

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

Plaintiffs

v.

MAURICE B. TOSE', *et ux*

Defendants

* * * * *

MAURICE B. TOSE'
TERESA M. LAYDEN

Counter-Plaintiffs

v.

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

and

All Property Owners in Arundel on the Bay
(Attachment "A")

Counter-Defendants

* * * * *

**AMENDED COUNTER-COMPLAINT TO QUIET TITLE,
FOR DECLARATORY RELIEF AND FOR INJUNCTIVE RELIEF**

Defendants and Counter-Plaintiffs, Maurice B. Tose' and Teresa M. Layden, by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., files this Counter-Complaint against the Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, and, in accordance with the provisions of the Order of this Court dated June 14, 2021, the Defendants and Counter-Plaintiffs are naming the approximately

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

400 property owners set forth in Attachment “A” as necessary parties and additional Counter-Defendants, and in support thereof, state:

1. The Property Owners Association of Arundel on the Bay, Inc. (the “Association” or “AOTB”) is a Maryland corporation which maintains its principal place of business and owns real property located in Anne Arundel County, Maryland. The Association owns property within the subdivision of Arundel on the Bay, as shown on a plat created in 1890 entitled “Arundel on the Bay,” which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book S.H. 34, folio 509 (the “AOTB Plat” Exhibit B of the Plaintiffs’ Complaint) and on a revised plat created in 1927 entitled “Revised Plat of Arundel on the Bay,” which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book 9, folio 25 (the “Revised AOTB Plat” which is Plaintiffs’ Exhibit C) The Association has made various claims over the years concerning the community’s rights to own or use the platted roads in the community.

2. Plaintiff and Counter-Defendant, David Delia is a property owner in the community of Arundel on the Bay and is a Plaintiff in this action claiming extensive rights in the property at issue in this action referred to by the Plaintiffs as the “Disputed Street,” held in title by the Defendants and Counter-Plaintiffs.

3. Plaintiff and Counter-Defendant, Lori Strum is a property owner in the community of Arundel on the Bay and is a Plaintiff in this action claiming extensive rights in the property at issue in this action referred to by the Plaintiffs as the “Disputed Street,” held in title by the Defendants and Counter-Plaintiffs. Collectively, the Association, Delia and Strom are referred to herein as the “Plaintiffs and Counter-Defendants”.

3A. In the Consent Order entered in this action on June 14, 2021, this Honorable Court found that all property owners in the community of Arundel on the Bay are necessary parties and

that complete relief cannot be afforded to the individuals or entity that are presently parties, unless all those individuals or entities owning property in the community of Arundel on the Bay are joined in this action. Therefore, the Defendants and Counter-Plaintiffs file this Amended Counter-Complaint for the purposes of joining the individuals set forth on Attachment “A” as parties to this action.

4. Defendants and Counter-Plaintiffs, Maurice B. Tose’ and Teresa M. Layden (“Tose’ and Layden”) own property in the community of Arundel on the Bay commonly known as 1290, 1299 and 1300 Magnolia Avenue, Annapolis, Maryland 21403. These properties are more particularly described in deeds recorded in the Land Records of Anne Arundel County as follows:

A. 1290 Magnolia Avenue—Book 8121 page 557, dated August 25, 1997, described as Lot L-1 Block 67; **Exhibit A**;

B. 1299 Magnolia Avenue—Book 6465 page 384, dated February 2, 1994, described as Lot A-R Block 66; **Exhibit B**; and

C. 1300 Magnolia Avenue--Book 5770 page 34, dated September 27, 1992, described as Lot C-R Block 66; **Exhibit C**.

Collectively, these three parcels will be referred to as the “Tose’-Layden Properties”.

5. As indicated on the Boundary Survey of the Tose’-Layden Properties (**Exhibit D**), 1300 Magnolia Avenue and 1290 Magnolia Avenue are located across the paper road of a section of Magnolia Avenue, as a result, Tose’ and Layden hold title to the street bed of Magnolia Avenue between these lots pursuant to MD CODE REAL PROP § 2-114. This is the section of property which appears to be described as the “Disputed Street” in Paragraph 7 of the Complaint filed by the Plaintiffs.

6. Further, as a result of their ownership of Lot A-R Block 66 (1299 Magnolia Avenue) Tose' and Layden are the titleholders to one-half of Saratoga Avenue to the center of the street, pursuant to MD CODE REAL PROP § 2-114.

7. In this Counter-Complaint, Tose' and Layden seek a declaration from this Court that the "Site Area" as shown on **Exhibit D** is held in title by Tose' and Layden pursuant to MD CODE REAL PROP § 2-114. Further, Tose' and Layden seek a declaration from this Court that the Plaintiffs and Counter-Defendants, except for those neighboring property owners who require the use of the Site Area and/or Disputed Street in order to access the next public way, do not have any right to use or maintenance of the Disputed Street as claimed in the Complaint filed by the Plaintiffs and Counter-Defendants.

8. The Plaintiffs and Counter-Defendants do not dispute that title to the Site Area is held by Tose' and Layden pursuant to MD CODE REAL PROP § 2-114.¹

9. As indicated on Exhibit D, part of the Site Area is improved with a gravel driveway, a concrete driveway, and part of a macadam roadway for the benefit of the neighboring property owners and the community in general. Tose' and Layden take no issue with these improvements or the continuation of the historic use of these improved areas.

10. The Association, Delia and/or Strum do not have a deed to, and have never otherwise held title to the Disputed Street or the Site Area.

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 devisor, 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.

11. Contrary to the assertions of the Plaintiffs and Counter-Defendants, none of the named Plaintiffs have a valid right to use and/or regulate the use of the Disputed Street, as asserted in the Plaintiffs' Complaint.

