

Circuit Court for Prince George's County
Case No. CAL16-24027

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2362

September Term, 2016

ELPIS SAKARIA

v.

PRINCE GEORGE'S COUNTY,
MARYLAND

Meredith,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 10, 2019

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

This appeal from a decision of the Circuit Court for Prince George’s County is a case about timing: 1) the more than 30-year delay in an administrative agency’s resolution of a citizen appeal; 2) the timing of judicial intervention via declaratory judgment in the face of inaction in the administrative proceeding; and 3) the events that have occurred on the administrative front since the circuit court’s dismissal of the declaratory judgment action for a failure to exhaust administrative remedies. In our opinion, we must take judicial notice of the latter events and of the conclusion of all administrative proceedings (except for the issuance of a final determination). Doing so, we find that the appellant, Elpis Sakaria, has now exhausted her administrative remedies. Therefore, we vacate the circuit court’s dismissal of her declaratory action and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

Pre-2018 Administrative Action

In January of 1985, the Prince George’s County Historic Preservation Commission (HPC) notified the Sakarias¹ that it was considering designating their property, formerly known as the Briarly Military Academy in Beltsville, as an “historic site.”² Later that month, the HPC notified the couple that it had so designated the property and informed

¹ Mr. Sakaria died during the pendency of these proceedings.

² The property had been regarded as an unclassified “historic resource” on the Prince George’s County Historic Sites and District Plan.

them that if they disagreed with the HPC decision they could appeal to the County Council, which would hold a public hearing.

On February 10, 1985, the Sakarias filed a timely appeal, which the HPC acknowledged and advised that “[y]our appeal will be forwarded to the Council for action” and “[t]he Clerk of the Council will notify you of the date of the hearing before the County Council.” Apparently, no such transmittal occurred and for more than three decades no hearing was held before the Council on the proposed designation of the Sakarias’ property.

In 2015, the HPC initiated a demolition by neglect administrative proceeding to require Ms. Sakaria to provide maintenance of and repairs to the property. Facing daily fines, Ms. Sakaria sought judicial relief.

Circuit Court Action

On May 26, 2016, Ms. Sakaria filed a complaint for declaratory judgment in the circuit court naming Prince George’s County as defendant and requesting a declaration that her property “has never been properly designated as historic” and an order that the HPC remove her property from its inventory of historic sites and properties. The County responded with a motion to dismiss or, in the alternative, motion for summary judgment, arguing that Ms. Sakaria failed to exhaust her administrative remedies, that a declaratory judgment would not terminate the controversy absent the pursuit of administrative remedies, and that the action was barred by laches and waiver. The County maintained that the Sakarias allowed the property to deteriorate to the prejudice of the County and

that the “delay, and the deterioration of the property is the fault of the Plaintiff exclusively.”³

In November of 2016, the circuit court held a hearing on the County’s motions and granted the motion to dismiss “because I think you have failed to exhaust your administrative remedies.” The court added that “I don’t find that this is an instance of fault on the plaintiff, fault on behalf of the plaintiff. There is an administrative process that should be followed.” Despite dismissal of the case, the court directed the Zoning Hearing Examiner to hold a hearing on Ms. Sakaria’s appeal “within 90 days.” After an order of dismissal was filed and a motion to alter or amend was rejected, this appeal followed.

2018 Administrative Proceedings⁴

As a result of the circuit court’s order directing prompt administrative action, a major portion of the administrative proceedings were concluded even before argument of this appeal. A hearing was conducted before the Zoning Hearing Examiner on April 24, 2018, and she issued her decision on May 31. In recommending approval of the HPC designation of Ms. Sakaria’s property as an Historic Site, the hearing examiner rejected Ms. Sakaria’s motion to dismiss her own appeal and found that the property met all the criteria for designation.

³ The County also stated that “[a] present day hearing on the historical significance of the property would be much different than such a hearing 31 years ago.”

⁴ Because this case is all about exhaustion of administrative remedies, we think it is particularly appropriate to take judicial notice of the fact that Ms. Sakaria has now exhausted those proceedings and of the public record of those hearings.

Ms. Sakaria filed timely exceptions to the hearing examiner's decision and requested oral argument before the Prince George's County Council sitting as the District Council. On October 1, 2018, her counsel asked the Council to stay or postpone its hearing pending a decision by this Court in this case. There is no indication in the record that there was a formal ruling on this request. However, on October 15, 2018, a hearing was held where the Council heard from Ms. Sakaria's counsel and a lawyer for the HPC. The Prince George's County People's Zoning Counsel also weighed in, supporting Ms. Sakaria. He said:

I disagree with the examiner. I don't believe this property is a proper historic site. I think from an equitable standpoint that we are overreaching. The burden is not on this property owner to process an appeal. That is our administrative practice and procedure. It's our obligation. If we have failed to do that, the theory of zoning estoppel precludes us from this date to making this a historic site.

