PAUL JOHN CISAR, et al.,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
F.O. MITCHELL & BRO., et al.,	*	ANNE ARUNDEL COUNTY
Defendants.	*	Case No. C-02-CV-22-000988

HARFORD COUNTY'S MOTION TO DISMISS – HEARING REQUESTED

Defendant Harford County, Maryland by its undersigned counsel, hereby moves, pursuant to Rule 2-322, to dismiss Plaintiffs' Verified Complaint for Injunctive Relief and Declaratory Judgment and Private Action for Nuisance and Public Nuisance ("Complaint") because of improper venue, failure to state a claim upon which relief can be granted, and lack of jurisdiction over the subject matter.

Factual Background

Alleging no connection between this case and Anne Arundel County, Plaintiffs nevertheless have brought suit in the Circuit Court for Anne Arundel County against Defendants F. O. Mitchell & Bro. ("Mitchell"), Frederick Ward Associates, Inc. ("Ward"), Chesapeake Real Estate Group, LLC ("CREG"), and Harford County, Maryland ("Harford County" or the "County") complaining about a "planned development" of the Mitchell Farm on the "Perryman Peninsula" in Harford County (the "Property"). Compl. ¶¶ 1-2. The Property is zoned as Light Industrial ("LI"). Id. ¶ 2.

Plaintiffs allege that Defendants CREG and Ward have "begun development of the Mitchell Farm by seeking approvals" from the County, including submission of "Forest Stand Delineation Plans, Preliminary Plans, [and] Site Plans." Compl. ¶ 32. The development of the Property is subject to the Harford County Subdivision Regulations found in Chapter 268 of the

Harford County Code ("Code").[1] Defendants activities are part of the administrative subdivision process required by those Regulations, which process has not reached a final decision. *See* Code §§ 268-19 (preliminary plans and site plans), 267-35(A)(1)(a) (forest stand delineation needed for subdivision approval). In addition, Defendants CREG and Ward have "presented a traffic impact study" (Compl. ¶ 32), which is required under the Adequate Public Facilities regulations found within the Zoning Code (Chapter 267 of the Code) and Subdivision Regulations. Code, §§ 267-126(B)(3)(c); 268-19(C)(12).

Plaintiffs repeatedly refer to the planned development as a "Freight Terminal," despite the fact that public records relating to the proposed development refer to the use as "warehouses" and "commercial retail." *See* Compl. ¶ 3 (quoting Ward as saying, "We are proposing 5 warehouses" and "commercial retail use"). The description of the "planned development" contained in the Complaint is taken from the minutes of the January 19, 2022 meeting of the Development Advisory Committee ("DAC"), of which this Court can take judicial notice. Exhibit A at 3; https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8276210/Page1.aspx (last visited 6/28/2022).[2]

Review by the DAC is part of the subdivision process under Section 268-19(C). DAC meetings are required to be open to the public. Code § 268-19(C)(2). Notice must be published prior to the meetings, including "information about the type of subdivision, *proposed use* and number of units requested in the plan." *Id*. § 268-19(C)(5) (emphasis added). DAC meetings allow for citizens to make comments about the proposed development plan. *Id*. § 268-19(C)(7).

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[1] The Code is available online here: https://ecode360.com/HA0904 (last visited 6/28/2022). The Harford County Charter ("Charter") is available here: https://ecode360.com/12066517 (last visited 6/28/2022).

[2] As a service to the public, the Harford County Department of Planning and Zoning has made the public records relating to the proposed subdivision of the Mitchell Farm available online. *See* http://hcgweb01.harfordcountymd.gov/weblink8/search.aspx?dbid=0&searchcommand={LF:ID=8098795} (last visited 7/06/2022). As noted below, this Court may consider in deciding this Motion facts of which it may properly take judicial notice, such as the existence of the official public documents in the subdivision record. *E.g. Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008).

The subdivision review process also includes review and approval of stormwater management ("SWM") plans, designed to prevent any damage to water resources. Section 268-17(A)(2) provides: "Every subdivision shall be provided with a stormwater drainage system adequate to serve the area being platted, including any surface drainage water originating outside the limits of the area, which would ordinarily run through the area being platted, and otherwise meeting the drainage specifications as set forth in the Harford County Road Code and the [SWM] Regulations, as amended." The purpose of the SWM Regulations (Chapter 214 of the Code) is "to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff," to reduce pollution, and "to restore, enhance and maintain the chemical, physical and biological integrity of streams, minimize damage to public and private property and reduce the impacts of land development." Code § 214-24(D). Although there are allegations in the Complaint concerning alleged damage to water resources (¶¶ 56, 58, 59), there are no allegations concerning an approval of a SWM plan under the SWM Regulations.

