UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1824

September Term, 2015

PINEY ORCHARD COMMUNITY ASSOCIATION, et al.

v.

TOLSON AND ASSOCIATES, L.L.C, et al.

Meredith,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: December 1, 2016

This appeal arises from the circuit court's dismissal of an action for declaratory and injunctive relief filed by Appellants, Piney Orchard Community Association, Inc., et al.[1] ("Piney Orchard"). Piney Orchard sought to prevent Appellees, Tolson and Associates, LLC, et al.[2] ("Tolson"), from constructing and operating the Tolson Rubble Landfill ("the Landfill" or "Tolson Landfill") located on Capital Raceway Road in Anne Arundel County, Maryland. This case is the third of three related actions filed by Piney Orchard against Tolson and others.

On appeal, Piney Orchard presents two issues for our review,[3] which we rephrase as follows:

[1] Appellant, Piney Orchard Community Association, represents a group of concerned citizens, who participated in the public comment process for the Tolson permit. Co-Appellants include Earthreports, Inc. (dba Patuxent Riverkeeper), and eight Maryland residents: Jeffrey R. Andrade, Louise H. Keister, Peter Hanan, Robert Bochar, Kirsten Whitley, Michael C. Davie, Erika Garrett, and Robert Garrett.

[2] In Piney Orchard's second and third amended complaints, the defendants included Tolson and Associates, LLC, JM Land Development Company, Capitol Raceway Promotions, Inc., and Ventura Properties, LLC, as well as Anne Arundel County, Maryland ("County").

[3] Piney Orchard presented the issues as follows:

> 1. Whether the lower court erred when it dismissed with prejudice the Third Amended Complaint on the grounds that Citizen-Appellants failed to exhaust administrative remedies.

1. Whether the circuit court erred when it dismissed with prejudice Piney Orchard's Third Amended Complaint on the grounds that Piney Orchard failed to exhaust its administrative remedies.

2. Whether the circuit court erred when it dismissed with prejudice Piney Orchard's Third Amended Complaint on the grounds that Piney Orchard was barred from relitigating the issue of whether County Bills 21-14 and 34-03 applied to the Tolson Landfill by the doctrine of collateral estoppel.

For the reasons discussed below, we shall affirm the judgment of the Circuit Court for Anne Arundel County.

FACTUAL AND PROCEDURAL BACKGROUND

The Tolson Landfill spans four parcels and approximately 72 acres of land at the end of Capital Raceway Road in the Odenton/Gambrills area of Anne Arundel County. An operational landfill has existed on the site for many years, and sand and gravel mining has been conducted on the property since the early 1980s. In 1993, the Board of Appeals ("the Board") granted a special exception for the site to be used as a rubble landfill. The special exception included the requirement that "[a]ll truck traffic entering or exiting the site . . . be restricted to Race Track."[4]

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2. Whether the lower court erred when it alternatively dismissed with prejudice the Third Amended Complaint on the grounds that Citizen-Appellants' legal arguments were barred by the doctrine of collateral estoppel.

[4] "Race Track" was later named "Capital Raceway Road."

In 2003, ten years after the Board granted the special exception for the site, the County passed a zoning ordinance (Bill No. 34-03) that prohibited vehicular access roads to rubble landfills from passing through residentially zoned land. On November 24, 2014, MDE issued a refuse disposal system permit to Tolson and Associates, LLC for the construction and operation of a rubble landfill on the site. The county passed another zoning ordinance (Bill No. 21-14), which became effective January 1, 2015, prohibiting the issuance of new special exceptions for rubble landfill sites within residential areas of Anne Arundel County.

Piney Orchard has initiated three separate cases challenging the construction and operation of the Tolson Landfill. The first case (Court of Special Appeals Case No. 1124, September Term, 2015) involves a petition for judicial review (the "Permit Case") in which Piney Orchard challenged the decision by the Maryland Department of the Environment ("MDE" or "the Department") to issue the refuse disposal permit to Tolson. The permit authorized Tolson to construct and operate a rubble landfill at the Tolson site in Anne Arundel County. The Permit Case, which included MDE as defendants, is currently on appeal to this Court.

The second case involves an administrative challenge to Tolson's request for a temporal variance (the "Variance Case"), which provides additional time for Tolson to construct and begin operation of the landfill. On April 21, 2015, the Administrative

Hearing Officer issued an order approving the variance, and Piney Orchard appealed.[5] While the Variance Case was pending before the Board of Appeals, Piney Orchard filed this case in the Circuit Court for Anne Arundel County.

