

Circuit Court for Anne Arundel County
Case No. C-02-CV-19-003640

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 57

September Term, 2024

PROPERTY OWNERS ASSOCIATION OF
ARUNDEL ON THE BAY, INC., ET AL.

v.

MAURICE B. TOSÉ, ET AL.

Beachley,
Tang,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: May 27, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On November 8, 2019, the Property Owners Association of Arundel-on-the-Bay, Inc., David Delia, and Lori Strum (the “Association”) filed a complaint in the Circuit Court for Anne Arundel County to quiet title on two small pieces of waterfront property located in Arundel-on-the-Bay (the “Disputed Area”). The Association also sought a declaratory judgment and injunctive relief against Maurice Tosé and Teresa Layden (collectively “Tosé”), owners of several lots in Arundel-on-the-Bay. Tosé filed a counterclaim to quiet title as well as for a declaratory judgment and injunction against the Association. After a three-day trial, the court ruled that Tosé held title to the Disputed Area and that the Association and the property owners in Arundel-on-the-Bay had an easement to use the land for ingress and egress and for waterfront activities, but that certain activities would not be permitted until and if Tosé improved the land. The court also ruled that the individual plaintiffs, Delia and Strum, were not entitled to individual relief. The Association noted this timely appeal and presents the following questions for our review:

1. Did the trial court err in holding that the Association did not obtain valid title to the Disputed [Area] through the 1951 Deed or via adverse possession by color of title?
2. Did the trial court err in not holding that Appellees’ title claim was barred by laches?
3. After correctly holding that all lot owners in Arundel-on-the-Bay have an easement to use and access the Disputed [Area] for ingress and egress and normal waterfront activities, did the trial court err by placing arbitrary restrictions on the scope of the easement and the right of the Association and all lot owners to maintain, repair and improve the Disputed [Area]?
4. Did the trial court err in holding that Appellants David Delia and Lori Strum and other lot owners in Arundel-on-the-Bay: (i) do not have an “individual claim of title or right” to use the Disputed [Area] “separate from that of the Association,” and (ii) are not entitled to any individual

relief, given that the crux of the easement dispute was whether the lot owners have a right to access and use the Disputed [Area]?

5. Did the trial court abuse its discretion by denying Appellants' motion to alter or amend judgment, given that Appellants' motion challenged provisions of the trial court's judgment which were contrary to well-settled law on easements?

Tosé noted a cross-appeal and presents the following additional questions:

1. Did the lower court err when it held that the Disputed [Area was] platted as waterfront access areas for all property owners in the community to use?
2. Did the lower court err when it failed to rule that the Association's claim is barred under the doctrine of laches?

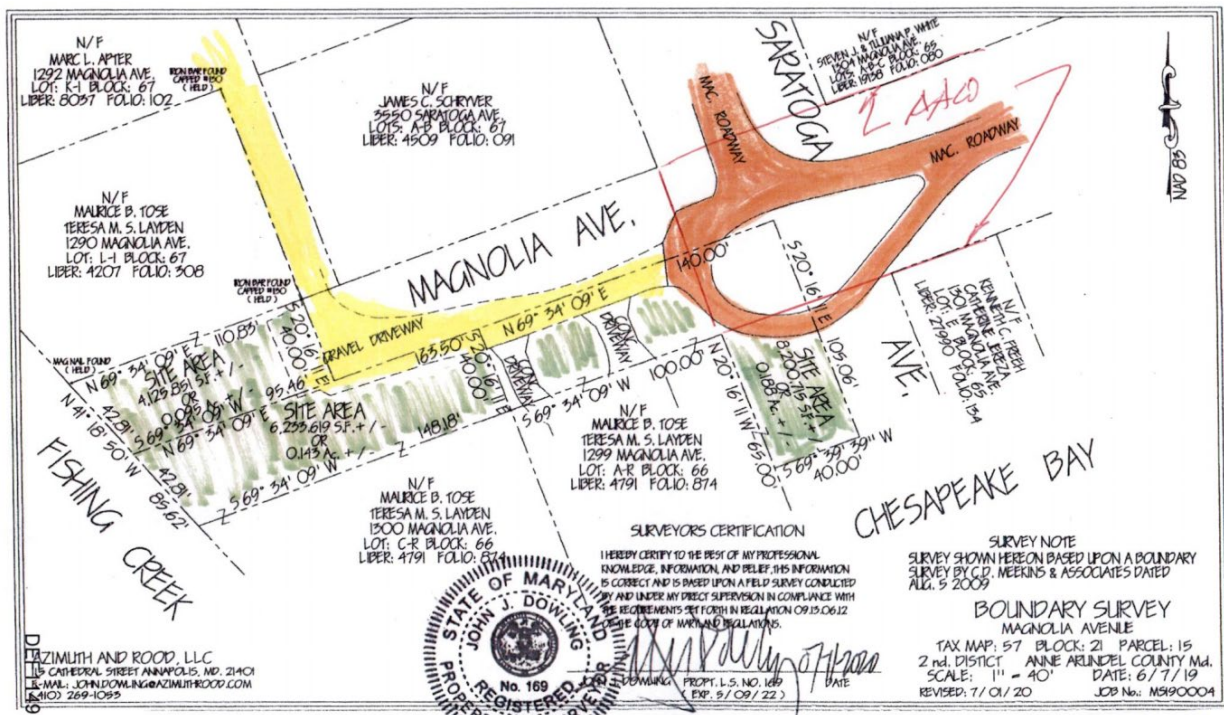
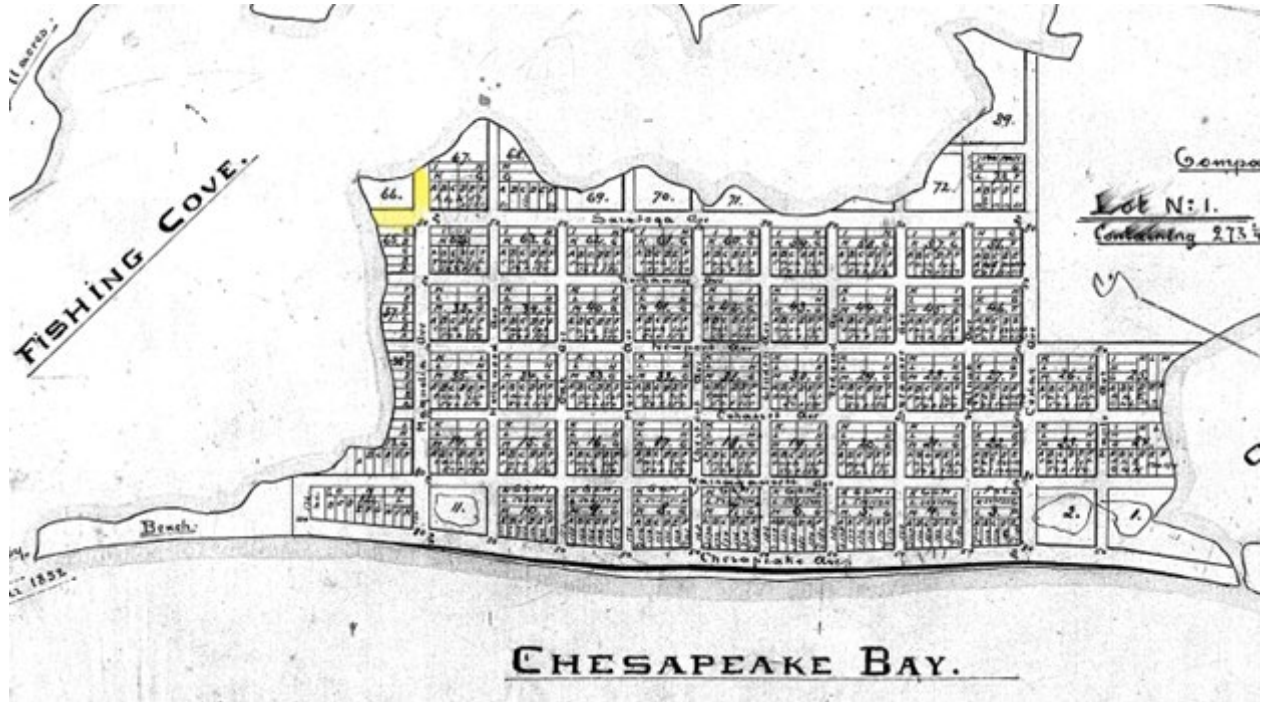
For the reasons below, we shall reverse and remand as to the court's determination of the scope of the easement. We shall otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Disputed Area at issue in this case consists of two small strips of land, which are designated on a recorded plat as streets, binding on 1290, 1299, and 1300 Magnolia Avenue in Arundel-on-the-Bay. Specifically, the Disputed Area consists of (1) the portion of what is labelled on the plat as Magnolia Avenue from the intersection with Saratoga Avenue on the East to the waters of Fishing Creek on the West, from the edges of 1299 and 1300 Magnolia Avenue on the South to the center line of the platted street, and from 1290 Magnolia Avenue on the North to the center line of the platted street (the "Magnolia Portion"); and (2) the portion of what is labelled on the plat as Saratoga Avenue from the intersection with Magnolia Avenue on the North to the waters of Fishing Creek on the South, and from the edge of 1299 Magnolia Avenue on the West to the center line of the

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platted street (the "Saratoga Portion"). The two images below depict a cropped portion of the original 1890 plat for Arundel-on-the-Bay (with the relevant street ends highlighted in yellow) and a recent survey of the Disputed Area.



