

CD Transcription of  
**CD Transcription Key School**

Date: April 23, 2013 on Tuesday

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IN THE CIRCUIT COURT FOR  
ANNE ARUNDEL COUNTY, MARYLAND  
PAMELA J. BUCKENMAIER, ET AL.,  
Plaintiffs  
v. CASE NO: C-11165665  
KEY SCHOOL, ET AL.,  
Defendants.

Hearing Date: Tuesday, April 23, 2013  
Held Before: Judge Paul G. Goetzke

APPEARANCES:  
On Behalf of the Plaintiffs:  
Thomas A. Deming, Esquire  
On Behalf of the Key School:  
Rignal Baldwin, Esquire  
On Behalf of the Key School:  
Kemp Hammond, Esquire, Co-counsel  
On Behalf of George and Linda Graefe:  
Daniel Mellin, Esquire

1 P R O C E E D I N G S

2 - - - - -

3 THE COURT: We'll call again

4 Buckenmaier v. Key School, Case No. C-11165665.

5 Introduce yourselves, Counsel, please,  
6 and spell your name when you do.

7 MR. DEMING: Thomas A. Deming,  
8 D-E-M-I-N-G, counsel for plaintiffs, Pamela and  
9 Chester Buckenmaier and Greg and Trisha Scott.

10 MR. BALDWIN: Rignal Baldwin,  
11 B-A-L-D-W-I-N, on behalf of defendant, Key School.

12 MR. HAMMOND: Kemp Hammond,  
13 H-A-M-M-O-N-D. I'm co-counsel for defendant, Key  
14 School.

15 MR. MELLIN: Daniel Mellin,  
16 M-E-L-L-I-N, for the Graefes, George and Linda  
17 Graefe.

18 THE COURT: All right. Just bear with  
19 me.

20 All right. The posture of the case is  
21 that the Court has been asked to rule on a motion

1 pursuant to Rule 2-519 for judgment. The defendants  
2 have asked for that, and I will get to the standard  
3 that controls consideration for such a motion. But  
4 in as much as the rules related to injunctions  
5 require either a memorandum or a statement of the  
6 decision on the record, I will be somewhat lengthy  
7 here, and I would ask for your patience on this.

8           Firstly, with regard to the background  
9 and procedural history of the case, that's already  
10 stated in my prior memorandum opinions set forth in  
11 some detail when I ruled upon the request for  
12 declaratory relief, so I would adopt that as if  
13 stated here with the following, as they say, bring to  
14 dates the following more recent events.

15           There were amended pleadings, which I  
16 reviewed. There were motions filed, most of which  
17 were determined to be moot. And the matter proceeded  
18 here today for a decision, based only on the  
19 surviving request for relief, and that is the request  
20 for a permanent -- permanent injunction.

21           Now I want to read specifically what

1 the amended complaint, or the complaint most recently  
2 filed. I believe there's only been one amended  
3 complaint, but in any event, the relief requested,  
4 and this is at page 14 of this pleading. The  
5 plaintiffs would like the Court to enter an  
6 injunction as follows: I notice that the -- Counsel,  
7 would you look at page 14. I'm certain I have the  
8 correct document, but A and B seem to request a  
9 declaration, which the Court has already addressed.

10 MR. DEMING: Your Honor, did you want  
11 me to address that?

12 THE COURT: Yeah. Please, if you  
13 would. Why is that injunctive as opposed to  
14 declaratory relief?

15 MR. DEMING: Well, I had actually  
16 because of the uniqueness of this case, I had  
17 actually above in Paragraph 35 included a reference  
18 to a case, even though that's not an allegation of  
19 fact. But my understanding from Maryland case law  
20 with regard to the framing of the judgment of relief,  
21 when it comes to something like a restrictive

1 covenant, is that in order to frame the injunctive  
2 relief, the Court has to construe the covenant.

3 THE COURT: Right.

4 MR. DEMING: And so --

5 THE COURT: All right. Well, just --

6 MR. DEMING: -- Paragraph A and B were  
7 simply asking the Court to construe the covenants.

8 THE COURT: Okay. All right. Well,  
9 I'll interpret it in that manner because I suspect I  
10 would end up doing that in any event.

11 All right. So the specific request  
12 for relief are the following: The plaintiffs would  
13 like the Court to find and declare that the use of  
14 the golf course property by the Key School for  
15 Outdoor Education Environmental Studies and for  
16 Student Athletic Facilities is an educational use of  
17 the property that is not permitted under the  
18 declaration of restrictions on use.