In this case, Piney Orchard sought declaratory relief and an injunction to stop Tolson from constructing and operating the landfill. Piney Orchard filed the first complaint in this case on March 12, 2015. Thereafter, Piney Orchard filed an amended complaint on May 12, 2015, a second amended complaint on June 12, 2015, and a third amended complaint on July 10, 2015.

On October 1, 2015, the circuit court dismissed Piney Orchard's third amended complaint with prejudice for two primary reasons. First, the court found that Piney Orchard failed to exhaust its administrative remedies. Second, the court determined that the doctrine of collateral estoppel barred Piney Orchard from raising the issue of whether the two county zoning bills in the Permit Case applied to the Tolson site. Piney Orchard appealed the circuit court's decision on October 29, 2015. On January 20, 2016, this Court denied Piney Orchard's motion to consolidate this appeal (Case No. 1824, September Term, 2015) with Piney Orchard's separate appeal in the Permit case (Case No. 1124, September Term, 2015).

[5] On March 28, 2016, the Board of Appeals approved the variance and found that the county bills did not apply to the Tolson site retroactively.

For the reasons explained below, we affirm the Circuit Court for Anne Arundel County.

DISCUSSION

I. Standard of Review

"We review *de novo* [] the grant of a motion to dismiss . . . ." *Gomez v. Jackson Hewitt, Inc.*, 427 Md. 128, 142 (2012) (citation omitted). In considering a motion to dismiss, we "assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them, and order dismissal only if the allegations and permissible inferences, if true, would not afford relief to the plaintiff -- i.e., the allegations do not state a cause of action for which relief may be granted." *Id.* (citation omitted).

Piney Orchard contends that, on at least the grounds of failure to exhaust administrative remedies, we should view the circuit court's grant of Tolson's motion to dismiss as a grant of summary judgment, because Tolson attached certain documents to its motion.[6] For purposes of determining the standard of review on appeal, we ordinarily treat a motion to dismiss as a motion for summary judgment when the trial court "is presented

[6] Attached to Tolson's Third Supplemental Motion to Dismiss and Reply to Plaintiff's Response to Second Supplemental Motion to Dismiss filed by Tolson and Associates, LLC, *et al.*, were five exhibits, the first four of which were the pleadings and the circuit court's written opinion in the Permit case. The final document was the written decision of the administrative hearing officer in the Case, filed on April 21, 2015.

with factual allegations beyond those contained in the complaint to support . . . a motion to dismiss and the trial judge does not exclude such matters." *Nickens v. Mount Vernon Realty Group, LLC*, 429 Md. 53, 62–63 (2012) (quoting *Okwa v. Harper*, 360 Md. 161, 177 (2000)); *see also Anne Arundel Cnty. v. Bell*, 442 Md. 539, 552 (2015) (treating the circuit court's grant of the county's motion to dismiss as a grant of summary judgment because the trial court considered affidavits attached to the motion). Documents attached to the complaint that go to the plaintiff's right to bring the claim, however, may not convert a motion to dismiss into a summary judgment motion. *See Tomran, Inc. v. Passano*, 391 Md. 1, 10 n. 8 (2006).

Here, the documents attached to Tolson's motion to dismiss included the briefs and written opinions from the permit and variance cases. With Piney Orchard's consent, the circuit court took judicial notice of the circuit court's written opinion in the Permit Case. Tolson relied on both the Permit and the Variance Cases in its argument that Piney Orchard was either collaterally estopped from raising the applicability and retroactivity of two county zoning bills, or that it was barred for failure to exhaust administrative remedies before bringing the declaratory action in this case. For both of these reasons, Tolson moved to dismiss Piney Orchard's Third Amended Complaint for failure to state a claim for which relief can be granted pursuant to Maryland Rule 2-322(b). The circuit court in this case, therefore, did not examine the merits of Piney Orchard's claim, but rather, whether Piney Orchard had the right to bring the action at all.

Most importantly, however, whether we view the circuit court's decision as a dismissal or as summary judgment does not change the standard of review in this case. For a motion to dismiss, a trial court examines whether a complaint fails to present a legally sufficient cause of action. Summary judgment, on the other hand, turns on whether a genuine dispute of a material fact exists and whether the movant is entitled to judgment as a matter of law. Here, however, no material facts were in dispute.