At the time of the trial, the Magnolia Portion was primarily lawn (shown in green on the survey), with a gravel driveway (shown in yellow on the survey) leading to Tosé’s properties as well as a property owned by Mark Apter. The Saratoga Portion is likewise a lawn. The intersection of Magnolia Avenue and Saratoga Avenue, which is paved, is not at issue (shown in orange). Maurice Tosé and Teresa Layden own 1290, 1299, and 1300 Magnolia Avenue and claim to therefore also own the Disputed Area. The Association claims to own the Disputed Area through either inverse condemnation or adverse possession. Neither party has paid property taxes on the land.

The Association filed a complaint against Tosé in the Circuit Court for Anne Arundel County to quiet title as well as for a declaratory judgment relating to any easement rights and an injunction prohibiting Tosé from parking vehicles or installing barriers in the Disputed Area. Tosé filed a counterclaim to quiet title as well as for a declaratory judgment, asserting that the Association and other property owners have no easement over the Disputed Area. Tosé also sought an injunction prohibiting the Association from trespassing on the Disputed Area or encouraging others to do so.

A three-day trial was held December 6-8, 2023. On the morning of the second day of trial, the trial judge, the parties, counsel, and expert witnesses traveled to the Disputed Area to observe the current state of the land. The Association called several witnesses who testified about the Association’s internal operations, various notices and newsletters the Association had sent to residents of the community over the years, use of the Disputed

Area by the Association and community members, and specific interactions with Tosé and his son.

A. History of Arundel-on-the-Bay (1890-1951)

The Chesapeake and Columbia Investment Company (“CCIC”) is the original developer of Arundel-on-the-Bay. CCIC took title to the property in 1890 and thereafter filed a plat depicting a grid of streets and numerous small lots situated on a peninsula bordered by the Chesapeake Bay and Fishing Cove (now known as Fishing Creek). This plat designated the development as “Arundel-on-the-Bay.” Nearly all of the platted streets ran either to or along the water, a fact that will be significant in our analysis.¹ One small strip of land several blocks east of the Disputed Area was labeled “Beach.” The plat contained no express restrictions or easements.

In 1898, after approximately sixty-five lots were conveyed, the General Assembly enacted legislation establishing Arundel-on-the-Bay as an incorporated town (the “Town”).

An updated plat was recorded in 1927, reflecting changes to the peninsula caused by erosion, including the almost complete loss of a street bordering the Chesapeake Bay. The Disputed Area, however, was largely unchanged.

On April 29, 1949, the General Assembly repealed the Town’s charter, effective June 1, 1949. Three days prior to its dissolution, the Town purportedly conveyed “all of the lands included in the streets and avenues” of Arundel-on-the-Bay to Willa Gallagher,

¹ The only exceptions are roads with one terminus at the entrance to the peninsula, along the border of CCIC’s property. The second terminus of each of these roads is either at Fishing Cove or the Chesapeake Bay.

George E. Terrell, and Clarence W. Gosnell in trust (the “Trustees”). The description of the land in the deed included “the Westerly end of Magnolia Avenue from Rockaway Avenue to Fishing Cove,”² and “Saratoga Avenue from Fishing Cove to the end of the Town Limits[.]”³ The land conveyed was to be held by the Trustees “for the proper use, benefit and behoof of the property owners of Arundel-on-the-Bay . . . with the power and authority vested in them to convey all or any part of said real property to any properly organized corporation which may be organized by the aforesaid property owners of Arundel-on-the-Bay”

In 1950, the General Assembly passed emergency legislation empowering Anne Arundel County to “take over and maintain as public roads all the roads and streets located within the boundaries of” Arundel-on-the-Bay. In 1951, the Trustees executed two deeds: the first in January conveying certain internal roads in the community to the County (including the intersection of Magnolia Avenue and Saratoga Avenue, but not the Disputed Area), and the second in September, conveying the remainder of the property to the newly-formed Association. Because the January 1951 deed is not at issue in this case, we shall follow the parties’ convention of referring to the September 1951 deed as the “1951 Deed.”

² Rockway Avenue (formerly spelled “Rockaway”) runs parallel to Saratoga Avenue, one block to the east. Thus, this description includes the Magnolia Portion.

³ Saratoga Avenue is currently bisected by Fishing Creek four blocks north of the Disputed Area. Both the 1890 and 1927 plats show some erosion of Saratoga Avenue, but no areas where the water bisected the road. It is therefore unclear whether Saratoga Avenue remained a single contiguous road at the time of the 1949 Deed. For purposes of this appeal, we shall assume that the 1949 Deed purported to convey the Saratoga Portion.

B. 1951-1979

Little evidence was presented concerning how the Association or Tosé’s predecessor-in-title treated the Disputed Area from 1951 to 1979. The entirety of the evidence from this period, relating to both the Disputed Area and other streets within the community, is as follows:

- The Association issued several iterations of a constitution and bylaws. Relevant to the present case, the Association’s constitution creates a committee tasked with maintaining the streets in the community, and the bylaws dictate how the streets may be used, including setting speed limits and prohibiting boat trailers from being parked on the streets. Additionally, the bylaws state that the “waterfront access roads” are all “under the jurisdiction of” the Association.
- Minutes from a small number of Association meetings indicate that the Association was at least considering maintaining and improving the street ends, which it described as “accesses to the water.” The September 8, 1955 meeting minutes stated: “While the road ends are the property of [the Association], there is no objection to a property owner making any repairs or improvements he or she desires[.]” On March 19, 1967, Tosé’s predecessor-in-title “complained of the low areas holding water at Magnolia. Mr. Alton promised loads of dirt, but have not received any. He requested any [excess] dirt left from other roads The president answer by saying that we will have to wait for trucks. Mr. Purdy promised to fill in the low areas with dirt.” At the April 22, 1967 meeting, “[a] communication was read in regards to the fill dirt promised for the end of Magnolia Street. This request will be fulfilled as soon as funds become available to the road operations department, which should be in a few weeks. Funds are necessary for construction work which in turn will make fill dirt available.”
- In 1954, the Association issued a deed purporting to convey a small portion of Newport Avenue to the County.
- In 1959, the Association issued a deed purporting to convey a small portion of Rockway Avenue to the County.

- In 1962, the Association sent a letter to Dr. Hugh Browne instructing him to remove a “barricade” he erected along Saratoga Avenue,⁴ and sent a letter to Roger Browne instructing him to remove wooden posts he installed to block off part of Chesapeake Avenue. In both letters, the Association asserted that it owned the road.
- In 1964, the Association issued a deed purporting to convey multiple small sections of streets within the community to the County, including the block of Saratoga Avenue just north of the Disputed Area.
- Association financial reports from 1964-1967 did not reflect any spending that was obviously road maintenance, although expenses such as “bulldozing and grass cutting” could be related to the roads.
- In 1966, the Association issued a deed purporting to give the County an easement over a small portion of Hollywood Avenue just north of the Magnolia Portion to install sewers and other public utilities. Also that year, the Association contacted the Public Works Department concerning drainage problems along certain streets and requesting the installation of “No Parking” and stop signs.
- In 1970 and 1972, the Association requested that the County take title to the Magnolia Portion, as well as many other streets in the community that the Association asserted it owned.
- In 1974, the Association issued a notice to property owners asserting its ownership of the property conveyed in the 1951 Deed. The notice stated that “[i]t is the generally accepted custom and practice in the community of Arundel-on-the-Bay for individual property owners to maintain community-owned property titled to [the Association] when the community-owned property is adjacent to their own[,]” and that maintenance and use of the Association’s property “is not adverse to the interests of” the Association.⁵

⁴ It is unclear from the letter what portion of Saratoga Avenue the letter referred to, because Dr. Browne’s property was described as being “in Block No. 12 of Arundel-On-The-Bay,” but the number 12 block depicted in the plat is not near Saratoga Avenue.

