

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

REVEREND MARIE ROBINSON, *et al.*, *

Plaintiff, *

v. * Civil Action No. RDB-07-1903

THE BOARD OF COUNTY *

COMMISSIONERS FOR QUEEN ANNE'S *

COUNTY, MARYLAND, *et al.*, *

Defendants. *

* * * * *

MEMORANDUM OPINION

This action arises out of a three-count Complaint filed by Reverend Marie E. Robinson (“Robinson”), Terri Sorrell (“Sorrell”), Enterprise Homes, Inc. (“Enterprise”), Lacrosse Homes, Inc. (“Lacrosse”), and R.J. Investments, LLC (“R.J.”), (collectively, “Plaintiffs”) against the Board of County Commissioners for Queen Anne’s County, Maryland (the “Board”), Eric S. Wargotz, M.D., Courtney M. Billups, Paul L. Gunther, Gene M. Ransom, III, and Carol R. Fordonsky, (collectively, “the Commissioners”) in their personal capacities and in their official capacities as County Commissioners for Queen Anne’s County, Maryland, and as Sanitary Commissioners, and, finally, the Queen Anne’s County Sanitary Commission (“Sanitary Commission”) (collectively, “Defendants”). Plaintiffs allege that Defendants have violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and the Civil Rights Act of 1871, 42 U.S.C. § 1983. Pending before this Court is Defendants’ Motion to Dismiss or, in the Alternative, for Summary Judgment (Paper No. 5). The parties’ submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2008). For the reasons that follow, Defendants’ Motion to Dismiss is GRANTED in part and DENIED in part. The Motion to Dismiss

Enterprise Homes, Inc. for lack of standing is GRANTED. The Motion to Dismiss is also GRANTED as to the Commissioners in their individual capacities on the ground that they have legislative immunity. However, the Motion to Dismiss and the alternative Motion for Summary Judgment are DENIED as to all counts against the Commissioners in their official capacities, the Board, and the Sanitary Commission.

BACKGROUND

The facts alleged in the Complaint are viewed in light most favorable to the Plaintiffs. As set forth in the local code of Queen Anne's County, Maryland ("the County"), anyone seeking to develop land in the County must first submit a sketch plan to the County's Planning Commission for approval, demonstrate to the Board of County Commissioners that the property can adequately be served by the County's sewer and water systems, and comply with a series of other requirements.

Walter Properties, LLC ("the Owner") owns a 144-acre parcel of land in Grasonville, Queen Anne's County, Maryland (the "Property"). (Compl. ¶¶ 9, 11.) In September of 1996, the Planning Commission approved the Owner's sketch plan to build 142 single-family dwelling units. (*Id.* ¶ 11.) In December of 1996, the Board "approved a request to amend the 1996 Master Water and Sewer Plan to designate the Property as W-1/S-1" meaning the Property was eligible for immediate access to public water and sewer service. (*Id.* ¶ 12.) The Owner ultimately decided not to pursue the final steps to gain approval to develop its property. (*Id.*) However, in 1998, the Board adopted the Grasonville Community Plan and a new zoning ordinance zoning the Property in question for "Planned Residential" use. (*Id.* ¶¶ 13-14, Ex. 1.)

On November 5, 2001, Hailey-Ribera, LLC entered into a contract with the Owner to

purchase the Property. That contract was later assigned to R.J. Investments, LLC for purposes of building a planned residential community now known as Sayer's Choice. (Compl. ¶¶ 15, 23.) R.J. and Lacrosse Homes, Inc. (the "Developers") are the developers of the Property and accepted assignment of the contract with the understanding that the Property had previously been approved for 142 units and immediate water and sewer service. (*Id.* ¶ 9.) The Developers planned to build single- and multi-family dwellings at a density higher than that approved in 1996 but still within the acceptable range of a Planned Residential zone. (*Id.* ¶ 23.)