12. Tose' and Layden seek a declaration that the area of Magnolia Avenue, described as the Disputed Street is not an area for the Plaintiffs and Counter-Defendants to use or maintain for any purposes; at best the Disputed Area is part of a paper road which was shown on the AOTB Plat and the Revised AOTB Plat as access to a riparian area, however, as a result of sea level rise over the decades, there is no riparian area or beach remaining from what was shown on the 1927 plat. What remains is an unimproved paper road that has not been used as access to the waters of Fishing Creek, or as community recreational area for more than twenty years.

13. In addition, Tose' and Layden seek a declaration that the unimproved portion of the Site Area located in the unimproved section of the paper road of Saratoga Avenue is not riparian or recreation area available for use by the Plaintiffs and Counter-Defendants.

COUNT I

Claim to Quiet Title to Real Property Pursuant to MD CODE REAL PROP § 14-108.

14. Defendants and Counter-Plaintiffs, Tose' and Layden, incorporate the allegations contained in paragraphs 1 through 13 as though fully stated herein and brings this action to quiet title pursuant to MD. REAL PROP. CODE ANN. § 14-108.

15. Tose' and Layden seek to quiet the title to, and resolve any question regarding the fee simple ownership of all of the real property of the Site Area shown on Exhibit A, including the Disputed Street as described in paragraph 7 of the Plaintiffs' Complaint.

16. The Site Area is comprised of the area shown on the plat as one-half of the paper road of Magnolia Avenue and one-half of Saratoga Avenue contiguous with the Tose'-Layden

properties, running to the centerline of the roadbed of the paper road of Saratoga to the waters of the Chesapeake Bay, as well as the property comprised of the paper road between the Tose'-Layden property to the waters of Fishing Creek.

17. Tose' and Layden have been in actual peaceable possession of the entirety of the Site Area under color of title and claim of right since at least 1997, as a result of their ownership of the adjacent properties, specifically 1290, 1299 and 1300 Magnolia Avenue.

18. Statutory support for Tose' and Layden's ownership of the Site Area is found in MD CODE REAL PROP § 2-114.

19. Tose' and Layden seek an order from this Honorable Court declaring that they hold fee simple title to the Site Area.

WHEREFORE, Defendants and Counter-Plaintiffs pray for an Order of this Court determining that they are the absolute owner of that portion of Magnolia Avenue and Saratoga Avenue shown in Exhibit D and described as the Site Area, and enjoining the Plaintiffs and Counter-Defendants from asserting any claim, at law or otherwise, relating to the possession of that area, and awarding the Defendants and Counter-Plaintiffs costs, and for such other and further relief as the nature of the cause may require.

COUNT II

Claim to Quiet Title to Real Property Pursuant to MD CODE REAL PROP § 14-108; Regarding Plaintiffs' Right to Use of the Site Area.

20. Defendants and Counter-Plaintiffs, Tose' and Layden, incorporate the allegations contained in paragraphs 1 through 19 as though fully stated herein.

21. Since at least 1997, Tose' and Layden have maintained a driveway planted bushes, cut the grass, and generally treated the unimproved portions of the Site Area as though it was exclusively theirs.

22. The Site Area has never been used by the members of the community of Arundel-on the Bay for any purpose other than those portions that are shown on the plat as a walkway or driveway to the lots contiguous to or accessed from Saratoga and Magnolia Avenues.

23. The Site Area located between 1290 and 1300 Magnolia Avenue is not used for general riparian activities by members of the community of Arundel on the Bay.

24. The Site Area is not available for use by the Plaintiffs and Counter-Defendants simply because it is an area platted as a paper road in the community.

25. Pursuant to Maryland law, the implied easement of the paper roads extends to the benefit of the adjacent properties, only until it reaches some other street or public way.

26. While in certain cases involving waterfront communities, the rule involving implied easements has been expanded to allow access to designated community beach areas, in the instant case, because there is no community beach area in the vicinity of the Tose'-Layden property, there is no basis for this expanded interpretation of the law.

27. There is no basis under the facts of this case to expand the general rule established in Maryland law that limits the use of an implied easement by plat to those that require the use to reach some other street or public way.²

WHEREFORE, Defendants and Counter-Plaintiffs pray for an Order of this Court declaring that the Plaintiffs and Counter-Defendants do not have a right to use the Site Area for

² See *Kobrine v. Metzger*, 380 Md. 620 (2004)

any riparian purpose or for any general purpose and that the use of the area of the Disputed Street and the unpaved portion of the Site Area is generally restricted to those adjacent property owners who require the use of the Site Area to reach some other street or public way; and enjoining the Plaintiffs and Counter-Defendants from asserting any claim, at law or otherwise, relating to the use or possession of the Disputed Street or the Site Area, and award the Defendants and Counter-Plaintiffs costs, and for such other and further relief as the nature of the cause may require.

COUNT III
Declaratory Judgment

28. Defendants and Counter-Plaintiffs, Tose' and Layden, incorporate the allegations contained in paragraphs 1 through 27 as though fully stated herein.

29. Tose' and Layden acknowledge that the AOTB Plat and Revised AOTB Plat create a limited implied easement for adjacent lot owners in Arundel on the Bay to use the Site Area for pedestrian ingress and egress between their lots and the nearest public road and the waters of the Fishing Creek and the Chesapeake Bay, in accordance with Maryland law, and for no other purpose.

30. The Association improperly claims a right to unlimited use and general riparian use of the Disputed Street and Site Area, and based upon that claim, has asserted a right to use and encouraged and declared an intent to continue to use and encourage others to access and use those portions of the Disputed Street and Site Area for riparian and recreational use.