The "traffic impact study" (Compl. ¶ 32) also is not alleged to have received approval under the Adequate Public Facilities provision of the Zoning Code. Code § 267-126(B)(3)(c). There is no certainty that there will be a finding of adequate capacity, what additional improvements might be required to achieve such a finding, or whether the developer will be willing to fulfil any such requirements. Without such a finding, the Preliminary Plan and Site Plan cannot be approved. *See* Code § 267-126(B)(3) ("Approval of nonresidential development and site plans shall be subject to findings of adequate capacity based on the standards set in this subsection…"). Developers may be required to construct substantial improvements to the public road system in order to meet adequate facilities requirements. Code § 267-126(B)(3)(c)(4); *see also* § 268-12(E).

If all requirements are met under the Subdivision Regulations, the Zoning Code, and all other applicable provisions of the Code, the Director of the Department of Planning and Zoning

will send the developer a written approval of the Preliminary Plan or Site Plan (or both), including any conditions that must be met to comply with the Zoning Code, Subdivision Regulations, Floodplain Management Regulations (Chapter 131 of the Code), or other applicable provisions of the Code. *Id.* § 268-19(C)(10). After the Preliminary Plan and Site Plan approvals have been issued, the developer must submit a "final plat" which is reviewed by the appropriate agencies prior to being recorded in the land records. *Id.* §§268-21, 268-24. Such a recorded plat is a necessary prerequisite to a transfer of lots within the subdivision and to the issuance of building permits. Code §§ 268-7 ("No lot in a subdivision or any section thereof shall be transferred, nor shall a building permit be issued for a structure thereon, until a final plat of such subdivision or any section thereof has been recorded in accordance with these Regulations.").

The approval of the Preliminary Plan or Site Plan is subject to appeal within 30 calendar days to the Circuit Court for Harford County. Code § 268-28.

Although the Complaint is vague about the subdivision process, it does not allege that there has been any approval of the Preliminary Plan or Site Plan by the Director of the Department of Planning and Zoning. The Complaint repeatedly references what the plans "include" or "call for" but does not allege that the plans have been approved. Compl. ¶¶ 49-51. The Complaint also repeatedly uses the future tense to refer to the development. *See* Compl. ¶¶ 54 ("will render"); 55 ("will exponentially increase"); 56 ("will exacerbate").

As of now, the Mitchell Farm Preliminary Plan and Site Plan have not been approved. There is no certainty that they will be approved. Nor is there any certainty, if they are approved, what conditions may be imposed in order to comply with the Zoning Code, Subdivision Regulations, Floodplain Management Regulations, or other applicable provisions of the Code. Code § 268-19(C)(10). There is no development approval or recorded plat and therefore cannot be any building permits issued for the construction of warehouses or any other buildings on the Property. Code § 268-7.

Legal Standards

Maryland Rule 2-322(a) provides that a motion to dismiss for improper venue must be filed before the answer. Such motions are to be supported by affidavits. *E.g., Lampros v. Gelb & Gelb, P.C.*, 153 Md. App. 447, 452 (2003). In considering this motion, the Court may make necessary findings of fact in order to decide the legal issues presented. Neimeyer & Schuett, Maryland Rules Commentary, Rule 2-322 at 205 (3rd ed. 2003) ("If determinations of fact become necessary in deciding the motion, the court may consider affidavits or, in connection with any hearing, take testimony. The court, not the jury, makes the necessary findings and decides the ultimate legal issues.").

"Pursuant to Maryland Rule 2-322(b)(2), 'a party may seek dismissal of a complaint if the complaint fails to state a claim upon which relief may be granted.'" *Holden v. Univ. Sys. of Md.*, 222 Md. App. 360, 366 (2015). A complaint's exhibits are part of the complaint on a motion to dismiss, as are uncontroverted matters that supplement the complaint's allegations. *Wireless One, Inc. v. Mayor of Baltimore City*, 239 Md. App. 687, 692–93 (2018), *aff'd*, 465 Md. 588 (2019).

