legislation that over time may need review and revision to accomplish its intended goals.

(emphasis added). Although the timing of the adoption of Bill No. 27-07 and Bill No. 71-08 may appear, on their faces, opportunistic, they do not exceed the bounds of what the County was authorized by law to do. See *Aviles*, 281 Md. at 535, 379 A.2d at 1230.

The *Dabbs* Class asserted sporadically its dissatisfaction with Bill No. 96-01 in the circuit court and intermediate appellate court in this case. Bill No. 96-01, effective 3 February 2002, authorized, *inter alia*, the County to use impact fees for temporary classroom structures provided the structures expand the capacity of the schools. It appears that they have abandoned, however, any argument to this effect before us. The *Dabbs* Class maintains that they cited Bill No. 96-01 "*passim*" throughout its brief. We, however, could find only two instances where the *Dabbs* Class referred to Bill No. 96-01 in its brief[31]

---

[31] First, "[a]nd while the County's 2008 replenishment of pre 1996 fees and their reallocated expenditure on 2008 capital projects was a per se taking, the character of the County's actions in enacting Bills 96-01, 27-07 and 71-08 during pending litigation, each designed to prevent refunds, bears additional

and one reference in its reply brief where it notes that "[t]he Class because of limited space adopts its arguments on Bill 71-08 and State Rated Capacity precludes impact fee expenditures 'countywide' for relocatable classrooms." We cannot discern where (or if) the *Dabbs* Class asserted meaningful legal arguments (with supporting authorities) regarding the applicability of Bill No. 96-01.[32]

Moreover, the *Dabbs* Class asserts and re-asserts a plethora of alternative arguments "supporting" their claim to its entitlement to impact fee refunds.[33] We

---

consideration as a regulatory taking ...." Second, "Anne Arundel County, in a trilogy of ordinances, Bill 27-07, 96-01 and 71-08 presented a fluctuating legislative policy, knowing who would, in pending litigation, benefit from each ordinance it enacted, the County."

[32] The County, nevertheless, responds briefly that, under conflict preemption (the apparent basis the *Dabbs* Class asserts in support of its argument), "there is nothing in the State definition of [State Rated Capacity] [( ]SRC[ )] that prohibits the County from applying a definition of [school] capacity for purposes of determining the scope of its use of impact fees broader than the definition used by the State Department of Education for school finance purposes."

[33] We do not address the *Dabbs* Class' following naked arguments, and allegations, including, but not limited to, that: (1) the December 2000 impact fee study committee's report to the county executive made clear the rational nexus test was the legal foundation of the county's impact fee ordinance; (2) "[t]his Court cannot now condone the County's unconscionable shell game gimmickry, it made through known misrepresentations to all courts, regarding its alleged exclusion of the identical fees it now admits were "dollar for dollar" replenished and then reallocated in 2008 to support projects not even in existence in 1996; (3) Bill No. 27-07 was not an emergency ordinance as alleged; (4) Bill No. 27-07 is an abuse of legislative power; (5) Bill No. 27-07 interfered with the judicial process; and, (6) claims relating to

adopt, in response to those arguments, once more, "[w]e did not grant certiorari as to [these questions], and thus, the decision of the intermediate appellate court is the law in this case." *Halle*, 408 Md. at 559 n.7, 971 A.2d at 226 n.7.

We find no error or abuse of discretion by any court in this case.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED; COSTS TO BE PAID BY PETITIONERS.

---

the County's 9.9 million "dollar for dollar" replenishment of expended pre-1996 ineligible impact fees.

Appendix B-1

REPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 2653

September Term, 2015

WILLIAM DABBS, ET AL.

v.

ANNE ARUNDEL COUNTY, MD.

Wright,

Graeff,

Bair, Gary E. (Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: March 30, 2017

This appeal arises from the Circuit Court for Anne Arundel County's entry of a declaratory judgment in favor of appellee, Anne Arundel County (the "County"), as to all counts and claims stated in a class action complaint filed against it on November 4, 2011, by appellants, William Dabbs, Sally Trapp, Samuel Craycraft, and Roberta Craycraft, "individually and

on behalf of all others similarly situated." Appellants had sought refunds of impact fees that, following the fiscal year ("FY") of collection, were not expended or encumbered within six FYs. Following a hearing on November 20, 2014, and after receiving memoranda from the parties, the circuit court entered judgment in the County's favor on January 27, 2016, ordering that appellants "take nothing in this action." The court also denied appellants' motion to revise class definition, as well as their motion for an accounting of County impact fee collections, expenditures, and encumbrances. On February 11, 2016, appellants noted this appeal.

Questions Presented

For clarity, we have combined, renumbered, and rephrased the questions presented by appellants, as follows:[1]

1. Did the circuit court err in concluding that the "rough proportionality" or "rational nexus" test established by the Supreme Court of the United States has no application to development impact fees?

2. Did the circuit court err in finding that the enactment of Bill No. 27-07 did not interfere with the vested rights of appellants to recover impact fee refunds?

3. Did the circuit court err in concluding that appellants could not recover as damages $9.9 million that the County transferred from the

[1] In their brief, appellants presented six questions, but their argument consisted of 15 subparts.

General Fund to the Impact Fee Special Fund in 2008?

4. In determining the appropriate use of impact fees under its Impact Fee Ordinance, is the County required to use the definition of "State Rated School Capacity" that the State applies for school construction funding purposes?

5. Did the circuit court err in denying appellants' motion for an accounting of County impact fee collections, expenditures, and encumbrances?

6. Did the circuit court err in finding that the prospective repeal in Bill No. 71-08 of the County's impact fee refund provision, codified in § 17-11-210(b), had no effect on appellants' vested rights to refunds?

For the reasons that follow, we affirm the circuit court's judgment.

Facts

I. The County's Impact Fee Ordinance

Pursuant to the authority set forth in Chapter 350, Acts of 1986, and codified in Subtitle 2 of Title 11 of Article 17 (the "Impact Fee Ordinance") of the Anne Arundel County Code ("County Code"), the County may impose impact fees for the purpose of requiring new development to pay its proportionate share of the costs for land and capital facilities necessary to accommodate development impacts on public facilities. § 17-11-202(1).[2] Impact fees must be paid by

[2] Unless otherwise specified, all citations will be to the County

any person who improves real property causing an impact on public facilities before a building permit for the improvement may be issued. §§ 17-11-203, 17-11-206.

Under § 17-11-209(a), all funds collected from impact fees must be used for eligible capital projects, that is, capital projects for the "expansion of the capacity" of roads and schools, and not for replacement, maintenance, or operations. The County has been divided into impact fee districts and impact fees generally must be used for capital improvements within the "district from which they are collected." § 17-11-209(d). The County Planning and Zoning Officer ("PZO") determines the extent to which capital projects are eligible for impact fee use. *See generally* Impact Fee Ordinance.

Section 17-11-210(b) provides that, if the impact fees collected in a district are not expended or encumbered within six FYs following the FY of collection, the County Office of Finance must give notice to current property owners that impact fees are available for refund. Section 17-11-210(e), however, allows the PZO to "extend for up to three years the date at which the funds must be expended or encumbered." Such an extension may be made "only on a written finding that within a three-year period certain capital improvements are planned to be constructed that will be of direct benefit to the property against which the fees were charged."

Code. The code has since been amended numerous times. The language of the relevant sections at the pertinent times is undisputed by the parties.

The County began imposing impact fees in FY 1988. On December 20, 2001, the County Council enacted Bill No. 96-01, which, effective February 3, 2002, authorized the County to use impact fees for temporary structures (classrooms) provided they expanded the capacity of the schools to serve new development. Then, on May 22, 2007, the County Council enacted Bill No. 27-07, which codified the procedures which the County had utilized to count impact fee expenditures and encumbrances for purposes of determining impact fee refunds under § 17-11-210(b). Because Bill No. 27-07 did not effect a substantive change in policy, the County Council made Bill No. 27-07 retroactive to fees collected in FYs 1988-1996.

On November 6, 2008, the County Council enacted Bill No. 71-08 and repealed, prospectively, the impact fee refund provisions previously set forth in § 17-11-210. The repeal was effective on January 1, 2009, and barred claims that were not ripe as of the effective date of the repeal, that is, the repeal barred claims for refunds of fees collected after FY 2002.

II. Plaintiffs' Claims

This action is the second lawsuit in which class plaintiffs have sought refunds of impact fees pursuant to § 17-11-210. In the first action, the circuit court ruled that it would only resolve claims for refunds of impact fees collected in FYs 1988-1996, namely the FYs that were ripe for review at that time. *Halle Dev., Inc. v. Anne Arundel Cty.*, Case No. 02-C-01-069418. Thus, in 2011, appellants filed the present claim ("*Dabbs*"), seeking refunds of fees collected in and after FY 1997.

A. Halle

In 2008, this Court, in *Halle*, explained the manner in which § 17-11-210 should be applied to calculate whether impact fees are available for refund. *Anne Arundel Cty. v. Halle Dev., Inc.*, No. 2552, Sept. Term, 2006 (Feb. 7, 2008, *on reconsideration*, May 7, 2008). We ruled that the County was entitled to count impact fee encumbrances in calculating refunds after the close of six FY periods and remanded the case to the circuit court for the purpose of recalculating refunds accordingly. Specifically, we rejected the County's argument that the case should be remanded to the PZO for new extension decisions, and we ruled that the County Code required any decision by the PZO to extend the period for using impact fees be validly made before the end of the six FY period. However, we agreed with the County that (1) in applying its procedure to count impact fees encumbered for the purpose of determining refunds, the County was not attempting to encumber impact fees "retroactively," and (2) the County Code did not require the County to count impact fee encumbrances as part of the annual budget process and within the six FY period. We stated:

> Owners contend that the circuit court's ruling is supported by the refund provisions in Code § 17-11-210. They argue that the County is attempting retroactively to encumber funds. They assert that the circuit court correctly ruled that for refund purposes a PZO determination that impact fee funds had been encumbered, must have been made within the six years following collection of the funds. This analysis confuses encumbrance with extension.

> As we have seen in Part I, *supra*, there was a time limit prior to which the fact-finding of extension must be made, and made in the required format, in order to effect an extension. Section 17-11-210 does not mandate any format for effecting an encumbrance.

Halle, Feb. 7, 2008 opinion at 19-20.

We also rejected the circuit court's reliance on § 4-11-102(c)(11) for the proposition that impact fee encumbrances had to be counted as a part of the annual budget process, stating:

> Code § 4-11-102(c)(11), also cited by the court and requiring the capital budget and capital program to include "any amounts encumbered and expended by April 1 of the current and prior year," is satisfied by the current format of that budget and program, as described above. That information advises the County Council of matters of historic fact. The section does not require that encumbrances be recorded in the accounts of a particular impact fee special fund when those encumbrances are made in the future, during the fiscal year that is the subject of a particular capital budget.