The Developers also intended to donate Lot 1 of the Property to a non-profit organization called Enterprise Community Partners, Inc. to build affordable housing for the workforce community along with its affiliate, Plaintiff Enterprise Homes, Inc. ("Enterprise"). (*Id.*) Enterprise is a for-profit corporation that has developed or is developing approximately 4,400 housing units for low-and moderate-income families in the State of Maryland. (*Id.* ¶ 3.) There is no dispute that Enterprise has not entered into "a formal contract or enforceable commitment" to develop Lot 1 of the Property. (Pls.' Mem. Opp'n Mot. Dismiss 20.) Maryland law in fact prohibited the Developers from contractually committing to donate Lot 1. *See* Md. Code Ann. Art. 66B, § 5.05 ("[A]n owner or agent of an owner of land located within a subdivision who transfers or sells or agrees to sell or negotiate to sell any land by reference to, exhibition of, or other use of a plat of a subdivision before the plat has been approved by the planning commission and recorded or filed in the office of the appropriate county clerk, shall be subject to a civil penalty. . . .").

Since its inception, the project has faced numerous setbacks. First, by letter dated May 27, 2003, the Board advised the Developers that the capacity of the local high school was

“inadequate to support the proposed development” and that they must submit a formal Mitigation Plan to address the issue. (*Id.* ¶ 18.) The Developers thus agreed to pay their pro-rata share of the per pupil cost to construct the additional necessary facilities. (*Id.* ¶ 19.) However, the Board allegedly never responded to their Mitigation Plan. In March of 2005, the Developers submitted an updated plan concluding that the high school capacity was no longer an issue as construction on a new school had begun. (*Id.* ¶ 21.) Counsel for the Developers also inquired as to why the Board never responded to the original Mitigation Plan, submitted in December of 2003. (*Id.*) The Board accepted the updated plan. (*Id.* ¶ 22.)

A second initial setback resulted from the Board’s May 27, 2003 letter to the Developers, noting that the existing sewer system might be insufficient. (*Id.* ¶ 18.) Shortly thereafter, the County entered into a contract to expand the existing Kent Narrows/Stevensville/Grasonville Waste Water Treatment Facility (“the Waste Water Treatment Facility”), which would have allegedly been able to serve the Property. (*Id.*) In May 2005, the Developers submitted their first sketch plan to the Planning Commission. (*Id.* ¶ 23.) However, in June 2005, the County made public its Draft 2005 Comprehensive Water and Sewer Plan (“CWSP”), which undertook a countywide re-categorization, including designating the subject Property at issue as W-5/S-5. (*Id.* ¶ 26.) This designation means that water and sewer service would not be accessible to the Property for more than twenty years. Had this draft been approved, the Sayer’s Choice project would effectively have been halted. (*Id.*) In August, September, and December of 2005, the Developers’ attorney wrote to the Board as well as the Sanitary and Planning Commissions objecting to the proposed downgrade to W-5/S-5 but never received any response to the letters. (*Id.* ¶¶ 27-29.)

In February 2006, the Board adopted the 2006 CWSP, which designated the Property as W-3/S-3 (four to ten years planned service). (*Id.* ¶ 31.) Shortly after this designation, the Developers applied for an amendment to the 2006 Comprehensive Water and Sewer Plan (“2006 CWSP”), seeking a single-category upgrade to W-2/S-2 (one to three years planned service). (*Id.*) This is the amendment at issue in this case.

On September 14, 2006, the Planning Commission finally approved the May 2005 sketch plan submitted by the Developers, “thereby affirming consistency of the proposed development with Title 18 of the Queen Anne’s County Code, including regulations relating to the environment, land use, compatibility with comprehensive plans and zoning, engineering requirements, and community planning requirements.” (*Id.* ¶ 32.) The Planning Commission also made a favorable recommendation to the Board to grant the amendment sought by the Developers to amend the 2006 CWSP to upgrade the Property to W-2/S-2. This amendment, which remains at issue, would permit the project to proceed to its final stages. (*Id.*)

On May 8, 2007, the Board unanimously denied the Developers’ request and rejected the recommendation of the Planning Commission to permit the requested sewer and water upgrade. (*Id.* ¶ 34.) Commissioner Gene Ransom allegedly said the reason was that the project “contained only the bare minimum number of MPDU’s required by law.” According to a County ordinance passed in 2003 with the goal of providing affordable housing for the workforce population, at least 10% of new residential developments have to be set aside for moderately priced dwelling units, or “MPDUs”. (*Id.* ¶ 42 (citing Queen Anne’s County Code § 18:1-108).) However, according to the Developers, Sayer’s Choice would provide almost four times the moderately priced dwelling units required by that law. (*Id.* ¶ 36.) Commissioner Ransom also gave as a

reason for denying the requested upgrade the fact that the expansion of the Waste Water Treatment Facility needed to support the Property had not been completed and would not be operational for another thirty to sixty days. (*Id.* ¶ 37.) However, the expanded Waste Water Treatment Facility was in fact operational a week after the May 8, 2007 denial of the Developers' request. (*Id.*)