31. The use of the Disputed Street and Site Area by non-adjacent lot owners for recreational and other purposes constitutes an alteration, enlargement and expansion of the limited implied easement created by the AOTB Plat and Revised AOTB Plat, to the extent provided by Maryland law, in a manner that impedes and interferes with Tose' and Layden's use and enjoyment of their properties and substantially increases the burden on the Disputed Street and Site Area.

32. The use of the Disputed Street and Site Area for recreational and other purposes, without the owners' consent, would constitute a trespass on the Disputed Street and Site Area.

33. There exists a justiciable issue or controversy between the parties involving the rights and liabilities of the parties based upon the Plaintiffs and Counter-Defendants' claims asserted in this action, which controversy may be determined by a judgment of this Court.

34. There exists a justiciable issue or controversy between the parties involving the rights and liabilities of the parties regarding the extent of an implied easement, if any, for the use of the Disputed Street and Site Area, which controversy may be determined by a judgment of this Court.

WHEREFORE, the Defendants and Counter-Plaintiffs pray that this Court determine and adjudicate the rights and liabilities of the parties with respect to the Plaintiffs and Counter-Defendants' assertions of their right to use and access the Disputed Street and Site Area:

a. That Tose' and Layden are the absolute fee simple owner of the Disputed Street and Site Area;

b. That the Plaintiffs and Counter-Defendants do not have an easement or right to use the Disputed Street and Site Area other than for ingress and egress by adjacent owners to the extent provided by Maryland law;

c. That the Defendants and Counter-Plaintiffs are awarded the costs of these proceedings;

d. And for such other and further relief as the nature of this cause may require.

COUNT IV
(Permanent Injunction)

35. The Defendants and Counter-Plaintiffs repeat and incorporate the allegations contained in paragraphs 1 through 34 as though fully stated herein, and bring this action for permanent injunction pursuant to Maryland Rules 15-501 through 15-502.

36. The Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, by words, deeds and acts, claim a right to use and intends to continue to use and to encourage others including community members and AOTB Lot Owners to use the Disputed Street and Site Area for purposes other than to provide ingress and egress by adjacent owners, in accordance with Maryland law.

37. Tose' and Layden have made demands upon the Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, to cease the use of the Disputed Street and Site Area and to cease encouraging the use of the Disputed Street and Site Area by members of the community and other individuals who are not adjacent lot owners entitled to use the Disputed Street and Site Area as set forth in Maryland law.

38. As stated in the Complaint, the Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, encourage the use of the Disputed Street by its members and AOTB Lot Owners for pedestrian ingress and egress, riparian and recreational uses and other similar uses.

39. The Plaintiffs and Counter-Defendants' Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, conduct has caused and continues to cause significant interference with Tose' and Layden's use and enjoyment of their properties.

40. The Plaintiffs and Counter-Defendants' Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum's conduct constitutes a continuing trespass on those portions of the Disputed Street and Site Area.

41. Unless the Plaintiffs and Counter-Defendants are enjoined from using and claiming a right to use, and encouraging others to trespass upon the Disputed Street and Site Area, for purposes that are lawfully permitted, Tose' and Layden will continue to suffer permanent and irreparable injury.

42. The benefits to Tose' and Layden in being granted an injunction are equal to or outweigh the potential harm which the Plaintiffs and Counter-Defendants would incur if the injunction is granted.

43. The public interest is best served by granting the injunction.

WHEREFORE, the Defendants and Counter-Plaintiffs demand that this Court issue an Order granting them a permanent injunction restraining and enjoining the Plaintiffs and Counter-Defendants and others from trespassing on the Disputed Street and Site Area and encouraging others to use the Disputed Street and Site Area for any purpose other than for ingress and egress by adjacent owners to the extent provided by Maryland law. The Defendants and Counter-Plaintiffs further demand that the Court award them the costs of these proceedings, and to provide such other and further relief as the nature of this cause may require.

Respectfully submitted,

/s/

Barbara J. Palmer CPF # 8501010468
Hyatt & Weber, P.A.
200 Westgate Circle, Suite 500
Annapolis, Maryland 21401
(410) 266-0626
bpalmer@hwlaw.com

Certificate of Service

I HEREBY CERTIFY that on this 12th day of August, 2021, a copy of the foregoing Amended Counter-Complaint was filed in accordance with the MDEC system and a copy will be served upon:

Wayne T. Kosmerl
N. Tucker Meneely
125 West Street, 4th Floor
Annapolis, Maryland 21401
(410) 268-6600
kosmerl@councilbaradel.com
meneely@councilbaradel.com
Attorneys for the Plaintiffs and Counter-Defendants

And the individuals named in Attachment "A" hereto.

/s/

Barbara J. Palmer

THIS DEED

Made this 25th day of August, 1997, by and between RAYMOND B. STRANG, party of the first part, and MAURICE B. TOSE and TERESA M.S. LAYDEN, parties of the second part.

WITNESSETH, that in consideration of the sum of Ten Dollars and other good and valuable considerations the said party of the first part does grant and convey unto the parties of the second part in fee simple as tenants by the entirety, all that property situate, lying and being in Anne Arundel County, in the 2 Election District, State of Maryland, and described as follows:

BEING KNOWN AND DESIGNATED AS 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", WHICH PLAT IS RECORDED AMONG THE LAND RECORDS OF ANNE ARUNDEL COUNTY IN LIBER 4207 FOLIO 308.

Being the same property described in Liber 5043, Folio 304.

By the execution of the Deed, the party of the first part hereby certifies under penalties of perjury that the actual consideration paid or to be paid including the amount of any mortgage deed of trust outstanding, is in the sum total of \$0. \$592,500.00

TOGETHER with the building and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

AND the said party of the first part covenants that he/she will warrant specially the property hereby conveyed; and that he/she will execute such further assurances of said land as may be requisite.

Witness his/her hand and seal.