⁵ Nearly identical notices have been sent to community members periodically after 1979 as well.

- In 1975, the Association issued a deed purporting to give the County an easement over all the streets in the community for the purpose of installing sewers and other public utilities.

C. 1979-Present

On May 24, 1979, the County enacted a bill declaring Arundel-on-the-Bay to be a Special Community Benefit District (“SCBD”). The Association manages the SCBD, using additional tax revenue collected by the County to maintain the infrastructure and community areas in Arundel-on-the-Bay. Relevant to this appeal, the bill stated that the SCBD was created “for construction, maintenance and repair of non-county owned roads, paths, streets, and/or signs and street lights[.]”

Some evidence was presented indicating the Association’s actions related to other roads within the community. In 1998, the Association issued a deed purporting to convey a portion of Newport Avenue to the County.

Tosé initially rented 1290 Magnolia Avenue, later purchasing the house in 1993. He purchased the other two Magnolia Avenue properties in 1992 and 1994. The Association appointed him as its treasurer from 1992 to 1993. He also served as a board member in the late 1990s.

In 1994, the Association hired Edward Albert to conduct a title examination on the roads in the community. In his report (the “Albert Report”), Albert stated that there was no evidence in the land records of the Town obtaining title to the roads. He also did not find any restrictions or reservations with regard to the roads in any of the 272 instruments

he reviewed. Albert “also noted that Maryland law generally extends an owner’s title to the center of street beds which bind along property lines[.]”

D. Association Witnesses

Lori Strum testified that she “grew up in the community” in the 1960s, and bought a house in Arundel-on-the-Bay in 1986. As a child, she frequently walked along the bulkhead with crab nets, at street ends and behind houses. For the past ten years, Strum has walked her dog “all the way around the community, [to] all of the street ends[.]” and sat on the bench on the Saratoga Portion. She testified that, in 2019 or 2020, Tosé’s son Asher Tosé confronted her while she was walking with a neighbor on the Magnolia Portion and told her to leave because she was walking on private property. On cross-examination, Strum stated that she was on the Magnolia Portion with workers from a lawn care company when she was confronted by Asher Tosé. She testified currently fewer non-residents use and access Arundel-on-the-Bay than when she was a child because, at that time, “every street [end] was a gravel road. . . . I mean to the end of the road was gravel. There was no grass.” Because of this, members of the general public would drive to the community to fish from the street ends, occasionally resulting in community members calling police to have them removed. She was not aware of anyone having fished from the Disputed Area in the past twenty years. She admitted that, where the Disputed Area meets the water, the land is no longer suitable for swimming, and that no one launches boats there because the community has a boat ramp. Concerning the bench on the Saratoga Portion, Strum testified that she came up with the Association’s bench program, and that the owner of the property

across Saratoga Avenue from Tosé’s, Kenneth Freeh, was “good with the bench being there[,]” but Tosé “[n]ever said a word about the bench.” She testified that the bench at the end of Saratoga was “in the middle of the street[,]” and not located entirely on the half closer to Freeh’s house (thus, the bench is placed partially on the Disputed Area). However, she earlier testified that she was never confronted while using the bench on the Saratoga Portion “because [the bench is] on the other side[,]” near property owned by Freeh, who “wants you to come and socialize with him.”

David Delia testified that he had lived in the community since 2003. He held various positions in the Association since 2006, including being elected chairman three times. Since 2006, he has frequently walked around the entire community, including the Disputed Area. He also walked around the community as part of his duties as an Association board member to “see what needed doing in the neighborhood,” such as tree limb removal, addressing abandoned vehicles, and ensuring that “somebody [didn’t] build something someplace that they shouldn’t have.” He admitted that, although he walked there “quite frequently,” he did not often see anyone else walking on the Disputed Area. According to Delia, the bench that sits partially on the Saratoga Portion was supposed to be placed entirely on Freeh’s side of the platted street because Tosé did not want a bench placed near his house. Delia testified that he authored most of the notices sent to community members that asserted that the Association owned the streets of Arundel-on-the-Bay. He stated that he sent these notices out “[w]henever there was a reason to do so[,]” such as when a new budget was made, so that community members would understand why the Association was

paying for legal services. Concerning the rules created by the Association for the community to follow, Delia indicated that the Association has no “[e]nforcement powers,” and an individual’s reason for following those rules “[d]epends upon your moral character.”

Frank Florentine testified that he had lived in the community since 1993. He recounted his extensive involvement in the Association, including his service on the board and as chairman of the Membership Committee, as well as his term as president beginning in 2003. After Hurricane Isabel caused extensive damage to the community, Florentine drafted a memorandum of understanding in response to Tosé’s inquiry about installing erosion barriers along the Magnolia Portion. The memorandum of understanding confirmed that Tosé could proceed with the work, subject to “the understanding that professional engineers will design it.” He did not remember Tosé ever signing the document. Nevertheless, he recalled that Tosé obtained the permit for the erosion barrier, and the Association “agree[d] to sign off on any permits that he got.” Over the “past four or five years,” Florentine stated that he rode his bicycle around the neighborhood, including on the Magnolia Portion. Florentine also testified that he has walked around the community as part of his Association duties to “see where things needed to be fixed, or trimmed” and “to make sure that the community roads were being honored by everybody.” He testified that he and his wife placed the bench on the Saratoga Portion, and “carefully measured” to where they “thought . . . was about halfway in the middle of Saratoga Avenue . . . and placed the bench there.”

Alan Hinman, who was chair of the Association’s roads committee, testified concerning maintenance that had been performed in the Disputed Area since he joined the committee in 2003. He stated that the Association pays for snow removal on all roads in the community, including County-owned roads. At least “a couple times a year,” he walked around the community to determine what road work may be needed. According to Hinman, “[g]ravel roads need to be replaced every few years. Sometimes they can go as much as about five years, so we set that up and on Magnolia we’ve resurfaced and done some work down there.” Magnolia was first resurfaced during Hinman’s tenure in January 2009. In 2012, at Mr. Tosé’s request, the Association “put in a truckload of rubble and backfill on the backside of the seawall that’s down there and then applied some stone and some sand on top of that.” The Association resurfaced the gravel road again in 2014, and repaired a pothole in 2015. The Association contracted to have the gravel resurfaced again in 2021, but that work was not completed. Hinman conceded that the Association performed some work on the County roads within the community, although that work usually involved a “cross street.”

Susan Cook, the Association’s secretary and former treasurer, testified that the Albert Report “only covers one site” and does not apply to the whole community. Concerning use of the land, Cook testified that she “know[s] tons of people that walk their dog” on the Disputed Area, and who “go down there and just walk[.]” However, she did not know of anyone who picnicked, launched a boat, or swam there. As to swimming, Cook testified, “you would go to the beach probably.”

Timothy Hamilton, who moved into the community in 1998, testified that he frequently took walks around the neighborhood, including on the Magnolia Portion “several times a week.” He also testified that his son fished from the Magnolia Portion “every week or so for about . . . three years” beginning in 2016 or 2017, sometimes also fishing with his friends.

E. Tosé Witnesses

Tosé called John Dowling to testify as an expert surveyor and title examiner. Dowling searched the title to Tosé’s properties, working from Tosé’s deeds back to 1890, then looked at the transactions of the Chesapeake and Columbia Investment Company, which created the original 1890 plat. His search revealed no restrictions or reservations related to the binding roads. Significantly, his title search did not uncover any conveyance of the roads to the Town. Nor did he find any court records that affected title to the Disputed Area. He testified that his findings and opinions were the same as those expressed in the Albert Report.

Shep Tullier qualified as an expert witness in planning and land use in Anne Arundel County. He testified that the Disputed Area is currently zoned R-2 Residential, which does not allow for “recreational activity” such as “making a street-end park.” He further testified that various laws relating to environmental conservation severely limit what may be done with the land. Concerning the issuing of permits, Tullier testified that the person requesting the permit must “hold title to the land and demonstrate to the county that it’s your property”; however, the County does not investigate claims of ownership and “would take

the applicants at their word.” Tullier opined that the purpose of the roads shown on the 1927 plat was to “provide[] access to the lots” and not to be “used as a recreational area.”