Whether Piney Orchard was required to exhaust its administrative remedies prior to bringing this declaratory action, and whether the doctrine of collateral estoppel bars Piney Orchard from litigating issues raised in a prior proceeding, are legal issues for which the standard of review is *de novo*. *Falls Road Community Ass'n v. Baltimore Cnty.*, 437 Md. 115, 134 (2014). "When a circuit court's grant of summary judgment hinges on a question of law, not a dispute of fact, we review whether the circuit court was legally correct without according deference to that court's legal conclusions." *Peninsula Reg'l Med. Ctr. v. Adkins*, 448 Md. 197, 208-09 (2016). In other words, "when reviewing the grant of either a motion to dismiss or a motion for summary judgment, an appellate court must determine whether the trial court was legally correct." *Hrehorovich v. Harbor Hosp. Center, Inc.*, 93 Md. App. 772, 785 (1992); *see* Md. Rule 2-322(c).

II. Piney Orchard's Arguments Regarding the Effect of Its Failure to Exhaust Administrative Remedies are Adequately Preserved for Appeal.

Tolson argues that Piney Orchard "forfeited and/or waived" arguments related to "contentions concerning whether the administrative remedies available to them are exclusive, primary, or concurrent and the legal implications of those differences in the

circuit court" because Piney Orchard failed to raise these issues in either its amendments to its pleadings or in its opposition to Tolson's motion to dismiss. Piney Orchard maintains that the issue of administrative remedies was raised in the court below when the matter was discussed at the September 28, 2015 hearing on Tolson's Motion to Dismiss. Indeed, the court may raise the issue of exhaustion of administrative remedies, whether either of the parties do so or not. Judge Eldridge, writing for the Court of Appeals, explained,

> While the failure to invoke and exhaust an administrative remedy does not ordinarily result in a trial court's being deprived of fundamental jurisdiction, nevertheless, because of the public policy involved, the matter is for some purposes treated *like* a jurisdictional question. Consequently, issues of primary jurisdiction and exhaustion of administrative remedies will be addressed by this Court sua sponte even though not raised by any party.

Bd. of Education for Dorchester Cnty. v. Hubbard et al. Bd. of Education of Garrett Cnty., 305 Md. 774, 787 (1986) (citations omitted).

In this case, the trial court raised *sua sponte* the issue of whether Piney Orchard had an administrative remedies problem when the court asked, among other questions, "[w]ell, don't you have to exhaust the administrative remedies before you even file here for a declaratory judgment?" As a result, the issue of administrative remedies is preserved regardless of whether either party raised the issue in the court below. We, therefore, consider whether Piney Orchard failed to exhaust its administrative remedies.

III. Administrative Remedies

A. Piney Orchard Failed to Exhaust Its Administrative Remedies Because It Failed to Give Notice Pursuant to A.A.C. § 18-17-205.

Under Maryland law, the general rule is that administrative remedies must be exhausted before actions for declaratory judgment, mandamus, and injunctive relief may be brought. *See Md. Reclamation v. Harford Cnty.*, 382 Md. 348, 362 (2004) ("[W]hen administrative remedies exist in zoning cases, they must be exhausted before other actions, including requests for declaratory judgments, mandamus, and injunctive relief, may be brought . . . .") (citing *Joseph v. City of Annapolis*, 353 Md. 667, 674-678 (1998)). "If there is no final administrative decision in a case before an administrative agency, there is ordinarily no exhaustion of the administrative remedy." *Renaissance Centro Columbia, LLC v. Broida*, 421 Md. 474, 485 (2011); *see also id.* (quoting *State v. State Board of Contract Appeals*, 364 Md. 446, 457 (2001)) ("[I]n the absence of a statutory provision expressly authorizing judicial review of interlocutory administrative decisions . . . the parties . . . must ordinarily await a final administrative decision before resorting to the courts."). The policy behind this rule is one of judicial restraint and efficiency -- the exhaustion doctrine avoids deciding issues in the circuit court that could be resolved at the agency level, where the case would benefit from the agency's greater expertise. *See Falls Road*, 437 Md. at 136-137; *Brown v. Fire and Police*, 375 Md. 661, 669 (2003).