Id. at 19. In short, we ruled:

> Accordingly, we shall remand on the encumbrance issue for a determination of the amount of impact fees that had been encumbered, but unexpended, within six years following their collection.

Id. at 20.

Thereafter, the County filed a motion for reconsideration requesting that this Court rule that the County was also entitled to count impact fees encumbered in connection with plaintiffs' claims for refunds of school impact fees. We granted the motion in a May 7, 2008 opinion, stating:

> [In our February 7, 2008 opinion,] we held that the circuit court erred in failing to include in the six-year test encumbrances made within a six-year period after the year of receipt in computing the debit against fee receipts.
>
> * * *
>
> This Court's rationale in its February 7, 2008 opinion with respect to transportation project encumbrances, argues the County, is equally applicable to the accounting record for encumbrances for school projects. Because we held in our February 7, 2008 opinion that the ground on which the circuit court relied in rejecting encumbrances as a setoff under the six-year test was erroneous, the court, on remand, should consider not only encumbrances for transportation projects, but for school projects as well when applying the six-year test.

Halle, May 7, 2008 opinion at 7-8.

Although Bill No. 27-07, which codified the County's procedure for counting impact fee encumbrances, had been enacted prior to this Court's 2008 opinion and was retroactive, we ruled that the amended ordinance did not modify the concept of encumbrance which had been in the County Code from the enactment of Bill

58-87 in 1988, and thus, it was unnecessary to address the retroactivity of the legislation because it did not change law or policy.

Following this Court's 2008 decision in *Halle*, both the County and the class plaintiffs filed petitions for a writ of *certiorari* in the Court of Appeals. The County requested that the Court review the Court of Special Appeals' ruling that the case could not be remanded to the PZO to make new extension decisions. The class plaintiffs, on the other hand, requested that the Court of Appeals review the Court's ruling that the County was not "retroactively encumbering" impact fees by utilizing the procedure (subsequently codified in Bill No. 27-07) to count them after the case had been filed. Plaintiffs argued that they had vested rights to an accrued cause of action to recover refunds after they filed suit on February 21, 2001, and thus, the case could not be remanded to permit the County to either grant new extensions, or count encumbrances.

The Court of Appeals granted the County's petition. *Anne Arundel v. Halle*, 405 Md. 350, 952 A.2d 225 (2008). However, it denied plaintiffs' cross-petition, thus declining to review the encumbrances issue. The Court of Appeals then affirmed this Court on all issues for which it granted *certiorari* and explained that the class plaintiffs did not have vested rights which would preclude the County from counting encumbrances after the close of the six FY periods. *Anne Arundel Cty. v. Halle Dev., Inc.*, 408 Md. 539, 971 A.2d 214 (2009). It stated:

> This case is not about vesting. It is about the PZO's lack of authority under the impact fee ordinance to go back and make administrative decisions that it failed to

> effectively execute when permitted. Indeed, the Owners may not be vested in their right to a refund. Whether they are entitled to a refund and in what amount it will be determined by the Circuit Court on remand. The full refund amount determined by the Circuit Court may be reduced if the County is able to prove that it, in fact, encumbered the impact fee funds within six years.

Id. at 559, 971 A.2d 214. In an accompanying footnote, the Court of Appeals explained:

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

Id. at 559, 971 A.2d 214 n.7.

On remand, the circuit court stated that this Court's 2008 opinion in *Halle* was the law of the case and, in applying our mandate, reduced the amount of refunds from $4.7 million to $1.3 million. The circuit court, however, stated that it disagreed with part of

our opinion, and instead it expressed continued belief that the County was not entitled to count encumbrances because the County was required to do so during the FYs under review as a part of the annual budget process. To that end, the circuit court invited the Court of Appeals to review the issue of encumbrances. The circuit court then made certain "alternate findings" in the event that the Court of Appeals decided to review the case.

Subsequently, the plaintiffs filed a petition for writ of *certiorari*, asking the Court of Appeals to again review whether the enactment of Bill No. 27-07 interfered with their vested rights. The Court of Appeals, however, declined to do so, and this Court, in 2013, affirmed the circuit court's final judgment ruling that our 2008 opinion was the law of the case. *Halle Dev., Inc. v. Anne Arundel Cty.*, No. 0327, Sept. Term, 2011 (July 29, 2013). We stated:

> In its March 25, 2011 opinion, the circuit court correctly ruled that our prior holdings in this case—and the prior holdings of the Court of Appeals in this case—are the law of the case which are binding on the circuit court.
>
> * * *
>
> The circuit court ruled in its December 30, 2004 opinion that the definition of impact fees encumbered, and the County's procedure for counting encumbrances was reasonable and lawful. The circuit court, however, also ruled that the County could not retroactively count encumbrances because the impact fees must be counted "as part of the annual budget process, no later than the sixth fiscal year."

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

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

Anne Arundel Cnty. v. Halle Dev., Inc., 408 Md. 539, 571-72, 971 A.2d 214 (2009). The Court of Appeals also pointed out that:

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

> **modified on remand, and the Owners' rights in any specific refund award are not vested.**
>
> *Id*. at 559, 971 A.2d 214, n.7 (emphasis added).
>
> Here, Owners raise issues relating to the determination of impact fee encumbrances to determine refunds. As set forth, *supra*, our comprehensive 2008 opinion addressed this issue as a question of law. Accordingly, the circuit court was bound by the law of the case as to this legal issue.

Id. at 4-6.

We also determined that plaintiffs' argument that the retroactivity provision in Bill No. 27-07 unconstitutionally interfered with their vested rights was barred by the law of the case doctrine:

> Next, Owners argue that Bill 27-07 "operates retrospectively to divest and adversely affect vested rights, impacts the obligation of contracts, and violates the due process clause." Owners further argue at length that the County Council "was not permitted to retroactively modify the County's impact fee ordinance, by design, and reduce the amount of impact fees refunded 20 years after the events here have occurred." The County argues that these arguments are barred under the law of the case doctrine. We agree with the County that the law of the case doctrine precludes re-litigation of these issues. The circuit court, therefore, did not err

> in applying the law of the case in determining impact fee encumbrances.
>
> * * *
>
> We also observed in our prior opinion that the retroactivity provision of Bill No. 27-07 was not relevant to the case. In particular, we cited the definition of an "encumbrance" as set forth in § 17-11-201(2) of the County Code. At that time we observed that, "[a]though this statutory definition, enacted by Council Bill No. 27-07, was not effective until May 22, 2007, long after the events with which we are concerned here, the definition conforms to generally accepted accounting principles (GAAP)." Further, we pointed out that we had no occasion to consider the validity of the retroactivity provision of the amended ordinance because the only relevant issue was the definition of "encumbrance," and the ordinance was cited "simply to state the pre-existing, generally accepted meaning of the term, 'encumbrance[.]' "
>
> Thus, we have already defined—as a matter of law—the definition of "encumbrance" that governs this case. Additionally, we have previously held that the retroactivity provision of Bill 27-07 is not implicated, and does not alter how impact fee encumbrances are counted for purposes of this case.

Id. at 11-12.

Finally, we noted that the Court of Appeals had rejected the class plaintiffs' claim that they had

obtained vested rights in impact fee refunds by bringing their lawsuit in 2001:

> Moreover, the Court of Appeals has made clear that the retroactivity provision of Bill 27-07 is of no consequence here. As a threshold matter, we point out that, as the circuit court aptly observed, the key issue in a retroactivity analysis is whether Owners have "vested rights" in their claims for impact fee refunds. "If the legislature intends a law affecting substantive matters to operate retroactively and the law does not offend constitutional limitations or restrictions, it will be given the effect intended.["] *State Comm'n on Human Relations v. Amecom Div. of Litton Sys., Inc.*, 278 Md. 120, 123, 360 A.2d 1 (1976). In conducting the retroactivity analysis, a court must determine whether the retroactive application of the statute or ordinance would interfere with vested rights. *Rawlings v. Rawlings*, 362 Md. 535, 766 A.2d 98 (2001).
>
> Here, the Court of Appeals held that the instant case was not about vested rights, and that Owners had no vested rights in impact fee refunds:
>
> > **This case is not about vesting.** It is about the PZO's lack of authority under the impact fee ordinance to go back and [make] administrative decisions it failed to effectively execute when permitted. Indeed, the Owners may not be vested in their right to a refund. Whether they are entitled to a refund

> and in what amount will be determined by the Circuit Court on remand. The full refund amount determined by the Circuit Court on remand may be reduced if the County is able to prove that it, in fact, encumbered the impact fee funds within six years.
>
> * * *
>
> *Anne Arundel County v. Halle Dev., Inc.*, 408 Md. 539, 971 A.2d 214; id. at 559, 971 A.2d 214, n.7 (emphasis added).

Id. at 12-13.

B. Dabbs

In the present case, involving impact fees collected in FYs 1997-2002, appellants sought refunds on the ground that the impact fees were not expended or encumbered in a timely manner under § 17-11-210(b). Appellants also argued that the amendments to the Impact Fee Ordinance in Bill No. 27-07 and Bill No. 71-08 unconstitutionally interfered with their vested rights in refunds. After hearing from the parties, the circuit court ruled that the County had applied the Impact Fee Ordinance as required by this Court's 2008 opinion and found that there are no impact fees available for refund under § 17-11-210. Further, the circuit court rejected appellants' constitutional and state law challenges to the Impact Fee Ordinance, finding that most of the challenges had already been resolved against the class plaintiffs in *Halle*.

More specifically, the circuit court found that the County prepared the six FY charts in the format

approved by the *Halle* courts, properly comparing the amount of impact fees collected in each FY and district under review to the amount of impact fees expended (disbursed) and encumbered as of the end of the sixth FY following the FY of collection. Kurt Svendsen, the County's Assistant Budget Officer, who had been employed by the County since September 1, 1997, was responsible for (a) the preparation of the County's Capital Budget portion of the Annual Budget and Appropriation Ordinance, and (b) the monitoring of encumbrances and expenditures recorded in connection with appropriations for capital projects. Because Svendsen monitored expenditures and encumbrances recorded against appropriations of capital projects on an almost daily basis, he was delegated the responsibility for conducting the six FY test under § 17-1-210(b).