19 B finds and declares that the use of  
20 the golf course property by the Key School for  
21 Outdoor Education Environmental Studies and for

1 Student Athletic Facilities is not a recreational use  
2 quote, closed quote, of the property that is  
3 permitted under the declaration on use. And C  
4 enjoins the Key School and George E. Graefe, III, and  
5 Linda Graefe -- I apologize for the pronunciation --  
6 acting as agents for the Key School under Paragraph 7  
7 of the January 8, 2012, agreement of sale from using  
8 the golf course property in the future for Outdoor  
9 Education Environmental Studies and for other -- I'm  
10 sorry -- for Student Athletics Facilities. There's  
11 also a general request for relief.

12 As used in these findings and the  
13 Court's ruling, the property being referred to is, of  
14 course, that property defined in the Court's  
15 declaration, or decision, with regard to the  
16 declaratory relief.

17 Now I just indicated to the parties  
18 that the request for relief is an injunction in this  
19 case, and the law on injunctions, specifically,  
20 permanent injunctions, which is requested here, is  
21 set fourth in Maryland Rules 15-501@Sec. We are

1 dealing here with a final injunction, so what we're  
2 talking about, of course, is an order mandating or  
3 prohibiting a specific act.

4 One of you lawyers want to help me  
5 out? I need the language out of the Maryland Rules  
6 on the permanent injunctions.

7 MR. DEMING: That's 15-501(a).

8 THE COURT: Yeah, that's what I just  
9 read. There's no -- okay. All right. Well, that  
10 seems to be it. All right. So in any event, the  
11 decision in this matter is what we call permanent  
12 injunction, and that is exactly what it says,  
13 subject, of course, to an appeal and my being  
14 reversed, or this Court being reversed. It will  
15 determine the use whether they are able to do it or  
16 not as ultimately resolved in this case.

17 If I could now put this particular  
18 motion in posture, it's what we call Rule 2-519  
19 motion for judgment, and it provides that "A party  
20 may move for judgment on any or all the issues in any  
21 action at the close of the evidence offered by an



1 opposing party. The moving party shall state with  
2 particularity all reasons why the motion should be  
3 granted." We've heard those arguments. "No  
4 objection to motion is necessary," and "a party does  
5 not waive the right to make a motion by introducing  
6 evidence during the presentation of an opposing  
7 party's case."

8 Now how does the Court dispose of such  
9 a motion? "When a defendant moves for a judgment at  
10 the close of the evidence offered by the plaintiff in  
11 an action tried by the Court," and that's what we  
12 have here. "The Court may proceed as the trier of  
13 fact to determine the facts and render a judgment  
14 against the plaintiff or may decline to enter a  
15 judgment until the close of all the evidence. When a  
16 motion for judgment" -- I beg your pardon.

17 All right. Now with regard to a  
18 denial of such a motion, "A party who moves for a  
19 judgment at the close of the evidence offered by the  
20 other party may offer evidence in the event that the  
21 motion is not granted without having reserved the

1 right to do so." And in the long story short of that  
2 application here is the following, if you will just  
3 bear with me again.

4 All right. To the extent that the  
5 Court determines using that standard that the  
6 plaintiff has not demonstrated that the declarations  
7 preclude a use depicted on Exhibit 8, and this is a  
8 plat of some kind in the drawing rendered for  
9 purposes of the Key School's project. So to the  
10 extent that the plaintiff has not yet demonstrated  
11 that the declaration precludes a use depicted on  
12 Exhibit 8, that use will not be enjoined.

13 To the extent, using that same  
14 standard, the Court is not able to determine one way  
15 or another, as a matter of law, whether a use  
16 depicted on that drawing is precluded, then the case  
17 goes forward with regard to that particular use. And  
18 then plaintiff would have -- the plaintiffs would be  
19 obliged to carry its burden going forward. Of  
20 course, the next evidence we would hear defendants  
21 chose to produce evidence would be their evidence.

1                   Now one point I'd like to make is my  
2                   decision here today is only with request for an  
3                   injunction based upon that document. Nothing I rule  
4                   upon here will alleviate anybody from complying with  
5                   any zoning or building requirement, or frankly,  
6                   anything else beyond what's specifically provided in  
7                   any injunction I were to may enter.

8                   The language often reviewed in this  
9                   case that is of importance provides that for a  
10                  consideration of the premises and no monetary  
11                  consideration, the declarants do hereby henceforth  
12                  and forever restrict the subject property to one or  
13                  more of any combination of the following uses: (1),  
14                  golf course with or without a clubhouse and/or  
15                  pro-shop; (2), other recreational uses; (3),  
16                  horticultural nurseries; (4), conservation uses; (5),  
17                  accessory uses, including vehicular parking. You can  
18                  etch them with any of those first four enumerated  
19                  uses, also rights of way and/or easements to provide  
20                  access to inaccessible areas and temporary and  
21                  permanent, primary and accessory structures for the

1 use listed up in 1 through 6. And, of course, to the  
2 extent, if possible, you're allowed to have no use of  
3 it.