When the county provides a particular administrative remedy for the grievance involved, the aggrieved party typically must exhaust those remedies before bringing the case to court. As the Court of Appeals has explained:

> [W]hen a chartered county . . . has established a Board of Appeals under the Express Powers Act, the appeal to that board provided for parties 'aggrieved by a decision of a local zoning official' is at least primary, and may be exclusive. Similarly, the Maryland Uniform Declaratory Judgments Act provides that '[i]f a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of [a declaratory judgment].'

Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cty., 437 Md. 115, 136 (2014) (citations omitted).

The Anne Arundel County Code (A.A.C.) provides at least two administrative remedies relevant to Piney Orchard's claims that would allow Piney Orchard to appeal to the Board of Appeals. A.A.C. § 18-16-402 provides a cause of action for challenging the approval of a temporal variance. The County Code also provides the path through which county zoning violations are enforced within Anne Arundel County. *See, e.g.*, A.A.C. § 18-17-201 *et seq.* Section 18-17-201(b) provides that "[a]ny person may file with the Department of Inspections and Permits a written complaint of a zoning violation." § 18-17-201(b). Section 18-17-205, entitled "Private cause of action," provides that

> [a]n aggrieved property owner may seek relief for abatement of a zoning violation upon showing that the notice requirements of this subsection have been satisfied, unless the Department of Inspections and Permits gives notice to the aggrieved property owner within the time established under this subsection that the Department intends to pursue enforcement remedies.

A.A.C. § 18-17-205(a)(1).

Although Piney Orchard now distances itself from § 18-17-205, it previously attempted to utilize this county code provision when, on the same day that it filed its second amended complaint in this case, it sent "notice" to the parties required under the statute.

Piney Orchard, however, failed to follow the prerequisites prior to filing suit under this law.

Indeed, one of the most prominent prerequisites under § 18-17-205 is the section's notice requirement. In a letter dated June 12, 2015, the same day that Piney Orchard filed its Second Amended Complaint and *after* Piney Orchard initiated all three cases, Piney Orchard attempted to give the notice required by § 18-17-205. Piney Orchard's attorney stated in the letter "I am writing now to provide supplemental notice pursuant to § 18-17-205 of the Anne Arundel County Code regarding a land use inconsistent with the Zoning Ordinance on" the Tolson site. Despite Piney Orchard's attempt to give notice after it had filed this case in court, as the circuit court explained, "there [were] no allegations in the Complaint of [sic] exhibits attached to show any notice was given under § 18-17-205(a)(2)." Additionally, the statute provides for a sixty-day waiting period during which the Department of Inspections and Permits (DIP) may decide to pursue enforcement remedies, in which case the aggrieved party no longer has a cause of action under the statute.[7] Whether based on Piney Orchard's failure to give notice of the alleged zoning violations before filing suit or indicate that notice in its pleadings, or Piney Orchard's failure to give DIP the required time to decide whether to pursue a case itself, Piney Orchard failed to comply with the requirements of § 18-17-205(a)(2).

[7] (2) An aggrieved property owner shall give notice of the zoning violation and of the aggrieved property owner's intent to bring

B. Piney Orchard Failed to Exhaust Its Administrative Remedies Because the Board of Appeals Had Not Reached a Final Decision in the Variance Case.

The second basis for the circuit court's determination that Piney Orchard failed to exhaust its administrative remedies is that Piney Orchard had a pending case before the Board of Appeals -- the Variance Case. At the time Piney Orchard filed this action for declaratory and injunctive relief, the Variance case was pending before the Board of Appeals; therefore, there was "no final administrative decision in [the] case before [the] administrative agency." *See Broida, supra*, 421 Md. at 485.

During the hearing in the circuit court on September 28, 2015 on Tolson's motion to dismiss, the court raised the issue of Piney Orchard's failure to exhaust its administrative remedies to Piney Orchard's attorney, Mr. G. Macy Nelson. During the hearing, Mr. Nelson admitted that Piney Orchard was required to complete the administrative process before filing an action in the circuit court and suggested that the circuit court stay the proceedings until Piney Orchard had exhausted its administrative remedies.

> an action under this section by certified mail, return receipt requested, to the owner of record, any tenant, and the Department of Inspections and Permits.
>
> [. . .]
>
> (4) If the Department of Inspections and Permits intends to pursue enforcement remedies, it shall give notice of its intention to the aggrieved property owner within 60 days of receipt of notice from the aggrieved property owner.