"In considering a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Maryland Rule 2-322(b)(2), a trial court must assume the truth of all well-pleaded relevant and material ***facts*** in the complaint, as well as all inferences that reasonably can be drawn therefrom." *Bobo v. State*, 346 Md. 706, 708 (1997) (citations omitted) (emphasis added). "Bald assertions and conclusory statements by the pleader will not suffice." *Id.* at 708-709. The Court of Appeals has explained:

> Facts must be pleaded with some specificity to demonstrate that the elements which are required to sustain the cause of action exist. It is not sufficient to merely assert conclusory allegations suggesting that the elements are in fact present in the controversy.

Valentine v. On Target, Inc., 353 Md. 544, 549 (1999). *See also Anderson v. Meadowcroft*, 339 Md. 218, 230 (1995) ("[A] conclusory allegation, without supporting facts, is insufficient to state

a cause of action."); Maryland Rule 2-305 ("A pleading that sets forth a claim for relief … shall contain a clear statement of the facts necessary to constitute a cause of action….").

In addition to the facts alleged in the Complaint, the Court may consider documents expressly referenced in the Complaint because they merely supplement the allegations and cannot be controverted. *Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015) (agreement could be considered on motion to dismiss because it "merely supplements the allegations of the complaint, and the document is not controverted"). *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710 n.4 (2015) (permitting consideration of agreement referenced in complaint).

The Court may also consider facts of which it may properly take judicial notice, such as adjudicative facts in "official public documents." *Chesek v. Jones*, 406 Md. 446, 456 n.8 (2008); *see also* Md. Rule 5-201 (permitting judicial notice of fact "not subject to reasonable dispute"); *Faya v. Almaraz*, 329 Md. 435, 444 (1993) ("to place a complaint in context, we may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification.").

Argument

Plaintiffs' Complaint must be dismissed because venue is improper in this Court. In addition, the claims against the County must be dismissed because the claims are not justiciable, because there is no final administrative decision and because Plaintiffs have not exhausted administrative remedies. In addition, if not dismissed, the case should be transferred under Maryland Rule 2-327(c) and the principles of *forum non conveniens*.

A. Venue is improper in Anne Arundel County.

Anne Arundel County is not the proper venue for this action because Defendants Mitchell and Harford County do not reside, carry on a regular business, have employment, or habitually engage in a vocation in Anne Arundel County. Plaintiffs make no attempt in the Complaint to allege facts establishing venue for Mitchell or Harford County.

Regarding venue, Plaintiffs merely allege that "Anne Arundel County is the proper venue pursuant to Maryland Code Ann., Cts. & Jud. Proc. § 6-201 because Defendant CREG's principal place of business is in Anne Arundel County." Complaint ¶ 27. This statement is incorrect as a matter of law because venue must be established for *each* defendant. The Court of Appeals has held that "[t]he privilege of a defendant to be sued only in the county of his residence is a substantial right not to be denied except in strict compliance with the exceptions established by law." *Capron v. Mandel*, 250 Md. 255, 260 (1968).

Section 6-201(a) of the Courts and Judicial Proceedings Article provides that "a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed or habitually engages in a vocation." Venue is not proper for Mitchell and Harford County because they do not reside, carry on a regular business, have employment, or habitually engage in a vocation in Anne Arundel County, and Plaintiffs make no effort to allege otherwise. Affidavit of Barry Glassman, ¶ 3 (Exhibit B); Affidavit of Louis F. Friedman, ¶ 3 (Exhibit C).

Plaintiffs cannot and do not maintain that venue is proper under the multiple defendants provision of Section 6-201(b) of the Courts and Judicial Proceedings Article because Harford County is a single venue applicable to all Defendants. All Defendants carry on a regular business in Harford County and would be subject to venue there. Affidavit of Barry Glassman, ¶ 4 (Exhibit B); Affidavit of Louis F. Friedman, ¶ 4 (Exhibit C); Affidavit of James Lighthizer, ¶ 3 (Exhibit D); Affidavit of Torrence Pierce, ¶ 3 (Exhibit E). The entire case is about the development efforts of CREG in Harford County on land owned by Mitchell in Harford County, utilizing the services of Ward in Harford County. Thus, Harford County is the single venue applicable to all Defendants, and Section 6-201(b) cannot be used to establish venue in Anne Arundel County.