In the present case, the County prepared six FY charts for FYs 1997-2002 in the same manner as the charts prepared in *Halle* for FYs 1988-2002, but also included impact fee expenditures on temporary classrooms.[3] The charts indicated that all impact fees collected in FYs 1997-2002 were expended or encumbered within six FYs following the FY of

[3] As previously stated, prior to the enactment of Bill No. 96-01, the County was prohibited from expending impact fees to pay for temporary classrooms. Bill No. 96-01 authorized such expenditures provided they expanded the capacity of the schools to serve new development, but it was given only prospective effect, so it applied only to expenditures on and after February 3, 2002.

collection and, thus, no impact fees collected in these FYs were available for refund.[4]

Lastly, the circuit court found that, in applying the six FY test, the County properly interpreted the term "impact fees encumbered" in § 17-11-210(b) to mean:

> (1) the amount of impact fees collected in a district account in a FY which have not been expended on June 30 of the sixth FY following the FY of collection, for which there is
>
> (2) as of the same date, an encumbrance (purchase order) on an impact fee eligible capital project in the district.

According to the circuit court, this definition is the only logical one based on GAAP, the applicable provisions of the County Charter, and Annual Budget and Appropriation Ordinances. Under GAAP, an appropriation states the legal authority to spend or otherwise commit a government's resources. *See*

---

[4] Notwithstanding Bill No. 96-01, appellants argued that impact fees cannot be used to fund temporary classrooms because they are excluded from "State Rated Capacity" as defined by the State for school funding purposes, and impact fees can only be used for projects that expand school capacity. Appellants also argued that the "rough proportionality" or "rational nexus" test prohibits the use of impact fees to fund temporary classrooms.

The County disagreed with appellants' arguments, contending that the use of impact fees to fund temporary classrooms on and after February 3, 2002, was expressly authorized by law and that the rational nexus test does not apply to the County's impact fees. Alternatively, the County prepared six FY charts that excluded all expenditures on temporary classrooms in calculating whether impact fees were available for refund in FYs 1997–2002. Those charts demonstrated that, even if all expenditures on relocatable classrooms were excluded, there would still be no impact fees available for refund.

Stephen Gauthier, *Governmental Accounting Auditing and Financial Reporting* at 305 (Government Finance Officers Ass'n 2001).[5] Meanwhile, § 715(a) of the County Charter provides that County officials and employees may not spend or commit funds in excess of appropriations, and § 17-11-201(2) defines an encumbrance as "a legal commitment for the expenditure of funds, chargeable against the applicable appropriation for the expenditure, that is documented by a contract or purchase order." Thus, the court concluded that when determining the amount of "impact fees encumbered,"[6] the County was correct in comparing the amount of unexpended impact fees in the district account at the end of the relevant FY to the encumbrances entered in relation to capital projects in the district that have been determined by the PZO to be eligible in the district.

Additional facts will be included as they become relevant to our discussion, below.

Discussion

---

[5] This scholarly treatise has been relied upon repeatedly throughout the related proceedings by this Court and by the circuit court.

[6] According to the County, in the Annual Budget and Appropriation Ordinances, the County Council appropriated only sums of money for capital projects, and did not appropriate from a specific funding source. The County states that there are numerous sources for the funds disbursed to pay invoices relating to capital projects, including impact fees, general funds, federal grants, state grants, and developer contributions. It also notes that funding sources for County capital projects are identified by the County's Office of Finance after invoices are paid from the Central Cash Fund.

Md. Code (1973, 2013 Repl. Vol.), § 3-409(a) of the Courts & Judicial Proceedings Article provides that "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 ... [a]n actual controversy exists between contending parties." (Emphasis added). "It follows that 'declaratory judgment generally is a discretionary type of relief.' " *Sprenger v. Pub. Serv. Comm'n of Maryland*, 400 Md. 1, 20, 926 A.2d 238 (2007) (quoting *Converge Servs. Grp. v. Curran*, 383 Md. 462, 477, 860 A.2d 871 (2004)). "Thus, we generally review a trial court's decision to grant or deny declaratory judgment under an abuse of discretion standard." *Id.* at 21, 926 A.2d 238.

The Court of Appeals has "defined abuse of discretion in numerous ways, but has always enunciated a high threshold." *Sumpter v. Sumpter*, 436 Md. 74, 85, 80 A.3d 1045 (2013) (citations omitted). Previously, this Court has stated:

> "Abuse of discretion" is one of those very general, amorphous terms that appellate courts use and apply with great frequency but which they have defined in many different ways. It has been said to occur "where no reasonable person would take the view adopted by the [trial] court," or when the court acts "without reference to any guiding rules or principles." It has also been said to exist when the ruling under consideration "appears to have been made on untenable grounds," when the ruling is "clearly against the logic and effect of facts and inferences before the court," when the ruling is "clearly untenable,

> unfairly depriving a litigant of a substantial right and denying a just result," when the ruling is "violative of fact and logic," or when it constitutes an "untenable judicial act that defies reason and works an injustice."
>
> There is a certain commonality in all of these definitions, to the extent that they express the notion that a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.

North v. North, 102 Md. App. 1, 13-14, 648 A.2d 1025 (1994) (internal citations omitted).

I. "Rough Proportionality" or "Rational Nexus" Test

Appellants first argue that the circuit court erred in determining that the rough proportionality test, or the rational nexus test, has no application to the development impact fees in this case. Rather, according to appellants, the County must demonstrate that "its expenditure of impact fees was reasonably attributable to new development and each such expenditure reasonably benefitted 'new development' and/or individual 'against whom the fee was charged.' " (Citations omitted). In advancing their argument, appellants assert that the circuit court's decision runs contrary to *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), *Waters Landing, Ltd. P'ship. v.*

Montgomery Cty., 337 Md. 15, 650 A.2d 712 (1994), *Koontz v. St. Johns River Water Mgmt. Dist.*, --- U.S. ----, 133 S.Ct. 2586, 186 L.Ed.2d 697 (2013), and several out-of-state cases.

In response, the County avers that, "[u]nder settled law, the rough proportionality or rational nexus test does not apply to legislatively enacted fees or taxes of general application, such as the County's impact fees" in this case.

The United States Supreme Court established the "rough proportionality" test in *Dolan*, 512 U.S. at 391, 114 S.Ct. 2309. In that case, a property owner applied for a building permit to construct a commercial building, and the City of Tigard conditioned the issuance of the permit on the dedication of (1) a portion of the property for a "greenway" to control flooding, and (2) another portion for a pedestrian and bicycle path. *Id.* at 379-80, 114 S.Ct. 2309. Although the Supreme Court found that an " 'essential nexus' exists between the 'legitimate state interest' and the permit condition exacted by the city," pursuant to *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), it nonetheless ruled that the City of Tigard failed to demonstrate that the required dedications were consistent with the takings clause of the Fifth Amendment because the extent of the exaction was not roughly proportional to "the impact of the proposed development." *Dolan*, 512 U.S. at 386-96, 114 S.Ct. 2309.

Approximately six months following the *Dolan* decision, the Maryland Court of Appeals ruled that the rough proportionality test did not apply to a "development impact tax [imposed] by legislative

enactment, not by adjudication." *Waters Landing*, 337 Md. at 40, 650 A.2d 712. The Court reasoned:

> We think *Dolan*, which concerned the Fifth Amendment Takings Clause, is irrelevant to the issue of special benefit assessments and generally inapplicable to this case. While the facts in *Dolan* are somewhat similar to the facts before us, the Court, in reaching its holding, specifically relied on two distinguishing characteristics that are absent in the instant case. First, the Court mentioned that instead of making "legislative determinations classifying entire areas of the city," the City of Tigard "made an adjudicative decision to condition [the landowner's] application for a building permit on an individual parcel." *Id*. at 385, 114 S.Ct. at 2316, 129 L.Ed.2d at 316. Second, the Court noted that "the conditions imposed were not simply a limitation on the use [the landowner] might make of her own parcel, but a requirement that she deed portions of the property to the city." *Id*. In contrast, Montgomery County imposed the development impact tax by legislative enactment, not by adjudication, and furthermore, the tax does not require landowners to deed portions of their property to the County.
>
> Furthermore, *Dolan* is inapplicable because it concerns the Takings Clause, which is not implicated in the case before us. To the extent that this tax is a regulation on the development of land, it is not a regulation that " 'goes too far'" so as to be " 'recognized as a taking.' " *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003,

> 1014, 112 S.Ct. 2886, 2893, 120 L.Ed.2d 798, 812 (1992) (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 322 (1922)). A regulation does not "go too far" unless it either "compel[s] the property owner to suffer a physical 'invasion' of his property," or "denies all economically beneficial or productive use of land." *Id.* at 1015, 112 S.Ct. at 2893, 120 L.Ed.2d at 812-13[.]

Id.

Like in *Waters Landing*, the impact fees at issue here were imposed by legislative enactment, and do not require landowners to deed portions of their property to the County. Moreover, appellants cannot claim "that the impact tax" here "compel[s] the property owner to suffer a physical 'invasion' of his property," or "denies all economically beneficial or productive use of land." *Id.* at 40-41, 650 A.2d 712. Therefore, as the Court of Appeals concluded in *Waters Landing*, we similarly hold that "the Takings Clause being inapplicable, *Dolan* does not affect our decision." *Id.* at 41, 650 A.2d 712.

We disagree with appellants' assertion that *Koontz* runs contrary to this conclusion. In that case, the development exactions at issue involved discretionary exactions made on the basis of an individualized determination; it did not involve a legislatively imposed tax of general application. *See Koontz*, 133 S.Ct. at 2591. Thus, the Supreme Court ruled that the "so-called 'monetary exactions' must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*." *Id.* at 2599. The *Koontz* Court clarified, however, that "[i]t is beyond dispute that [t]axes and user fees ... are not takings," and that its decision

should not be read to "affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners." *Id.* at 2600-01 (internal citation omitted).

For these reasons, the circuit court did not err or abuse its discretion in declining to apply the rough proportionality or rational nexus test to the County's impact fees.[7]

II. Effect of Bill No. 27-07

[3]Next, appellants argue that Bill No. 27-07 cannot be applied retroactively. In support of their argument, appellants aver that "[n]o Court of Appeal has determined [this issue]," and they further contend that "completed capital projects are not subject to retroactive legislation." In sum, appellants believe that the retroactivity of Bill 27-07 interfered with their vested rights, and that impact fee refunds are due.

In response, the County asserts that "[t]his Court and the Court of Appeals ruled in the *Halle* case that the retroactivity of Bill 27-07 did not interfere with any vested rights ... because the bill did not effect a change in policy." We agree with the County.