A.A.C. § 18-17-205(a)(2)-(4).

THE COURT: Sir, as to the Board of Appeals litigation --

MR. NELSON: Yes, sir.

THE COURT: -- that is still pending, would not the Board of Appeals in that case have the ability to grant the relief which your clients are seeking?

MR. NELSON: That's a tough question, and you know, *I think I probably will argue that they do.* My adversaries will argue, I guarantee, that they don't. And I predict the Board will rule that they don't. […] . . . I come into circuit court . . . and my adversaries say, well, wait a minute. You've got to exhaust your administrative remedies, so we do both.

So, yes, I will raise the point. And I predict that the board will say we're not going to reach it; it's not before us.

THE COURT: Well, don't you have to exhaust the administrative remedies before you even file here for a declaratory judgment?

MR. NELSON: You've got to exhaust an administrative remedy that exists, right? So --

THE COURT: *But you don't know if it exists or not until you complete the process* --

MR. NELSON: *Right.*

THE COURT: -- *and you haven't completed the process yet.*

MR. NELSON: *Right.* [. . .] I'm thinking, you know, we're going back to the Board of Appeals . . . . And with luck, we're going to wrap up that case . . . and there will be a ruling. [. . .] So maybe put this case on hold until we get that --

THE COURT: But even if they were to rule against you on the legal issue, you then have the administrative remedy of pursuing it as a petition for judicial review.

MR. NELSON: You know, and then the --

> THE COURT: Which would properly put you in this court in terms of whether or not the Board of Appeals made an error.
>
> MR. NELSON: Yes. But the argument will be, I predict, look, this issue was never before the Board. [. . .] I think the way to do it is let's get this Board of Appeals case done . . . . and then consolidate these two and have a ruling on it.

(Emphasis added.)

Piney Orchard further concedes in its brief that administrative remedies were available in the Variance Case.[8] Piney Orchard argues that

> [T]he administrative remedy available to [Piney Orchard] is not, as a matter of law, the exclusive remedy. Up to this point, no administrative body or court has fully contemplated and ruled on the complex issues involving Bill 21-14 and 34-03. *While it is still possible that the Board could reach these issues in the pending case before it*, these questions should be addressed in some forum.

Piney Orchard, therefore, acknowledges that it did not exhaust its administrative remedies in the Variance Case prior to filing this case in the circuit court. "[W]hen

[8] The parties dispute whether the administrative remedies available to Piney Orchard were exclusive, primary, or concurrent with its equitable remedies in the circuit court, and what impact it may have on whether Piney Orchard was able to pursue both remedies simultaneously. Piney Orchard argues that "[a]t most, any administrative remedy available to [Piney Orchard] in the circumstances present here is primary," and that if the remedy is concurrent or primary, there is no presumption that administrative remedies must be exhausted first. There is a presumption in Maryland, however, that administrative remedies are the primary remedy and that primary remedies be exhausted before filing in the circuit court. *See Furnitureland v. Comptroller*, 364 Md. 126, 133 (2001). A concurrent administrative remedy, on the other hand, exists only "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." *Intercom Systems v. Bell Atlantic*, 135 Md. App. 624, 640 (2000). That is not the case here.

administrative remedies exist in zoning cases, they must be exhausted before other actions, including requests for declaratory judgments . . . and injunctive relief, may be brought . . . ." *Md. Reclamation*, *supra*, 382 Md. at 362 (citing *Joseph*, *supra*, 353 Md. at 674-678 (1998)). Indeed, in its reply brief in this case, Piney Orchard advised us that "the Board of Appeals approved the variance and ruled against the Citizen-Appellants on the retroactivity issue." This ruling by the Board of Appeals occurred on March 28, 2016, which occurred after Judge Caroom rendered his opinion below in this case.

Although Piney Orchard admits that it maintained proceedings in the Variance Case at the time it filed its complaint in this case, it requests that we reverse and remand the case with instructions to stay the proceedings in this case until the conclusion of the proceedings in the Variance Case. Piney Orchard relies on the holding in *Intercom Systems Corp. v. Bell Atlantic of Md.*, Inc., 135 Md. App. 624 (2000). In *Intercom Systems*, the circuit court dismissed the case after finding that the particular administrative remedy at issue was exclusive, rather than primary. On appeal, however, the Court held that the administrative remedy was primary and remanded the case back to the circuit court with instructions to stay the proceedings until the administrative proceedings, which had already begun, were complete. *Id.* at 644.