TEST:

[Signature]
RAYMOND B. STRANG

IMP FID SURE \$ (SEAL)	5.00
RECORDING FEE	20.00
RECORDATION T	4,147.50
TR TAX COUNTY	5,925.00
TR TAX STATE	2,962.50
TOTAL	13,060.00

STATE OF MARYLAND
County of Prince George's, TO WIT;

On this 25th day of August, 1997, before me, the undersigned, did personally appear RAYMOND B. STRANG known to me (or satisfactorily proven) to be the person whose name is/are subscribed to the within instrument and did acknowledged that he/she executed the same for the purposes therein contained.

My Commission Expires: 7/14/99

[Signature]
NOTARY PUBLIC

This is to certify that the within instrument was prepared by or under the supervision of Stephen J. Troese, an attorney admitted to practice before the Court of Appeals of Maryland.

[Signature]
Stephen J. Troese

CASE # G1921
REMIT TO: MAURICE B. TOSE and TERESA M.S. LAYDEN
1290 MAGNOLIA AVENUE
ANNAPOLIS, MD 21403

PREPARED BY: TROESE/HUGHES TITLE SERVICES, INC.
7217 HANOVER PARKWAY, STE B
GREENBELT, MD 20770

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Anne Arundel County
WILLIAM F. SMOUSE

[Signature]
AND
10/27/97

ACCT. 2002-9005-2157
ALL LIENS/ARE PAID AS
OF 10/27/97 A.A. COUNTY
BY *[Signature]*

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) RPD 8121, p. 0557, MSA_CE59_8465. Date available 06/18/2005. Printed 03/25/2019.

G1921

5
20
4,147.50
5,925.00
2,962.50
13,060.00

BOOK 6465 PAGE 384

This Deed, MADE THIS 2nd day of February

in the year one thousand nine hundred and Ninety Four by and between Eagle Data Services, Inc. , Grantor,

of Anne Arundel County, Maryland, parties of the first part, and

Maurice B. Tose and Teresa M.S. Layden, husband and wife, Grantees, parties

of the second part.

WITNESSETH, That in consideration of the sum of Six Hundred Thirty Five Thousand and 00/100DOLLARS (\$635,000.00), the actual consideration paid or to be paid, and other good and valuable considerations, the receipt of which is hereby acknowledged;

the said

Eagle Data Services, Inc. ,

do es grant and convey to the said

(CLEAN)

Maurice B. Tose and Teresa M.S. Layden, husband and wife, as tenants by the entirety, their assigns, and unto the survivor of them, his or her personal representatives/successors and assigns , in fee simple, all

that lot of ground situate in Anne Arundel County, Maryland, and described as follows, that is to say:

BEING known and designated as Lot A-R, as shown on a Plat entitled, "Minor Plat of Resubdivision, Lot A-R & C-R, Block 66, Resubdivision of Lots A thru E, Block 66, ARUNDEL ON THE BAY, Election District No. 2, Anne Arundel County, Maryland", dated February 15, 1989 and recorded among the Land Records of Anne Arundel County in Liber 4791, folio 874.

BEING the same lot of ground as described in a Deed dated January 7, 1992 from Jerome A. Kuta, Substitute Trustee, and The Washington Savings Bank, FSB to Eagle Data Services, Inc. recorded among the Land Records of Anne Arundel County, Maryland in Liber 5497, folio 657.

THE GRANTOR HEREBY CERTIFIES THAT THIS CONVEYANCE IS NOT PART OF A TRANSACTION IN WHICH THERE IS A SALE, LEASE, EXCHANGE, OR OTHER TRANSFER OF ALL OR SUBSTANTIALLY ALL THE PROPERTY AND ASSETS OF THE GRANTOR.

RECEIVED FOR TRANSFER State Department of Assessments & Taxation for Anne Arundel County WILLIAM F. SNODGRASS

ACCT. 2002 1051 1600 ALL LIENS ARE PAID AS OF 2/4/94 A.A. COUNTY CONTROLLER BY [Signature]

CP 2nd 2-4-94

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) MMR 6465, p. 0384, MSA_CE59_6809. Date available 06/24/2005. Printed 03/25/2019.

AFFIDAVIT OF PURCHASER REGARDING
EXEMPTION FROM STATE TRANSFER TAX

After being duly sworn, the undersigned Purchaser(s) depose and say the following under oath pursuant to MD. TAX PROP.CODE ANN. SS13-203 (1987 Sup.), as amended by 1988 MD. Laws 197:

1. The undersigned is/are the Grantee(s) of real property located at:

Address: 1299 Magnolia Avenue
Annapolis, Maryland 21403

being more particularly described as Lot/Unit AR, Block 66, Subdivision/Condominium ARUNDEL ON THE BAY, Anne Arundel County, Maryland.

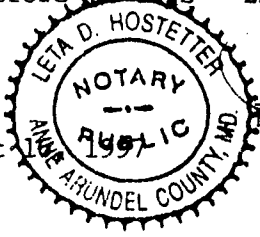
2. Said real property is improved by a residence which the undersigned Grantee(s) will occupy.

3. This affidavit is being executed in order to obtain an exemption from the Maryland State Transfer Tax on the first \$30,000 of consideration payable for an instrument of writing for residentially improved owner-occupied real property pursuant to the aforesaid statute.

Maurice B. Tose
Maurice B. Tose

Teresa M.S. Layden
Teresa M.S. Layden

Subscribed and sworn to before me this 2nd day of February, 1994.



Leta D. Hostetter
Notary Public

My Commission Expires: August

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) MMR 6465, p. 0385, MSA_CE59_6809. Date available 06/24/2005. Printed 03/25/2019.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To HAVE AND TO HOLD the said described lot

of ground and premises to the said

BOOK 6465 PAGE 386

Maurice B. Tose and Teresa M.S. Layden, husband and wife, as tenants by the entireties, their

personal representatives/~~SUCCESSORS~~

and assigns, in fee simple.