Maurice Tosé and his son Asher Tosé testified about their use of the land as well as use by the Association and other community members. Asher Tosé testified that, other than some periods in 2015, 2016, and 2018, he has lived at 1290 and 1299 Magnolia Avenue since 1997, when he was born. In his experience, the gravel driveway on the Magnolia Portion has only ever been used to access the adjoining properties and “there really has never been many people, if anyone,” using the lawn portions of the Disputed Area until 2018. According to Asher Tosé, “things started stirring up with the use of the streets,” and he began seeing more people using the Disputed Area. He had never seen anyone launch a boat from the Disputed Area or gather to swim, birdwatch, or watch fireworks. The only people he saw fishing from the Disputed Area were two individuals who were given permission by Tosé to fish there. If Airbnb guests from a nearby property enter upon the lawn portion of the Disputed Area, “[t]hey’re quickly met with just an assertion that it’s private property and they are not allowed to be there.” In his view, the lawn area “has always just been part of our yard[,]” reiterating that the Tosés exclusively maintained the area. Additionally, the Tosés on “a few occasions” have paid to have the gravel driveway resurfaced. When vehicles have accidentally driven off the gravel area and onto the lawn, the Tosés filled in the ruts left by the tires. When debris is left on the Disputed Area by storm surges, Asher Tosé testified that he has cleaned it up “every single time.”

Maurice Tosé testified, as mentioned above, that he and his wife purchased the three Magnolia Avenue properties in 1992, 1993, and 1994. He asserted that, “since acquiring them, [the Tosés] lived as if we own the road beds . . . that adjoined the properties.” Prior to the lawsuit, Tosé frequently saw Delia walking around the neighborhood near his property, but never saw him enter the Disputed Area. He “occasionally” saw other people walking in the Disputed Area. He recounted that there was only one occasion when someone attempted to enter the water from the Disputed Area, and that individual asked Tosé for permission to do so. Similarly, the only people he saw fishing from the Disputed Area were two individuals who sought and received his permission to do so. Tosé testified that he has parked vehicles on the gravel road the entire time he has lived in Arundel-on-the-Bay. He installed a birdhouse on the Saratoga Portion, which remained there for ten years before he removed it. When the Association announced that it planned to install benches on the road ends, beginning with the Disputed Area, Tosé objected. The Association ultimately announced that benches would only be placed near properties whose owners did not object to having a bench. However, the bench at the end of Saratoga Avenue was placed partially on the Disputed Area. Tosé testified that he and his family maintained the lawns in the Disputed Area without help from the Association. A landscaper hired by the Association on one occasion attempted to cut the grass in the Magnolia Portion, but Tosé informed the landscaper that he was trespassing. According to Tosé, although the Association hired a snow removal service for the community, they never plowed the gravel driveway on Magnolia Avenue until 2015. Additionally, the Association

“never offered to help remove hurricane waste” or debris left from storm surges. Tosé admitted that both he and the Association on different occasions have paid to have the gravel road resurfaced.

F. Court Findings and Order

After closing arguments, the court made findings of facts and rendered an oral bench opinion. The court stated that it was “unable to find by a preponderance of the evidence” that the Association had title by adverse possession. The court found “based upon the original plat, the design of the community and its waterfront nature that there is an implied easement at the ends of those streets in this community.” The court found that the easement was limited to activities such as

swimming, fishing, crabbing, viewing the water, and the like. It would not include picnics, parties, cars, trailers, golf carts, parking, motorized vehicles, and anything like that. But . . . I do believe that there is an implied easement based on the case law and the facts of this case, and the nature of the community that does allow persons to walk their dogs, and watch the sunset, and walk to the end and look at the water.

Tosé’s counsel pointed out that, when it comes to activities that involve access to the water, such as swimming, the erosion control measures currently made it unsafe for someone to attempt those activities, which “expos[es] the property owner to liability.” The court responded that Tosé’s counsel “does express valid concerns about boating and swimming because it does create a potential to incentivize someone to do something dangerous. . . . And there was no evidence of anyone actually doing it.” The court stated that, as far as determining the scope of an implied easement, the court should consider “what the plat anticipated and what the history of the community was and what access to the water might

mean at the time of the original plat.” The court therefore decided that the written order should include a caveat that swimming and boating are only allowed

“if a safe means of access to the water is provided.” So if someone decides that they want to move the rocks around and -- or put a little stair or something like that, which the someone would be Mr. Tosé, then that’s okay. But at this point in time there is no safe means of access to the water so that would exclude those activities.

In its Declaratory Judgment and Order, the court found that the 1951 Deed “is ineffective and failed to convey title to the Association.” The court further found that “Plaintiffs failed to meet their burden of proof and burden of persuasion on Plaintiffs’ assertion that the Association had adversely possessed the Disputed [Area] for the requisite period of twenty years.” The court was also “not persuaded by” the Association’s argument that the court should presume the existence of a missing deed. The court found “that the evidence presented, including the Association’s historic deeds of conveyance for other areas or streets within the community concerning property subject to the 1951 Deed, along with the notifications distributed asserting ownership of certain community-owned property, is not persuasive and fails to support their claims.” The court concluded that Tosé was the titleholder of the Disputed Area. In its written declaratory judgment, the court made the following findings related to easement rights over the Disputed Area:

ORDERED, that the Association, and the property owners in the community of Arundel-on-the-Bay have a limited implied easement by plat for the passive use of the Disputed [Area] for activities such as walking (including dog walking in accordance with all Anne Arundel County laws and regulations), biking, fishing, or crabbing. The [c]ourt finds that safe access to the waters of Fishing Creek and the Chesapeake Bay from the Disputed [Area] is not possible because of the extensive shoreline erosion controls, consisting of rocks and riprap, installed along the water’s edge at

the dead end of the Disputed [Area]. The testimony was consistent from all witnesses that it was not safe to access the water from the Disputed [Area] and no individuals had regularly done so. As a result, the Association and property owners in Arundel-on-the-Bay may only use the Disputed [Area] for access to the water in the event that the Defendants reconfigure the area so as to provide safe access for individuals to use for access to the water; and it is further

ORDERED, that this [c]ourt finds that the implied easement by plat, for the benefit of the Association and property owners in Arundel-on-the-Bay, is restricted and *does not* provide the right of the Association or any of its members or property owners of Arundel-on-the-Bay to do the following on the unpaved and unimproved areas of the Disputed [Area]:

1. Access the Disputed [Area] with any motorized vehicle, including but not limited to any car, truck, trailer, golf cart, electric bicycle or electric scooter;
2. Park any vehicle;
3. Gather at the Disputed [Area] for any purpose including but not limited to picnicking, birdwatching or socializing;

ORDERED, that the Association’s easement by plat does not include the right of the Association or any of the property owners in the community of Arundel-on-the-Bay, to make any physical changes or improvements to the Disputed [Area], other than the regular maintenance of the paved or improved portions of the roadway and driveway, pursuant to its obligation as a Special Community Benefit District, nor does it include the right to install any temporary or permanent objects, including benches, nor direct the Defendants how to maintain the Disputed [Area]; and it is further

...

ORDERED, that having presented no evidence of an individual claim of title or right to use the Disputed Area separate from that of the Association, this court finds that neither David Delia nor [Lori Strum], nor any of the other property owners in the community of Arundel-on-the-Bay . . . are entitled to any individual relief, but are entitled to the relief set forth herein[.]

The Association filed a motion to alter or amend the judgment, raising the same arguments it raises on appeal. The court denied the motion, the Association filed this timely appeal, and Tosé filed a cross-appeal.

DISCUSSION

The Association does not dispute that Tosé holds record title to the Disputed Property. Tosé’s record title is based on the common law presumption that, where a deed grants land binding on a street, it also passes title from the edge of the deeded land to the center of the street. *Barchowsky v. Silver Farms, Inc.*, 105 Md. App. 228, 239 (1995). This common law rule was codified in 1892, and is now found in Md. Code (1974, 2023 Repl. Vol.), § 2-114 of the Real Property Article (“RP”). The presumption does not apply where the deed contains a reservation of any interest in the street. RP § 2-114(c).

The Association agrees that, because there were no reservations in any of the deeds in Tosé’s chain of title, RP § 2-114 would apply such that Tosé would have record title from the edge of his lots to the middle of Magnolia and Saratoga Avenues (*i.e.*, the Disputed Area), but argues that it obtained ownership of the streets through either inverse condemnation or adverse possession. The Association also argues that, if it is not the legal owner of the Disputed Area, the court erred in limiting the scope of the Association’s easement. Finally, the Association raises arguments concerning the court’s exclusion of certain documentary evidence and Delia and Strum’s individual easement rights. Tosé argues in his cross-appeal that the court’s determination of the scope of the easement is too broad. Both parties assert that the other’s claims are barred by laches. We address each of

these arguments in turn.