We hold that Piney Orchard has failed to exhaust its administrative remedies. For the reasons discussed below, and unlike *Intercom Systems*, Piney Orchard is barred from raising these questions because the trial court also ruled that appellants were collaterally estopped from bringing the present case and arguing, again, that the rubblefill is not

permitted due to changes in the zoning law. Thus, under these circumstances, the circuit court was not required to stay the proceedings until Piney Orchard exhausted its administrative remedies. Accordingly, the circuit court was within its discretion to dismiss the case with prejudice.

III. Piney Orchard was Barred From Relitigating the Retroactivity or Applicability of the Two County Zoning and Land Use Ordinances by the Doctrine of Collateral Estoppel.

In addition to Piney Orchard's failure to exhaust administrative remedies, the circuit court dismissed Piney Orchard's request for declaratory and injunctive relief on the grounds that the doctrine of collateral estoppel barred Piney Orchard from relitigating the issue of whether the zoning laws -- Bill No. 21-14 and 34-03 -- applied to the Tolson Landfill. The doctrine of collateral estoppel exists to prevent a litigant from having a second chance to argue the same issue once that party has had the opportunity to litigate the issue in court. *See Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 391 (2000) (The doctrine of collateral estoppel is "based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised."). The Court of Appeals explained the purpose behind the doctrine in the following way:

> When 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 (2012) (quoting *Murray Int'l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989)).

We rely on a four-prong test to determine whether an issue is barred from relitigation by the doctrine of collateral estoppel:

> (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?
>
> (4) Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Electrical General Corp. v. Labonte, 229 Md. App. 187, 202 (2016).

Piney Orchard contends that the facts in this case "fail to satisfy the third and fourth prong of the test for collateral estoppel." More specifically, Piney Orchard argues, first, that "the issue in [the Permit Case] was not identical to the issue in this case," and second, "[t]he Circuit Court's *dicta* in [the Permit Case] regarding retroactivity was not essential to the judgment in that case." We disagree.

A. The Issue of Whether Bill No. 21-14 and 34-03 Apply to the Tolson Site Was Raised and Decided in a Separate Case.

Piney Orchard argues that the issues in the Permit Case are not identical to the issues raised in this case, Piney Orchard contends that

> To the extent that the [c]ircuit [c]ourt in Case 1124 considered the retroactive applicability of CB 21-14 and CB 34-03 . . . , that brief consideration fell squarely within the context of the question of whether MDE validly issued the [rubble landfill]

permit.

This argument fails, however, because there is no requirement under the doctrine of collateral estoppel that the issues being compared are raised within the same context or for the same purpose. The Court of Appeals has explained that, unlike the doctrine of *res judicata*, collateral estoppel does not require that the purpose of the proceeding be the same:

> Collateral estoppel *does not require that the prior and present proceedings have the same purpose, nor does it mandate that the statutes upon which the proceedings are based have the same goals.* The relevant question is whether the fact or issue was actually litigated and decided in a prior proceeding, *regardless of the cause of action or claim*. If the answer to that question is yes, then, assuming that the remaining factors of the doctrine have been met, collateral estoppel bars re-litigation of the issue.

Cosby v. Dep't of Human Res., 425 Md. 629, 642 (2012) (citations omitted).

Although Piney Orchard now argues that the applicability of Bill No. 21-14 and 34-03 was not an "issue" in the Permit Case, Piney Orchard, itself, put forward the applicability of subsequent changes in the county zoning code as a relevant issue in the Permit Case. Moreover, Piney Orchard focused considerable attention throughout its memorandum to the court in the Permit Case on whether the Tolson site complied with current county zoning laws -- specifically Bills 21-14 and 34-03.[9]

[9] For example, Piney Orchard argued in the Permit Case that MDE was required to answer two questions:

The circuit court in the Permit Case found that EN § 9-210(a)(3)(i) required MDE to obtain a written statement from the County confirming that a particular site met all county zoning and land use requirements before MDE continued the approval process. It did not, as Piney Orchard argued, require an updated letter from the county after a certain period of time or because local zoning laws changed.