As a result of the Defendants' refusal to grant the amendment, Plaintiffs' proposed development is allegedly unable to go forward as planned, as they have exhausted all opportunities to seek approval of an upgrade to W-2/S-2 and have no rights of appeal from the Board's May 8, 2007 decision denying that upgrade. (*Id.* ¶ 45.)

Reverend Marie Robinson and Terri Sorrell are both African-American and seek affordable housing in Queen Anne's County, Maryland. (*Id.* ¶¶ 1-2.) However, they claim that they are unable to find affordable housing in the County due to Defendants' actions described above. (*Id.*) They allege that the real motivation behind the delays is a desire on the part of the Commissioners to prevent workforce housing likely to house a large percentage of African-American individuals. (*Id.* ¶¶ 34-35, 38-41, 43.)¹

On July 19, 2007, Plaintiffs Reverend Marie E. Robinson, Terri Sorrell, Enterprise Homes, Inc., Lacrosse Homes, Inc., and R.J. Investments, LLC filed this action against Defendants Board of County Commissioners for Queen Anne's County, Maryland, and its Commissioners, Eric S. Wargotz, M.D., Courtney M. Billups, Paul L. Gunther, Gene M.

¹ For example, Commissioner Ransom allegedly raised concerns that his own property value would decrease if the Sayer's Choice community would be built, prompting the Developers to propose moving the access road away from the Commissioner's property. (*See id.* at Ex. 4, p. 3.)

Ransom, III, and Carol R. Fordonsky, in both their official and individual capacities, as well as Queen Anne's County Sanitary Commission. Count I alleges that the Defendants violated the Fair Housing Act, 42 U.S.C. §§ 3601-3619, by illegally and arbitrarily interfering with the efforts of Plaintiffs to build the Sayer's Choice community. (*Id.* ¶¶ 50-51.) Count II alleges that the Defendants violated the Civil Rights Act of 1871, 42 U.S.C. § 1983, by unreasonably and illegally exercising control over the local land use process in order to deprive Plaintiffs of their rights guaranteed under the Fair Housing Act. (*Id.* ¶ 56.) Finally, Count III alleges that the Defendants violated § 1983 by refusing to grant a water and sewer change, restricting Sayer's Choice from access to the Waste Water Treatment Facility, and by adopting a pattern and practice of delay to prevent the development of the Property consistent with the Board's own Comprehensive Plan. (*Id.* ¶ 62.)

On November 5, 2007, Defendants filed a Motion to Dismiss or, in the Alternative, for Summary Judgment (Paper No. 5) contending that: (1) Enterprise Homes lacks standing to sue; (2) the County Commissioners, as individual Defendants, possess legislative immunity; (3) the Complaint fails to state a claim under the FHA for disparate impact in Counts I and II; (4) the Complaint fails to state a claim under the Equal Protection Clause in Count III; (5) the Complaint fails to state a claim for procedural due process violations in Count III; and therefore, (6) Defendants are entitled to judgment as a matter of law.

STANDARD OF REVIEW

I. Motion to Dismiss

Under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a complaint may be dismissed for failing to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

A Rule 12(b)(6) motion tests the legal sufficiency of a complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). Therefore, the court accepts all well-pleaded allegations as true and construes the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff. *Ibarra v. United States*, 120 F.3d 472, 473 (4th Cir. 1997). A complaint must meet the “simplified pleading standard” of Rule 8(a)(2), *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002), which requires only a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)).

Although Rule 8(a)(2) requires only a “short and plain statement,” the Supreme Court of the United States recently explained that a complaint must contain “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007). The factual allegations contained in a complaint “must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Id.* at 1965. Thus, a complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 1974.