I. **Inverse Condemnation**

The Association first argues that the 1951 Deed was valid because the Town obtained title to the Disputed Area through “inverse condemnation.” The Association succinctly summarizes its argument in its opening brief:

In sum, the Association argued that the Town . . . took title to the Disputed [Area] via governmental action (known as an inverse condemnation) when it conveyed that title to the . . . Trustees, who ultimately conveyed title to the Association via the 1951 Deed, and that all these actions were done at the behest of the property owners.

Tosé responds that no governmental taking occurred because the Town’s purported conveyance did not restrict the use or value of the land and there was no legislation which had the effect of taking title to the Disputed Area.

Inverse condemnation is a “shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted.” *Arthur E. Selnick Assocs., Inc. v. Howard County*, 206 Md. App. 667, 700 (2012) (quoting *College Bowl, Inc. v. Mayor of Baltimore*, 394 Md. 482, 489 (2006)). Inverse condemnation may arise in various ways, including:

[T]he denial by a governmental agency of access to one’s property, regulatory actions that effectively deny an owner the physical or economically viable use of the property, conduct that causes a physical invasion of the property, hanging a credible and prolonged threat of condemnation over the property in a way that significantly diminishes its value, or . . . conduct that effectively forces an owner to sell.

Md. Reclamation Assocs., Inc. v. Harford County, 468 Md. 339, 388 (2020) (alterations in original) (quoting *College Bowl*, 394 Md. at 489). “[A] taking in a Constitutional sense

‘requires a high degree of interference with the use of the property.’” *College Bowl*, 394 Md. at 490 (quoting *Md. Port Admin. v. QC Corp.*, 310 Md. 379, 402 (1987)). For example, when a property owner claims that the passage of a zoning ordinance constituted a taking for which the owner should be compensated, the claim will fail unless the ordinance “deprives him of all beneficial use of the property and . . . the property cannot be used for any other reasonable purpose under its existing zoning.” *Md. Reclamation Assocs.*, 468 Md. at 393 (emphasis omitted) (quoting Stanley D. Abrams, *Guide to Maryland Zoning Decisions*, § 10.01 (5th ed. 2012)). “[I]t is not enough for the property owner to show that the [governmental] action causes substantial loss or hardship.” *Id.* at 392 (first alteration in original) (quoting *Pitsenberger v. Pitsenberger*, 287 Md. 20, 34 (1980)).

A cause of action for inverse condemnation is typically brought by the property owner who seeks compensation for infringement of their property rights by the government. Here, the Association attempts to use the concept of inverse condemnation against the property owners, claiming that the 1949 Deed from the Town Commissioners to the Trustees amounted to a taking of the Disputed Area. The Association has not cited, nor are we aware of, any case where the government is the plaintiff seeking to establish inverse condemnation. Assuming such a cause of action exists, the Association presented no evidence which could support a finding that the 1949 Deed constituted a governmental taking. Tosé’s predecessors-in-title’s ability to use the property was not hampered in any way, and there was no evidence that the government’s actions effectively denied the Tosés physical or economically viable use of the Disputed Area. In sum, there was no evidence

of a taking for which the Tosés would be due just compensation. The court did not err in concluding that the conveyance by the Town Commissioners to the Trustees as reflected in the 1949 Deed did not constitute an inverse condemnation.⁶

II. Adverse Possession

The Association alternatively argues that it obtained title to the Disputed Area through adverse possession under color of title. It argues that it acted as an owner of the land by, *inter alia*, maintaining the gravel on the Magnolia Portion, creating rules for how the streets may be used, sending notices declaring its ownership of all the streets in the community not owned by the County, and taking action to enforce its ownership rights. The Association argues that it took these actions for more than the twenty-year period required to establish adverse possession. Tosé responds that the court correctly determined that the Association’s actions were insufficient to prove that the Association adversely possessed the Disputed Area.

⁶ Assuming *arguendo* that the 1949 Deed constituted a taking by inverse condemnation, there was no evidence that Tosé’s predecessor-in-title was compensated.

The owner whose property has been taken, but whose action for inverse condemnation is barred by limitations, may, depending on the facts, lose only the option of compelling the public authority to acquire the property upon payment of just compensation. Even if an inverse condemnation action is barred by limitations, the owner who claims that a taking has been effected may, depending upon the facts, bring an action of ejectment, or a bill to quiet title, or “the State’s agencies could be restrained from appropriating the property unless and until condemnation proceedings in accordance with law be had, and just compensation awarded and paid or tendered[.]”

Electro-Nucleonics, Inc. v. Wash. Suburban Sanitary Com’n, 315 Md. 361, 373-74 (1989) (citations omitted) (quoting *Dunne v. State*, 162 Md. 274, 291 (1932)).

Adverse possession is “a method whereby a person who was not the owner of property obtains a valid title to that property by the passage of time.” *Senez v. Collins*, 182 Md. App. 300, 322-23 (2008) (quoting *Yourik v. Mallonee*, 174 Md. App. 415, 422 (2007)). In Maryland, the requisite statutory period to establish title by adverse possession is twenty years. Md. Code (1974, 2020 Repl. Vol.), § 5-103(a) of the Courts & Judicial Proceedings Article.

“[T]he elements of adverse possession can be placed in three groups: possession must be (1) actual, open and notorious, and exclusive; (2) continuous or uninterrupted for the requisite period; and (3) hostile, under claim of title or ownership.” *Senez*, 182 Md. App. at 324. These elements must be proven “based on the claimant’s objective manifestation of adverse use, rather than on the claimant’s subjective intent.” *Id.* at 341 (internal quotation marks omitted) (quoting *Porter v. Schaffer*, 126 Md. App. 237, 276 (1999)).

The first group of elements requires that the possession be actual, open and notorious, and exclusive. “Neither a record claim of title nor payment of taxes, without open, visible acts of possession, will suffice to support title by adverse possession.” *E. Wash. Ry. Co. v. Brooke*, 244 Md. 287, 295 (1966) (citing *Stinchcomb v. Realty Mortg. Co.*, 171 Md. 317, 325 (1937)). Concerning the exclusivity requirement, “[a]n adverse claimant’s possession need not be absolutely exclusive . . . ; it need only be a type of possession which would characterize an owner’s use.” *Senez*, 182 Md. App. at 325 (quoting *Blickenstaff v. Bromley*, 243 Md. 164, 173 (1966)). These acts of ownership must

be “of such a character as to openly and publicly indicate an assumed control or use such as is consistent with the character of the premises in question.” *Id.* at 326 (quoting *Blickenstaff*, 243 Md. at 171). Important to this determination are the land’s “character and locality, and the uses and purposes for which it is naturally adapted, since possessory acts of an outlying and uncultivated piece of land may be proved by acts of ownership somewhat different from those required with regard to land under enclosure and actual cultivation.” *Porter*, 126 Md. App. at 277 (quoting *Goen v. Sansbury*, 219 Md. 289, 296 (1959)). Use of “the disputed land in the same manner as adjacent land [owned] by title [is] further evidence of actual possession.” *Senez*, 182 Md. App. at 330 (emphasis omitted).

The second group of elements, that the possession be continuous or uninterrupted for twenty years, requires possession without entry of the owner during that period. *Senez*, 182 Md. App. at 334. Such entry, to defeat an adverse possession claim, “must clearly indicate to the [claimant] that his possession is invalid and his right challenged. It must be open and notorious and bear on its face an unequivocal intention to take possession[.]” *Id.* (quoting *Rosencrantz v. Shields, Inc.*, 28 Md. App. 379, 389 (1975)). “[W]here . . . entry is followed up by possession by the owner, although the adverse claimant continues in possession as before such entry[,]” it is “[e]specially . . . true” that the entry breaks the continuity of the adverse possession. *Rosencrantz*, 28 Md. App. at 391 (quoting 5 George W. Thompson, *Commentaries on the Modern Law of Real Property*, § 2552, at 576-78 (1957)).

In the context of the third group of adverse possession elements—that possession be hostile, under claim of title or ownership—“‘[h]ostile’ is a term of art.” *Senez*, 182 Md. App. at 339. “Hostile” indicates that the possession was “without license or permission” and “unaccompanied by any recognition of . . . the real owner’s right to the land.” *Id.* at 339-40 (alteration in original) (quoting *Yourik v. Mallonee*, 174 Md. App. 415, 429 (2007)). One type of hostile possession of land is possession under color of title. Possession “‘[u]nder color of title’ describes a situation in which a claimant bases a claim to land on an instrument that appears to give title,” “but which in reality is not good and sufficient title.” *Id.* at 343 (quoting *Yourik*, 174 Md. App. at 424).