Venue is not proper in this Court over Defendants Mitchell and Harford County, making this case subject to dismissal under Rule 2-322(a)(2). Alternatively, the case must be transferred to Harford County Circuit Court pursuant to Rule 2-327(b). If this case is transferred, the

remaining issues concerning dismissal for failure to state a claim should be decided by the Circuit Court for Harford County.

B. Plaintiffs' claims must be dismissed because of the related doctrines of exhaustion, finality, and justiciability.

Plaintiffs' attempt to circumvent the remedies provided in the Harford County subdivision process must be rejected. Despite the facts that no development plans have been approved and that the Harford County Code would provide them a remedy even if plans had been approved, Plaintiffs have asked this Court – more than 50 miles away from the subject Property and in a different jurisdiction – to intervene and dictate the outcome of the Harford County development process. This cannot succeed because Plaintiffs have not exhausted their administrative remedies in Harford County, there is no final decision by the Harford County Director of Planning, and there is no justiciable controversy to be decided by this Court.

1. There is no final decision by the Harford County Director of Planning, and Plaintiffs have not exhausted their administrative remedies.

Plaintiffs' Complaint must be dismissed based on the related concepts of finality and exhaustion. There is no final decision of the Harford County Director of Planning, and Plaintiffs have failed to exhaust their administrative remedies in the subdivision process. *See, e.g. Laurel Racing Ass'n, Inc. v. Video Lottery Facility Location Comm'n*, 409 Md. 445, 460 (2009) ("party must exhaust the administrative remedy and obtain a final administrative decision ... before resorting to the courts").

The Complaint is based upon Plaintiffs' objections to the development process relating to the Mitchell Farm. *See, e.g.*, Compl. ¶¶ 1, 3, 8, 23, 24 (repeatedly referring to the "development"). Indeed, the relief Plaintiffs seek is to stop the development process and prevent the County from issuing permits and approvals. Compl. at 17, ¶ B (seeking to enjoin "obtaining any permitting or approvals"), ¶ C (seeking to enjoin "any steps in furtherance of the development" including "permitting, approvals, subdividing"). This relief is unavailable for multiple reasons.

First, Plaintiffs have failed to exhaust their administrative remedies. The development of land in Harford County is controlled by an extensive administrative process, described above, which includes "seeking approvals" from the County of "Forest Stand Delineation Plans, Preliminary Plans, [and] Site Plans," among other submissions. Compl. ¶ 32. Indeed, Plaintiffs expressly allege that Harford County is "responsible for the approval and granting of permits for development of real property in its jurisdiction." *Id.* ¶ 24. Without such approvals, the Property cannot be developed. Code § 268-7. Local citizens, especially adjacent land owners, have multiple opportunities to raise objections to the development during this administrative process, and anyone affected by the approval of a preliminary plan or site plan has the right to appeal to the Circuit Court for Harford County. Code §§ 268-19(C), 268-28(A).

With respect to the development of land in Harford County, the Harford County Code "provides an administrative remedy as the exclusive or primary means by which an aggrieved party may challenge a government action." *Priester v. Baltimore Cnty., Maryland*, 232 Md. App. 178, 193 (2017). That being the case, Plaintiffs are required to "use that form rather than any other." *Soley v. State Comm'n on Hum. Rels.*, 277 Md. 521, 526 (1976). If the Plaintiffs were to be ultimately unsuccessful at the administrative level, they "must seek the judicial review provided by the [Harford County Code] rather than invoke the ordinary jurisdiction of the courts." *Id.*

This rule of administrative exhaustion exists for good reasons. First, the agency should be afforded the initial opportunity to exercise its discretion and apply its expertise to the decisions that "are often of a discretionary nature, and frequently require an expertise which the agency can bring to bear in sifting the information presented to it." *Id.* Second, judicial intervention in the process might "undermine the very efficiency which the Legislature intended to achieve in the first instance." *Id.* Third, premature court involvement might call upon the courts "to decide issues which perhaps would never arise if the prescribed administrative remedies were followed." *Id.*

All three of these policy goals are implicated here. First, the Harford County Department of Planning and Zoning exercises discretion and uses its expertise in reviewing, imposing conditions upon and approving preliminary plans and site plans; this discretionary review is still ongoing regarding the development of the Property. Second, court intervention at this stage would disrupt the development process and hinder the efficiency that the Harford County Subdivision Regulations are designed to achieve. Third, many of the issues presented in the Complaint may never arise or might be substantially different by the time the administrative review process is complete, such as the complaints about traffic. For these reasons, Plaintiffs are required to exhaust their administrative remedies, which they have failed to do.

