Circuit Court for Prince George's County
Case No. CAL22-15933

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 557

September Term, 2023

PALMER ST CLAIR SASSCER, ET AL.

v.

TOWN OF UPPER MARLBORO

Graeff,
Berger,
Albright,

JJ.

Opinion by Berger, J.

Filed: May 14, 2024

This appeal arises from a declaratory judgment action filed in the Circuit Court for Prince George's County by appellants Palmer St. Clair Sasscer, Lucy St. Claire Sasscer, Anne M. Sasscer, Barbara C. Havenner, Rosalind C. Haselbeck, Hal C.B. Clagett, III, Elizabeth G. Clagett, John S. Sanders, Robert C. Sanders, and Carolyn O. Post ("Appellants") against the Town of Upper Marlboro, appellee (the "Town"). Appellants are the non-resident joint property owners of a 109.86-acre farm located west of the Town (the "Sasscer Farm"). Appellants' declaratory judgment action challenges the Town's annexation of multiple parcels of land west and south of the incorporated Town, including Sasscer Farm. The circuit court ultimately vacated the annexation due to the Town's failure to comply with statutory notice requirements. Appellants and the Town filed timely notices of appeal, each challenging different portions of the circuit court's holding. We consolidate the parties' questions presented on appeal as follows:[1]

[1] Appellants' original question presented reads as follows:

> Whether the Circuit Court erred in ruling as a matter of law that tenants in common have a single, collective vote in an annexation referendum under Section 4-411 of the Local Government Article of the Maryland Code.

The Town posits the following issues in their cross-appeal:

I. Whether the circuit court erred in ruling as a matter of law that tenants in common have a single, collective vote in an annexation referendum under Section 4-413 of the Local Government Article of the Maryland Code?

I. Whether the circuit court erred in concluding that Appellants' declaratory judgment action was not barred by their failure to exhaust administrative remedies.

II. Whether the circuit court erred in concluding that Appellants were entitled to a shared, collective vote in the annexation referendum pursuant to Md. Code (2013) § 4-313 of the Local Government Article ("LG").

III. Whether the circuit erred in vacating the annexation due to the Town's failure to comply with the statutory notice requirements set forth in LG § 4-411.

For the reasons explained below, we shall affirm, in part, and reverse, in part, the judgment of the Circuit Court for Prince George's County, and remand for the entry of a declaratory judgment consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

On December 28, 2021, the Town enacted Annexation Resolution 01-2021 pursuant to the municipal annexation statute. *See* LG §§ 4-402, 4-403. Annexation Resolution 01-2021 annexed two separate areas, only one of which is at issue in this case (the "Second

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II. Whether the circuit court's ruling violates the common law and Article 5 of the Declaration of Rights of the Maryland Constitution?

III. Whether the Town substantially complied with the referendum notice requirements in LG Article, § 4-411 of Md. Ann. Code?

IV. Whether Town's Board of Election Supervisors and the Board of Commissioners had primary jurisdiction of the issues raised by the appellants, and the appellants failed to exhaust their administrative remedies, and the appellants otherwise waived their right to contest the Area 2 referendum.

Annexation Area"). The Second Annexation Area encompasses thirteen parcels of land, including Sasscer Farm, with approximately six residents residing therein. The Town received the necessary consent to annexation from multiple property owners and residents of the Second Annexation Area as required by Section 4-403 of the Local Government Article.[2]

Section 4-408 of the Local Government Article of the Maryland Code provides:

> [A]t any time within 45 days after enactment of an annexation resolution, at least 20% of the registered voters who are residents of the area to be annexed may petition the chief executive and administrative officers of the municipality in writing for a referendum on the resolution.

LG § 4-408(a). Additionally, if there are fewer than twenty residents eligible to sign an annexation petition, "any person, including the two or more joint owners of jointly owned property, who owns real property in the area to be annexed may sign the petition and vote in the referendum." LG § 4-413. Eight of the ten Appellants in this case, along with two resident property owners and one non-resident property owner of the Second Annexation Area, signed a petition requesting that the Town hold a referendum on Annexation Resolution 01-2021.

The Town Board of Commissioners announced that it would hold a referendum and issued two proclamations -- one on March 8, 2022 and one on April 15, 2022 -- confirming

[2] Section 4-403 of the Local Government Article provides that the legislative body of a municipality may initiate an annexation proposal through an annexation resolution if it obtains consent from "at least 25% of the registered voters" in the area to be annexed, as well as consent from "the owners of at least 25% of the assessed valuation of the real property in the area to be annexed." LG § 4-403.

the details of the referendum. The first proclamation specified that joint property owners would be limited "to one vote per parcel or lot, regardless of the number of joint [owners]," pursuant to Section 4-413 of the Local Government Article of the Maryland Code. This was reiterated in the second proclamation, which affirmed that "there will be one person, one vote as provided for the registered voters and there will be one vote per parcel, lot or subdivided unit of land" for joint property owners. The Town subsequently enacted Resolution 2022-10, which established the date and time of the referendum and provided that:

> Since there are fewer than 20 residents in the area, each property may have one representative or collective vote (e.g., one parcel, one vote). Registered voters in county elections residing in the area who are not voting as landowners may also vote under the one person, one vote rule.

The Town also published multiple notices of the annexation referendum. The Town published a notice on its website on or around April 29, 2022 announcing that the referendum would take place on May 18, 2022. Furthermore, on or around April 29, 2022, the Town Clerk mailed notices to each of the property owners in the Second Annexation Area. Additionally, formal notices were published in the Prince George's Post on May 5, 2022 and May 12, 2022.