AND the said party of the first part hereby covenant^s that he/she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he/she will warrant specially the property hereby granted; and that he/she will execute such further assurances of the same as may be requisite.

WITNESS the name and corporate seal of said body corporate and the signature of Susan Nappi

the

President thereof.

Eagle Data Services, Inc.

Attest:

[Signature]

BY:

Susan Nappi

[Signature]
President

STATE OF Maryland
Anne Arundel County,

, to wit:

I HEREBY CERTIFY, That on this 2nd day of February, 1994,

before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Susan Nappi

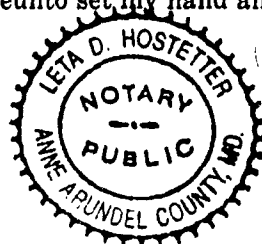
who acknowledged him/her self to be the President of Eagle Data Services, Inc.

a corporation, and that he as such President

being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing in my presence, the name of the corporation by him/her self as such President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires:



[Signature]
Leta D. Hostetter

Notary Public.

August 16, 1997

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

[Signature]

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) MMR 6465, p. 0386, MSA_CE59_6809. Date available 06/24/2005. Printed 03/25/2019.

THIS DEED, made this 27th day of September, 1992, by and between RICHARDS/STRANG DEVELOPMENT, INC., A Maryland Corporation, hereinafter referred to as "GRANTOR" and MAURICE B. TOSE AND TERESA M. S. LAYDEN, hereinafter referred to as "GRANTEES".

WITNESSETH: That for and in consideration of the sum of TWO HUNDRED EIGHTY-ONE THOUSAND AND 00/100 DOLLARS (\$281,000.00), and other good and valuable considerations, the receipt of which is hereby acknowledged, the said GRANTOR has bargained and sold and does hereby grant and convey unto the said MAURICE B. TOSE AND TERESA M. S. LAYDEN, GRANTEES, as Tenants by the Entireties, their assigns, the survivor of them, his or her heirs, personal representatives and assigns, in fee simple, all that lot or parcel of ground, situate, lying and being in the Second Assessment District, Anne Arundel County, State of Maryland, and more particularly described as follows:

BEING KNOWN AND DESIGNATED as Lot C-R as shown on a Plat entitled, "Minor Plat of Resubdivision Lots A-R and C-R, Block 66, A Resubdivision of Lots A-E, Block 66, of "ARUNDEL ON THE BAY", which said Plat recorded among the Land Records of Anne Arundel County in Liber folio 874.

BEING a part of the same property which by deed dated August 23, 1988 and recorded among the Land Records of Anne Arundel County in Liber 4691, folio 94, was granted and conveyed by O'Donnald H. Sheppard unto

RECORD FEE	15.00
RECORD TAX	1967.00
TRANS TAX	1405.00
ENTRY TAX	2010.00
POSTAGE	.50
TOTAL \$6397.50	

09/30/92
MARY H. ROSE
AN CO. CIRCUIT COURT



RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Anne Arundel County
KENNETH H. TSCHEMME

by PLS and Date 9-30-92

NOT 2-002-90043522
ALL LIENS ARE PAID
OF 9/30/92 A.A.C.
CONTROLLER BY [Signature]

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) MMR 5770, p. 0034, MSA_CE59_6114. Date available 06/24/2005. Printed 03/25/2019.

5
1967
1405
2810
500
50

Richards/Strang Development, Inc., A Maryland Corporation.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, ways, waters, privileges and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the lot of ground above described and mentioned and hereby intended to be conveyed, unto and to the proper use and benefit of the said MAURICE B. TOSE AND TERESA M. S. LAYDEN, GRANTEES, as tenants by the entireties, the survivor of them, his or her personal representatives, heirs and assigns, in fee simple.

AND the said GRANTOR covenants that it has not done or suffered to be done, any act, matter or thing whatsoever to encumber the property hereby conveyed; that it will warrant specially the title to the property hereby granted and that it will execute such other and further assurances of the same as may be requisite.

The within Grantor herein certifies that thsi conveyance is not a part of a transaction in which there is a sale, exchange or other transfer of all or substantially all of the assets or property of the Grantor corporation.

WITNESS the hand and seal of the said GRANTOR, by its President,

RAYMOND B. STRANG, JR.

WITNESS:

RICHARDS/STRANG DEVELOPMENT, INC.

[Handwritten Signature]

[Handwritten Signature]

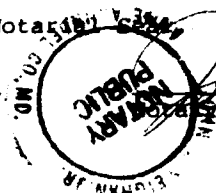
(SEAL)
President

STATE OF MARYLAND, ANNE ARUNDEL COUNTY, to wit:

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) MMR 5770, p. 0035, MSA_CE59_6114. Date available 06/24/2005. Printed 03/25/2019.

I HEREBY CERTIFY, that on this 29th day of September, 1992, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared RICHARD B. STRANG, President of Richards/Strang Development, Inc., and he acknowledged the foregoing Deed to be the act and deed of the said body corporate, and further, that he is authorized to make this affidavit.

WITNESS my hand and Notary Seal



Richard B. Strang
Notary Public

My Commission Expires:

12/1/93

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

John W. Weigler, Jr.
Attorney

Maurice Tose

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.