II. Motion for Summary Judgment

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no *genuine* issue as to any *material* fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c) (emphasis added). In *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), the Supreme Court explained that only “facts that might affect the outcome of the suit under the governing law” are

material. Id. at 248. Moreover, a dispute over a material fact is *genuine* “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* The Court further explained that, in considering a motion for summary judgment, a judge’s function is limited to determining whether sufficient evidence supporting a claimed factual dispute exists to warrant submission of the matter to a jury for resolution at trial. *Id.* at 249. In that context, a court must consider the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

“Once the movant has established the absence of any genuine issue of material fact, the opposing party has an obligation to present some type of evidence to the court demonstrating the existence of an issue of fact.” *Pension Ben. Guar. Corp. v. Beverley*, 404 F.3d 243, 246-47 (4th Cir. 2005) (citing *Pine Ridge Coal Co. v. Local 8377, UMW*, 187 F.3d 415, 422 (4th Cir. 1999)). Thus, Rule 56 mandates summary judgment against a party “who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). If the evidence presented by the nonmoving party is merely colorable, or is not significantly probative, summary judgment must be granted. *Anderson*, 477 U.S. at 249-50. Similarly, the existence of a mere “scintilla” of evidence in support of the nonmoving party’s case is insufficient to preclude an order granting summary judgment. *Id.* at 252.

A genuine issue of material fact may exist if the evidence presented to the court is sufficient to indicate the existence of a factual dispute that could be resolved in favor of the nonmoving party at trial. *Rachael-Smith v. FTDATA, Inc.*, 247 F. Supp. 2d 734, 742 (D. Md. 2003) (citing *Anderson*, 477 U.S. at 248-49). Moreover, any inferences drawn from disputed evidence

must be accorded to the non-moving party. *See Matsushita*, 475 U.S. at 587-88; *E.E.O.C. v. Navy Federal Credit Union*, 424 F.3d 397, 405 (4th Cir. 2005).

ANALYSIS

I. Motion to Dismiss

A. Standing

First, Defendants allege that Plaintiff Enterprise Homes, Inc. has no standing to sue because the parcel allegedly donated for development by Enterprise was not included in the Developers' application for amendment of the Property's water and sewer categories. (Defs.' Mem. Supp. Mot. Dismiss 11.) To establish Article III standing, a plaintiff must (1) show an injury in fact, (2) demonstrate a causal connection between the defendants' actions and the alleged injury, and (3) show that the injury will likely be redressed by a favorable outcome. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1995). Each party "invoking federal jurisdiction bears the burden of establishing these elements." *Id.* at 561. Thus, this Court must examine the allegations "to ascertain whether the *particular plaintiff* is entitled to an adjudication of the particular claims asserted." *Allen v. Wright*, 468 U.S. 737, 752 (1984) (emphasis added).

Defendants essentially argue that Enterprise cannot prove the first element—an injury in fact. (Defs.' Mem. Supp. Mot. Dismiss 14-15.) Specifically, Defendants argue that Enterprise's proffered role in developing Lot 1 of the Property remains hypothetical. (*Id.*) An "injury in fact" is characterized as "an invasion of a legally protected interest which is concrete and particularized, and actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560 (internal quotations omitted). "Where there is no actual harm, however, its imminence . . . must

be established.” *Id.* at 564. Enterprise alleges that it suffered a concrete injury because the Developers have already “proffered to donate Lot 1 [of the Property] to a non-profit organization” which would then negotiate with Enterprise to develop housing. (Compl. ¶ 23.) Plaintiffs further contend that it would be impossible to create any enforceable agreement because the parcel was to be a gift and, under Maryland law, the Developers could not formally contract to sell the parcel until they received final approval. (Pl.’s Mem. Opp’n Mot. Dismiss 20 (citing Md. Code Ann. Art. 66B, § 5.05).)

Enterprise certainly has an interest in the outcome of this litigation. However, “the ‘injury in fact’ test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured.” *Lujan*, 504 U.S. at 563 (internal quotations omitted). In order for Enterprise to demonstrate an actual or imminent injury, two events need to occur: 1) the Developers must go through with the proffered donation to the non-profit organization, and 2) the non-profit organization must enter into some kind of arrangement with Enterprise for the development of workforce community housing on the donated lot. Neither of these events is guaranteed to occur. Thus, at this time, Enterprise cannot show that it has suffered any loss to a legally protected interest.

Accordingly, Defendants’ Motion to Dismiss Plaintiff Enterprise Homes, Inc. for lack of standing shall be GRANTED.

