

IN THE
COURT OF SPECIAL APPEALS OF MARYLAND

SEPTEMBER TERM 2013

No. 00542

PAMELA J. BUCKENMAIER, *et al.*

Appellants

v.

THE KEY SCHOOL

Appellee

APPEAL FROM THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY
(THE HONORABLE PAUL G. GOETZKE)

**BRIEF OF ANNAPOLIS ROADS RESIDENT AND PROPERTY OWNER
WENDY HARRIS AS AMICUS CURIAE**

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STATEMENT OF THE CASE

Wendy Harris incorporates by reference the Statement of the Case from Appellee's brief.

QUESTION PRESENTED

Did the trial court properly grant final judgment in favor of The Key School on Appellants' injunctive relief claim in their amended complaint?

STATEMENT OF THE FACTS

Wendy Harris incorporates by reference the Statement of the Facts from Appellee's brief and supplements with the following:

At trial on April 23, 2013, Appellants presented Exhibit 8 – “Key School Preliminary Plan September2012.jpg.” (E 97, 192). But while seeking to enjoin these proposed recreational uses which included tennis courts, Appellants failed to disclose the incumbent tennis courts on the golf course property (“Property”) - they are depicted by a rectangular object on the far right side of the document. There was a brief reference to the tennis courts during the testimony of Jerome May. (E 144). As to other recreational activities in the Annapolis Roads community, the trial court took judicial notice of the former swimming complex: “I swam in it many years ago, in that pool.” (E 119).

HISTORICAL BACKGROUND

Amicus Curiae, Annapolis Roads Property Owners' Association ("ARPOA") acknowledges the history of the "'life sports' or 'country club sports': golf, swimming, and tennis" in Annapolis Roads. (ARPOA Br. at p. 7). ARPOA even concedes that tennis courts once existed on the Property. (*Id.* at n. 3). However, ARPOA neglects the inconvenient fact that these tennis courts were in play when the Declaration of Restriction on Use was recorded in 1987 ("Declaration").

The Annapolis Roads community has a long history of enjoying vibrant social and recreational activities. As observed by our eminent historian Jim Gibb: "Annapolis Roads rocked!" (*Annapolis Roads, An Olmstead Designed Community* (2012), by James G. Gibb at p. 43). Mr. Gibb also explained that the Declaration settled the threat of "high rise condominiums" being developed by the "syndicate" on the Property. (*Id.* at pp. 48 - 49). This understandable concern about massive construction in the heart of Annapolis Roads gives perspective to the Declarants' term "other recreational uses." It was a broad and inclusive phrase to permit recreation and preclude development.

STATEMENT OF INTEREST

This amicus curiae brief is filed on behalf of Wendy Harris, an Annapolis Roads resident, property owner and member of ARPOA. She objects to ARPOA's position that

The Key School's proposed uses of the Property will adversely impact her dwelling or enjoyment of her community. (ARPOA Br. at p. 4). Ms. Harris and her neighbors have a vital interest in supporting a long-term Property owner whose sustainable use is consistent with the Declaration's covenants and enhances a greater living environment. The Key School has an honorable history of being a good neighbor in the Hillsmere Community. Ms. Harris and many other Annapolis Roads residents welcome The Key School to our neighborhood and are most grateful for their stewardship of the Property.

ARGUMENT

Wendy Harris incorporates by reference the Argument from Appellee's brief and supplements with the following:

The Property uses proposed by The Key School are not precluded by the Declaration and the trial court properly denied Appellants' claim for an injunction. The Declaration limits use not users. (E 59 - 61). Appellants and ARPOA both ask this Court to focus on the educational characteristic of the user, The Key School. Quite simply, such guidance ignores the plain directive of the Declaration: "Declarants reserve to themselves, their personal representatives, heirs, successors and assigns *the sole discretion to determine... (3) by whom the subject property may be used.*" (E 60) (emphasis added). In its ruling, the trial court correctly reviewed the evidence by focusing solely on the proposed use of the Property. (E 230, lines 9 - 13).

ARPOA's brief attempts to define recreational use with the maxim: "Recreational is a mind set." (ARPOA Br. at p. 9). Respectfully, this statement shows a lack of fidelity to the Declaration and its covenants which have protected our community from development for over 25 years. It asks the Court to divine the specific intent of *users* to determine whether the proposed *uses* in this case are permissible. This construct is irrelevant and has no bearing on the issue before this Court. The cases cited by ARPOA involve the interpretation of statutes and zoning ordinances. The germane document for this case is the Declaration. Its terms and limitations are clear and unambiguous.

CONCLUSION

The trial court properly found that the Appellants failed to meet their burden of proving an impermissible use of the Property by The Key School. In so holding, the trial court thoroughly considered the Declaration's terms and meaning and therefore its ruling should be affirmed.

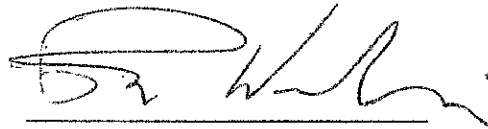
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, copies of this Brief were sent via first-class mail to counsel for Appellant, Thomas A. Deming, Esq., 506 Sunwood Lane, Annapolis, Maryland 21409, counsel for Appellee, Rignal W. Baldwin, Jr. and Kemp W. Hammond, Baldwin, Kagan & Gormley, LLC, 112 West Street, Annapolis, Maryland 21401, and counsel for ARPOA, L. Teri Spradlin-Dahn, Esq., 1910 Town Centre Blvd., Suite 250, Annapolis, Maryland 21401.


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STATEMENT OF TYPE STYLE AND POINT SIZE

Per Md. Rule 8-504(a)(9), this Brief was printed using Times New Roman, 13 point type proportionately spaced and 2.0 spacing between lines.