4 There was a provision, and I think I  
5 asked Mr. Hammond where it refers to who could use  
6 the property, and I'm not sure that I got the right  
7 document. Is that in the declaration? Is it 2 or 3?

8 MR. HAMMOND: Paragraph 2, and then  
9 there's a little 3.

10 THE COURT: That's what I thought he  
11 said 2. Okay. Those provisions provide as follows:  
12 Declarants reserve to themselves their personal  
13 representatives, heirs, successors, and assigns the  
14 sole discretion to determine; (1), whether the  
15 subject property is to be used at all, and if it is  
16 to be used; (2), to which of the above use -- above  
17 listed uses -- use or uses the subject property is to  
18 be put the use and uses made on the subject property,  
19 if any, being subject to change from time to time to  
20 some other listed use or uses; and (3), by whom  
21 subject property would be used. Item 3, the

1 declaration of restriction on use does not grant  
2 conveyor owe as or give otherwise create in any  
3 person, firm, corporation, or unincorporated  
4 association any right, title, interest, or estate in  
5 or to the subject property, except at the Annapolis  
6 Roads Property Owner's Association, Incorporated.  
7 It's successors and assigns in any -- I'm sorry --  
8 and/or any person or persons owning a residential lot  
9 in the subdivision of Annapolis may prosecute any  
10 legal proceeding to enforce this declaration on use,  
11 provided the only relief sought is that of an  
12 injunction against the violation of the provisions  
13 herein.

14 So the Court believes that it is  
15 appropriate and, in fact, necessary for me not only  
16 to address whether the Exhibit 8 proposes an accepted  
17 use, but also whether it can be -- whether it can be  
18 used by Key School or anybody else at the discretion  
19 of the party -- the defendants, that is.

20 All right. What's -- what's proposed  
21 to be used? Exhibit 6, this is the Key School's

1 facts, and it's entitled the "Key School Facts and  
2 Key School's Environmental Education Athletic  
3 Extension in Annapolis Roads." There's a Q and A  
4 provision, and it states that "Key School will use  
5 the property for instructional purposes, specifically  
6 in support of its outdoor education environmental  
7 studies and athletic programs. The school's  
8 administration and board of trustees" -- excuse me --  
9 "will preserve and protect the existing natural areas  
10 to serve as outdoor classrooms for Key students who  
11 are studying the environment and provides space for  
12 outdoor education activities. We will also create  
13 playing fields to be used for after school practices  
14 and games."

15 Moreover, the question is posed  
16 whether -- what development -- will Key School  
17 develop the property? Among the responses there  
18 defendant has made is the covenant restriction  
19 restrict the use of the property as open quote -- and  
20 I'm quoting this document -- "open space recreational  
21 conservation and horticultural only."

1                   Moreover, we had two witnesses, who I  
2 would emphasize, were called by the plaintiff, and  
3 therefore the testimony of those witnesses is  
4 witnesses bind the plaintiffs, that is to say, as  
5 their witness, the testimony -- or as their  
6 witnesses, the plaintiffs' have put before the Court  
7 that testimony of those two folks. And if you will  
8 just bear with me for one second.

9                   Ms. Yedid, I believe she said she was  
10 the head of the Key School. She may or may not be on  
11 the Board. But in any event, she testified that the  
12 plans of Key School were to construct recreational,  
13 athletic, and environmental uses. I think she said  
14 maybe others. She indicated that the property would  
15 be used by the students for school purposes.

16                  Mr. Jones testified that the property  
17 would be used for the benefit of the students. By  
18 the way, Mr. Jones is the Key School board president.  
19 He happens, I believe, to be a resident of the  
20 Annapolis Roads community, although I wouldn't swear  
21 to it.

1 All right. Moreover, there is in the  
2 file -- I'm sorry -- in the record, the Exhibit 8  
3 that I referred to, and the Court's copy of that was  
4 not especially clear. But as best I can figure, and  
5 I've got it all here, the uses proposed by this  
6 Exhibit 8 are as follows: There is a maintenance  
7 facility, what I would guess to be the western end of  
8 the property. In any event, there are ball fields  
9 depicted, clearly baseball field, clearly a track and  
10 field use anticipated there. There is a pavilion  
11 next to a park. There are tennis courts. And there  
12 appear to be two general purpose perhaps lacrosse  
13 fields farther east on the property, some of those  
14 properties encumbered by conservation improvements  
15 proposed in this plan. And there are various and  
16 other ancillary uses and uses related to those, such  
17 as parking and rights of way.

