

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC. *et. al.*

Plaintiffs/Counter-Defendants

v.

MAURICE B. TOSE', *et ux.*

Defendants/Counter-Plaintiffs

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C-02-CV-19-003640

* * * * *

DEFENDANTS' PRETRIAL STATEMENT

The Defendants/Counter-Plaintiffs, Maurice Tose' and Teresa Layden ("Tose"), by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., files this Pre-Trial Statement pursuant to Maryland Rule 2-504.2 and states:

1. Defendant's Statement of Facts/Status of the Action

This dispute has been brought by the homeowners association of the community of Arundel on the Bay, and two individuals, against a waterfront property owner, Maurice Tose and his wife, Teresa Layden, because they seek the use of the paper roads between the Tose' lots for use of the community at large for waterfront activities. The property at issue shows on the 1927 plat (Ex. A) as a road leading to an area of beach along Fishing Cove. Over the decades, erosion and sea-level rise has totally eliminated the beach area and the Tose' properties are now waterfront lots. (Ex. B)

The Property Owners Association of Arundel on the Bay, along with two residents of the community of Arundel on the Bay have filed suit against Tose', claiming that the community as a whole has the right to an implied easement for the use of the paper roads that are adjacent to the Tose' properties, for all riparian purposes. The Plaintiffs seek an injunction against the Defendants because they have parked their vehicles and placed some driveway markers in the area which is

the subject of the dispute. The Plaintiffs do not make a claim of title to the area of the unimproved paper roads that is the subject of the dispute.

The Defendants assert that they hold title to the paper roads as a result of Real Property Art. §2-114¹; because of their ownership of the adjacent lots on both sides of the paper road of Magnolia Avenue, they hold title to the entire width of the bed of the paper road. For the same reason, they hold title to half of the roadbed of Saratoga Avenue, which borders one of their three lots. The Defendants further assert that their interest is subject to the limited implied easement by plat, to those that require the use of the paper road to reach the next street or public way. *Kobrine v. Metzger*, 380 Md. 620 (2004). The paper road is not available for use as a community park or waterfront area. The fact that the paper road touches the water does not change the character of the paper road from a way of passage to a park. The area of the paper road in proximity of the water is quite often boggy or marshy and is at times underwater. The land cannot support the weight of a vehicle and is not a boat launching area or a fire-drafting site.

2. Amendments Required of the Pleadings

The Plaintiffs are seeking relief for the benefit of all residents of the community, yet the only named plaintiffs are the Association and two individuals. In identical, litigation involving the property located on the Chesapeake Bay side of Magnolia Avenue (*Atterbeary, et al. v.*

¹ MD CODE REAL PROP § 2-114 (a) Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the deviser, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.

(b) If the transferor owns other land on the opposite side of the street or highway, the deed, will, or other instrument shall be construed to pass the right, title, and interest of the transferor only to the center of that portion of the street or highway upon which the 2 or more tracts coextensively bind.

Property Owners Association of Arundel on the Bay, et al. Case No. C-02-CV-15-003736), the Association filed a Motion to Dismiss for Failure to Join Necessary Parties against the property owners involved in that case, which Motion was granted by this court. The Defendants have desired to resolve matters without engaging all of the residents of the community in the litigation, however if this matter cannot be resolved and trial is necessary, then it would appear that the Plaintiffs are required to name all of the residents in the community in this action to quiet title pursuant to Maryland Real Prop. Art. §14-601 et eq.

3. Simplification or Limitation of Issues

Tose' seeks a declaration from this Court that they hold title to the Disputed Street with the limited right of the adjacent property owners to walk the property.

4. Stipulation of Facts

Neither party has requested any stipulations; however, the Defendants anticipate that stipulations could be reached concerning documents located in Land Records.

5. Requested Relief

Defendants seek a declaration of title to the disputed property and a declaration that there exists an implied easement by plat that the disputed property is available for use by the adjacent property owners as necessary to get to the next public way pursuant to the law as stated in *Kobrine v. Metzger*, 380 Md. 620 (2004).

6. Evidentiary Documents and Records

The Defendants will timely provide a list of anticipated exhibits prior to the trial on the merits.

7. Witnesses

The Defendants reserve the right to call the following as witnesses:

Maurice Tose'

Asher Tose'

A representative of the Anne Arundel County Fire Department

8. Expert Witnesses

John Dowling, Esq.