The annexation referendum took place on May 18, 2022. Prior to the referendum, the property owners of three of the thirteen parcels in the Second Annexation Area signed Annexation Agreements with the Town. Under these Agreements, those property owners provided formal written consent to and approval of the annexation. The Agreements did

not compel the property owners to vote in the referendum but provided that, if the property owners voted, they "shall vote in favor of the Annexation Resolution[.]" Nevertheless, none of these property owners showed up at the polls on the day of the referendum. Notably, two of the ten Appellants did visit the polls, but refused to vote upon seeing that the ballot required that the voter indicate they were the "legal representative" of two or more joint owners of property and were casting a collective vote for those joint owners. In the end, only one vote was cast in the referendum, which was in favor of annexation. Therefore, the annexation referendum passed by a vote of one to zero.

On the eve of the referendum, on May 17, 2022, Appellants filed their declaratory judgment action in the Circuit Court for Prince George's County. Appellants requested that the circuit court nullify Annexation Resolution 01-2021 and declare that each co-owner of jointly owned property was entitled to cast an individual vote in the annexation referendum.[3] The Town filed its answer to Appellants' complaint on June 14, 2022 and filed a motion to dismiss or, in the alternative, for summary judgment on July 24, 2022. The Town argued that the statutory language and legislative history of Section 4-413 of the Local Government Article of the Maryland Code provides that joint property owners are entitled only to a single, collective vote in an annexation referendum and that the Town's referendum procedures complied with that provision. Appellants responded by filing a

[3] Appellants' complaint also requested that the court nullify any consents to annexation or Annexation Agreements executed by other residents or property owners of the Second Annexation Area. These claims, however, are not presented for our consideration on appeal.

cross-motion for summary judgment on August 5, 2022. Their cross-motion contended that the Town incorrectly interpreted the municipal annexation statute and asserted that the Town failed to comply with the notice requirements set forth in Section 4-411 of the Local Government Article. In response to Appellants' cross-motion for summary judgment, the Town argued that Appellants' declaratory judgment action was barred by their failure to exhaust the administrative remedies set forth in the Town Charter.

The circuit court held a hearing on the parties' cross-motions for summary judgment on April 4, 2023. At the conclusion of the hearing, the court concluded that Appellants' action was not barred by their failure to exhaust administrative remedies. Additionally, the court held that there existed no genuine dispute of material fact and that the case was "ripe for summary judgment" on the two issues before the court: the Town's interpretation of the Local Government Article and the Town's failure to comply with the statutory notice requirements. The court concluded that Appellants were entitled to a shared, collective vote at the annexation referendum. Nevertheless, the court held the annexation referendum to be invalid due to the Town's failure to comply with the statutory notice requirements set forth in Section 4-411 of the Local Government Article of the Maryland Code.

The court issued a memorandum opinion on April 20, 2023. The circuit court initially held that Appellants' action was not barred by their failure to exhaust administrative remedies. Although the Town Charter provides an avenue for individuals aggrieved by any action of the Board of Supervisors of Elections to appeal to the Town's Board of Commissioners, the circuit court concluded that this administrative appeal "is [a]

permissive, not a mandatory one" and that it was "not a condition precedent for seeking relief in [circuit court]." The circuit court's opinion also declared that joint property owners are entitled to a shared, collective vote in an annexation referendum, concluding:

> The Court is persuaded that the Town's reading of Section 4-413 is correct. The phrase "including two or more joint owners of jointly owned property" is a parenthetical phrase intended to give meaning to the singular noun "person" for purposes of voting in an annexation referendum if all of them were not unanimously for or against the annexation of their property. The Court, however, can only consider extrinsic evidence, including evidence of legislative intent, if the language of a statute is ambiguous.
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> The Court finds that section 4-413 is unambiguous. The parenthetical language "including two or more joint owners of jointly owned property" provides an example of a "person" in the singular, meaning that two or more joint owners of jointly owned property are a single "person" for purposes of voting in an annexation resolution. The Court is constrained to apply the statute as written, given that it is unambiguous, regardless of what the legislature may have intended.

Finally, the circuit court concluded that the Town failed to comply with the notice requirements set forth in Section 4-411 of the Local Government Article. The circuit court, therefore, vacated the annexation of the Second Annexation Area, holding that "[t]he appropriate and equitable relief is to require the Town to issue a new notice of referendum and to hold the referendum election" within the timeframe required by statute.

Appellants filed a timely notice of appeal on May 18, 2023, and the Town filed its timely cross-appeal on May 19, 2023.

DISCUSSION

I. Standard of Review

The entry of summary judgment is governed by Maryland Rule 2-501, which provides:

> The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.

Md. Rule 2-501(f). This Court's review of a circuit court order granting summary judgment "begins with the determination [of] whether a genuine dispute of material fact exists[.]" *Appiah v. Hall*, 416 Md. 533, 546 (2010) (citing *O'Connor v. Balt. Cnty.*, 382 Md. 102, 110 (2004)). In doing so, "[w]e review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party." *Wildewood Operating Co. v. WRV Holdings, LLC*, 259 Md. App. 464, 475–76 (2023) (quoting *Myers v. Kayhoe*, 391 Md. 188, 203 (2006)).