With these principles as a backdrop, we note that the party seeking title by adverse possession has the burden of proof. *Porter*, 126 Md. App. at 276. Here, the court held that the Association “failed to meet [its] burden of proof and burden of persuasion on [its] assertion that the Association had adversely possessed the Disputed [Area] for the requisite period of twenty years.” The court continued,

After weighing the evidence presented, this [c]ourt is not persuaded by these arguments. This [c]ourt finds that the evidence presented, including the Association’s historic deeds of conveyance for other areas or streets within the community concerning property subject to the 1951 Deed, along with the notifications distributed asserting ownership of certain community-owned property, is not persuasive and fails to support their claims.

On this point of appellate review, we have stated that it is “almost impossible for a judge to be clearly erroneous when he [or she] is simply *not persuaded* of something.” *Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 594 (2019) (alteration in original) (quoting *Bricker v. Warch*, 152 Md. App. 119, 137 (2003)).

The Association failed to produce such overwhelming evidence of the elements of adverse possession that might lead to the extraordinarily rare circumstance of non-persuasion being clear error. Indeed, most of what the Association purports to be evidence of possession prior to becoming a SCBD are documents where the Association states a belief that it owns all of the road ends in the community or makes declarations as to how roads in the community may be used. The documents the Association relies on largely do not reference the Disputed Area. The documents that specifically reference the Disputed Area include (1) meeting minutes from 1955 noting that a section of road that might include the Magnolia Portion “need[s] attention,” (2) meeting minutes from 1967 where Tosé’s predecessor-in-title requested “any [excess] dirt left over from other roads” to fill in low areas on the Magnolia Portion, and the Association’s agreement to provide dirt “as soon as funds become available . . . for construction work which in turn will make fill dirt available[,]” (3) a 1962 letter from the Association requesting that a property owner remove a “barricade” erected across a part of Saratoga Avenue which might include the Saratoga Portion, and (4) a 1970 letter from the Association requesting that the County take over the Magnolia Portion and a letter renewing this request in 1972. To be sure, these documents support the Association’s adverse possession claim.⁷ But the court was well within its discretion as the factfinder to conclude, based on the entire evidentiary record, that the

⁷ Although the Association provided evidence that it paid to maintain the gravel on the Magnolia Portion, all such evidence relates to periods of time after the Association began managing the SCBD. Therefore, the maintenance of the road could merely be the Association fulfilling its SCBD duties, and not an act of ownership.

Association failed to prove all of the elements of adverse possession by a preponderance of the evidence. In essence, the Association’s evidence that it treated the Disputed Area as an owner amounts to assertions of ownership and, on one occasion, agreeing to provide materials for maintenance of the gravel driveway. The court’s finding that it was not persuaded that the Association adversely possessed the Disputed Area is not clearly erroneous.⁸

III. Use and Scope of Easement

a. *Beneficial Use of the Easement*

The Association asserts that the court correctly determined that all property owners in Arundel-on-the-Bay are entitled to use the easement; the Association argues, however, that the court erred by placing restrictions on the easement related to the current conditions of the land, and by not allowing the Association to improve the land to suit the purpose of the easement.⁹ Tosé argues that the court erred by extending the easement to all residents

⁸ The Association also briefly presents an argument that the court should have presumed the existence of a deed granting it title to the Disputed Area under what it refers to as the “presumed deed doctrine.” It cites *Cadwalader v. Price*, 111 Md. 310 (1909), as support for this separate argument. However, that case stands for the proposition that, where a deed is missing for a piece of land, and “when a party has had possession of property in such way and for such time as to make it adverse within the meaning of the law, a deed is presumed[.]” *Id.* at 319. Based on the record in this case, we reject the Association’s claim under the “presumed deed doctrine.”

⁹ Although the Association argues that “[t]he trial court erred in restricting the scope of the easement by prohibiting water access, ‘gather[ings],’ and the types of vehicles which could access the Disputed [Area,]” it also described the court’s initial holding, which excluded gatherings and motor vehicles, as “well-reasoned, consistent with case law concerning easements in waterfront subdivisions, and supported by substantial evidence in the record[.]” stating that it “should be affirmed.” At oral argument, the Association’s

in the community. In Tosé’s view, use of the easement should be limited to ingress and egress for adjoining property owners to access their property.

An easement may be created in multiple ways, including, as here, by implication from the filing of a plat. *Kobrine, LLC v. Metzger*, 380 Md. 620, 635-36 (2004). “[A]n implied easement is based on the presumed intention of the parties at the time of the grant or reservation as disclosed from the surrounding circumstances rather than on the language of the deed[.]” *Id.* at 638 (quoting *Boucher v. Boyer*, 301 Md. 679, 688 (1984)). Where a deed references a plat that establishes a right of way, it “creates a rebuttable presumption that the parties intended to incorporate the right of way in the transaction.” *Boucher*, 301 Md. at 689.

Unless a contrary intention is expressed, “an easement owner has a *right* to repair, maintain, and improve the easement” to serve its purpose. *Shallow Run Ltd. P’ship v. State Highway Admin.*, 113 Md. App. 156, 169-70 (1996); *see also Fedder v. Component Structures Corp.*, 23 Md. App. 375, 381 (1974) (“Generally, an owner of a right-of-way may prepare, maintain, improve, or repair the way in a manner and to an extent reasonably calculated to promote the purposes for which it was created.”); *Tong v. Feldman*, 152 Md. 398, 404 (1927) (“It cannot be contended . . . that the word ‘repair’ . . . is limited to making

counsel confirmed that the Association would be satisfied with the types of uses described in *Klein v. Dove*, 205 Md. 285 (1954). Thus, the Association has waived any claim to uses beyond the parameters of *Klein*.

good the defects in the original soil by subsidence or washing away; it must include the right of making the road such that it can be used for the purpose for which it is granted.”).

We shall begin by discussing three cases detailing the law of easements in waterfront housing developments.

i. *Williams Realty Co. v. Robey*

Williams Realty Co. v. Robey, 175 Md. 532 (1938), is a seminal case involving easements for access to water in a waterfront community. The case involved a strip of land along the water labeled on an unrecorded plat “Community Beach and Park.” *Id.* at 535. The plaintiffs testified that they chose to purchase a lot across the street from the “Community Beach and Park” based on that label on the plat. *Id.* The presence of a community beach was emphasized by a salesman when the plaintiffs were looking to buy the house, and “they were given explicit verbal assurances” that the beach would be for the benefit of the community. *Id.* The “Community Beach” was also referenced in the plaintiffs’ deed. *Id.* A second plat was recorded that showed the same open area, but without the label “Community Beach and Park.” *Id.* at 536. A third plat, recorded seven years later, showed the area divided into lots. *Id.* The strip of land was eventually “rented out as a public shore resort and night club,” drawing visitors from outside the community, causing the beach to be overcrowded. *Id.* at 537.

The Supreme Court of Maryland stated, concerning the existence and scope of an easement: “It is a question of intention, and a clear manifestation of it must appear. . . . This manifestation of intention need not be found in the conveyance; a sufficiently clear

manifestation in a previous agreement must have the same result.” *Id.* at 539. The Court concluded:

The relation of lots in a water front settlement to the water differs from that of abutting lots to a city square. There is naturally a greater dependence, if indeed, we should not say that access to the water is an essential, for in that access lies the purpose of the settlement and the purchase of lots in it. As Williams, testifying for the defendant, agreed, facilities for access to the water constituted the chief selling point. Therefore the case is concerned with a possible estoppel or implied covenant with relation to an incident almost, if not altogether, of importance equal to that of a bordering street. And when a buyer is persuaded as in this case by the assurances of restricted facilities, in a community beach lying immediately across his front road or street, the advantages appear with sufficient clearness and certainty to have been sold to him as an incident, and in a court of equity repudiation must be prevented by injunction. As stated, this conclusion is in accord with the greater number of text writers and courts elsewhere as well as with decisions of this court.