Shepard Tullier

/s/

Barbara J. Palmer (CPF # 8501010468)
Hyatt & Weber, LLC
200 Westgate Circle. 5th Floor
Annapolis, Maryland 21401
(410) 266-0626
bpalmer@hwlaw.com
Attorney for Maurice Tose' and Teresa Layden

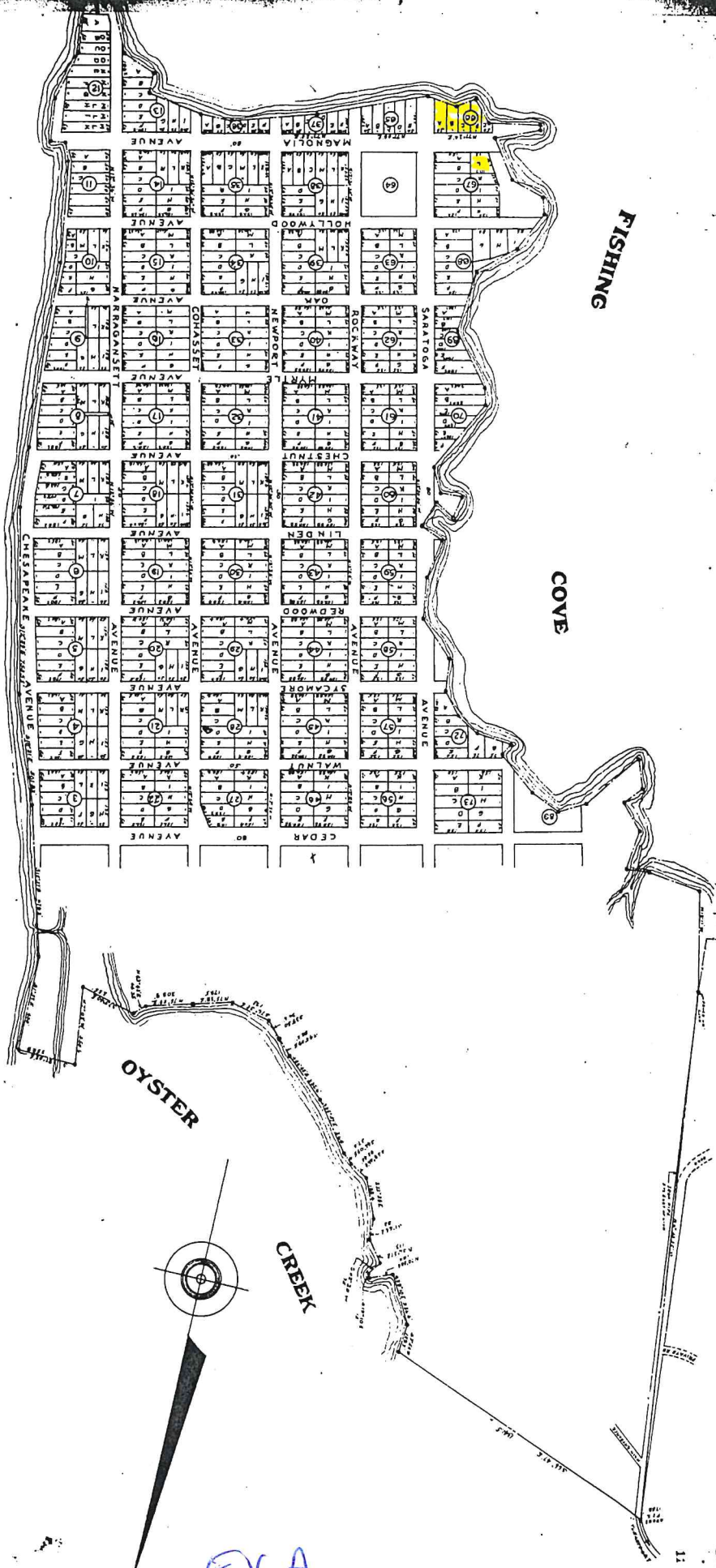
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2020, a copy of the foregoing Pre-Trial Statement was filed in accordance with the MDEC system and a copy will be electronically served upon:

Wayne Kosmerl
Tucker Meneely
125 West Street, 4th Floor
Annapolis, Maryland 21401
kosmerl@councilbaradel.com
meneely@councilbaradel.com
Attorneys for the Plaintiffs

/s/

Barbara J. Palmer (CPF # 8501010468)



CHESAPEAKE

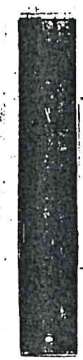
FISHING

COVE

BAY

OYSTER

CREEK



CABINET No. /
ROD No. A-3
PLT No. //
Anne Arundel Co.