As we outlined above, in *Halle*, we ruled that Bill No. 27-07 did not modify the concept of encumbrance, which had been in the County Code from the enactment of Bill 58-87 in 1988, and thus, it was unnecessary to address the retroactivity of the

---

[7] Because the test does not apply to the impact fees in this case, we need not address the merits of whether the County complied with the test's requirements.

legislation in our 2008 opinions because it did not change law or policy. Thereafter, upon granting the *Halle* plaintiffs' petition for writ of *certiorari*, the Court of Appeals explained that the class plaintiffs did not have vested rights which would preclude the County from counting encumbrances after the close of the six FY periods. Then, in 2013, we reiterated that the retroactivity provision of Bill No. 27-07 was not implicated in *Halle*, that it did not alter how impact fee encumbrances were counted, and that *Halle* was not about vesting. We fail to see how we can reach a different conclusion here, especially when we have previously made clear that the holdings in our 2008 opinion and the subsequent holdings of the Court of Appeals in *Halle* are the law of the case as to this very issue.

Appellants' reliance on *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 805 A.2d 1061 (2002) is misplaced. *Dua* involved challenges to two retroactive laws, regarding refund of late fees associated with cable contracts, passed by the General Assembly during its 2000 session. 370 Md. 610-11, 805 A.2d 1061. There, the Court of Appeals stated that neither law could be applied retroactively, as "they represented major changes of legislative policy." *Id*. at 643, 805 A.2d 1061. In addition, at the time the legislation took effect in *Dua*, the petitioners' ability to recover the refunds was not subject to any future review, act, contingency, or decision to make it secure and, therefore, the Court concluded that "there is a vested right in an accrued cause of action and that the Maryland Constitution precludes the impairment of such right." *Id*. at 632, 805 A.2d 1061.

By contrast, here, Bill No. 27-07 did nothing more than codify the County's procedure; it did not retroactively change County law or policy, nor did it purport to take away an accrued cause of action for refunds. *See id*. at 643, 805 A.2d 1061; *Cf. Prince George's Cty. v. Longtin,* 419 Md. 450, 500, 19 A.3d 859 (2011) (holding that retroactive application of damages cap constituted a substantive change in law and policy that occurred after the cause of action had fully accrued, and would thus violate the Maryland Declaration of Rights). Accordingly, the calculation of refunds with consideration of encumbrances pursuant to the County's procedure in Bill No. 27-07 did not interfere with vested rights.

III. $9.9 Million

Appellants argue that the County knowingly violated the Impact Fee Ordinance by denying them a refund of $9.9 million, which is the amount the County transferred from the General Fund to the Impact Fee Fund to replace fees that were improperly spent on ineligible projects. In response, the County avers that this Court had already ruled, in *Halle*, that class plaintiffs are not entitled to "dollar for dollar" refunds of impact fees spent on ineligible projects. The County is correct.

The impact fee refund at issue here stems from appellants' claim concerning the impact fees collected in FYs 1997-2002. At the time of appellants' original claim, however, those impact fees were expended or encumbered within six FYs following the FY of collection and, as such, no impact fees were available for refund. § 17-11-201.

Thereafter, the circuit court determined that the County funded certain projects with money from the Impact Fee Fund and that those projects were ineligible from impact fee use. According to the court, the County should have used the General Fund or another source instead. As a result, in FY 2008, the County credited the Impact Fee Fund for the expenditures that the circuit court had determined were improperly spent on projects ineligible for impact fee use, totaling $9.9 million.

As the County correctly states, this accounting adjustment does not violate any County or State law, and does not constitute a basis for a refund. In Maryland, a taxpayer is entitled to a refund where the refund is specifically authorized by statute. *Bowman v. Goad*, 348 Md. 199, 202, 703 A.2d 144 (1997) ("any statutorily prescribed refund remedy is exclusive"). No statute authorizes a refund of money transferred from the General Fund to the Impact Fee Fund to replace funds erroneously expended. Therefore, we reject appellants' contention that they are now entitled to a $9.9 million refund.

IV. "State Rated School Capacity"

In late 2001, the County Council enacted Bill No. 96-01, which, effective February 3, 2002, authorized the County to use impact fees for temporary classroom structures provided they expanded the capacity of the schools to serve new development. Appellants argue that this change in policy was simply "the County's attempt to prevent the refund of impact fee expenditures." In addition, they contend that Bill No. 96-01 violates the rational nexus doctrine, effects a taking, and is preempted by State regulation.

As we explained in detail above, neither the rational nexus doctrine nor the takings clause applies here. With regard to appellants' contention that impact fees cannot be expended for temporary classrooms because movable structures do not expand the capacity of schools as measured by the Maryland State Department of Education's ("MSDE") State Rated Capacity ("SRC"), we conclude that nothing in MSDE's definition of SRC was intended to preempt the County's authority.

Under Maryland law, "State law may preempt local law in one of three ways; (1) preemption by conflict, (2) express preemption, or (3) implied preemption." *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 512, 850 A.2d 1169 (2004) (quoting *Talbot County v. Skipper*, 329 Md. 481, 487-88, 620 A.2d 880 (1993)) (footnote omitted). Here, appellants assert that there is conflict preemption. Under that theory, "when a local government ordinance conflicts with a public general law enacted by the General Assembly, the local ordinance is preempted by the State law and is rendered invalid." *Id*. at 513, 850 A.2d 1169 (citations omitted).

As the circuit court ruled, there is nothing in the State definition of SRC that prohibits the County from applying a definition of capacity for purposes of determining the *scope of its use of impact fees* broader than the definition used by MSDE for *school finance purposes*. The County's definition of capacity is consistent with the enabling law for the impact fees (1986 Md. Laws Ch. 350, § 1, codified in § 17-11-214), and it is the County, not the State, that determines the scope of its Impact Fee Ordinance. As such, appellants' challenge to Bill No. 96-01 fails.

V. Motion for Accounting

Next, appellants continue to challenge the retroactivity of Bill No. 27-07 and to assert their right to a refund of the $9.9 million replenishment, by arguing that the circuit court erred in denying their motion for an actual accounting by the County. Specifically, appellants assert that the County should have been ordered to provide an accounting of the impact fees "**without** the new accounting procedures in retroactive Bill 27-07 and the 2008 replenishment." (Emphasis in original). This is because, according to appellants, the County's records governing impact fee collections, expenditures, encumbrances, and eligibility are complicated, unorganized, and solely in the County's possession.

Contrary to appellants' assertion, our opinion in *Alternatives Unlimited, Inc. v. New Baltimore City Bd. of Sch. Comm'rs*, 155 Md.App. 415, 843 A.2d 252 (2004), squarely addresses this issue. In that case, we explained that the traditional criteria for an accounting in equity were as follows:

> The general rule is that a suit in equity for an accounting may be maintained when the remedies at law are inadequate.
>
> * * *
>
> The instances in which the legal remedies are held to be inadequate are said to be as follows; First, where there are mutual accounts between the plaintiff and the defendant; second, where the accounts are all on one side, but there are circumstances of great complication, or difficulties in the way of adequate remedy at law; and third, where a

> fiduciary relation exists between the parties, and a duty rests upon the defendant to render an account.

Id. at 508-09, 843 A.2d 252 (internal citations and emphasis omitted). With regard to the second instance, which applies to appellants' complaint here, we clarified:

> [W]hereas an equitable claim for an accounting once served a necessary discovery function, that function has been superseded by modern rules of discovery.
>
> [W]here there is no other ground of equity jurisdiction, a bill for discovery alone has been practically superseded by an adequate, complete and sufficient remedy at law.
>
> ... [I]t is sufficient that the new rules furnish means for discovery, at law or in equity, which are broader than the former inherent equity jurisdiction.

Id. at 510, 843 A.2d 252 (internal citations and emphasis omitted).

In this case, not only was discovery a fully effective means for appellants to obtain the information they sought in their motion for an accounting, but the County also provided them with the six FY charts and documents necessary for appellants to determine whether impact fees were available for refund. As the County notes, appellants have not pointed to a single piece of information relevant to the calculation that they were not provided. The circuit court, therefore, properly denied appellant's motion.

VI. Effect of Bill No. 71-08

Finally, appellants contend that Bill No. 71-08, which prospectively repealed the impact fee refund provisions previously set forth in § 17-11-210, interfered with their vested rights to impact fee refunds in violation of the contracts clause and takings clause of the United States Constitution. According to appellants, Bill No. 71-08 "operates as a substantial impairment of a contractual relationship between the County and special taxpayers" and "is facially unconstitutional for it violates the rational nexus doctrine by eliminating the County's burden to demonstrate a need for the collection of [impact] fees."

"As a general rule, statutes are presumed to operate prospectively and are to be construed accordingly." *Washington Suburban Sanitary Comm'n v. Riverdale Heights Volunteer Fire Co. Inc.*, 308 Md. 556, 560, 520 A.2d 1319 (1987) (citations omitted). A legislative body is authorized to "amend, qualify, or repeal any of its laws, affecting all persons and property which have not acquired rights vested under existing law." *Dal Maso v. Bd. of Cty. Comm'rs of Prince George's Cty.*, 182 Md. 200, 206, 34 A.2d 464 (1943). "Thus many courts adhere to the proposition that in the absence of a contrary expression of intent, a cause of action or remedy dependent upon a statute falls with the repeal of a statute." *State v. Johnson*, 285 Md. 339, 344, 402 A.2d 876 (1979) (citations omitted). In sum, "rights which are of purely statutory origin and have no basis at common law are wiped out when the statutory provision creating them is repealed, regardless of the time of their accrual, unless the rights concerned are vested." *Beechwood Coal Co. v. Lucas*, 215 Md. 248, 256, 137 A.2d 680 (1958) (citations omitted).

Appellants suggest that prospective application of the repeal in this case applies only to impact fees collected after Bill No. 71-08's effective date of January 1, 2009. Appellants are mistaken. As explained above, the repeal of a statute creating a right purely of statutory origin, such as § 17-11-210, wipes out the right unless the right is vested. Stated differently, the prospective repeal of the substantive right to assert a claim means that the repeal bars any claim that could not have been made (i.e., not ripe) as of the effective date of the repeal. *See McComas v. Criminal Injuries Comp. Bd.*, 88 Md.App. 143, 148, 594 A.2d 583 (1991) ("Because the rights and obligations created [at issue] originated with the statute itself, amendments apply to all claims to which the Board has not granted an award."); *Aviles v. Eshelman Elec. Corp.*, 281 Md. 529, 533, 379 A.2d 1227 (1977) (restating the "well established" principle that "[a]bsent a contrary intent made manifest by the enacting authority, any change made by statute or court rule affecting a remedy only (and consequently not impinging on substantive rights) controls all court actions whether accrued, pending or future") (footnote and citations omitted).