ATTACHMENT "A"
NECESSARY PARTIES
ADDITIONAL COUNTER-DEFENDANTS

List of Property Owners within Arundel on the Bay

Mailing Address

Premises Address

3400 Niagara LLC
c/o Patrick O'Toole
3403 Niagara Road
Annapolis, MD 21403

3400 Niagara Avenue

Arundel on the Bay Prop Owners
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Annapolis, MD 21403

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Saratoga Avenue

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3430 Rockway Avenue
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Private Road

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Dianne M. Fontanesi, Trustee
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Diane L. Ruegg, Trustee
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Tedi S. Osias
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1337 Magnolia Avenue

Chimene Liburd Brown Trustee
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3408 Chesapeake Walk

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P C Gordon
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Ronald A. Hames
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Barbara M. Stafford
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Karina Stone
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De Jesus Noemi Enchautegui
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Tujuana P. White
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Betsy Elaine Read 137 Green Wood Creek Road Queenstown, MD 21658	3418 Newport Ave
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Jacqueline M. Rybacki 3436 Narragansett Avenue Annapolis, MD 21403	3434 Narragansett Ave
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Diane S. Wilkerson 3524 Cohasset Avenue Annapolis, MD 21403	3522 Cohasset Avenue
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Randy B. Wolfensberger Meghan Brown 3448 Narragansett Avenue Annapolis, MD 21403	

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Ximena O Grimes
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Gail J. Cook
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Josie Schiavone
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PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., *et al.*

Plaintiffs

v.

MAURICE B. TOSE', *et ux*

Defendants

* * * * *

MAURICE B. TOSE'
TERESA M. LAYDEN

Counter-Plaintiffs

v.

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

and

~~DAVID DELIA~~ *

~~and~~ *

~~LORI STROM~~ All Property Owners in Arundel on the Bay (Attachment "A")

*

Counter-Defendants

* * * * *

**AMENDED COUNTER-COMPLAINT TO QUIET TITLE,
FOR DECLARATORY RELIEF AND FOR INJUNCTIVE RELIEF**

Defendants and Counter-Plaintiffs, Maurice B. Tose' and Teresa M. Layden, by and through their attorneys, Barbara J. Palmer and Hyatt & Weber, P.A., files this Counter-Complaint against the Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the

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

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Bay, Inc., David Delia and Lori Strum, and in accordance with the provisions of the Order of this Court dated June 14, 2021, the Defendants and Counter-Plaintiffs are naming the approximately 400 property owners set forth in Attachment “A” as necessary parties and additional Counter-Defendants, and in support thereof, state:

1. The Property Owners Association of Arundel on the Bay, Inc. (the “Association” or “AOTB”) is a Maryland corporation which maintains its principal place of business and owns real property located in Anne Arundel County, Maryland. The Association owns property within the subdivision of Arundel on the Bay, as shown on a plat created in 1890 entitled “Arundel on the Bay,” which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book S.H. 34, folio 509 (the “AOTB Plat” Exhibit B of the Plaintiffs’ Complaint) and on a revised plat created in 1927 entitled “Revised Plat of Arundel on the Bay,” which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book 9, folio 25 (the “Revised AOTB Plat” which is Plaintiffs’ Exhibit C) The Association has made various claims over the years concerning the community’s rights to own or use the platted roads in the community.

2. Plaintiff and Counter-Defendant, David Delia is a property owner in the community of Arundel on the Bay and is a Plaintiff in this action claiming extensive rights in the property at issue in this action referred to by the Plaintiffs as the “Disputed Street,” held in title by the Defendants and Counter-Plaintiffs.

3. Plaintiff and Counter-Defendant, Lori Strum is a property owner in the community of Arundel on the Bay and is a Plaintiff in this action claiming extensive rights in the property at issue in this action referred to by the Plaintiffs as the “Disputed Street,” held in title by the Defendants and Counter-Plaintiffs. Collectively, the Association, Delia and Strom are referred to herein as the “Plaintiffs and Counter-Defendants”.

3A. In the Consent Order entered in this action on June 14, 2021, this Honorable Court found that all property owners in the community of Arundel on the Bay are necessary parties and that complete relief cannot be afforded to the individuals or entity that are presently parties, unless all those individuals or entities owning property in the community of Arundel on the Bay are joined in this action. Therefore, the Defendants and Counter-Plaintiffs file this Amended Counter-Complaint for the purposes of joining the individuals set forth on Attachment "A: as parties to this action.

4. Defendants and Counter-Plaintiffs, Maurice B. Tose' and Teresa M. Layden ("Tose' and Layden") own property in the community of Arundel on the Bay commonly known as 1290, 1299 and 1300 Magnolia Avenue, Annapolis, Maryland 21403. These properties are more particularly described in deeds recorded in the Land Records of Anne Arundel County as follows:

A. 1290 Magnolia Avenue—Book 8121 page 557, dated August 25, 1997, described as Lot L-1 Block 67; **Exhibit A**;

B. 1299 Magnolia Avenue—Book 6465 page 384, dated February 2, 1994, described as Lot A-R Block 66; **Exhibit B**; and

C. 1300 Magnolia Avenue--Book 5770 page 34, dated September 27, 1992, described as Lot C-R Block 66; **Exhibit C**.

Collectively, these three parcels will be referred to as the "Tose'-Layden Properties".

5. As indicated on the Boundary Survey of the Tose'-Layden Properties (**Exhibit D**), 1300 Magnolia Avenue and 1290 Magnolia Avenue are located across the paper road of a section of Magnolia Avenue, as a result, Tose' and Layden hold title to the street bed of Magnolia Avenue between these lots pursuant to MD CODE REAL PROP § 2-114. This is the section of property which

appears to be described as the “Disputed Street” in Paragraph 7 of the Complaint filed by the Plaintiffs.

6. Further, as a result of their ownership of Lot A-R Block 66 (1299 Magnolia Avenue) Tose’ and Layden are the titleholders to one-half of Saratoga Avenue to the center of the street, pursuant to MD CODE REAL PROP § 2-114.