If no genuine dispute of material facts exists, we determine "whether the Circuit Court correctly entered summary judgment as a matter of law." *Smith v. Westminster Mgmt., LLC*, 257 Md. App. 336, 387 (2023), *cert. granted*, 483 Md. 571 (2023) (quoting *Koste v. Town of Oxford*, 431 Md. 14, 24–25 (2013)). We review *de novo* the circuit court's legal conclusions. *Id.* (citing *Webb v. Giant of Md., LLC*, 477 Md. 121, 135 (2021)). Furthermore, "[i]n conducting this *de novo* review . . . we ordinarily are limited to considering the grounds relied upon by the circuit court in granting summary judgment."

Asmussen v. CSX Transp., Inc., 247 Md. App. 529, 558–59 (2020) (citing *Sutton-Witherspoon v. S.A.F.E. Mgmt., Inc.*, 240 Md. App. 214, 233 (2019)). Additionally, this appeal requires us to determine whether the circuit court correctly interpreted Section 4-413 of the Local Government Article of the Maryland Code. Questions regarding statutory interpretation presented on appeal are legal questions, which this Court reviews *de novo*. *Richardson v. Boozer*, 209 Md. App. 1, 9 (2012).

II. The Appellants' declaratory judgment action was not barred by their failure to exhaust administrative remedies.

Preliminarily, we review the circuit court's conclusion that Appellants' action was not barred by failing to exhaust administrative remedies. This Court has recognized that "issues concerning primary jurisdiction and exhaustion are treated like jurisdictional questions." *Harford Cnty. v. Md. Reclamation Assoc.*, 242 Md. App. 123, 142–43 (2019), *aff'd*, 468 Md. 339 (2020). "Whether a plaintiff must exhaust administrative remedies prior to bringing suit is a legal issue which [this Court] reviews without deference." *Comptroller of Md. v. Comcast of Cal.*, 484 Md. 222, 231 (2023) (quoting *United Ins. Co. of Am. v. Md. Ins. Admin.*, 450 Md. 1, 14 (2016)) (internal quotation marks omitted); *see also Falls Road Cmty. Ass'n v. Balt. Cnty.*, 437 Md. 115, 134 (2014) (holding that "no deference is due to the lower court" on issues related to exhaustion of administrative remedies).

Section 82-25 of the Town Charter of the Town of Upper Marlboro provides:

> If any person shall feel aggrieved by the action of the Board of Supervisors of Elections in refusing to register or in striking off the name of any person, *or by any other action*, such person may appeal to the Board of Commissioners. Any decision or action of the Board of Commissioners upon such appeals may

> be appealed to the Circuit Court for Prince George's County within thirty days of the decision or action of the Board of Commissioners.

The circuit court concluded that "[t]his administrative remedy is [a] permissive, not a mandatory remedy" and held that "[t]aking an administrative appeal pursuant to Section 82-25 is not a condition precedent" to filing a declaratory judgment action in circuit court. In its cross-appeal, the Town argues that the circuit court erred in so holding and contends that Appellants were required to seek an administrative appeal before pursuing a judicial remedy.

This Court had consistently recognized three categories of relationships between administrative remedies and judicial remedies: exclusive, primary, and concurrent. *See Zappone v. Liberty Life Ins. Co*., 349 Md. 45, 60–61 (1998); *Boyd v. Goodman-Gable-Gould Co.*, 251 Md. App. 1, 24 (2021); *Holzheid v. Comptroller of Treasury of Md.*, 240 Md. App. 371, 388–89 (2019); *Priester v. Balt. Cnty.*, 232 Md. App. 178, 205–06 (2017). An exclusive administrative remedy is one which precludes a party from resorting to any other alternative remedy. *Zappone*, *supra*, 349 Md. at 60. A primary remedy is one whereby "a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy." *Id.* at 60–61. In other words, a party must exhaust the remedies available under the administrative statutory scheme before seeking an alternative judicial remedy. Finally, a remedy may be concurrent, meaning that a

plaintiff "may pursue the judicial remedy without the necessity of invoking and exhausting the administrative remedy." *Id.* at 61.

While the legislature may sometimes "set forth its intent as to whether an administrative remedy is to be exclusive, or primary, or simply a fully concurrent option, most often statutes fail to specify the category in which an administrative remedy falls." *Id.* at 62. The Court must, therefore, conduct an analysis as to which category applies. The Supreme Court of Maryland has held that there is no presumption that an administrative remedy is exclusive. *Bell Atl. of Md., Inc. v. Intercom Sys. Corp*., 366 Md. 1, 12 (2001) (citing *Zappone*, *supra*, 349 Md. at 63–64). There is, however, "a rebuttable presumption that in the absence of specific statutory language indicating otherwise, an administrative remedy [is] intended to be primary." *Id.*

There are multiple factors that we consider in determining whether an administrative remedy is a primary remedy. First, we must analyze the comprehensiveness of the administrative remedy. *Zappone*, *supra*, 349 Md. at 64. "A very comprehensive administrative remedial scheme is some indication that the Legislature intended the administrative remedy to be primary, whereas a non-comprehensive administrative scheme suggests the contrary." *Id.* Second, we give weight to an administrative agency's view of its own jurisdiction. *Id.* at 65. Finally, "[a]n extremely significant" factor is the "nature of the alternative judicial cause of action pursued by the plaintiff." *Id.* As the Supreme Court has explained:

> Where that judicial cause of action is wholly or partially dependent upon the statutory scheme which also contains the administrative remedy, or upon the expertise of the administrative agency, the Court has usually held that the administrative remedy was intended to be primary and must first be invoked and exhausted before resort to the courts . . . . On the other hand, where the alternative judicial remedy is entirely independent of the statutory scheme containing the administrative remedy, and the expertise of the administrative agency is not particularly relevant to the judicial cause of action, the Court has held that the administrative remedy was not intended to be primary and that the plaintiff could maintain the independent judicial cause of action without first invoking and exhausting the administrative procedures.