Piney Orchard's argument that the County's written statement was invalid and therefore did not comply with EN § 9-210(a)(3)(i) ultimately failed. That did not affect, however, the circuit court's analysis concerning the narrower issue of whether Bills 21-14 and 34-03 applied to the Tolson Landfill. Moreover, the facts relevant to the question of whether the county ordinances apply to the Landfill are the same in this case as they were in the Permit Case, even if raised for different reasons. Finally, during oral argument in the court below in this case, Piney Orchard ultimately admitted that it had raised the issue of the county zoning ordinances' application to the Tolson Landfill before the circuit court in the Permit Case, albeit for a different purpose:

> First, how did MDE determine that the proposed [rubble landfill] "meets all applicable county zoning and land use requirements" when the only evidence is that [Bill No. 21-14] no longer allows a [rubble landfill] on the Subject Property. Second, how did MDE determine that the proposed [rubble landfill] "meets all applicable county zoning and land use requirements" when the only evidence is that the [Bill No. 34-03] prohibits vehicular access to a [rubble landfill] through residentially zoned land and the only access to the [Tolson site] passes through residentially zoned land.

THE COURT: Didn't you raise these same issues with Judge Harris?

MR. NELSON: I - - yes and no. [. . .] The core argument in [the Permit Case], Judge Caroom, was the county ordinance - - correction -- the state ordinance requires that the Maryland Department of Environment receive from the county an affirmation that the proposed use is consistent with the county zoning law.

* * *

We took judicial review action and asserted that the 2002 notice was stale because you can't wait 12 years and rely on a 12-year-old notice. That was the core argument. And we said, by the way, Judge -- I said to Judge Harris -- things have changed during the interim. We have the access issue. We have the Bill 21-14. But the core point, as evidenced by his opinion we assert, is that we asserted that that 2002 notice was stale.

THE COURT: But the converse of being stale is that it is effective, that it's current. And if it's effective and it's current, doesn't that mean that, in effect, the - - your opponents had prevailed on that issue?

* * *

[T]he underlying issue was also whether it was a valid ruling, in effect, by the [C]ounty, that the exception was valid and in effect. And you were saying it was stale because these new facts had occurred to invalidate it and to make it no longer effective, it's not merely the passage of time.

MR. NELSON: Well, no, I think if you read the papers, the focus was the passage of the time, the staleness, but I acknowledge the point.

THE COURT: You did raise those issues though. [. . .] If . . . the new ordinances had intervened.

MR. NELSON: Yes. And I also acknowledged the point that Judge Harris addressed those points in *dicta*, in his opinion, his

> *dicta*. His core holding was MDE has no obligation to ask for a renewed notice from the County.

The circuit court in this case found that, regardless of the reasons why Piney Orchard raised the issue of whether the two county zoning bills applied to the Tolson Landfill, the issue itself is the same. The circuit court in this case below explained:

> Plaintiffs again cited to the same two county zoning codes [in the Permit Case] as in this present case. . . . In the prior case, Plaintiffs also argued that MDE erred when granting the permit due to the changes in zoning law, citing the same zoning laws at issue in this present case.
>
> Since these issues have already been reviewed and ruled on in the previous hearing Plaintiffs are barred from bringing this present case *and asserting, again, that the rubblefill is not permitted due to changes in the zoning law*.

We agree with the circuit court that Piney Orchard previously raised and the parties litigated the same issue of whether the two county bills apply to the Tolson site in the Permit Case. As such, the third prong of the test for whether the doctrine of collateral estoppel is satisfied.

B. Piney Orchard was Given a Fair Opportunity to Be Heard on the Issue of Whether Bills 21-14 and 34-03 applied to the Tolson Landfill.

Piney Orchard also contends that the fourth prong of this test -- that the litigant against whom the doctrine of collateral estoppel is being used was given a fair opportunity to litigate -- is not satisfied in this case. In support of its argument, Piney Orchard argues that the circuit court's decision and analysis regarding the two county zoning laws was *dicta* and not essential to the ruling that MDE complied with EN § 9-210(a)(3)(i). Piney Orchard relies on *GAB Enterprises, Inc. v. Rocky Gorge Dev., LLC* for the Court's

reasoning that "if an issue didn't matter in . . . the first round of litigation, there's no reason to think that the parties would have had the best chance there . . . to fight it out . . . ." 221 Md. App. 171, 191, *cert. denied sub nom. Rocky Gorge Dev. v. GAB Enterprises*, 442 Md. 745 (2015). Piney Orchard, in this case, does not dispute whether it had a full and fair opportunity to litigate the issues in the Permit Case; instead, Piney Orchard argues only that the applicability of the county zoning ordinances did not matter because the circuit court ultimately determined that the statute did not require MDE to obtain an updated letter.