In this case, § 17-11-210 originally required the County to refund fees that had not been expended or encumbered within six FYs following the FY of collection. Pursuant to § 17-11-210(b), the County was required to determine whether impact fees were available for refund within 60 days following the end of the FY. Thus, a claim for a refund of impact fees collected in FY 2003 could not be ripe until August 29, 2009. Because this date is after the effective repeal date of January 1, 2009, the circuit court correctly ruled that appellants were barred from claiming fees

collected after 2002 and that they have no vested right that precludes the repeal.[8]

Finding no error or abuse of discretion on the part of the circuit court, for all of the foregoing reasons, we affirm the circuit court's judgment.

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

---

[8] Bill No. 78-01 was not given express retroactive effect, and therefore, the repeal of § 17-11-210 was prospective. *See State Farm Mut. Auto. Ins. Co. v. Hearn*, 242 Md. 575, 582, 219 A.2d 820 (1966) ("The general presumption is that all statutes, State and federal, are intended to operate prospectively and the presumption is found to have been rebutted only if there are clear expressions in the statute to the contrary.") (Citations omitted). Accordingly, unlike fees collected in FY 2003, claims for refunds of impact fees collected in FYs 1997-2002, which were not expended or encumbered within six FYs following the year of collection, were ripe prior to the repeal and may be pursued in this case.

Appendix C-1

IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY

WILLIAM DABBS, Jr. Trustee, *et al.*	
Plaintiffs	CASE NO.
v.	02-C-11-165251
ANNE ARUNDEL COUNTY, MARYLAND	**Judge Dennis M. Sweeney**
Defendant	

MEMORANDUM

This case arises out of the decision of Anne Arundel County ("County") in 1987 to impose road and school impact fees upon those who sought to develop land in the County. Under some limited circumstances, the owners of the properties developed for which fees had been paid could become eligible for refunds but only if the fees, after a substantial period of time passed, were not devoted to eligible public improvements related to the specified development. Since at least 2001, litigation over the rights of the owners of the developed property and the obligations of the County in respect to possible refunds has been a perennial fixture on the dockets of the Circuit Court for Anne Arundel County and in the Courts of Appeal or Special Appeals. This case represents another chapter in the saga which hopefully for all concerned is reaching its denouement and end stage. This memorandum

constitutes the Court's findings of fact and conclusions of law under Maryland Rule 2-522 (a) which will result in judgments and orders to be entered as set out below.

The Complaint

On November 4, 2011, Plaintiffs William M. Dabbs, Sally Trapp, Samual Craycraft and Roberta Craycraft filed a *Class Action Complaint for Declaratory Relief and Damages* ("Complaint") against the County.

In the Complaint, the Plaintiffs claimed that the County imposed road impact fees and school impact fees-on those who "seek to develop land within Anne Arundel County". ¶1. Plaintiffs asserted that the County collected the impact fees but failed to give notice of a refund due or provide the refund despite it being required by the County Code. ¶2.

Plaintiffs claimed that the County was required to refund any funds "not expended or encumbered by the end of the fiscal year immediately following six (6) years from the date the transportation impact fee or school impact fee was paid, with interest at the rate of five (5) per cent per annum." ¶3.

Plaintiffs were described as those who paid tile fees and who at the time of the filing of the suit were current owners of property affected by the collection of the development fees. ¶¶5,6.

As previously noted, Plaintiffs assert that the purported class members had not received notice of a refund. ¶7.

Appendix C-3

Plaintiffs grounded their Complaint on the legislation that the County enacted through Bill 50-87 which was accomplished on Augusts, 1987. ¶12 to 15. Plaintiffs asserted that they and the class members were not paid the refunds "despite entitlement and vesting" that they claimed existed. ¶17. They said that such payments were "mandated [by] Art. 24, §7-110" of the ordinance and that the ordinance was "the constitutional mandated 'law of the-land' under Art. 19 of the Maryland Declaration of Rights ..." ¶17.

Plaintiffs also claimed that after 2001, the County passed "1aw 96-01, ostensibly permitting the expenditure of impact fees for relocatable classrooms." ¶18. Plaintiffs alleged that such expenditure was "an unlawful use of impact fees." Id. More specifically, Plaintiffs claimed that the County "unlawfully expended impact fee[s] on approximately one hundred twenty five (125) relocatable classrooms" from 1993 up to 1996. They also claimed that approximately another 125 additional relocatable classrooms were added from and after 1997. ¶19. Plaintiffs claim that the County did so knowing that such classrooms do not increase capacity. Id.

In bringing this case, Plaintiffs sought to represent a class composed of:

"All persons or entities who paid to Anne Arundel County roads impact fees and school impact fees that were not timely and legally expended or encumbered by the end of the fiscal year immediately following six (6) years from the date the roads impact fee or school impact fee was paid from 1997 to present." ¶25.

Plaintiffs alleged three counts in the Complaint.

The first count, Count I, seeks Declaratory Relief regarding "the refund of impact fees, considering the lack of adequate records, untimely and extensive, admitted illegal expenditure of impact fees on both relocatable classrooms and books and continued abuse of legislative enactments purposefully and knowingly designed to avoid impact fee refunds for completed transactions in violation of Art 19, the 'land of the law' [sic] and Art 24 'due process' clauses of the Maryland Declaration of Rights." ¶42

In this Count, Plaintiffs also sought a declaration regarding the use of relocatable classrooms as was allowed by "law 96-01" which Plaintiffs claim was "improper". ¶¶45,46.

The second count, Count II, is entitled "Assumpsit and Demand for a Refund of Impact Fees". Plaintiffs seek to receive compensation for the "unlawful" and "improper" use of impact fees to pay for relocatable classrooms. ¶¶47 to 57.

Count III is entitled Breach of Contract and asserts that Plaintiffs and the unnamed Class Members are "special taxpayers" as opposed to "general taxpayers" and alleges that they should receive refunds for transportation and school impact fees that were "not timely or legally expended or encumbered for the benefit of the property against which the impact fees were accessed [sic] by the end of the fiscal year immediately following six (6) years from the date of the transportation impact fee or school impact fee was paid, as well as the interest at the rate of five (5) per cent per anum [sic]." ¶65 Plaintiffs claimed that they had "Constitutional entitlement and vesting under

'the land of the land'" [sic] and had not received a refund for which they seek recovery. Id.

In the final paragraph of the Complaint, Plaintiffs seek as relief a declaratory judgment on the issues raised in the complaint; an order rescinding the County's "unlawful retention of all refunds and interest due" to the Plaintiffs and the class; compensatory damages in the amount of $75,000,000 against the County; attorneys fees, costs and pre and post judgment interest. Page 18 of the Complaint.

Class Action Order

By order of this Court signed on April 25, 2013, the Court ordered that this case could proceed as a class action under Rule 2-321.[1] The class was defined at Plaintiffs' request as:

"All persons or entities who are current property owners of property upon which roads/transportation impact fees and school impact fees were paid to Ann Arundel County, and for which impact fees were not timely and legally expended or encumbered by the end of the fiscal year immediately following six (6) years from the date the roads impact fee or school impact fee was paid from 1997 to 2003."

---

[1] At the request of the Plaintiffs, the Court also recognized in that order that the only named Plaintiffs were now William A. Dabbs, Jr., as Trustee of the William A. Dabbs, Jr. Living Trust and Sally A. Trapp. The other originally named Plaintiffs should no longer be considered as Plaintiffs in this case. At the time of this order, Plaintiffs on their own behalf and that of the class waived any right to a jury trial in favor of a court trial on the issues.

Plaintiffs filed a motion to revise the class definition to substitute in the definition where it states "from 1997 to 2003" to now read "from 1997 to present." The County opposed the motion. Particularly in light of how this Court rules below, it sees no reason or need to modify the class definition and therefore will deny the motion.

The County Impact Fee Ordinance

In the 1980s, sprawling residential development in suburban Maryland lead many local officials to seek new revenue sources to pay for the infrastructure necessary to support that development. County officials in Maryland took note of what was happening in the other states and turned to what is commonly called "impact fees" to fund certain public facilities required by the new development. Paul A. Tiburzi, *Impact Fees in Maryland*, University of Baltimore Law Review, 17 U. Balt. L. Rev. 502 (1988). As described in that article, impact fees have two essential features: (1) they shift the cost of capital improvements from all users or taxpayers in the jurisdiction to the new residents who create the need for them, and (2) they are collected before the improvements are constructed rather than after they are in service. Id. In Maryland, Anne Arundel County was on the leading edge of employing impact fees to fund development costs.

The County became authorized to levy such fees under Anne Arundel County Code ("AACC"), Article 17, Title 11, Section 203, which states: "Any person who improves real property and thereby causes an impact upon public schools, transportation, or public safety

facilities shall pay development impact fees [.]"[2] The amount of the fee varies according to the land use and is computed by reference to a fee schedule. See AACC § 17-11-204.

The stated purpose for the impact fees is to promote the health, safety, and general welfare of County residents by

(1) requiring all new development to pay its proportionate fair share of the costs for land, capital facilities, and other expenses necessary to accommodate development impacts on public school, transportation, and public safety facilities;

(2) complementing the provisions of Title 5 by requiring that all new development pay its share of costs for reasonably attributable impacts; and

(3) helping to implement the General Development Plan to help ensure that adequate public facilities for schools, transportation, and public safety are available in a timely and well planned manner.

AACC § 17-11-202.3

There are separate special funds for transportation impact fees and for school impact fees. AACC § 17-11-208. Collected impact fees are to be deposited "in the

---

[2] The Anne Arundel County impact fee ordinance at issue was previously codified under Anne Arundel County Code ("AACC"), Article 24, Title 7. In this memorandum, the ordinance is referred to by its re-codification. A detailed history of the various enactments affecting the Impact Fee Ordinance and how they interrelate is set out in footnote one of the County's *Pre-Trial Memorandum* at page 3.

appropriate special fund to ensure that the fees and all interest accruing to the special fund are designated for improvements reasonably attributable to new development and are expended to reasonably benefit the new development." Id. Under Section 17- 11-209(c), the County is divided into school impact fee districts and transportation impact fee districts by way of maps prepared by the Office of Planning and Zoning ("PZO") and adopted by the County Council. Section 17-11-209(d) states that collected development impact fees "shall be used for capital improvements within the development impact fee district from which they are collected, so as to reasonably benefit the property against which the fees were charged."

The principal impact fee ordinance provision at issue in this case is Section 17-11-210 which governs impact fee refunds. It provides in pertinent part:

(a) *Notice of refund availability*. If fees collected in any district during a fiscal year[3] have not been expended or encumbered by the end of the sixth fiscal year following collection, the Office of Finance shall give notice of the availability of a refund of the fees and refund the fees as provided in this section.