Second, there is no final administrative decision for this Court to review. "[T]he requirement of a final administrative decision" overlaps with the principle of administrative exhaustion. *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 485 (2011). *See also Dorsey v. Bethel A.M.E. Church*, 375 Md. 59, 76 (2003) (finality overlaps with exhaustion). The court in *Priester* explained this overlap: "Exhaustion requires a grievant to invoke and pursue the administrative process until he or she receives a final decision from the agency at the utmost level of the administrative hierarchy." *Priester*, 232 Md. App. at 194.

Under Maryland law, "'[w]here an administrative agency has primary or exclusive jurisdiction over a controversy, the parties to the controversy must ordinarily await a final administrative decision before resorting to the courts for resolution of the controversy.'" *Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 443 Md. 199, 215 (2015), *quoting State v. Maryland State Bd. of Contract Appeals*, 364 Md. 446, 457 (2001). "To be 'final,' the order or decision must dispose of the case by deciding all question of law and fact and *leave nothing further for the administrative body to decide*." *Willis v. Montgomery Cnty.*, 415 Md. 523, 535 (2010) (emphasis added). "The salutary purpose of the finality requirement is to avoid piecemeal actions in the circuit court seeking fragmented advisory opinions with respect to partial or intermediate agency decisions." *Driggs Corp. v. Maryland Aviation Admin.*, 348 Md.

389, 407 (1998). Moreover, piecemeal review of interlocutory agency decisions "could raise serious separation of powers concerns." *Id*.

In this case, there plainly is no final administrative decision because there is much more for the administrative body to decide. There has been no approval of the Preliminary Plan or Site Plan by the Director of the Department of Planning and Zoning, and there is no certainty that they will be approved. Compl. ¶¶ 49-51 (allegations concerning plans do not allege approval); ¶¶ 54-56 (allegations concerning development in future tense). Even if there were to be a final decision by the Director, Plaintiffs' appeal rights would be "to the Circuit Court for Harford County" under Section 268-28(A) – not to this Court in the form of a declaratory judgment action. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-409(b) ("If a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of a proceeding under this subtitle."); *Soley v. State Comm'n on Hum. Rels*., 277 Md. 521, 526 (1976) (requiring resort to judicial review provided by code rather than "invoke[ing] the ordinary jurisdiction of the courts"). This Court must reject Plaintiffs attempt to obtain piecemeal review of the Harford County development process in the wrong court and outside the process established by the Harford County Code.

2. There is no justiciable controversy to be decided by this Court.

This case must also be dismissed because there is no justiciable controversy. "A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." *Reyes v. Prince George's County*, 281 Md. 279, 288 (1977). "The existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." *Hatt v. Anderson*, 297 Md. 42, 45 (1983). Addressing "non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State." *Hatt*, 297 Md. at 46.

In this case, there is "nothing that rises to the level of an actual dispute between the parties." *120 W. Fayette St., LLLP v. Mayor & City Council of Baltimore City ("Superblock II")*,

413 Md. 309, 357 (2010). The County "has not yet adopted or approved any plans." *Id.* Any plans that might be adopted could be different than the plans currently being considered. If the court were to intervene at this point, it would be improperly asked "to decide purely theoretical questions or questions that may never arise." *Hamilton v. McAuliffe*, 277 Md. 336, 340 (1976). Like the plaintiffs in *Superblock II*, Plaintiffs have "failed to allege facts sufficiently ripe to rise to level of a justiciable controversy." *Superblock II*, 413 Md. at 359.