Id. at 65–66.

Notably, we have found no extrinsic evidence indicating the Board of Commissioner's views of its own jurisdiction. The Town, of which the Board is a component, argues that the Board has primary jurisdiction over matters such as the one raised here. Additionally, we recognize that the Town Charter gives the Board broad authority to hear administrative appeals but does not include any explicit language indicating that it is a primary remedy. As such, we focus our analysis on the first and third *Zappone* factors. Additionally, it is significant that Section 82-25 of the Town Charter provides that an aggrieved individual "*may* appeal to the Board of Commissioners." This language alone seems to suggest that the administrative remedy is concurrent rather than primary. Nevertheless, due to the rebuttable presumption that an administrative remedy scheme is a primary remedy, we analyze the two relevant *Zappone* factors in the context of this case.

A. The Town Charter does not provide a comprehensive remedial scheme.

The Town argues that the municipal annexation scheme set forth in the Local Government Article of the Maryland Code is extremely comprehensive and therefore weighs in favor of the conclusion that the administrative remedy is primary. We agree that the municipal annexation scheme is comprehensive. Notably, however, the first *Zappone* factor requires use to determine the comprehensiveness of the "administrative remedial scheme" -- which, in this case, is set forth in the Town Charter. In our view, the Town Charter does not set forth a comprehensive scheme for administrative appeals to the Board of Commissioners.

The Town Charter provides that an aggrieved individual may appeal to the Board of Commissioners challenging any "action of the Board of Supervisors of Elections in refusing to register or in striking off the name of any person, or *by any other action*." Although this language gives the Board of Commissioners broad authority to hear appeals, it does not set forth specific rules or procedures governing such appeals. It merely provides that a party can appeal to the Board and may seek judicial review of the Board's decision or action by appealing to the Circuit Court for Prince George's County. This language is much less comprehensive than other administrative remedial schemes that this Court and the Supreme Court of Maryland have deemed to be primary. *See, e.g., United Ins. Co. of Am.*, *supra*, 450 Md. at 17–18; *Bell Atl. of Md.*, *supra*, 366 Md. at 13–25.

The Supreme Court of Maryland's decision in *Bell Atlantic of Maryland v. Intercom Systems Corporation* is instructive in our analysis. *Bell Atl. of Md.*, *supra*, 366 Md. at 13–

25. In *Bell Atlantic*, the Supreme Court considered whether the administrative remedy set forth in the Public Utilities Article of the Maryland Code was intended to be an exclusive, primary, or concurrent remedy. *Id.* at 11–29 (analyzing Md. Code (1998, 2020 Repl. Vol.) § 3-102 of the Public Utilities Article ("PU")). Section 3-102 of the Public Utilities Article of the Maryland Code provides that "[a]ny person may file a complaint with the [Public Service] Commission." PU § 3-102(a)(1). The Public Utilities Article also sets forth a plethora of requirements and procedures governing appeals to the Public Service Commission. Indeed, subsequent sections of the Public Utilities Article provide requirements addressing service of process, the time and location of hearings, the Commission's ability to delegate proceedings, the order in which the Commission should prioritize proceedings, the rights of parties appearing before the Commission, and the parties' burdens of proof. *See* PU §§ 3-101 through 3-109. Furthermore, the statute provides a specific process by which an individual can seek judicial review of a decision of the Commission in state court. *See* PU §§ 3-201 through 3-209. The Court concluded that an administrative appeal to the Public Service Commission is a primary remedy rather than an exclusive or concurrent one. *Bell Atl. of Md.*, *supra*, 366 Md. at 25.

The administrative remedial scheme in *Bell Atlantic,* like the remedial scheme in this case, provides that an aggrieved individual "*may*" pursue an appeal with the administrative agency. Accordingly, *Bell Atlantic* demonstrates that inclusion of the term "may" in an administrative remedial scheme does not preclude this Court from concluding that the remedy is primary rather than concurrent. *Bell Atlantic*, however, is easily

distinguishable. The Public Utilities Article of the Maryland Code provides an elaborate and detailed process by which an individual can bring an appeal before the Public Service Commission. By contrast, the Town Charter of the Town of Upper Marlboro includes two brief sentences describing the process by which an individual can seek an administrative appeal with the Board of Commissioners.

We are not persuaded that the Town Charter constitutes a comprehensive remedial scheme from which one can infer that the remedy is intended to be primary. We, therefore, conclude that this *Zappone* factor supports the conclusion that the administrative remedy is a concurrent remedy.

B. Appellants' claims do not arise out of and are not dependent on the Town Charter or the expertise of the Board of Commissioners.

We further note that the third *Zappone* factor leads us to conclude that the administrative remedy set forth in the Town Charter is a concurrent rather than primary remedy. Our analysis of this factor is two-fold. First, we must determine whether Appellants' "judicial cause of action is wholly or partially dependent upon the statutory scheme which also contains the administrative remedy[.]" *Zappone*, *supra*, 349 Md. at 65. Second, we must determine whether the matter before us "relies upon the expertise of" the Board of Commissioners. *Id.*

Although the Town correctly recognizes that annexation referendums are governed by the Town's Charter, ordinances, and regulations, the Town is also required to hold municipal referendums and elections in a manner that complies with the Local Government Article of the Maryland Code. Appellants' action for declaratory judgment specifically

challenges the Town's failure to adhere to this statutory scheme, arguing that the Town "misconstrue[d] Section 4-413 of the Local Government Article by limiting joint owners of a parcel to one vote in an annexation referendum." Appellant's claim, therefore, is dependent upon the provisions of Maryland's municipal annexation statute set forth in the Local Government Article of the Maryland Code. As such, Appellants' claims are not "wholly or partially dependent" upon the Town Charter, which is the vehicle that provides the administrative remedy at issue.