(b) *Publication of notice.* Within 60 days from the end of a fiscal year during which fees become available for refund, the Controller shall cause to be published once a week for two successive weeks in one or more newspapers that have a general circulation in the County, a notice that development impact fees

[3] The parties agree that at all relevant times the County's fiscal year runs from July 1 through the following June 30.

collected within a particular district for a preceding fiscal year are available for refund on application by the current owner of the property for which the fee was originally paid. The notice shall set forth the time and manner for making application for the refund.

(c) *Refund application deadline.* An eligible property owner shall file an application for a refund within 60 days of the last publication of notice. On proper application and demonstration that the fee was paid, the Controller shall refund the fees to the property owner with interest at the rate of 5% per year.

(d) *Refund on a pro rata basis.* If only a portion of the fees collected in a district during a fiscal year have been expended or encumbered, the portion not expended or encumbered shall be made available for refund on a pro rata basis to property owners. Each eligible property owner who has properly applied for a refund shall receive a refund in an amount equal to the portion of the original fee that was not expended or encumbered.

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

AACC § 17-11-210.

The Prior Litigation.

This case concerns impact fees that were paid from FY 1997 to 2003. Impact fees paid from the inception of the ordinance in 1988 through FY 1996 were exhaustively dealt with in litigation in this court entitled *Halle Development, Inc. v. Anne Arundel County*, Circuit Court for Anne Arundel County, Case No. 02-C-01-69418 ("*Halle* Case"). While this case involves a different time frame, the history of that case is relevant to the extent that the case resolved issues or created a framework for various decisions made by the County to amend its law or restructure how it was handling the claims for refunds. The *Halle* Case produced numerous rulings by the Circuit Court, four unpublished opinions by the Court of Special Appeals and one reported opinion from the Court of Appeals. See, *Anne Arundel County v. Halle Development, Inc.* 408 Md. 539 (2009).

The upshot of the *Halle* Case was that the class of plaintiffs did receive refunds of a limited nature primarily due to the fact that the County's attempts to extend the period of time during which it could encumber impact fees beyond the base six years was found to be structurally invalid eventually entitling the class to a limited refund based on the amount found in the impact fee account to be unencumbered.

Using the template of that litigation, the Plaintiffs represented by the same counsel as in the *Halle* case seek to duplicate their earlier success. On the other hand, the County having gone to school on the rulings they experienced in that case, have retooled their defense in this matter and most notably did not attempt in this litigation to rely on any period of

extension beyond the base six year period for computation of expenditures or encumbrances.

The Trial in this Case.

The trial in this case took place from November 17 to November 20, 2014. At the trial, the County undertook a comprehensive and detailed effort to demonstrate that the impact fees collected in the subject years of this litigation[4] were in fact reasonably expended or encumbered during the follow on six year period such that no refunds are available to the Plaintiffs or the class they represent.

The County's case was primarily presented through its chief witness, Kurt Svendsen, the County's Assistant Budget Officer who has been employed by the County since September 1, 1997 and has been involved with the calculus of the impact fee computations since that time.

Mr. Svendsen testified as to charts prepared under his supervision showing the amounts of impact fee collections, expenditures, encumbrances and interest expended during the relevant six-FY periods[5]. With

---

[4] The County correctly notes that in Bill No. 71-08, the County Council repealed the refund provision in §17-11-210 prospectively as of January 1, 2009. Because refund claims relating to impact fees collected in FY 2003 and thereafter were not ripe prior to the effective date of the repeal, refund claims relating to FYs 2003 and thereafter were barred. Thus, this case involves only claims for refunds of impact fees collected in FYs 1997 through 2002.

[5] The charts and back up data by order of the Court were produced in April, 2014 over six months before the trial and provided to Plaintiffs's counsel at that time.

minor variations[6], he prepared these charts, in the same fashion as was done in the *Halle* litigation and which eventually met with judicial approval in that litigation. Mr. Svendsen's testimony was supported by the County's 155 exhibits which were made part of the record of this case.

Mr. Svendsen testimony was credible, clear and convincing and demonstrated a detailed knowledge not only of the impact fee legislation and its operation but a comprehensive understanding of how the County's budgeting and accounting systems work and mesh with the impact fee calculations. He also demonstrated how the methods used in determining possible refunds for the impact fees collected were consistent with governmental budgeting and accounting principles. Plaintiffs were unable to marshall any substantial attacks on his testimony that demonstrated that his testimony was inaccurate or not supported by the voluminous records submitted to the Court or otherwise made available to Plaintiffs' counsel pre-trial.

Plaintiff's did present their own expert, Kirk Sorenson a Ph.D economist from Florida who testified that he had extensive experience with impact fees and had advised local governments on impact fee programs. Mark Twain once defined an expert as merely "an

---

[6] The differences in the chart preparations were done to lessen the need to do manual counts of encumbrances and expenditures which are described in *Defendant's Pretrial Statement* at pages 2 to 4. In the Court's view, these minor differences do not undermine the validity of the overall conclusions reached for the fiscal years in question. Indeed, as suggested by the County, the revised method seems to favor Plaintiffs' position.

ordinary fellow from another town". With no disrespect meant to Dr. Sorenson, his testimony here shows the wisdom of that quip. Dr. Sorenson demonstrated only the flimsiest knowledge of the ordinance at issue in this case and how it operated in actual practice and was completely unhelpful in providing any useful testimony about how the County operated to count expenditures or record encumbrances the core issue in this case. The Plaintiffs eventually decided not to introduce charts prepared by him and pre-marked as exhibits that were designed to counter the Svendsen charts and testimony. Simply put Sorenson's testimony was largely useless[7] and a waste of time and if anything demonstrated the inadequacy of Plaintiffs' attack on the methodology used by the County or the details included in its analysis.

If the methodology used by the County is lawful there is no question from the testimony of Mr. Svendsen, the charts he prepared and the exhibits submitted by the County that the impact fees paid were more than mathematically offset by the expenditures made during the six year period or were reasonably encumbered for that time period leaving the Plaintiffs' impact fee accounts with no excess that entitles them to any refund for the years in question.

---

[7] The County has gone to somewhat amazing lengths in its post trial briefs to demonstrate that Mr. Sorenson's testimony actually supported the accounting and computational methods used by the County and Mr. Svendsen in dealing with impact fees. Even it if does, his testimony would not be particularly helpful to the Court given his underlying deficiencies as a knowledgeable witness about the core issues before this Court.

It thus becomes a question of law as to whether the County has followed the law in how it has proceeded in applying its methodology to the impact fees collected.[8]

Was it lawful for the County to have counted expenditures and encumbrances in the way it did for the fiscal years in question?

While despite reams of papers being filed, it is still somewhat difficult to tease out precisely what Plaintiffs' specific contentions are except for the assertion that they should receive a refund of some unspecified amount. As the Court understands their current contention, it is that Bill 27-07 should not have been employed with "retroactive application" and that refunds would surely be due to them except for the "new accounting procedures that were not enacted when the impact fees from 1997 through 2002 were collected." See, *Plaintiffs Class Proposed Findings of Fact and Conclusions of Law,* pages 3 and 13-14.[9] Plaintiffs claim that the County cannot

---

[8] In footnote one to Plaintiffs' *Proposed Findings and Conclusions*, they argue that somehow the three day "trial" should be morphed into a preliminary hearing on the *Motion for Accounting* and that the Court should apparently schedule more hearings and trials after appointing a person to further explain and examine the County's accounting. The County's *Response to Plaintiff Class' Proposed Findings of Fact and Conclusions of Law* at pages 1 to 5 convincingly refutes this notion and is in accord with the Court's understanding. Plaintiffs have not been able to convincingly deconstruct the County's accounting despite having had years to do so. It is now time to deal with the legal issues and conclude this case at least at the trial level.

[9] Both Plaintiffs and the County filed helpful and comprehensive proposed findings of fact and conclusions of law in an extensive post trial process which the Court has reviewed and in some

"reallocate impact fee collected prior to the enactment of Bill 27-07 by the use of an eligible/applied encumbrance which, admittedly, is not part of the County's impact fee ordinance prior to May 22, 2007." Id at 14. Their argument also appears to be that the impact fees at issue "were not timely or legally expended or encumbered" since the accounting was not done before the end of the six year period. Id.

In May, 2007, the ordinance was amended by County Council Bill No. 27-07 which the County claims merely codified the existing County's procedures for counting impact fee encumbrances and expenditures for purposes of determining whether impact fees are available for refund. As noted, Plaintiffs assert that this enactment can not be given retroactive effect to defeat their claims for refund because applications of the procedures would impair Plaintiffs' "vested rights" in impact fees refunds that they had an entitlement to.

The term "impact fees encumbered" in § 17-11-210(b) has been in the County Code since the initial enactment of the Impact fee Ordinance in 1987 by Bill No. 58-87, and the County has at all times interpreted the term to mean (Tr. 11/18/14 at 1520, 20-36):

(1) the amount of impact fees collected in a district account in a FY which have not been expended on June 30 of the sixth FY following the FY of collection, for which there is

---

cases adopted into this memorandum either explicitly or by reference.

(2) as of the same date, an encumbrance on an impact fee eligible capital project in the district.

This definition was applied by Mr. Svendsen, the Assistant Budget Officer responsible for making the refund determination for all FYs at issue in this case, and by Mr. Svendsen's predecessor in the Office of Budget who trained him. (Tr. 11/18/14 at 20-38. In this Court's view the County's definition of "impact fees encumbered" is reasonable, logical and harmonizes with the County's Charter, Annual Budget and Appropriation Ordinances and the meaning of the applicable accounting terms under Generally Accepted Accounting Principles (GAAP).

Further, an administrative determination as to the meaning of a statute or ordinance by the officials responsible for implementing it is entitled to deference from the courts. *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 69 (1999) ("an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts."). This Court should not, in this highly technical matter, strive to second guess how the County has administered its accounting provided the methods chosen are reasonable and not contrary to the the express language of the legislation.

As the County has argued, the definition of "impact fees encumbered" applied by the County administratively is the logical definition that the term has in the context of the GAAP meaning of the term encumbrance (Def. Ex. 139 at 305-06), § 715 of the County Charter (Def. Exs. 152 and 153), and the

Annual Budget and Appropriation Ordinances (Def. Exs. 95-110).

Under GAAP (and § 17-11-201(3) of the County Code) an encumbrance is defined as a legal commitment, such as a purchase order, entered in relation to an appropriation. An appropriation is the legal authority to expend money, and in the County appropriations are made in the Annual Budget and Appropriation Ordinance or supplements thereto. In municipal GAAP accounting, encumbrances (and expenditures) are recorded in relation to appropriations to ensure that the appropriation is not exceeded. (Def. Ex. 139 at 305-06). This process is known as encumbrance or appropriation accounting.