Id. at 539-40.

ii. *Klein v. Dove*

Klein v. Dove, 205 Md. 285, 288 (1954), involved a ten-foot easement leading from a road in a residential development to a stretch of land next to a river (referred to as the “lake area”). The right of way was depicted in a plat as running along one side of the servient lot. *Id.* The development, located on a peninsula, contained approximately equal numbers of waterfront lots and inland lots. *Id.* “Without using someone else’s property, access to the water can be had from the interior lots only at either of two piers—one on the east, the other on the west, side of the peninsula[.]” *Id.* The plat did not expressly identify any portion of the land as a community area. *Id.* at 291. However, the plat was “rather scantily marked[.]” without labels even for roads. *Id.*

Our Supreme Court concluded: “Regardless of the absence of any such legend as ‘community beach’ on the lake area, there is no readily perceptible reason for the ten-foot right of way between what appears to be the main road of the development and the lake area except to give the owners or occupants of interior lots on this waterfront development access to boating, bathing, swimming and fishing.” *Id.* The Court recognized the importance of access to water, adopting the trial court’s view that

the purchasers of the lots in this subdivision thought they were buying not only the right to use the roads and paths laid down on said plat, but, as well, the right to use the piers on the east and west sides thereof, and the [l]ake area Everyone connected with the development contemplated them having those rights. If a purchaser of a lot in a waterfront development did not expect to get the right to use the water, few would purchase lots therein. After all is said and done, a waterfront development cannot be a waterfront development without a waterfront.

Id. at 292. As to the argument that interior lot owners had access to the water via the two piers, “[t]he evidence shows that these are not satisfactory places as bathing beaches. Even if they were, in view of the fact that the ways leading to them are ten feet wide and the piers, as shown by the plat, seem to be of the same width,” such a narrow space ““would hardly furnish a place adequate for the use and enjoyment of a large number of lot owners and their families and guests.”” *Id.* at 293 (quoting *Anderson v. De Vries*, 93 N.E.2d 251, 256 (Mass. 1950), *abrogated on other grounds by M.P.M. Builders, LLC v. Dwyer*, 809 N.E.2d 1053 (Mass. 2004)). The Court affirmed *Williams Realty*’s observation that access to water is typically an important consideration in waterfront developments. *Id.* at 293-94.

iii. *Kobrine, LLC v. Metzger*

In *Kobrine, LLC v. Metzger*, the Supreme Court considered the easement rights to a lot bordering the Patuxent River labeled on a subdivision plat “Area Reserved For the Use of Lot Owners.” 380 Md. 620, 623 (2004). Property owners in the community frequently used the lot to access the river and for “picnics, parties, and other recreational uses.” *Id.* There was, in addition, access to the river via “a nearby thirty-foot road.” *Id.* When Kobrine, as record title owner of the lot (the “KLLC” lot), attempted to prevent community use of the lot, Metzger and others sued to have Kobrine’s title to the land declared invalid or, in the alternative, a declaration to establish an easement in favor of the property owners to use the lot “for all lawful recreational purposes.” *Id.* at 623, 630.

The original plat for Section Two of the Harbor Light Beach subdivision created 39 residential lots and “two unnumbered parcels.” *Id.* at 624. Three of the residential lots and the unnumbered parcels bordered the river. *Id.* At issue was one of the unnumbered parcels, the “KLLC lot.” The original grantors conveyed to Beltway Industries, Inc. most of the remaining lots in the subdivision as well as “all ‘roads, streets, drives, paths, parks, shore and reserved areas as shown and designated’” on the plat, which included the KLLC lot. *Id.* at 624-25. The conveyance was “subject, however, to any rights of way of record and to right of way in common to lot owners in said subdivision over the nearest street and road to public highway and to the waters of Mill Creek and the Patuxent River in said reserved areas as shown on the aforesaid plats.” *Id.* at 625. In 1991, Kobrine purchased a lot that bordered what would later become known as the KLLC lot, and in 1999 Kobrine

purchased the KLLC lot. *Id.* at 628-29. The deed to the KLLC lot described the lot as “[a]ll that land which is shown and designated as ‘AREA RESERVED FOR THE USE OF LOT OWNERS’ on a plat entitled ‘Harbor Light Beach Subdivision, Section Two.’” *Id.* at 629 (alteration in original). When Kobrine purchased the KLLC lot, “[t]he parties expressly acknowledged that the property was not being conveyed as a building lot,” and that the land was “restricted from having any type of residential dwelling on it.” *Id.* Kobrine “installed a stone revetment along the shoreline to protect the KLLC lot from erosion. That revetment made access to the water difficult.” *Id.* As noted, Metzger sought, among other things, a declaration that the lot owners of Harbor Light Beach had an “easement in the KLLC lot for all lawful recreational purposes.” *Id.* at 630.

After concluding that the relevant plats and deeds did not create an express easement, the Supreme Court held that the legend on the recorded plat of Section Two of the subdivision, “Area Reserved For The Use Of Lot Owners,” “clearly indicate[d] an intent” by the grantors to reserve the KLLC lot for use by Section Two lot owners.¹⁰ *Id.* at 641. The Court noted that, contrary to cases where “the implied easement extends only to the abutting roadway and permits use of that roadway only until it reaches some other street or public way[,] . . . [a] more expansive rule has been applied with respect to waterfront subdivisions.” *Id.* at 639. The Court discussed *Williams Realty* and *Klein*, and concluded that, similar to the ten-foot right of way in *Klein*, the phrase “Area Reserved For the Use

¹⁰ The Court held that the record was insufficient to evidence an intent to create an easement for the benefit of Section One lot owners. *Id.* at 641.

of Lot Owners” “could have no other purpose” than to create an easement. *Id.* at 640-41. The Court looked to subsequent deeds to determine the scope of the easement, which “refer to a right of way in common over the streets ‘to the waters of Mill Creek and the Patuxent River[.]’” *Id.* at 641. Based on this language, the Court concluded that the circuit court “was entirely correct in finding that the use was limited to accessing the river for normal waterfront activities, as in *Klein v. Dove*—boating, swimming, fishing[,]” but not for other purposes “such as picnics and parties.”¹¹ *Id.*

iv. Analysis

In the present case, the court found an implied easement existed “based upon the original plat, the design of the community and its waterfront nature.” As the court recognized, the only evidence of the intention of the parties at the time of the creation of a potential easement in 1890 is the deed and plat. Neither the 1890 deed nor the plat expressly set forth any easements or reservations.

We first observe that the 1890 plat shows that the Arundel-on-the-Bay subdivision is substantially surrounded by water. Both ends of all but one of the east-west streets reflected on the plat, including Magnolia Avenue, end at the water, terminating in Fishing Creek and the Chesapeake Bay.¹² All of the north-south streets terminate at Fishing Creek

¹¹ However, the Court noted that the homeowner’s association and property owners did not challenge the limitations on the easement. *Id.*

¹² The exception is the northernmost street, Maple Avenue, which has an eastern terminus at the Chesapeake Bay and a western terminus at an intersection with Newport Avenue. Maple Avenue does not appear in the 1927 plat or any other maps of Arundel-on-the-Bay in the record.

to the south; several of these streets have a second, northern water terminus at Oyster Creek.¹³ In our view, the “more expansive rule” applicable to implied easements in waterfront subdivisions as articulated in *Kobrine* is appropriate here. Even the most cursory review of the 1890 plat reveals that “access to the water is the essential purpose of the subdivision and the purchase of lots in it.” *See id.* at 640 (citing *Williams Realty*, 175 Md. at 539). Indeed, the 1890 plat affords lot owners, even those residing in the interior portion of the subdivision, to walk a short distance in any direction to secure a water view. This interpretation supports the Association’s contention that an implied easement exists for the enjoyment of all owners as to the Disputed Area.

A careful examination of the specific Disputed Areas (and similar sections) on the 1890 plat further supports our conclusion. Notably with regard to the end of Saratoga Avenue, there is no lot that would require use of that part of Saratoga Avenue for access. Both of the lots to the east and west of the Saratoga Portion are bound by both Saratoga Avenue and Magnolia Avenue. Three other streets running parallel to Saratoga Avenue also have “end sections” depicted on the plat between Magnolia Avenue and Fishing Creek that are not necessary to access any lots because other access is available. The same is true of a further six street ends depicted in the plat in other parts of the community. In other words, the original grantor could have made these street ends into marketable additional residential lots without affecting access to any of the other platted lots. But the grantor

¹³ The 1890 plat also depicts a sandbar off the southeast corner of the peninsula labeled “Beach.” In the 1927 plat, this sandbar is depicted but not labeled. The sandbar no longer exists.

chose not to do so. Accordingly, like the ten-foot right of way in *Klein*, the fact that these otherwise extraneous street ends exist suggests that the intention was for *all* street ends to provide access to the water for Arundel-on-the-Bay residents. The court therefore did not err in finding that a beneficial easement existed for all property owners in the community.

b. Restrictions on the Easement

After determining that the Association and property owners had a “limited implied easement by plat,” the court proceeded to find that “safe access to the waters of Fishing Creek and the Chesapeake Bay from the Disputed [Area] is not possible because of the extensive shoreline erosion controls, consisting of rocks and riprap[.]” Because the court determined that “it was not safe to access the water from the Disputed [Area],” it restricted the implied easement by providing that the Association and property owners may not use the Disputed Area to access the water until Tosé improves the land to make it safe to do so.