The Town further argues that the Board of Commissioners is in a superior position to interpret the Town's charters and ordinances. While we acknowledge the value of the Board's expertise in interpreting these laws, we note that a Town Board of Commissioners' expertise may not rise to the level of other specialized, state-wide agencies such as the Maryland Tax Court or the Maryland Insurance Administration. The Town, however, goes further and argues that Town officials are also in a better position to "initially interpret . . . the statutes specifically governing municipalities in the Local Government Article and elsewhere" in the Maryland Code. We disagree.

We acknowledge that "administrative agencies generally may interpret statutes, as well as rule upon other legal issues[.]" *Balt. City Bd. of Comm'rs v. City Neighbors Charter Sch.*, 400 Md. 324, 343 (2007) (quoting *Bd. of Educ. for Dorchester Cnty. v. Hubbard*, 305 Md. 774, 790–91 (1986)). Although the Board is authorized to interpret state statutes, they are not necessarily in a better position to do so. The courts are just as well-positioned as the Board to analyze and interpret the Maryland Code, even those provisions related to the

administration of municipal annexations. Our courts routinely engage in statutory construction, analyzing the text and legislative history of Maryland law to determine the legislature's intent in cases involving issues of statutory interpretation. We conclude that the resolution of the issues in this case, which turn on the parties' differing interpretations of Section 4-413 of the Local Government Article of the Maryland Code, does not rely upon the expertise of the Board.

Based on our analysis of the *Zappone* factors, we conclude that the administrative remedy set forth in the Town Charter is a concurrent remedy. Accordingly, Appellants were not required to pursue an appeal with the Board of Commissioners before bringing their declaratory judgment action in the Circuit Court for Prince George's County. We, therefore, affirm the circuit court's judgment that Appellants' action is not barred by their failure to exhaust administrative remedies. Accordingly, we proceed to consider the merits of the arguments presented by the Appellants and the Town in their cross-appeals.

III. The Appellants were entitled to a shared, collective vote in the annexation referendum under Section 4-413 of the Local Government Article of the Maryland Code.

On appeal, Appellants and the Town present two different interpretations of Section 4-413 of the Local Government Article of the Maryland Code. Section 4-413 provides:

> If fewer than 20 residents in an area to be annexed are eligible to sign a petition for annexation and vote in a referendum under this subtitle, any person, including the two or more joint owners of jointly owned property, who owns real property in the area to be annexed may sign the petition and vote in the referendum.

LG § 4-413. Appellants contend that this language indicates that "natural persons, including tenants in common, are entitled to individual votes in an annexation referendum," while "artificial person" such as corporations, partnerships, and associations are entitled only to a shared, collective vote. The Town disagrees, asserting that the statutory language provides joint property owners the right to one, shared vote in an annexation referendum. The circuit court ruled in favor of the Town on this issue and Appellants appeal this ruling.

Appellants argue that the circuit court incorrectly construed the statute and that the circuit court's ruling violates the common law and Article 5 of the Maryland Declaration of Rights. For the reasons discussed below, we conclude that Section 4-413 of the Local Government Article entitles joint property owners such as Appellants to a single, shared vote in an annexation referendum.

A. The plain language and legislative history of Section 4-413 of the Local Government Article of the Maryland Code support the conclusion that joint property owners are entitled to a single, collective vote in an annexation referendum.

The parties in this case apply two different interpretations of Section 4-413 of the Local Government Article. As such, the issue before us is one of statutory construction. The goal of statutory interpretation "is to ascertain and effectuate the real and actual intent of the Legislature." *Lockshin v. Semsker*, 412 Md. 257, 274 (2010). This process begins with our analysis of the plain language of the statute. *Price v. State*, 378 Md. 378, 387–88 (2003). In doing so, however, we "do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone." *Lockshin*, *supra*, 412 Md. at 275. Indeed, the statute's plain language "must be viewed

within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Id.* at 276.

If the plain language of a statute is ambiguous, "a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process." *State v. Bey*, 452 Md. 255, 266 (2017) (quoting *State v. Johnson*, 415 Md. 413, 421–22 (2010)). Our analysis may include consideration of "the structure of the statute, how it relates to other laws, its general purpose and relative rationality and legal effect of various competing constructions." *Id.* Moreover, "[i]n addition to legislative history, we may and often must consider other 'external manifestations' or 'persuasive evidence,' in order to ascertain the legislative purpose behind a statute." *Blackstone v. Sharma*, 461 Md. 87, 113–14 (2018) (quoting *Kaczorowski v. Mayor & City Council of Balt.,* 309 Md. 505, 515 (1987)) (internal quotation marks omitted). This includes any "other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we reach the particular language before us in a given case." *Id.* at 114 (quoting *Kaczorowski*, *supra*, 461 Md. at 515).