Section 715(a) of the County Charter prohibits any County department, agency or official from exceeding an appropriation. (Def. Ex. 153). The County and the BOE conduct appropriation accounting in Appropriations Statements which compare the cumulative appropriations for a capital project to the cumulative expenditures and outstanding encumbrances as of the date of the statement. (Def. Exs. 5, 6, 78-83; Tr. 11/18/14 at 25-26).

For purposes of determining the correct meaning of "impact fees encumbered" in § 17-11-210(b), it is important that the County Council, in the Annual Budget and Appropriation Ordinances, has always appropriated only a sum of money for each Capital Project. The County Council has never appropriated funding sources in connection with capital projects. Thus, by law, then the County conducts appropriation accounting, it must enter encumbrances (purchasing

orders) and expenditures in relation to appropriations of sums of money for capital projects. The County does not, and cannot, enter encumbrances in relation to appropriations of impact fees because there are no appropriations of impact fees. (Tr. 11/18/14 at 57-62).

Accordingly, to determine "impact fees encumbered," under § 17-11-210(b), the County must compare the amount of unexpected impact fees at the end of the relevant FY in the district account to the encumbrances entered in relation to capital projects that have been determined by the PZO to be eligible in the district. This is so because, under § 17-11-209, these unexpended fees in the district account are restricted to fund the capital projects. Section 17-11-209 provides that impact fees in a district account are restricted and can only be spent on capital projects in the district that are determined to be eligible for impact fee use. Under § 17-11-209(a), projects are eligible for impact fee use if they are for the expansion of the capacity of public schools or roads. The PZO makes determinations as to the eligibility of capital projects. (Def. ex. 58-66).

Accordingly, "impact fees encumbered" can only mean unexpended impact fees for which there are is an encumbrances on an eligible capital project in the district. The fact that the County must consider encumbrances on impact fee eligible capital projects to determine impact fees encumbered under the § 17-11-210 test is entirely logical and consistent with the structure of the Impact Fee Ordinance, the treatment of expenditures and the judicial rulings in the *Halle* Case on impact fee eligibility. In conducting the six-FY test under § 17-11-210(b), the County can only

consider expenditures of impact fees on capital projects determined by the PZO to be eligible for impact fee use. In the *Halle* Case, for example, the Court ruled that certain expenditures are ineligible and cannot be considered. In short, the eligibility of capital projects for impact fee use under § 17-11-209 is the cornerstone of the Impact Fee Ordinance in terms of both the use of impact fees and the calculation of refunds under § 17-11-210(b).

The County does not identify the funding sources at a time that a purchase order is issued not only because the County Council does not appropriate specific funding sources, but also because there are many potential funding sources for a project, and the ultimate funding source applied will be dependent on external factors such as the performance of the economy. (Tr. 11/18/14 at 61-66). Of course, some purchase orders ultimately have no funding source because they are cancelled or liquidated. (Id.). Accordingly, any suggestion that the funding source logically or practically can be determined at the time of the issuance of a purchase order is impractical and unrealistic. Under the County's ordinances and financial accounting system, any attempt to identify the funding source at the time that the purchase order is issued would necessarily be tentative at best.

The difficulty of pegging encumbrances with a funding source on an immediate basis was explained by Mr. Svendsen. When invoices are presented to the County in connection with a capital project they are paid through the Central Cash Fund with out a designation as to the funding source. On a periodic, typically monthly, basis the Finance Office conducts

what is referred to as the Revenue Recognition Process in which it reviews how much money has been expended for each capital project from the Central Cash Fund and identifies, by an accounting entry, revenue from an available funding source or sources to cover the expenditures. The Finance Office does not appropriate specific funding sources for capital projects or conduct the process until after invoices are paid from the Central Cash Fund because this provides maximum flexibility in determining funding sources. For example, there may be Federal and State grants that can be tapped before County funds will be assessed and of course there are special funds as those at issue as well as funds appropriated by the County. It would not be surprising that the Finance Office would where lawful and feasible tap into the impact fee special funds before assessing other available sources if the encumbrance at issue were reasonably related to road or school development.

In short, because the County does not appropriate impact fees as a funding source, there is no basis under County law GAAP for the recordation of encumbrances (purchase orders) in relation to appropriations of impact fees. In conducting GAAP appropriation accounting to implement § 715 of the County Charter, the county can only record purchase orders as encumbrances in relation to appropriations for capital projects. Thus, impact fees encumbered under the County Charter and Ordinances must be determined by counting at the end of the sixth FY: (1) the unexpended impact fees in the account for the district, and (2) the open encumbrances on the eligible capital projects in the district.

Plaintiffs failed to offer a different and credible definition of impact fees encumbered that is at all convincing or consistent with governmental accounting practices.[10]

They continue to maintain that the County did not count impact fees encumbered during the FYs under review and cannot do so now because this action would constitute the unlawful retroactive application of Bill No. 27-07 in violation of Plaintiffs' vested rights to obtain impact fee refunds

In pressing their retroactivity argument about encumbrances, Plaintiffs seems to cling to an interpretation of the impact fee ordinance and its amendments that was made by their predecessor plaintiffs in the *Halle* litigation which counsel in this case made with great vigor when representing those plaintiffs. That argument was soundly rejected in great detail in an unreported opinion by Judge Lawrence F. Rodowsky. *Anne Arundel County v. Halle Development, Inc., et al.*, Court of Special Appeals, No. 2552, Sept. Term 2006, pages 15 to 20 (February 7, 2008). Since this litigation has different parties and a different period of time for the collection of the impact

[10] Plaintiffs seem to broadly suggest that when the Impact Fee Ordinance was enacted that those provisions that pertained to accounting of the fees paid and the possibility of a refund at some future time, were somehow frozen in amber unable to be revised or improved by the County as experience demonstrated a need. This would be a surprising result given that as explained above, development impact fee provisions were novel in Maryland and in the County and in some respects were an on going experiment in fiscal funding of the needs arising from development projects. It is exactly the type of legislation that over time may need review and revision to accomplish its intended goals.

fees, it is technically not a law of the case holding applicable to this case nor as an unreported opinion it is not a citable holding that in binds this Court in this case.

This Court's view is however identical to that of Judge Rodowsky's and there is no need in this document to rehash it or restate it except to say that the Ordinance since its inception in 1987 has contained the terms "expended or encumbered" which were not otherwise defined in the Ordinance and that the way the County has interpreted these terms since the inception were the commonly accepted meaning of these terms under GAAP. The fact that the County eventually codified and refined its practices in Bill No. 27-07 does not mean that Plaintiffs are entitled to their own peculiar methods which would enhance the possibility of refunds.

Anyone familiar with public agency and local government budgeting and accounting would see at once that the wooden and unworkable view espoused by Plaintiffs about how the expenditures and encumbrances should be documented to offset the Impact fees on account would never have been intended by the County Council in enacting this legislation. The Council would clearly have wanted a more dynamic system that meshed closely with the County's normal budgeting and accounting system as described above, which is exactly what the County did both in the *Halle* case and for the fiscal years in question in this case.

Plaintiffs seem to find objectionable the fact that, in their view, Mr. Svendsen was calculating the

expenditures and encumbrances so as to minimize or eliminate any refund to which the Plaintiffs could be found to be entitled. Looking out for the fiscal interest of the County and its general taxpayers as one of its senior budget employees, is certainly a main and appropriate goal of Mr. Svendson and there is no doubt that Mr. Svendsen was seeking to uncover all potential offsets that could be reasonably shown under county and governmental accounting standards to be used as offsets on the refund accounts.

Plaintiffs' counsel had a full opportunity for discovery and, had they chosen, for comprehensive cross examination of Mr. Svendsen to show that his zeal went too far. They did not produce in this Court's view any significant questions about the accuracy or integrity of his analysis or the documentation presented or show that any of his accounting was beyond what is generally acceptable and reasonable in a governmental setting.

Plaintiffs continue to argue at pages 13 to 14 of their *Proposed Findings of Fact and Conclusions of Law* that the County cannot count impact fees encumbered in determining whether impact fees are available for refund under § 17-11-210-(6) because it did not do so "within six years following the date of the fees collection without the retroactive application of Bill 27-07 and its new accounting procedures that were not enacted when the fees from 1997 through 2002 were collected." This seems to suggest that once the six year period has expired that there cannot be retrospective examination and adjustment of what the status of the impact fees accounts are beyond the final date of the six year period. This is non-sensical and

not supported by the language of the ordinance with or without consideration of the amendments to it. The County has fully refuted this notion in its briefing.[11] The Court agrees with the County.

Additionally, despite being given an opportunity to do so, Plaintiffs have not themselves presented any damage model of what they contend the evidence shows they and their class are entitled to[12]. In Plaintiffs Class *Proposed Findings of Fact and Conclusions of Law*, Plaintiffs assert that there should now be another hearing to establish a refund without specifying what amount is presently being sought or how the evidence of record supports the conclusion that **any** damages are due. Simply put, Plaintiffs who have the overall burden of proof have failed to meet it by showing that damages are due them because of the methods used by the County to account for the impact fees paid, expended and encumbered.

Apparently realizing the potentially fatal deficiencies in their presentation at trial to counter the County's expert and exhibits, the Plaintiffs filed a motion well after trial on December 30, 2014 requesting that pursuant to Md. Rule 2-231 (f) and Rule 5-706 (a) the Court appoint Dr. James C. Nicholas "to examine the County'[s] collections, expenditure and encumbrance of development impact fees to determine their timely

---

[11] See for example, pages 5 to 9 of the *Defendant's Response to Plaintiff Class Proposed Findings of Fact and Conclusions of Law*.

[12] In the Complaint, Plaintiffs asserted without explanation that the class damaged are $75,000,000.00. This damage claim was repeated in the *Class Plaintiffs' Pre-Trial Statement* filed shortly before trial, once again without any explanation as to how that amount was determined.

expenditure and/or encumbrance within six years of their collection enabling the court to determine whether refunds are due to the current owners of those properties that paid impact fees during the applicable period." See page 6 of the *Motion to Designate Dr. James C. Nicholas as a Court-Appointed Expert.*[13]

Plaintiffs' counsel state in their filings that the Court has a special obligation in a class action to help the class prove their claim citing *Gulf Oil v. Bernard*, 452 U.S. 89, 100 (1981). Plaintiffs counsel have been litigating these issues for fifteen years and it should not come as a surprise as to what the County was presenting. As the County indicates they provided the data and documents to them months before trial. Enough has been done to assist the Plaintiffs both from the County and this Court.