C. Count Four seeking injunctive relief does not allege a cause of action.

Count Four, seeking injunctive relief, must be dismissed because it does not state an independent cause of action. An injunction is a remedy, not a cause of action and cannot stand on its own. *Orteck Int'l Inc. v. Transpacific Tire Wheel, Inc.*, 704 F. Supp. 2d 499, 521 (D. Md. 2010), aff'd sub nom. Orteck Int'l v. TransPacific Tire & Wheel, Inc., 457 F. App'x 256 (4th Cir. 2011). *See also Fare Deals Ltd. v. World Choice Travel.Com, Inc.*, 180 F. Supp. 2d 678, 682 n.1 (D. Md. 2001) ("request for injunctive relief does not constitute an independent cause of action" but "is merely the remedy sought for the legal wrongs alleged"). The only substantive count against Harford County is Count One seeking a declaratory judgment, which must be dismissed for the reasons stated above. Therefore, Count Four seeking an injunction must also be dismissed.

D. This case must be dismissed because Plaintiffs failed to join a necessary party.

This case also must be dismissed because Plaintiffs have failed to join a necessary party – one of the owners of the Property. The Preliminary Plan and Site Plan – both referenced in the Complaint (Compl. ¶ 32) – expressly list Charles A. Maslin III as an owner of one of the parcels. *See* Exhibit F (Preliminary Plan excerpt); Exhibit G (Site Plan excerpt).[3]

[3] *See also* https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8314776/Page1.aspx (full Preliminary Plan) (last visited 7/6/2022); https://hcgweb01.harfordcountymd.gov/weblink/0,0/doc/8314781/Page1.aspx (full Site Plan). (last visited 7/6/2022).

As an owner of part of the Property, Mr. Maslin's rights would be affected by any declaration concerning the development of the Property. Section 3-405(a) of the Maryland Uniform Declaratory Judgments Act mandates that any "person who has or claims any interest which would be affected by the declaration shall be made a party." Md. Code Ann., Cts. & Jud. Proc. § 3-405(a). Likewise, Maryland Rule 2-211(a)(2) requires joinder of any person if "disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action." Plaintiffs have violated these provisions and have failed to join a necessary party: Mr. Maslin, an owner of part of the Property. Having failed to join a necessary party, Plaintiffs' claims should be dismissed under Rule 2-322(b)(3).

E. This case should be transferred to Harford County based on *forum non conveniens*.

Even if venue were somehow proper in this Court (which it is not), this Court could and should transfer the case to Harford County under Maryland Rule 2-327(c) and principles of *forum non conveniens*.

In this case, all Plaintiffs live in Harford County, not in Anne Arundel County. Complaint, ¶¶ 13-19. The case relates to the development of property in Harford County and has no relationship to Anne Arundel County. *Id*. ¶ 1. Under these circumstances, any "deference owed to the plaintiff may face significant diminishment to the point of non-existence." *Univ. of Maryland Med. Sys. Corp. v. Kerrigan*, 456 Md. 393, 408 (2017). Such deference shrinks where the plaintiff does not reside in the chosen forum and shrinks even more "if a plaintiff's choice of forum has no meaningful ties to the controversy and no particular interest in the parties or subject matter." *Id*. at 406, quoting *Stidham v. Morris*, 161 Md. App. 562, 569 (2005).

In deciding a motion based on *forum non conveniens*, courts consider both convenience and the interests of justice. *E.g.*, *Stidham v. Morris*, 161 Md. App. 562, 568 (2005). Regarding convenience, the court should consider where the parties reside, the relative convenience of haling defendants or plaintiffs into the others' choice of venue based on residence or where they carry on business," "where the cause of action arose," "the convenience of the witnesses," and

"the ease of access to sources of proof." *Kerrigan*, 456 Md. at 415. With respect to the interests of justice, the court should consider "court congestion, the jury duty burden, and keeping localized concerns decided in their place of origin." *Id*. at 418.

In this case, *all* of the convenience factors weigh in favor of transferring the case to Harford County. All of the parties except CREG live or have a principal office in Harford County. Complaint ¶¶13-24. CREG does significant business in Harford County, including the proposed development that is the subject of this action. *Id*. ¶ 22; Exhibit D, ¶ 3.[4] To the extent there even is a cause of action, it would have arisen in Harford County where the property is located and all activity has occurred. The witnesses, including all Plaintiffs, all adjacent property owners, and all County officials are in Harford County. All of the sources of proof are in Harford County where the property is located and the development submissions have been made. In contrast, there is no nexus to Anne Arundel County.