We conclude that the plain language of Section 4-413 of the Local Government Article is clear and unambiguous. The relevant portion of the statute provides that "any *person*, *including* the two or more joint owners of jointly owned property, who owns real property in the area to be annexed may sign the petition and vote in the referendum." LG § 4-413 (emphasis added). The statute uses the singular term "person" and then specifies

that a "person" includes "the two or more joint owners of jointly owned property." *Id.* We agree with the circuit court that the phrase "the two or more joint owners" of property is intended to give meaning to the singular noun "person" for purposes of establishing voting rights in a referendum. Because a "person" is entitled to a single vote in a referendum, and the statute provides that multiple joint property owners are treated as a single "person" for voting purposes, joint property owners are entitled to one, collective, shared vote.

Both parties also analyze the predecessor to Section 4-413 of the Local Government Article -- former Article 23A § 19(k) of the Maryland Code. Former Article 23A § 19(k) of the Maryland Code provides:

> For purposes of this section, in any instance where there are fewer than twenty persons living in an area proposed to be annexed who are eligible to sign a petition and participate in a referendum election under the provisions of this section, any person owning real property in the area proposed to be annexed (*the word "person" here including an association, the two or more joint owners of a jointly-owned property or a firm or corporation)*, shall have a right equal to that of a natural person to sign a petition or to participate in a referendum election.

Md. Code (1957, 2011 Repl. Vol.) Article 23A § 19(k) (repealed 2013).

Under this article, a "person" owning real property is entitled to a "right equal to that of a natural person" when voting in a referendum election – meaning that a "person" is entitled to a single vote. The former statute defines a singular "person" as including "the two or more joint owners of a jointly owned property." Notably, the statute also defines a "person" as an association, corporation, or firm. The canon of construction, *noscitur a sociis,* suggests "that words grouped in a list should be given related meaning." *Manger v.*

Fraternal Ord. of Police, 227 Md. App. 141, 149 (2016) (quoting *Mass. v. Morash*, 490 U.S. 107, 114–15 (1989)). Therefore, joint property owners are entitled to the same treatment as corporations and associations under Article 23A, with all of these entities entitled only to a shared, collective vote in a municipal annexation referendum. This article was repealed and its provisions re-codified in Section 4-413 of the Local Government Article. Critically, the drafters of Section 4-413 clarified in a Revisor's Note that Section 4-413 is "new language derived without substantive changes from former Article 23A § 19(k)." LG § 4-413, revisor's note (Acts 2013, ch. 119).

We reject Appellants' argument that tenants in common are natural persons entitled to individual votes in an annexation referendum, as opposed to "artificial persons" such as corporations and associations which are entitled to a shared vote. The plain language of the statute and its legislative history identify no such distinction between joint property owners and entities such as partnerships, corporations, and associations. Indeed, the language of former Article 23A explicitly puts joint property owners in the same position as corporations and associations and provides that joint property owners are entitled to a single vote. The drafters of Section 4-413 emphasized that the enactment of the new statute was not meant to substantively change the provisions of Article 23A in any way. Accordingly, we conclude that the circuit court did not err in holding that Appellants were entitled to a single, collective vote in the annexation referendum.

B. Section 4-413 of the Local Government Article does not violate the common law or Article 5 of the Maryland Declaration of Rights.

Appellants contend that the circuit court's construction of Section 4-413 of the Local Government Article of the Maryland Code necessarily causes one tenant in common to prejudice the rights of their co-tenants, in violation of the common law and Article 5 of the Maryland Declaration of Rights. Appellants argue that when tenants in common are unable to reach a unanimous decision on how to vote in an annexation referendum, the joint property owners are "divested of any vote under the 'one parcel, one vote' rule." Appellants contend that this necessarily results in a violation of the common law doctrine prohibiting one tenant in common from prejudicing the rights of their co-tenants. *See Beesley v. Hannish*, 70 Md. App. 482, 492 (1987) (recognizing that, under the common law "where several tenants jointly own [a] property . . . one tenant may not prejudice the rights of the others without their unanimous consent.").

Although the General Assembly "may abrogate the common law through statutory enactments, we have also required a strong pronouncement from the Legislature as evidence of an intention to do so." *WSC/2005 LLC v. Trio Ventures, Assoc.*, 460 Md. 244, 258 (2018); *Walzer v. Osborne*, 395 Md. 563, 573–74 (2006)) ("[I]t is not to be presumed that the legislature . . . intended to make any alteration in the common law other than what has been specified and plainly pronounced."). Additionally, Article 5 of the Maryland Declaration of Rights affirms that "the Inhabitants of Maryland are entitled to the Common Law of England." Md. Const., Decl. of Rts., art. 5(a)(1); *see also Owens v. State*, 399 Md. 388, 412 (2007) ("Article 5(a)(1) of the Declaration of Rights avails Marylanders of the

common law of England as it existed at the time Maryland declared its independence."). Appellants, therefore, argue that the legislature could not have intended to enact a statute that would result in one joint property owner prejudicing the rights of another in abrogation of the common law. Furthermore, because common law rights are constitutionally guaranteed to the citizens of Maryland under Article 5 of the Maryland Declaration of Rights, Appellants argue that the circuit court's construction of Section 4-413 of the Local Government Article also violates the Maryland constitution.