7. In this Counter-Complaint, Tose’ and Layden seek a declaration from this Court that the “Site Area” as shown on **Exhibit D** is held in title by Tose’ and Layden pursuant to MD CODE REAL PROP § 2-114. Further, Tose’ and Layden seek a declaration from this Court that the Plaintiffs and Counter-Defendants, except for those neighboring property owners who require the use of the Site Area and/or Disputed Street in order to access the next public way, do not have any right to use or maintenance of the Disputed Street as claimed in the Complaint filed by the Plaintiffs and Counter-Defendants.

8. The Plaintiffs and Counter-Defendants do not dispute that title to the Site Area is held by Tose’ and Layden pursuant to MD CODE REAL PROP § 2-114.¹

9. As indicated on Exhibit D, part of the Site Area is improved with a gravel driveway, a concrete driveway, and part of a macadam roadway for the benefit of the neighboring property owners and the community in general. Tose’ and Layden take no issue with these improvements or the continuation of the historic use of these improved areas.

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.

10. The Association, Delia and/or Strum do not have a deed to, and have never otherwise held title to the Disputed Street or the Site Area.

11. Contrary to the assertions of the Plaintiffs and Counter-Defendants, none of the named Plaintiffs have a valid right to use and/or regulate the use of the Disputed Street, as asserted in the Plaintiffs' Complaint.

12. Tose' and Layden seek a declaration that the area of Magnolia Avenue, described as the Disputed Street is not an area for the Plaintiffs and Counter-Defendants to use or maintain for any purposes; at best the Disputed Area is part of a paper road which was shown on the AOTB Plat and the Revised AOTB Plat as access to a riparian area, however, as a result of sea level rise over the decades, there is no riparian area or beach remaining from what was shown on the 1927 plat. What remains is an unimproved paper road that has not been used as access to the waters of Fishing Creek, or as community recreational area for more than twenty years.

13. In addition, Tose' and Layden seek a declaration that the unimproved portion of the Site Area located in the unimproved section of the paper road of Saratoga Avenue is not riparian or recreation area available for use by the Plaintiffs and Counter-Defendants.

COUNT I

Claim to Quiet Title to Real Property Pursuant to MD CODE REAL PROP § 14-108.

14. Defendants and Counter-Plaintiffs, Tose' and Layden, incorporate the allegations contained in paragraphs 1 through 13 as though fully stated herein and brings this action to quiet title pursuant to MD. REAL PROP. CODE ANN. § 14-108.

15. Tose' and Layden seek to quiet the title to, and resolve any question regarding the fee simple ownership of all of the real property of the Site Area shown on Exhibit A, including the Disputed Street as described in paragraph 7 of the Plaintiffs' Complaint.

16. The Site Area is comprised of the area shown on the plat as one-half of the paper road of Magnolia Avenue and one-half of Saratoga Avenue contiguous with the Tose'-Layden properties, running to the centerline of the roadbed of the paper road of Saratoga to the waters of the Chesapeake Bay, as well as the property comprised of the paper road between the Tose'-Layden property to the waters of Fishing Creek.

17. Tose' and Layden have been in actual peaceable possession of the entirety of the Site Area under color of title and claim of right since at least 1997, as a result of their ownership of the adjacent properties, specifically 1290, 1299 and 1300 Magnolia Avenue.

18. Statutory support for Tose' and Layden's ownership of the Site Area is found in MD CODE REAL PROP § 2-114.

19. Tose' and Layden seek an order from this Honorable Court declaring that they hold fee simple title to the Site Area.

WHEREFORE, Defendants and Counter-Plaintiffs pray for an Order of this Court determining that they are the absolute owner of that portion of Magnolia Avenue and Saratoga Avenue shown in Exhibit D and described as the Site Area, and enjoining the Plaintiffs and Counter-Defendants from asserting any claim, at law or otherwise, relating to the possession of that area, and awarding the Defendants and Counter-Plaintiffs costs, and for such other and further relief as the nature of the cause may require.

COUNT II

Claim to Quiet Title to Real Property Pursuant to MD CODE REAL PROP § 14-108; Regarding Plaintiffs' Right to Use of the Site Area.

20. Defendants and Counter-Plaintiffs, Tose' and Layden, incorporate the allegations contained in paragraphs 1 through 19 as though fully stated herein.

21. Since at least 1997, Tose' and Layden have maintained a driveway planted bushes, cut the grass, and generally treated the unimproved portions of the Site Area as though it was exclusively theirs.

22. The Site Area has never been used by the members of the community of Arundel-on the Bay for any purpose other than those portions that are shown on the plat as a walkway or driveway to the lots contiguous to or accessed from Saratoga and Magnolia Avenues.

23. The Site Area located between 1290 and 1300 Magnolia Avenue is not used for general riparian activities by members of the community of Arundel on the Bay.

24. The Site Area is not available for use by the Plaintiffs and Counter-Defendants simply because it is an area platted as a paper road in the community.

25. Pursuant to Maryland law, the implied easement of the paper roads extends to the benefit of the adjacent properties, only until it reaches some other street or public way.

26. While in certain cases involving waterfront communities, the rule involving implied easements has been expanded to allow access to designated community beach areas, in the instant case, because there is no community beach area in the vicinity of the Tose'-Layden property, there is no basis for this expanded interpretation of the law.

27. There is no basis under the facts of this case to expand the general rule established in Maryland law that limits the use of an implied easement by plat to those that require the use to reach some other street or public way.²

WHEREFORE, Defendants and Counter-Plaintiffs pray for an Order of this Court declaring that the Plaintiffs and Counter-Defendants do not have a right to use the Site Area for

² See *Kobrine v. Metzger*, 380 Md. 620 (2004)

any riparian purpose or for any general purpose and that the use of the area of the Disputed Street and the unpaved portion of the Site Area is generally restricted to those adjacent property owners who require the use of the Site Area to reach some other street or public way; and enjoining the Plaintiffs and Counter-Defendants from asserting any claim, at law or otherwise, relating to the use or possession of the Disputed Street or the Site Area, and award the Defendants and Counter-Plaintiffs costs, and for such other and further relief as the nature of the cause may require.