B. Legislative Immunity

Plaintiffs allege that the Commissioners are liable in their personal capacities, in their official capacities as the Board of County Commissioners for Queen Anne’s County, and in their official capacities as Sanitary Commissioners. (Compl. ¶ 6.) However, Defendants argue that

the Commissioners are subject to absolute legislative immunity on the grounds that their unanimous vote to deny Plaintiffs' request for an amendment to the 2006 CWSP upgrading the Property from W-3/S-3 to W-2/S-2 constituted a legislative action. (Defs.' Mem. Supp. Mot. Dismiss 16.)

Proper application of legislative immunity in damages actions requires a court to make a distinction between official and personal capacity, as the Commissioners have been sued in both capacities. *See Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). When an individual is sued in his official capacity, the suit is essentially against the governmental entity. *Id.* In contrast, personal capacity suits “seek to impose personal liability upon a government official for actions he takes under color of state law.” *Id.* While an official can seek immunity from suits against him in his personal capacity, “[t]he only immunities that can be claimed in an official-capacity action are forms of sovereign immunity that the entity, *qua* entity, may possess, such as the Eleventh Amendment.” *Id.* at 166-67; *see also Okwa v. Harper*, 757 A.2d 118, 137 (Md. 2000) (“Qualified immunity may only be asserted as a defense to an individual capacity suit.”); *Ashton v. Brown*, 660 A.2d 447, 467 (Md. 1995) (“In a § 1983 claim for damages against a government official in his or her individual capacity, the official, depending on his position, may assert absolute or qualified immunity. . . . In a § 1983 suit against a governmental official in his or her official capacity, however, the above-mentioned immunity defenses are not available.”) (citing *Graham*, 473 U.S. 159, 166-67). Thus, the Commissioners can only seek legislative immunity from liability in their *personal* capacities.

It is well established that “[m]embers of local governmental bodies are entitled to absolute legislative immunity from claims against them arising out of their actions in a

legislative capacity.” *Roberson v. Mullins*, 29 F.3d 132, 134 (4th Cir. 1994) (internal quotations omitted). However, legislative immunity only attaches to legislative actions as executive and administrative actions are not fully protected. *Id.* The United States Court of Appeals for the Fourth Circuit has adopted a two-step analysis to determine whether an act is legislative or administrative in nature. *Alexander v. Holden*, 66 F.3d 62, 66 (4th Cir. 1995). Specifically a court must consider: “1) ‘the nature of facts used to reach [the] . . . decision’; and 2) ‘the particularity of the impact’ of the state action.” *Pathways Psychosocial v. Town of Leonardtown*, 133 F. Supp. 2d 772, 794 (D. Md. 2001) (quoting *Alexander*, 66 F.3d at 66).

As to the first prong, a court may look to see if the nature of the facts used to reach the decision “bore all the hallmarks of traditional legislation.” *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (finding that enacting a local ordinance eliminating a job was legislative in nature because it “reflected a discretionary, policymaking decision implicating the budgetary priorities of the city and the services the city provides to its constituents”). The nature of the Commissioners’ decision in this case “bore all the hallmarks of traditional legislation.” *Id.* Specifically, the Commissioners had complete discretion whether to accept or deny the Developers’ amendment and could consider a variety of facts in reaching their decision. Plaintiffs rely on *Front Royal and Warren County Industrial Park Corp. v. Town of Front Royal, Virginia*, 865 F.2d 77, 79 (4th Cir. 1989), in which a local legislature denied a developer water and sewer service. Unlike the present case, however, in *Front Royal*, the Virginia Annexation Court had ordered the Front Royal officials to extend sewer service to the Industrial Park’s parcels. The Fourth Circuit held that, since the court had removed all discretion the officials may have had to approve or disapprove, the officials’ decisions “had to do with zoning

enforcement rather than with rulemaking.” *Id.* Therefore, because the Queen Anne’s County Commissioners had the discretion to either accept or decline the Plaintiffs’ proposed amendment, the nature of the facts used to reach their decision suggested that their decision was legislative.