Unlike in *GAB Enterprises*, however, Piney Orchard itself raised the issue in the Permit Case and argued the effect of the bills in its brief and before the circuit court during oral argument. Moreover, Piney Orchard viewed the county zoning ordinances to be relevant to the court's decision when it argued that their applicability rendered the County's letter invalid. Notably, Part III of its Memorandum in Support of Petition for Judicial Review is focused *exclusively* on its assertion that the Tolson Landfill did not comply with Bills 21-14 and 34-03. Piney Orchard asserted that once Bill No. 21-14 became effective on January 1, 2015, the Tolson Landfill was no longer permitted by special exception.[10]

[10] In Piney Orchard's Memorandum in Support of its Petition for Judicial Review, Piney Orchard argued:

> The Zoning Ordinance permitted by special exception a [rubble landfill] at the Subject Property between 1993 and December 31, 2014. Bill No. 21-14 eliminated a rubble landfill as a legal special exception use in the RA district after December 31, 2014.

Similarly, Piney Orchard argued that access through Capital Raceway Road, which was required by the special exception, did not comply with the access requirements of Bill No. 34-03. For these reasons, Piney Orchard argued that the letter from the County was invalid and that an updated letter from the County was necessary for MDE to comply with EN § 9-210(a)(3)(i). Tolson responded that, in addition to the fact that MDE complied with EN §9-210(a)(3) and had no authority over county zoning codes, the two county bills did not apply to the Tolson Landfill because of the time at which these county bills became effective. Both parties argued their position in their briefs and during oral argument. [11]

The circuit court found that not only was Piney Orchard incorrect that subsequent changes to the local zoning ordinances could intervene to invalidate the County's written statement of the site's compliance for purposes of EN §9-210(a)(3)(i), but that even so, those zoning ordinances did not apply to the Tolson site. The circuit court rendered a thorough analysis of and decision regarding the applicability of the zoning ordinances.

> Petitioners contend that a twelve year old County certification letter, in this case, is too long because in the intervening years, zoning in Anne Arundel County has changed, thus, the certification letter from 2002 is no longer reflective of the actual zoning requirements of 2014. Specifically, since 2002,

[11] The circuit court confirmed Piney Orchard's reasoning during oral argument before inquiring further about the relevance of the changes to county zoning law:

> THE COURT: Before you sit down, I have a little bit of a problem. [. . .] You want me to do this because 12 years went by and certain changes were made?
>
> MR. NELSON: That's correct.

> Anne Arundel County has passed bill 21-14 (now codified as Anne Arundel County Code § 18-4-105), which precluded the grant of special exceptions for landfills on Rural Agricultural (RA) zoned property in Anne Arundel County. Also, the County now (unlike in 2002) requires that access roads to and from landfills must not also pass through residentially zoned areas. First, bill 21-14 applies to new special exceptions. The bill did not contain a retroactivity clause. MDE granted the permit to Tolson in 2014, prior to the effective date of bill 21-14 of January 1, 2015. The access road issue also fails for a similar reason. First, the change to the access road requirements occurred in 2003. A change in the zoning from 2003 does not automatically invalidate a previous and properly issued special exception. Here, the special exception was properly obtained in 1993. Any changes in zoning after the special exception was obtained, without a retroactivity clause, apply prospectively. The Court is also mindful of the fact that the Board of Appeals when it granted the special exception in 1993 imposed conditions on the rubblefill site to ensure that access to the site complied with the applicable zoning and land use laws.

Piney Orchard itself raised the issue of the applicability and retroactivity of the county zoning ordinances. Indeed, both parties argued the issue in their briefs and during oral argument, and the circuit court rendered a dispositive answer on this issue. Piney Orchard, therefore, was given a fair opportunity to litigate the issue of whether the two county bills apply to the Tolson Landfill.

We affirm the circuit court's dismissal with prejudice of the declaratory and injunctive action because we not only hold that Appellants failed to exhaust administrative remedies, but unlike *Intercom*, we further hold that Appellants' claim relating to the applicability of the two county bills is barred by the doctrine of collateral estoppel. Under

these circumstances, the circuit court was well within its discretion to grant the dismissal of the Third Amended Complaint with prejudice.

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