COUNT III
Declaratory Judgment

28. Defendants and Counter-Plaintiffs, Tose' and Layden, incorporate the allegations contained in paragraphs 1 through 27 as though fully stated herein.

29. Tose' and Layden acknowledge that the AOTB Plat and Revised AOTB Plat create a limited implied easement for adjacent lot owners in Arundel on the Bay to use the Site Area for pedestrian ingress and egress between their lots and the nearest public road and the waters of the Fishing Creek and the Chesapeake Bay, in accordance with Maryland law, and for no other purpose.

30. The Association improperly claims a right to unlimited use and general riparian use of the Disputed Street and Site Area, and based upon that claim, has asserted a right to use and encouraged and declared an intent to continue to use and encourage others to access and use those portions of the Disputed Street and Site Area for riparian and recreational use.

31. The use of the Disputed Street and Site Area by non-adjacent lot owners for recreational and other purposes constitutes an alteration, enlargement and expansion of the limited implied easement created by the AOTB Plat and Revised AOTB Plat, to the extent provided by Maryland law, in a manner that impedes and interferes with Tose' and Layden's use and enjoyment of their properties and substantially increases the burden on the Disputed Street and Site Area.

32. The use of the Disputed Street and Site Area for recreational and other purposes, without the owners' consent, would constitute a trespass on the Disputed Street and Site Area.

33. There exists a justiciable issue or controversy between the parties involving the rights and liabilities of the parties based upon the Plaintiffs and Counter-Defendants' claims asserted in this action, which controversy may be determined by a judgment of this Court.

34. There exists a justiciable issue or controversy between the parties involving the rights and liabilities of the parties regarding the extent of an implied easement, if any, for the use of the Disputed Street and Site Area, which controversy may be determined by a judgment of this Court.

WHEREFORE, the Defendants and Counter-Plaintiffs pray that this Court determine and adjudicate the rights and liabilities of the parties with respect to the Plaintiffs and Counter-Defendants' assertions of their right to use and access the Disputed Street and Site Area:

- a. That Tose' and Layden are the absolute fee simple owner of the Disputed Street and Site Area;
- b. That the Plaintiffs and Counter-Defendants do not have an easement or right to use the Disputed Street and Site Area other than for ingress and egress by adjacent owners to the extent provided by Maryland law;
- c. That the Defendants and Counter-Plaintiffs are awarded the costs of these proceedings;
- d. And for such other and further relief as the nature of this cause may require.

COUNT IV
(Permanent Injunction)

35. The Defendants and Counter-Plaintiffs repeat and incorporate the allegations contained in paragraphs 1 through 34 as though fully stated herein, and bring this action for permanent injunction pursuant to Maryland Rules 15-501 through 15-502.

36. The Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, by words, deeds and acts, claim a right to use and intends to continue to use and to encourage others including community members and AOTB Lot Owners to use the Disputed Street and Site Area for purposes other than to provide ingress and egress by adjacent owners, in accordance with Maryland law.

37. Tose' and Layden have made demands upon the Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, to cease the use of the Disputed Street and Site Area and to cease encouraging the use of the Disputed Street and Site Area by members of the community and other individuals who are not adjacent lot owners entitled to use the Disputed Street and Site Area as set forth in Maryland law.

38. As stated in the Complaint, the Plaintiffs and Counter-Defendants, Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, encourage the use of the Disputed Street by its members and AOTB Lot Owners for pedestrian ingress and egress, riparian and recreational uses and other similar uses.

39. The Plaintiffs and Counter-Defendants' Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum, conduct has caused and continues to cause significant interference with Tose' and Layden's use and enjoyment of their properties.

40. The Plaintiffs and Counter-Defendants' Property Owners Association of Arundel on the Bay, Inc., David Delia and Lori Strum's conduct constitutes a continuing trespass on those portions of the Disputed Street and Site Area.

41. Unless the Plaintiffs and Counter-Defendants are enjoined from using and claiming a right to use, and encouraging others to trespass upon the Disputed Street and Site Area, for purposes that are lawfully permitted, Tose' and Layden will continue to suffer permanent and irreparable injury.

42. The benefits to Tose' and Layden in being granted an injunction are equal to or outweigh the potential harm which the Plaintiffs and Counter-Defendants would incur if the injunction is granted.

43. The public interest is best served by granting the injunction.

WHEREFORE, the Defendants and Counter-Plaintiffs demand that this Court issue an Order granting them a permanent injunction restraining and enjoining the Plaintiffs and Counter-Defendants and others from trespassing on the Disputed Street and Site Area and encouraging others to use the Disputed Street and Site Area for any purpose other than for ingress and egress by adjacent owners to the extent provided by Maryland law. The Defendants and Counter-Plaintiffs further demand that the Court award them the costs of these proceedings, and to provide such other and further relief as the nature of this cause may require.

Verification

~~I, Maurice B. Tose', hereby swear and affirm under the penalties of perjury that the matters and facts contained herein are true and correct to the best of my personal knowledge, information and belief.~~

Maurice B. Tose'

Respectfully submitted,

/s/
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Certificate of Service

I HEREBY CERTIFY that on this 12th day of ~~February 2020~~August, 2021, a copy of the foregoing Amended Counter-Complaint was filed in accordance with the MDEC system and a copy will be ~~electronically~~-served upon:

Formatted: Superscript

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Attorneys for the Plaintiffs and Counter-Defendants

And the individuals named in Attachment "A" hereto.

/s/
Barbara J. Palmer