As to the second prong, “actions relating to a specific individual are usually defined as administrative, while those that impact the general community or that establish a general policy are legislative in nature.” *Pathways Psychosocial*, 133 F. Supp. 2d at 794. Plaintiffs argue that the Commissioners’ actions constituted a zoning exercise and were administrative in nature, because their decisions related solely to the Developers and the Property rather than the community or public policy in general. In contrast, Defendants argue that the adoption of a particular amendment to the County’s comprehensive plan constituted an exercise in planning and cannot be isolated from the broad, plainly legislative function of the plan as a whole. (Defs.’ Mem. Supp. Mot. Dismiss 21.)

The Commissioners’ decisions regarding the Comprehensive Water and Sewer Plan (“CWSP”) impacted the general community, including all existing and potential users of the Waste Water Treatment Facility, and, thus, are classically legislative decisions. In *Gregory v. Board of County Commissioners for Frederick County*, the Court of Appeals of Maryland noted that when adopting CWSPs, a “legislative body’s focus” is “not on a single piece of property, but rather on a considerable number of properties as they relate to each other and the surrounding area.” 599 A.2d 469, 472 (Md. 1991) (internal citations omitted) (reasoning that the adoption of a particular amendment to the plan cannot be isolated from the context of the plan as a whole). Moreover, in *Appleton Regional Community Alliance v. County Commissioners of Cecil County*, the Court of Appeals of Maryland recently rejected the argument that an amendment to the Cecil

County Master Water and Sewer Plan was “piecemeal,” because “all amendments to a Master Water and Sewer Plan are, by definition, comprehensive planning actions.” 945 A.2d 648, 655 (Md. 2008). Likewise, in this case, the Developers applied to amend Queen Anne’s County’s *Comprehensive* Water and Sewer Plan. Because the Commissioners’ actions clearly impacted the general community, their actions are legislative in nature.

Because they made solely legislative decisions, the Commissioners are subject to absolute legislative immunity in their personal capacities. They will remain Defendants in their official capacities. Accordingly, Defendants’ Motion to Dismiss the Commissioners—Eric S. Wargotz, M.D., Courtney M. Billups, Paul L. Gunther, Gene M. Ransom, III, and Carol R. Fordonsky—in their personal capacities is GRANTED.

C. Counts I and II² - Fair Housing Act

The Fair Housing Act (“FHA”) makes it unlawful “to . . . make unavailable or deny . . . any dwelling to any person because of race, color, . . . or national origin.” 42 U.S.C. § 3604(a). Initially, this Court must determine whether the Defendants’ actions fall within the scope of the FHA. The Fourth Circuit in *Smith v. Town of Clarkton, N.C.*, 682 F.2d 1055, 1065-66 (4th Cir.1982), specifically held that a town’s withdrawal from a multi-municipality housing authority may result in § 3604(a) liability. Accordingly, even if Plaintiffs are not denied physical entry to any existing structures on the basis of their race, this Court has previously held that, “[a]t least with respect to government defendants, the case law indicates that there can be a constructive illegal ‘denial’ of housing - i.e., a government entity may violate § 3604(a) by

² Even though Count II is titled and phrased as a § 1983 claim, it essentially alleges that the Defendants have violated Plaintiffs’ rights under the Fair Housing Act. Thus, the same analysis applies as to Count I.

denying a plaintiff a housing opportunity (as opposed to an actual brick-and-mortar dwelling).” *Thompson v. United States Dep’t of Hous. & Urban Dev.*, 348 F. Supp. 2d 398, 415 (D. Md. 2005).

Plaintiffs allege that Defendants’ actions have led to such denial of housing. Specifically, Plaintiffs argue that the Board’s arbitrary interference with the Sayer’s Choice development has had a discriminatory impact by having “a greater effect in depriving housing opportunities for African Americans and other protected groups as compared to whites.” (Compl. ¶¶ 48-51.) Accordingly, in viewing the facts in a light most favorable to the Plaintiffs, Defendants’ alleged actions fall within the purview of a constructive “denial” of housing under the FHA.

Next, Plaintiffs must allege that they were discriminated against within the meaning of the FHA by showing: 1) discriminatory intent; or 2) discriminatory impact. *Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 986 (4th Cir. 1984); *Thompson*, 348 F. Supp. 2d at 417. Plaintiffs allege the latter, claiming that Defendants’ actions have a discriminatory impact on African-Americans. (Compl. ¶¶ 35, 38, 43, 49, 55.) Plaintiffs aptly note that a discriminatory impact can be shown through either “an action that results in a disparate *effect* upon African Americans or other members of a protected class” or through “any ‘policy [that] perpetuates segregation and thereby prevents interracial association.’” (Pls.’ Mem. Opp’n Mot. Dismiss 6-7 (quoting *Betsey*, 736 F.2d at 983 n.3) (emphasis and alteration in original).)