ARUNDEL ON THE BAY

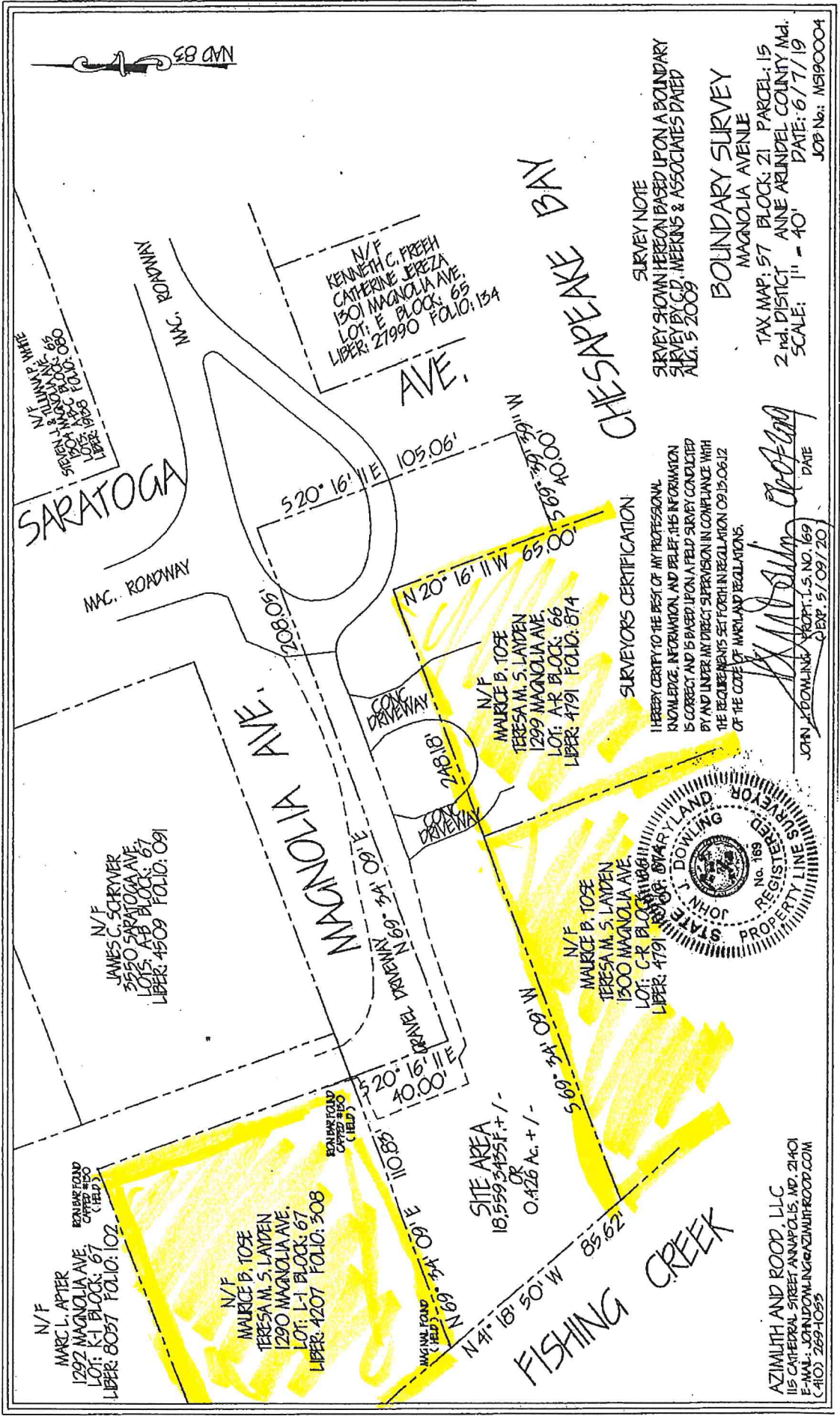
"REVISED PLAT"
ANNE ARUNDEL COUNTY, MD.

J REVELL CARR, COUNTY SURVEYOR
ANNAPOLIS, MARYLAND
MAY 1987, SCALE 1"=50'

OWNERS
MEREDITH LUMBER CO.
ANNAPOLIS, MD.