With respect to the interests of justice, the courts consider both the public interest and the private interest. *E.g., Stidham*, 161 Md. App. at 568. "[P]ublic interests include, among other things, considerations of court congestion, the burdens of jury duty, and local interest in the matter." *Id*. at 569. Most significant in this case is the fact that Anne Arundel County has no local interest in deciding this dispute over the development of land in Harford County. Indeed, there is a strong public policy in favor of local control over planning and zoning issues. Maryland Code, Local Gov't Art., § 10-324(b)(2) ("It is the policy of the State that planning and zoning controls shall be implemented by local government."). The Court of Appeals, quoting the United States Supreme Court, has indicated:

> Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. …. There

[4] CREG's website shows two other developments in Harford County: Trimble Road Business Park in Edgewood and Perryman Logistics Center already existing on the Perryman Peninsula. https://www.cregllc.com/properties/development-portfolio (last visited 6/16/2022). Another property at 350 Old Bay Lane in Havre de Grace is listed under current availabilities. https://www.cregllc.com/properties/current-availabilities (last visited 6/16/2022).

> is a local interest in having localized controversies decided at home.

Johnson v. G.D. Searle & Co., 314 Md. 521, 526 (1989), quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-509 (1947). This case has a substantial connection to Harford County, given the fact the land involved in the case is located there, and the entire case relates to zoning and development regulations under the Harford County Code and administered by Harford County officials. In contrast to these very strong connections to Harford County, the only connection to Anne Arundel County is the fact that the developer's corporate office happens to be in Anne Arundel County. However, the developer regularly conducts business in Harford County, and the developer's activities, as they relate to the development at issue in this case, occurred in Harford County. The location of the developer's office, therefore, is insignificant.

Regarding court congestion, Anne Arundel County Circuit Court, with 13 judges, had a total of 16,659 new case filings in fiscal year 2020 (1,281 cases per judge), compared to 6,619 new cases in Harford County with 6 judges (1,103 cases per judge). *See* Maryland Judiciary Annual Statistical Abstract 2020, prepared by Maryland Judiciary, https://mdcourts.gov/sites/default/files/import/publications/annualreport/reports/2020/fy2020statisticalabstract.pdf (last visited 6/16/2022) (showing 2020 cases filed); Maryland Manual On-Line, https://msa.maryland.gov/msa/mdmanual/31cc/html/cccounty.html (last visited 6/16/2022) (showing number of judges). Therefore, the factor of court congestion weighs slightly in favor of transferring the case from Anne Arundel County to Harford County.

Private interests include, among other things, "practical problems that make trial of a case easy, expeditious and inexpensive." *Stidham v. Morris*, 161 Md. App. 562, 568 (2005), quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). There are significant benefits to litigating this case in the same forum where the other issues related to the development of the property are already being considered by the relevant administrative agencies. This case has no relation to Anne Arundel County and should never have been filed in this Court.

WHEREFORE Defendant Harford County, Maryland requests that its Motion to Dismiss be granted and the case dismissed.

/s/ David M. Wyand
David M. Wyand, AIS No. 9412150301
Rosenberg Martin Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201
Phone: 410-727-6600
Fax: 410-727-1115
dwyand@rosenbergmartin.com

Attorneys for Defendant
Harford County, Maryland

REQUEST FOR HEARING

Defendant Harford County, Maryland hereby requests a hearing on the foregoing Harford County's Motion to Dismiss.

/s/ David M. Wyand
David M. Wyand, AIS No. 9412150301

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2022, a copy of the foregoing Harford County's Motion to Dismiss was served through MDEC on: Rignal W. Baldwin V, Esq., Michael A. Cuches, Esq., Baldwin Seraina, LLC, 111 South Calvert Street, Suite 1805, Baltimore, Maryland 21202, rbaldwinv@baldwin-seraina.com, mcuches@baldwin-seraina.com; any by regular mail on: F. O. Mitchell & Bro., 427 Michaelsville Road, Perryman, Maryland 21130; Frederick Ward Associates, Inc., c/o Torrence Pierce, 845 Flintlock Drive, Bel Air, Maryland 21015; Chesapeake Real Estate Group, LLC, c/o James Lighthizer, 1 Boone Trail, Severna Park, Maryland 21146.

/s/ David M. Wyand
David M. Wyand, CPF No. 9412150301