18 And the question becomes are those  
19 items recreational uses or other uses permitted by  
20 the declaration, and the Court reviewed what the  
21 Webster's definition, the case law provided to it, as



1 well as the County code, and I would note that the  
2 County zoning code is not determinative of my  
3 decision, but it is helpful to it.

4           The Anne Arundel County Code, Section  
5 18.1.101 defines recreational uses -- there are two  
6 types. They are active and passive. Active, under  
7 Paragraph 80, means recreational activities other  
8 than golf courses that require special facilities,  
9 fields, or equipment, such as playgrounds, ice  
10 skating rinks, running tracks, and athletic  
11 facilities, including playing fields for athletic  
12 events, tennis courts, basketball courts, and  
13 swimming pools.

14           A recreational use passive is defined  
15 as to mean recreational activities that require a  
16 minimal exchange to the site and preserve natural  
17 features, such as natural areas, picnic areas,  
18 walking or hiking, fishing areas, hunting areas, and  
19 bird or wildlife watching areas.

20           The motion for judgment, as I  
21 indicated, requires the Court to construe the

1 evidence in the light most favorable here to the  
2 plaintiff. And based upon the matters I've just  
3 recited and upon the evidence submitted in its total  
4 and by the plaintiff to date to this point, the Court  
5 finds that there is no use depicted on Exhibit 8 that  
6 is precluded by the declarations. The injunction is  
7 denied. The judgment will be entered in favor of Key  
8 School and the Graefes. All right. Anything else?

9 All right. I'll enter an order  
10 denying the injunction and entering a judgment in  
11 favor of Key School and the defendants, Graefes.

12 Okay. I want you to retain your  
13 documents and exhibits, if you would, please,  
14 parties.

15 Anything else?

16 (Chorus of no's.)

17 THE COURT: All right. You're excused  
18 then.

19 THE CLERK: All rise.

20 (The hearing was concluded.)

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CERTIFICATE OF NOTARY

I, Linda J. Carroll, a Notary Public, do hereby certify that the foregoing proceeding was transcribed by me and reduced to typewriting under my supervision; that I am neither of counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

My Commission expires:

April 10, 2014



*Linda Joyce Carroll*

LINDA JOYCE CARROLL

NOTARY PUBLIC IN AND FOR

THE STATE OF MARYLAND

<b>1</b>	<b>A</b>	16:10,11 <b>Athletics</b> 6:10	<b>code</b> 16:1,2,4 <b>combination</b> 10:13 <b>community</b> 14:20 <b>complying</b> 10:4 <b>concluded</b> 17:20 <b>conservation</b> 10:16 13:21 15:14 <b>consideration</b> 10:10,11 <b>construct</b> 14:12 <b>construe</b> 5:2,7 16:21 <b>conveyor</b> 12:2 <b>copy</b> 15:3 <b>corporation</b> 12:3 <b>County</b> 16:1,2,4 <b>courses</b> 16:8 <b>Court</b> 5:2,3,5,7, 8,13 7:8,14 8:8, 11,12 9:5,14 11:10 12:14 14:6 15:20 16:21 17:4, 17 <b>Court's</b> 6:13,14 15:3 <b>courts</b> 15:11 16:12 <b>covenant</b> 5:1,2 13:18 <b>covenants</b> 5:7 <b>create</b> 12:2 13:12	<b>declarants</b> 10:11 11:12 <b>declaration</b> 5:18 6:3,15 9:11 11:7 12:1,10 15:20 <b>declarations</b> 17:6 <b>declaratory</b> 6:16 <b>declare</b> 5:13 <b>declares</b> 5:19 <b>decline</b> 8:14 <b>defendant</b> 8:9 13:18 <b>defendants</b> 9:20 12:19 17:11 <b>defined</b> 16:14 <b>defines</b> 16:5 <b>definition</b> 15:21 <b>DEMING</b> 5:4,6 7:7 <b>demonstrated</b> 9:6,10 <b>denial</b> 8:18 <b>denied</b> 17:7 <b>denying</b> 17:10 <b>depicted</b> 9:7,11, 16 15:9 17:5 <b>determinative</b> 16:2 <b>determine</b> 7:15 8:13 11:14 <b>determines</b> 9:5 <b>develop</b> 13:17 <b>development</b> 13:16 <b>discretion</b> 11:14 12:18 <b>dispose</b> 8:8 <b>document</b> 10:3 11:7 13:20
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