Filed 1st Day of
(No 198)

EX A

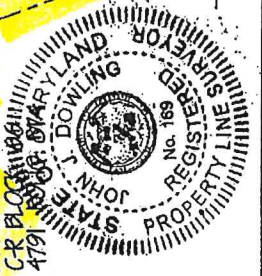


SURVEY NOTE
 SURVEY SHOWN HEREON BASED UPON A BOUNDARY SURVEY BY C.D. MEERKINS & ASSOCIATES DATED AUG. 5, 2009

BOUNDARY SURVEY
 MAGNOLIA AVENUE
 TAX MAP: 57 BLOCK: 21 PARCEL: 15
 2nd DISTRICT ANNE ARUNDEL COUNTY Md.
 SCALE: 1" = 40' DATE: 6/7/19
 JOB No.: MS190004

SURVEYORS CERTIFICATION
 I HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THE INFORMATION IS CORRECT AND IS BASED UPON A FIELD SURVEY CONDUCTED BY ME AND UNDER MY DIRECT SUPERVISION IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN REGULATIONS 09.15.06.12 OF THE CODE OF MARYLAND REGULATIONS.

JOHN T. DOWLING
 STATE REGISTERED PROFESSIONAL SURVEYOR
 No. 189
 DATE: 5/09/20



AZIMUTH AND ROAD, LLC
 115 CATHEDRAL STREET ANNAPOLIS, MD. 21401
 E-MAIL: JOHN.DOWLING@AZIMUTHROAD.COM
 (410) 269-1085

t. B

Description of 18,559.343 Square feet, the part of Magnolia and Saratoga Avenues, adjacent to Blocks 65, 66 & 67, Arundel on the Bay, plat book 9 folio 25, plat #492, 2nd Assessment District, Anne Arundel County, Maryland

Beginning for the same at the intersection of the south right-of-way of Magnolia Avenue, an 80 foot right-of-way, with the west right-of-way line of Saratoga Avenue, an 80 foot right-of-way, as shown on the plat of Arundel on the Bay, filed among the plat records of Anne Arundel County in plat book 9 folio 25 as plat #492; thence leaving said beginning point so fixed and running with the south right-of-way of Magnolia Avenue and the north side of lot A-R, block 66, Arundel on the Bay, as shown on a plat entitled Minor Plat of Resubdivision, Lots A-R and C-R, Block 66, Resubdivision of Lots A thru E, Block 66, Arundel on the Bay, filed among the land Records of Anne Arundel County in Liber 4791 folio 874, with a bearing based on Anne Arundel County Grid North (NAD 83) as established by C. D. Meekins & Associates, Inc., in 2009, South 69 ° 34 ' 09 " West 248.18 feet to intersect the shoreline of Fishing Creek; thence leaving Lot C-R and running with and binding on the shoreline of Fishing Creek North 41 ° 18 ' 50 " West 85.62 feet to a Mag Nail found in a wooden bulkhead at the south east corner of Lot L-1 as shown on a plat entitled Minor Plat of Subdivision and Resubdivision, Lots K-1 and L-1, Block 67, Resubdivision of Lots K and L, Block 67, Arundel on the Bay, filed among the land Records of Anne Arundel County in Liber 4207 folio 308; thence leaving said Fishing Creek and running with part of the South 77 ° 24 ' 00 " West 142.00 foot line of said Lot L-1 with the north side of said Magnolia Avenue, North 69 ° 34 ' 09 " East 110.83 feet to an capped iron bar found, corporate number 130, said point being at the south east corner of lot L-1; thence leaving said point so fixed and running South 20 ° 16 ' 11 " East 40.00 feet to the centerline of said Magnolia Avenue; thence running with and binding on the center line of said Magnolia Avenue North 69 ° 34 ' 09 " East 208.05 feet to intersect the centerline of the aforementioned Saratoga Avenue; thence leaving the center line of said Magnolia Avenue and running with and binding on the centerline of said Saratoga Avenue South 20 ° 16 ' 11 " East 105.06 feet to intersect the shoreline of the Chesapeake Bay; thence leaving the centerline of Saratoga Avenue and running with and binding on the shoreline of the Chesapeake Bay, South 69 ° 39 ' 39 " West 40.00 feet to a point in the east property line of Lot A-R, Minor Plat of Resubdivision, Lots A-R and C-R, Block 66, Resubdivision of Lots A thru E, Block 66, Arundel on the Bay, filed among the land Records of Anne Arundel County in Liber 4791 folio 874; thence leaving said Chesapeake Bay and running reversely with part of the South 12 ° 30 ' 30 " East 83.71 foot line of Lot A-R, North 20 ° 16 ' 11 " West 65.00 feet to the point of beginning. Containing 18,559.343 square feet , according to a Survey, Plat and Description by John J. Dowling, Maryland Property Line Surveyor No. 169, June 2019. My license comes up for renewal on 05-09-2020.

Tosc:AoB.m&b.wpd