This Court disagrees with Appellants' assertion that the "one parcel, one vote" rule necessarily results in one tenant in common prejudicing the rights of their co-tenants. First, it is unclear what rights Appellants contend are being prejudiced. In our view, Appellants initially appear to argue that the circuit court's construction would interfere with a joint property owner's right to vote in an annexation referendum. In their brief, Appellants argue that the legislature could not have "intended to divest tenants in common of the right to vote either for or against the annexation of their property" and that the circuit court's construction of Section 4-413 of the Local Government Article "will frequently divest [tenants in common] of the right to cast any vote." To the extent that Appellants contend that any interference with a joint property owner's voting rights is a violation of the common law, we disagree. As the Town recognizes, the common law does not confer a right to property owners to have an individual vote in an annexation referendum. The right of joint property owners to have a shared, collective vote in a referendum is a statutory right conferred by Section 4-413 of the Local Government Article.

In their response to the Town's cross-appeal, Appellants concede that the right to vote in an annexation referendum is a statutory right and clarifies that "[t]he common law doctrine at issue" in this case is the principle that a "tenant in common has no authority to act as an agent for his co-tenants in common." Without sufficient explanation or case law to support their position, Appellants contend that the circuit court's construction of Section 4-413 of the Local Government Article violates this doctrine. We are unpersuaded and decline to extend that doctrine to the facts of this case. This Court, therefore, concludes that the circuit court's construction of the municipal annexation statute regarding the voting rights of joint property owners does not contravene the common law or violate Article 5 of the Maryland Declaration of Rights.

IV. The circuit court erred in vacating the annexation of the Second Annexation Area based on the Town's failure to adhere to the notice requirements set forth in Maryland's municipal annexation statute.

Finally, we consider whether the circuit court erred in vacating the annexation of the Second Annexation Area due to the Town's failure to comply with statutory notice requirements. Section 4-411 of the Local Government Article of the Maryland Code provides:

> (a) The chief executive and administrative officer of the municipality shall schedule a referendum on the annexation resolution and publish notice of the date, time, and place at which the referendum will be held.
>
> (b) The referendum shall be held
>
> (1) no sooner than 15 days and no later than 90 days after notices of the referendum are published; and

(2) at one or more places in:

(i) the municipality, for the referendum in the municipality; and

(ii) the area to be annexed, for the referendum in that area.

(c) Public notice of the referendum shall be published:

(1) twice at not less than weekly intervals; and

(2) in at least one newspaper of general circulation in the municipality and the area to be annexed.

LG § 4-411. The Town published notices in the Prince George's Post on May 5, 2022 and May 12, 2022, with the referendum taking place on May 18, 2022. Pursuant to Section 4-411 of the Local Government Article, the Town was required to hold the referendum no sooner than May 20, 2022 -- 15 days after the initial publication of notice in the Prince George's Post. Therefore, the referendum took place sooner than allowed under statute, with a two-day defect.

The Town concedes that it did not comply with the fifteen-day notice requirement set forth in Section 4-411 of the Local Government Article. On appeal, however, the Town argues that this two-day defect was not sufficient grounds for the circuit court to vacate the annexation of the Second Annexation Area. The Town contends that it substantially complied with the statute and that the referendum voters were not misled or disadvantaged by the two-day defect. The Town further contends that the circuit court erroneously relied on *Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park*, 392 Md. 301 (2006).

Oakland involved a dispute between two incorporated municipalities -- Oakland and Mountain Lake Park -- that both sought to annex the same unincorporated parcels of land in Garrett County. *Oakland*, *supra*, 392 Md. at 304. The Mayor and Town Council of Oakland introduced an annexation resolution on March 16, 2004 and scheduled a public hearing on the annexation to be held on April 23, 2004. *Id.* at 305. Oakland published multiple notices of the public hearing between March 18, 2004 and April 8, 2004. *Id.* Former Article 23A § 19(d) of the Maryland Code, which governed the municipal annexation process at the time of the dispute, provided:

> The public notices shall specify a time and place at which a public hearing will be held by the legislative body on the resolution; *the hearing shall be set for not less than 15 days after the fourth publication of the notices* or, if the total area of the proposed annexation is for 25 acres of land or less, not less than 15 days after the second publication of the notices, and shall be held either within the boundaries of the municipal corporation or within the area to be annexed.

Md. Code (1957, 2011 Repl. Vol.) Article 23A § 19(d) (repealed 2013) (emphasis added). The fourth publication of the notice was published on April 8, 2004. *Oakland*, *supra*, 392 Md. at 305. Mountain Lake Park argued that the hearing took place on the fourteenth day after the fourth notice was published and, therefore, sought a declaration that the Oakland resolution was void due to Oakland's failure to comply with the notice requirement set forth in Article 23A § 19(d). *Id.* at 307. The Circuit Court for Garrett County ruled in favor of Mountain Lake Park and voided Oakland's annexation. *Id.* at 308–09.

Although the issue on appeal in *Oakland* arose out of a circuit court's nullification of a municipal annexation due to the town's failure to comply with notice requirements,

the specific issue considered by the Supreme Court of Maryland was whether the circuit court erred in applying the common law "clear time" rule to compute the fifteen-day notice requirement set forth by statute. *Id.* at 309–11. The Court concluded that the circuit court incorrectly applied the "clear time rule." *Id.* Accordingly, the Court held that the circuit court incorrectly counted April 8 -- the day of the fourth publication of notices -- as the first day of the fifteen-day waiting period before Oakland could hold a public hearing on the annexation resolution. *Id.* at 321. The Supreme Court ruled that April 8, 2004 should be excluded from the computation, and that fifteen days from April 9, 2004 -- the day after the final publication of notice -- was April 23, 2004. *Id.* Therefore, Oakland was permitted to hold the public hearing on April 23, 2004. *Id.*

The Circuit Court for Prince George's County relied on *Oakland* in its memorandum opinion, concluding that, "[d]espite finding that notice was sufficient under the facts of that case, *Oakland* squarely supports the rigorous enforcement of statutory deadlines in the annexation procedure[.]" We disagree. In our view, *Oakland* is easily distinguishable from the case before us. The issue on appeal is whether the Town's failure to adhere to the statutory notice requirements is adequate grounds to vacate an annexation.