In determining if there has been a discriminatory impact, this Court has previously considered: 1) the strength of the plaintiff’s showing of discriminatory effect; 2) the evidence of discriminatory intent; 3) the defendant’s interest in the conduct complained of; and 4) the burden

the defendant would bear if the plaintiff prevails. *Thompson*, 348 F. Supp. 2d at 417 (citing *Smith*, 682 F.2d at 1065). As to the first factor, Plaintiffs allege that the County Commissioners' arbitrary and capricious refusal to grant the Developers' application has a disproportionate impact and effect on African-Americans and other protected groups. (Compl. ¶¶ 35, 39, 49.) Because little statistical detail has been provided as to the availability of housing for workforce and African-American residents of the County, there are genuine issues of material fact as to that factor. As to the second and third factors, Plaintiffs claim that Commissioner Ransom's letter to Enterprise Homes reflects the Board's desire to separate themselves from racial and ethnic diversity. (Compl. ¶¶ 44.) In addition, Plaintiffs allege that at least one of the Commissioners, specifically Gene Ransom, has expressed concerns privately about the proximity of affordable housing to his own properties. (*Id.* ¶¶ 30, 44.) Finally, as to the fourth factor, the Complaint does not specifically address how a favorable outcome would affect Defendants, noting only that the Developers' plans met all requisite criteria for approval.

At this early stage of the litigation, viewing the facts in the light most favorable to the Plaintiffs, Plaintiffs have alleged sufficient facts to demonstrate that Defendants' actions may have had a discriminatory impact on Plaintiffs. Accordingly, Defendants' Motion to Dismiss Count I and II is DENIED.

D. Count III - Section 1983

In order to survive a motion to dismiss in a § 1983 suit against a local government, the plaintiff must simply follow the rules of notice pleading. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993). In Count III of the Complaint, Plaintiffs allege that Defendants' pattern and practice of delay to prevent the Sayer's

Choice development violated their procedural due process and equal protection rights (Compl. ¶ 62.) The Fourteenth Amendment of the United States Constitution provides that “[n]o State shall make or enforce any law which . . . deprive[s] any person of life, liberty, or property, without due process of law; nor deny . . . the equal protection of the laws.” U.S. Const. Amend. XIV, § 1.

In order to survive a motion to dismiss grounded in Rule 12(b)(6) of the Federal Rules of Civil Procedure, a procedural due process claim must, at a minimum, provide fair notice of the claim and the grounds on which it rests. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Plaintiffs claim that Defendants’ actions deprived them of their procedural due process “by refusing to grant a water and sewer category change, restricting Sayer’s Choice from access to the capacity of the [Waste Water Treatment Facility] capacity, and by adopting a pattern and practice of delay to prevent the development of the Property. . . .” (Compl. ¶ 62.) Plaintiffs also allege that these actions are inconsistent with the County’s own Comprehensive Plan and Maryland’s “Smart Growth” policy. (*Id.* ¶¶ 10, 62.)

As to the equal protection claim, the complaint must allege that the denial of equal protection was motivated by racial animus. *City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 195 (1976); *Arlington Heights v. Metro. Hous. Corp.*, 429 U.S. 252, 265 (1977). As outlined by the United States Court of Appeals for the Fourth Circuit,

[s]everal factors have been recognized as probative of whether a decisionmaking body was motivated by a discriminatory intent, including: (1) evidence of a “consistent pattern” of actions by the decisionmaking body disparately impacting members of a particular class of persons; (2) historical background of the decision, which may take into account any history of discrimination by the decisionmaking body or the jurisdiction it represents; (3) the specific sequence of events leading up to the particular decision being

challenged, including any significant departures from normal procedures; and (4) contemporary statements by decisionmakers on the record or in minutes of their meetings.