This appears to be a thinly veiled attempt to give Plaintiffs after years of litigation still another chance to find some still undiscovered path to prove their case.[14] They have had more than a fair chance to do so

---

[13] Plaintiffs also seek to have this Court order that the County pay 50% of the fees and expenses of Dr. Nicholas, the expert they have nominated. See,page 8 of the *Class Response to the County's Opposition to Designate the County's Original Impact Fee Consultation, Dr. James C. Nicholas as a Court –Appointed Expert.*

[14] Plaintiffs noted in their pre-trial filings that they sought an accounting that excluded the effects of Bills 96-01, 27-07 and 71-08 so that an appellate court would have a "complete alternative set of facts" to consider. See Plaintiffs' *Trial Memorandum/Accounting Motion p.4, n.5.* Plaintiffs despite having the opportunity to do so have themselves failed to show what such an analysis would show or prove. They have failed to

and did not come forward with any credible evidence at trial and the Court discerns no basis on which this motion should be granted or this case prolonged with further expense and delay for all concerned.

Was there a sufficient vesting of Plaintiffs' interest or expectation in a refund of impact fees such that the County could not apply its counting of encumbrances after the expiration of the six year period following the fiscal year in which the fee was paid?

Plaintiffs' right to receive a refund of the impact fees paid was created, defined , contained in and limited by the ordinance in question and permissible amendments. The possibility of a refund was at all times highly contingent and dependent on whether there were funds for the fiscal year in question that had not been expended or obligated by encumbrances after the six year period had passed and after an accounting was accomplished. At best, until that time, Plaintiffs enjoyed a mere expectation that **after** the six year period had passed and **after** the appropriate accounting had occurred that there **may** be a surplus such that they could receive a sum of money **if** a proper claim were filed by a current owner. Given that the impact fees assessed were intended to cover what the County had estimated to be the public development costs it would incur, it should reasonably have been expected that the County would, as it

---

make any threshold showing that causes this Court to prolong the conclusion of this litigation in the Circuit Court.

apparently did here, expend or encumber such funds so that no balance would be left due[15].

As the Court of Appeals stated in the *Halle* opinion:

> "Indeed, the Owners may not be vested in their right to a refund. Whether they are entitled to a refund and in what amount will be determined by the Circuit Court on remand. The full refund determination by the Circuit Court may be reduced if the County is able to prove that it, in fat, encumbered the impact fee funds within six years."

408 Md, 539, 559-60 n.7 (2009).

If one were valuing the Plaintiffs' expectations in a market based fashion at any time in the process, it would likely have had a monetary value at or approaching zero given the highly speculative nature of whether there would even be a remote possibility of a refund. The value of lottery ticket would probably be a fair analogy.

Defendant's Revised Proposed Findings of Fact and Conclusions of Law at pages 73 to 94 demonstrate that Plaintiffs' claims of a vesting that has been unlawfully

---

[15] In a letter to the Court some ten months after the trial, Plaintiffs' counsel cited the recent U. S. Supreme Court opinion in *Horne v. Department of Agriculture*, 576 U.S. ___, 133 S.Ct. 2053 (2015) finding it analogous to the situation presented in this case. The Court does not share Plaintiffs' counsel view that the government's outright seizure of a portion of a farmer's raisin crop is analogous to the County tinkering with the legislation that contained a highly contingent possibility of a refund for those who had paid impact fees.

interfered with by the County cannot be shown in this case and to a large extend has already been considered and rejected by the Court of Appeals opinion in the *Halle* case. The Court finds the County's findings and conclusions on this point to be accurate, a fair description of the history of the litigation and an accurate statement of the law and adopts them by reference.

Was the County entitled to use as an expenditure of impact fees the funds expended on relocatable classrooms.

In 2001, the County Council enacted County Council Bill No, 96-01 which, unlike the original ordinance, allowed the expenditure of impact fees on temporary or relocatable structures that expand the capacity of school to serve new developments. The County asserts that this bill allowed it to then use such expenditures in its refund calculations for impact fees.

Plaintiffs contend that this interpretation of the bill cannot be allowed because: (a) the State Rated Capacity for public schools established by the State Department of Education excludes relocatables from capacity; and (b) it is unconstitutional under the "rough proportionality" test to expend impact fees on relocatables.

Plaintiffs correctly note that this Court in the *Halle* Case ruled that expenditures for temporary or relocatable structures (classrooms) cannot be considered as eligible expenditures in determining whether impact fees are available for refund. The Impact fee Ordinance, however, was expressly amended in 2001, to authorize expenditures for

temporary structures that increase the capacity of public facilities. On December 20, 2001, the County Council enacted Bill No. 96-01, which among other things, amended, effective February 3, 2002, the permissible uses of impact fees under then § 7-109(a) [current § 17-11-209(a)] of the County Code. Prior to Bill No. 96-01, the County was not permitted to expend school impact fees for temporary structures (relocatable classrooms). Bill 96-01 deleted the prohibition of the use of impact fees on temporary structures which expanded the capacity of schools. Bill No. 96-01 amended then § 7-109 (now § 17-11-209 as follows:

> "All funds collected from development Impact Fees shall be used solely for capital improvements for expansion of the capacity of the public schools, [or] roads, AND PUBLIC SAFETY FACILITIES and not for replacement, maintenance, or operations. Expansion of the capacity of a road includes extensions, widening, intersection improvements, upgrading signalization, improving pavement conditions, and all other road and intersection capacity enhancement. Expansion of the capacity of a public school includes all constructions and remodeling[,] to the extent that the construction increases the [number of pupils that may be enrolled in] CAPACITY OF the public schools[, but does not include temporary structures]…"

Plaintiffs, however, continue to maintain that impact fees cannot be expended for temporary structures because temporary structures do not expand the

capacity of the schools as measured by State Rated Capacity ("SRC") by the State Department of Education. Thus, Plaintiffs argue, even after the enactment of Bill No. 96-01, the County cannot expend impact fees on temporary structures.[16] Plaintiffs are incorrect.

The County's Impact Fee Ordinance is not married to the State Education Department's definition of SRC, which was established for an entirely different purpose.

There is nothing that prohibits the County from applying a broader or more restrictive definition of capacity for purposes of determining the scope of the use of impact fees than the definition used by the State Department of Education for school finance purposes. The County's definition of capacity is consistent with the enabling law for the impact fees (1986 Md. Laws Ch. 350, § 1, codified in § 17-11-214 of the County Code), and it is the County, not the State, that determines the meaning of the terms of its Impact Fees Ordinance. Nothing in the State Department of Education's definition of SRC indicates that it was intended for use in establishing the appropriate use of County impact fees.

Plaintiffs cite the cases of *City of Baltimore v. Sitnick & Firey*, 254 Md. 303 (1969) and *McCarthy v. Bd. Of Education of A.A. County*, 280 Md. 634 (1977) to suggest that the State has preempted the subject of

---

[16] In the Complaint at ¶42, Plaintiffs also mentioned the expenditures on "books" as being not allowed to be counted. Plaintiffs have not pursued this contention at the trial of this case.

school capacity and uses of relocatable classrooms. The Court does not see any basis to suggest that the State intended to have its State education policy preempt how a county could charge, collect and refund impact fees under a development program limited to Anne Arundel County.

Plaintiffs further argue that the County is violating the "rational nexus" or "rough proportionality" test by spending impact fees on relocatables to expand the capacity of schools to accommodate students generated by new development. Plaintiffs do not articulate the analytical basis for their argument. The County citing *Waters Landing Limited Partnership v. Montgomery County*, 337 Md. 15 39-41 (1994), argues that the "rough proportionality" test has no application to development impact fees such as those imposed by the County on a general basis and is not a governmental decision made on an individualized basis where monetary exactions are imposed.[17] The Court agrees with the County's conclusion.

It is also clear to the Court that expenditures on relocatable classrooms actually employed in a district would "reasonably benefit" the new development and

[17] As the County notes the Court's analysis was consistent with the California Supreme Court's ruling in the leading case, *Ehrlich v. City of Culver*, 911 P.2d 429 (1996). The California Court ruled that the rough proportionality test applies only to discretionary, individualized monetary exactions and does not apply to fees or taxes which are legislatively imposed on a general basis to raise revenue.

are "reasonably attributable" to new development.[18] See § 17-11-208.

Resolution of the Motion for Accounting

As noted above, the hearing on the Motion for Accounting was wrapped into the trial of this case in November, 2014, the Court is satisfied that Plaintiffs and their class have had sufficient opportunity to determine their rights and they have failed to establish that any further action is needed by the Court on this motion. The motion will thus be denied as far as any further relief being granted.

Resolution of the Counts of the Complaint

As noted above, the Court has found that the County's methods and formulas for calculating whether a refund of impact fees collected for the Plaintiffs and their class is in compliance with the law and further that no refund is now due to the Plaintiffs. The court has also concluded that there is no violation by the County of the Maryland Declaration of Rights or other constitutional provisions.

Count I must be finally resolved as a Declaratory Judgment. The County ,after consultation with counsel for the Plaintiffs, shall prepare an appropriate Declaration consistent with the Court's findings and

---

[18] The County has also noted that as Mr. Svendsen testified that even if the costs of relocatables is deducted for the years in question that there still would not be funds available for refunds under § 17-11-210. See, County's *Revised Proposed Findings of Fact and Conclusions of Law* at pages 41 to 42. This appears to be the case and constitutes an independent basis to deny Plaintiffs' claim.

conclusions in this memorandum and in compliance with Subtitle 4 of Title 3 of the Courts and Judicial Proceedings Article and submit it to the Court for review and entry by the Court.

Having determined that there was no unlawful or improper use of impact fees to pay for relocatable classrooms as applied to these Plaintiffs and their class, the County is entitled to judgment on Count II. The County shall prepare a form of judgment for the Court to enter on this count.

The Court has also determined above that the County is also entitled to judgment on Count III, Breach of Contract, since Plaintiff and their class have failed to establish any binding contract that has been breached and would entitled them to a judgment and even if a breach can be said to have occurred they have failed to prove any damaged sustained. The County shall prepare a form of judgment for the Court to enter on this count.

Conclusion

In this case, the County has convincingly shown that the properties of the Plaintiffs and their class received within the time period allowed capital improvements within their districts which reasonably benefited their properties and the costs of which more than offset any impact fees they paid. Plaintiffs and their class obtained what the Impact Fee Ordinance promised; they are not entitled to more from this Court.

The County in consultation with the counsel for the Plaintiffs shall prepare the necessary orders and judgments as indicated in this memorandum. The

County shall present these to the Court for review and entry on or before January 11, 2016.

December 30, 2015 s/ Dennis M. Sweeney
Dennis M. Sweeney
Circuit Court Judge