By contrast, the primary legal question in *Oakland* was whether the "clear time rule" applied when computing the fifteen-day waiting period required under former Article 23A. Indeed, the Supreme Court recognized that the issue in *Oakland* was "the proper method of calculating the notice period described in [former Article 23A § 19(d)]." *Id.* at 209. The Court concluded that the circuit court computed time incorrectly by improperly applying

the "clear time rule" and held that Oakland complied with the statutory notice requirements. As such, the Court never reached the issue of whether failure to adhere to that requirement was appropriate grounds for the Circuit Court of Garrett County to void Oakland's annexation. For these reasons, we conclude that the circuit court erred in relying on *Oakland* to conclude that statutory notice requirements must be strictly adhered to in an annexation referendum.

It is well established that "[t]here is a clearly recognized difference between the interpretation given to provisions of the election laws before election and the construction of these same provisions after the election." *Wilkinson v. McGill,* 192 Md. 387, 393 (1949). Indeed, as recognized by the Supreme Court of Maryland held in *Dutton v. Tawes*:

> It is generally held that an election which has been honestly and fairly conducted will not be vitiated by mere failure to follow the statute precisely unless the result is shown to have been affected or the statute expressly states that such failure renders the election void. After the election is held, statutes giving direction as to the mode and manner of conducting it are generally construed as directory, unless the deviation from the prescribed forms of the law had so vital an influence as probably to have prevented a free and full expression of the popular will.

225 Md. 484, 491–92 (1961) (quoting *Lexington Park Volunteer Fire Dep't v. Robidoux*, 218 Md. 195, 200 (1958)). Accordingly, when an election is held and "it is not shown that the failure of the officials to observe the requirements of the law has interfered with the fair expression of the will of the voters, courts have generally held that the result of the election will not be disturbed." *Wilkinson*, *supra*, 192 Md. at 393.

Therefore, this Court's inquiry "turn[s] fundamentally on whether the mistake in procedure has caused harm by misleading the electorate or by tending to prevent or frustrate an intelligent and full expression of the intent of the voters." *Dutton*, *supra*, 225 Md. at 495. When the mistake in procedure at issue is failure to comply with a statutory notice requirement, the defect does not rise to the level of misleading or frustrating the will of the electorate where the voters had sufficient actual notice of the election. We conclude that the Town's failure to adhere to the notice requirements set forth in Section 4-411 of the Local Government Article of the Maryland Code did not harm or mislead the voters of the Second Annexation Area or otherwise thwart those voters' intent, and that the circuit court erred in nullifying the annexation.

Although the Town did not strictly adhere to the notice requirements set forth in Section 4-411 of the Local Government Article, the Town took significant steps to effectuate the purpose of that section – to provide the public with adequate notice that a referendum would occur. The Town began notifying the public about the referendum prior to its first posting in the Prince George's Post on May 5, 2022. Indeed, the Town published a notice on its website on or around April 29, 2022 announcing that the annexation referendum would take place on May 18, 2022. Notably, the Town Clerk also mailed notices of the referendum to all residents and property owners in the Second Annexation Area on or around April 29, 2022.

Furthermore, the annexation process leading up to the referendum involved a public process through which there was significant civic engagement. Two of the ten Appellants

visited the polls on the day of the referendum. Nevertheless, they refused to vote because the ballot required non-resident property owners to identify themselves as the "legal representative" of two or more joint owners of property authorized to cast a collective vote on the joint owners' behalf. Multiple property owners and residents signed consents to annexation prior to the enactment of the annexation resolution in December 2021. The Town held a hearing on that resolution on November 30, 2021, where one of the Appellants provided public comment on the proposal. The Town also held a public hearing on April 26, 2022 to consider and approve Resolution 2022-10, which provided the date, time, and voting rules of the referendum. Additionally, prior to the referendum, multiple parties entered into Annexation Agreements with the town, whereby they consented to the annexation of their property and agreed to vote in support of the annexation if they voted in the referendum.

Appellants have failed to allege how voters were in any way misled by the two-day defect. In our view, the Town provided the residents and property owners of the Second Annexation Area with ample notice of the annexation referendum as early as April 29, 2022 -- nineteen days before the referendum took place. We conclude that the Town's failure to adhere to the municipal referendum statute's notice requirements cannot have misled or otherwise "interfered with the fair expression of the will of the voters" of the Second Annexation Area. *Wilkinson*, *supra*, 192 Md. at 393. Accordingly, the circuit court erred in vacating the annexation of the Second Annexation Area based on the Town's

failure to comply with Section 4-411 of the Local Government Article of the Maryland Code.

CONCLUSION

For these reasons, we affirm, in part, and reverse, in part, the judgment of the circuit court. We remand this matter to the Circuit Court for Prince George's County with instructions to enter a declaratory judgment affirming the annexation of the Second Annexation Area consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED, IN PART, AND REVERSED, IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR ENTRY OF A DECLARATORY JUDGMENT IN FAVOR OF APPELLEE/CROSS-APPELLANT, THE TOWN OF UPPER MARLBORO. COSTS TO BE PAID BY APPELLANTS.