Sylvia Dev. Corp. v. Calvert County, 48 F.3d 810, 819 (4th Cir. 1995). Plaintiffs' underlying basis for Count III is Defendants' "pattern and practice of delay." (Compl. ¶ 62.) In support of this, Plaintiffs offer alleged instances of racial discrimination sufficient to overcome a motion to dismiss. Specifically, they allege that: (1) Commissioner Ransom's letter to Enterprise Homes, Inc. was racially motivated (*id.* ¶ 44); (2) the Commissioners have expressed concerns privately about the proximity of affordable homes (*id.* ¶ 30); and (3) the Board's pattern and practice of delay has a disproportionate effect on African-Americans and other protected groups as compared to whites (*id.* ¶¶ 19, 30, 35, 39, 49).

At this stage of the proceedings, Plaintiffs have sufficiently satisfied the rules of notice pleading by alleging "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 127 S. Ct. at 1974. Accordingly, Defendants' Motion to Dismiss Count III is DENIED.

II. Motion for Summary Judgment

Defendants have alternatively moved for summary judgment as to all Counts. That motion is premature because discovery has not yet commenced in this case. Counsel for the Plaintiffs filed an affidavit setting forth the need for further discovery, as required by Rule 56(f) of the Federal Rules of Civil Procedure. (*See Wechsler Aff.* ¶ 2.) Specifically, counsel contends that, with discovery, "Plaintiffs would be in a better position to adduce evidence regarding Defendants' motivations in denying Plaintiffs' requested water and sewer category upgrade, and in particular the evidence of racially discriminatory intent. . . ." (*Id.* ¶ 4.)

Even based on the existing record, it is clear under the standard set forth in *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), that there are genuine issues of material fact as to the motivations behind the Board’s decisions in denying the Developers’ request to upgrade the area containing the Property to W-2/S-2 and the availability of alternative sources of workforce housing for African Americans in the County. In light of the fact-intensive nature of the allegations in this case, it is clear that the this Court cannot assess the merits of Plaintiffs’ claims without affording them the opportunity to discover such facts. As such, Defendants’ Motion, in the Alternative, for Summary Judgment is DENIED.

CONCLUSION

For the foregoing reasons, Defendants’ Motion to Dismiss is GRANTED in part and DENIED in part. Defendants’ Motion to Dismiss Enterprise Homes, Inc. as a Plaintiff for lack of standing is GRANTED. The Motion to Dismiss is also GRANTED as to Commissioners Eric S. Wargotz, M.D., Courtney M. Billups, Paul L. Gunther, Gene M. Ransom, III, and Carol R. Fordonsky in their individual capacities. However, the Motion to Dismiss is DENIED as to the remaining Defendants—the Board of County Commissioners for Queen Anne’s County, Maryland, the Queen Anne’s County Sanitary Commission, and Commissioners Eric S. Wargotz, M.D., Courtney M. Billups, Paul L. Gunther, Gene M. Ransom, III, and Carol R. Fordonsky in their official capacities—for all three counts. Finally, the Motion, in the Alternative, for Summary Judgment is DENIED. A separate Order follows.

Date: June 19, 2008

/s/

Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

REVEREND MARIE ROBINSON, *et al.*, *

Plaintiff, *

v. *

Civil Action No. RDB-07-1903

THE BOARD OF COUNTY *

COMMISSIONERS FOR QUEEN ANNE'S *

COUNTY, MARYLAND, *et al.*, *

Defendants. *

* * * * *

ORDER

For the reasons stated in the foregoing Memorandum Opinion, IT IS this 19th day of June, 2008, HEREBY ORDERED

1. Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment (Paper No. 5) is GRANTED in part and DENIED in part;
 - a. The Motion to Dismiss Enterprise Homes, Inc. as a Plaintiff for lack of standing is GRANTED;
 - b. The Motion to Dismiss is GRANTED as to Defendants Eric S. Wargotz, M.D., Courtney M. Billups, Paul L. Gunther, Gene M. Ransom, III, and Carol R. Fordonsky in their personal capacities, but is DENIED as to those Defendants in their official capacities;
 - c. The Motion to Dismiss is DENIED as to the remaining Defendants in Counts I, II, and III;
 - d. The Motion, in the Alternative, for Summary Judgment is DENIED;
2. Defendants shall file an Answer to the Complaint within twenty (20) days; and

3. The Clerk of the Court shall transmit copies of this Order and the accompanying Memorandum Opinion to counsel of record.

/s/

Richard D. Bennett
United States District Judge