The People's Counsel also requested the Council to delay its decision until we issue our opinion in this case. The Council has not yet acted and has until January 28, 2019 to render its decision.

DISCUSSION

To ward off unrealistic expectations of our decision, we focus on the precise question before us: whether the circuit court erred in dismissing Ms. Sakaria's declaratory judgment action for failure to exhaust administrative remedies.⁵ Although

⁵ In her brief, Ms. Sakaria presents the following questions:

1. Pursuant to Section 29-119 of the Prince George's County Code, the designation of private property as a historic site is made by recommendation of

we agree with the circuit court that Ms. Sakaria was not at fault for the unreasonable delay in the resolution of her administrative appeal, and although she presents compelling legal reasons for the non-finality of the HPC site designation and the prematurity of the agency’s attempt to impose sanctions with respect to the condition of the property, we are unable to reach those issues. Not only did the circuit court not address the merits of Ms. Sakaria’s claim, it did not rule on the County’s fact-based defenses advanced in its motion for summary judgment. We are reluctant to render an advisory opinion on substantive issues when the only issue properly before us is a procedural one.

(...continued)

the Prince George’s County Historic Preservation Commission (“HPC”) to the County Council, but the final designation is conditioned upon the property owner’s right to appeal the HPC’s recommendation. Where the Circuit Court found that the property owner timely-noted an appeal, but was denied a *de novo* hearing as the statute required through no fault of her own, did the Circuit Court err in dismissing her complaint for declaratory judgment that her property was not designated a historic site, for failure to exhaust administrative remedies?

2. Where the Prince George’s County Code requires the HPC’s research and recommendation of historic site designation to be based on the subject property’s current historical and structural significance, did the Circuit Court err in holding that the HPC may use its 32-year-old recommendation, which it conceded to be outdated and now inaccurate, to pursue a historic designation today?
3. Did the Circuit Court err as a matter of law when, after dismissing the property owner’s complaint for declaratory judgment, it then granted affirmative relief to the HPC, by ordering that her 1985 appeal of the HPC’s recommendation to designate her property as a historic site be transmitted to the zoning hearing examiner, more than thirty years after the HPC had failed to do so?

Although this case was briefed and argued on the issue of whether an exception to the exhaustion requirement for “unauthorized procedure” was applicable,⁶ because of intervening events, we need not resolve that issue. Ms. Sakaria has now exhausted her administrative remedies and has done all that the law would require.

Of course, if the County remedy was an exclusive one, exhaustion of that remedy would not keep the declaratory judgment action alive. However, neither here nor in the circuit court has the County clearly argued that the remedy provided by County ordinance is exclusive.⁷ And under Maryland law, there is a presumption that an administrative

⁶ Some out-of-state cases recognize that “unreasonable delay” by the agency in deciding the issues in an administrative proceeding permits the granting of declaratory relief. *See, e.g., Farm Bureau Town and Country Ins. Co. of Missouri v. Angoff*, 909 S.W.2d 348, 353 (Mo. 1995).

⁷ That remedy is found in Sec. 29-121(e) of the Prince George’s County Code, which provides, in part:

Any person of record may appeal the decision of the Historic Preservation Commission, on the question of treating the property as classified or unclassified, to the District Council. Any appeal of the Commission’s decision shall be filed with the Commission within thirty (30) days of service of the decision.

...

(3) The hearing before the Zoning Hearing Examiner shall be a de novo hearing and shall be held in accordance with Section 27-129. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. All persons of record shall be given at least ten (10) days written notice by the Clerk of the Council of the date and time of the District Council’s consideration of the matter. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner’s recommendation with the District Council. If appealed, all persons of record may testify before the District Council

remedy is primary, not exclusive. *Prince George's County v. Ray's Used Cars*, 398 Md. 632, 644-47 (2007). This presumption is reflected in the Declaratory Judgment Act. *Fosler v. Panoramic Design, Ltd.*, 376 Md. 118, 128 (2003).

CONCLUSION

Because Ms. Sakaria has sufficiently exhausted her administrative remedies, we vacate the circuit court's dismissal of her declaratory judgment action and remand for further proceedings. Should the County Council rule against Ms. Sakaria and should she seek judicial review, that case can be consolidated with the declaratory judgment action, subject to whatever defenses the County seeks to raise.⁸ On the other hand, should the Council rule in her favor, the declaratory judgment action would become moot.

**JUDGMENT OF DISMISSAL VACATED.
CASE REMANDED FOR FURTHER
PROCEEDINGS CONSISTENT WITH
THIS OPINION. COSTS TO BE EVENLY
DIVIDED BETWEEN THE PARTIES.**

⁸ To tie up a loose end, we believe Ms. Sakaria's challenge to the circuit court's directive that her belated appeal be heard within 90 days has become moot. Moreover, there is no reason to believe that the County would not otherwise have responded expeditiously after the circuit court's dismissal for failure to exhaust.