The law related to the construction of improvements in an easement appears to be well-settled.

In the absence of an agreement, the owner of the servient tenement is under no duty to maintain or repair it, but rather it is the duty of the owner of the easement to keep it in repair. 25 Am. Jur. 2d § 85. The few Maryland cases on this subject hold that an easement owner has a right to repair, maintain, and improve the easement. We believe that no Maryland case has actually considered the duty of an owner to keep an easement in repair. *See Wagner v. Doehring*, 315 Md. 97, 104, 553 A.2d 684 (1989) (grant of right of way entitles holder to “maintain, improve, or repair the way to serve its purpose”); *Tong v. Feldman*, 152 Md. 398, 402, 136 A. 822 (1927) (dominant tenement owner may enter, at reasonable times, to make proper repairs); *Fedder v. Component Structures Corp.*, 23 Md. App. 375, 381, 329 A.2d 56

(1974) (owner of right of way may prepare, maintain, improve, or repair way).

Drolsum v. Luzuriaga, 93 Md. App. 1, 20 (1992) (emphasis removed); *see also Shallow Run*, 113 Md. App. at 169-70 (stating that “an easement owner has a *right* to repair, maintain, and improve the easement[,]” and “[t]he grant of a right-of-way . . . entitle[s] the holder to . . . improve, or repair the way to serve its purpose.” (alterations in original) (quoting *Wagner*, 315 Md. at 104)).

In *Tong v. Feldman*, 152 Md. 398, 401 (1927), the Court held that the tenant of an upper-floor unit in a building (Tong) had an implied easement of necessity to use a gas pipeline running through a unit in the cellar (leased by Feldman). The Court further held that the easement would allow Tong to replace the existing pipes with larger ones to accommodate his business. *Id.* at 405-06. In reaching this conclusion, the Court quoted with approval the following passage from a Pennsylvania case:

The grantee of the free and uninterrupted use of a private road may improve it in such manner as to make it fit for the purpose expressed in the grant, and in so doing may construct a bridge over a ravine or creek if it be done in such way as to cause the least practicable damage to the owner of the servient tenement.

Id. at 404-05 (quoting *Hammond v. Hammond*, 101 A. 855, 857 (Pa. 1917)).

Here, we see no evidence in the 1890 deed or plat that the grantor intended to restrict the beneficiaries of the easement from improving the land to accommodate the purpose of the easement. Accordingly, we shall vacate those parts of the court’s declaratory judgment that provide that “the Association and property owners in Arundel-on-the-Bay may only use the Disputed Streets for access to the water in the event that the Defendants reconfigure

the area so as to provide safe access for individuals to use for access to the water[.]”

Likewise, we must vacate the following provisions of the judgment:

that the Association’s easement by plat does not include the right of the Association or any of the property owners in the community of Arundel-on-the-Bay, to make any physical changes or improvements to the Disputed Streets, other than the regular maintenance of the paved or improved portions of the roadway and driveway, pursuant to its obligation as a Special Community Benefit District, nor does it include the right to install any temporary or permanent objects, including benches, nor direct the Defendants how to maintain the Disputed Streets[.]¹⁴

In conclusion, the Association may repair, maintain, and improve the easement, but its use of the easement shall be limited to the uses contemplated in *Klein v. Dove*.¹⁵

IV. Excluded Exhibits

The Association next argues that the court erred in excluding certain documentary evidence “that was germane to the Association’s color of title claim.” The Association claims that the following exhibits were improperly excluded:

- Plaintiff’s Exhibit 31 – 1962-63 Association expenditures and proposed budget listing \$500 for “Maintenance of property (beach & roads)” in the proposed budget for 1964;
- Plaintiff’s Exhibit 42 – 1983 notice to property owners declaring the Association’s belief that it held title to any roads in the community not owned by the County;

¹⁴ To the extent that the purpose of placing a bench on the land is to give pedestrians a place to rest and comfortably view the water, such benches would ostensibly constitute improvements to accommodate the purpose of the easement.

¹⁵ In light of our holding that use of the easement shall be limited to the uses contemplated in *Klein v. Dove*, the provision in the circuit court’s judgment that prohibits “gather[ings] at the Disputed Streets for any purpose” should be interpreted consistent with *Klein* in the event of any future controversy between the parties.

- Plaintiff’s Exhibit 44 – 1986 community newsletter containing a nearly identical notice;
- Plaintiff’s Exhibit 45 – 1987 notice to property owners concerning recommended new rules for the community; and
- Plaintiff’s Exhibit 50 – 1993 letter to the Association from a community member.

The Association argues that, because the court suggested that its finding as to adverse possession was “a close call,” excluding evidence relevant to that claim was an abuse of discretion and not harmless.

We review decisions relating to the admission of evidence for abuse of discretion. *Davidson v. Seneca Crossing Section II Homeowner’s Ass’n, Inc.*, 187 Md. App. 601, 643 (2009). We will only reverse a trial court’s decision to exclude evidence “upon finding that the trial judge’s determination was both manifestly wrong and substantially injurious.” *Id.*

Exhibit 31, a proposed budget for 1964 that included \$500 for “Maintenance of property (beach & roads),” was excluded by the court early in the trial because the Association had not yet presented evidence which would clarify what was meant by “road” in the proposed budget. Specifically, the court stated: “We don’t know what a road is yet. And there is no one here to testify what a road was in 1962.” This comment refers to an earlier discussion concerning Plaintiff’s Exhibit 4, which was not in evidence at that time, but was admitted later. Exhibit 4 was a House of Delegates bill from 1950 enabling the County to “take over and maintain as public roads all the roads and streets located within the boundaries of” Arundel-on-the-Bay. Because the bill did not reference the plat, the

court was unclear whether “roads and streets” included the entire area shown on the plat as streets, or if it only included the paved areas, which would make it irrelevant to this case. The court therefore stated that it did not “have enough facts to know whether it is admissible at this time.” Exhibit 4 was admitted into evidence on the third day of trial, after the court was satisfied that it was relevant. The Association did not subsequently ask that Exhibit 31 be admitted. Under these circumstances, the court’s ruling as to Exhibit 31 did not constitute an abuse of discretion.

Concerning Exhibits 42 and 44, the parties stipulated that the Association sent out notices such as these to community members “from time to time.” Two other nearly identical notices from 1974 and 2000 were admitted into evidence. In light of the stipulation, the 1983 and 1986 notices would have been merely cumulative. *See* Rule 5-403 (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by . . . needless presentation of cumulative evidence.”); *Lomax v. Comptroller of Treasury*, 88 Md. App. 50, 54 (1991) (“[A] trial judge may exclude evidence deemed to be cumulative.”). The court did not abuse its discretion in not admitting Exhibits 42 and 44.

The court precluded Exhibit 45 because it was not relevant to the case. The exhibit set forth proposed rules related to parking along the roads in the community, and would have established a sticker system for identifying vehicles of property owners. Susan Cook, the Association’s secretary, testified that no such sticker system was currently in place, and she was unsure if one had ever been implemented. The court pointed out that these rules

in essence were directed at non-residents of the community. Furthermore, the court noted, “it’s just general proposals about parking. It is not even a rule. It is proposals.” Notably, these proposed rules do not differentiate between streets owned by the County and those purportedly owned by the Association. The proposed rules are consistent with the Association’s general purpose as a property owner’s association, and therefore do not exclusively relate to ownership.¹⁶ The court did not abuse its discretion in precluding Exhibit 45.

Exhibit 50 is a letter written in 1993 by Barbara Jackson-Nash, a resident of the community, to the Association. Jackson-Nash’s property is located in the north-eastern section of Arundel-on-the-Bay, *i.e.*, the opposite corner of the community from the Disputed Area. In the letter, she complains about how people are using and maintaining Chesapeake Walk, an area that was once a platted road along the water, most of which has been lost to erosion. When Cook was asked whether the property was “near the Tosé property,” she answered, “Near in a sense that it could be a lot farther away.” Immediately after that answer, the court declined to admit the letter. We fail to see how a letter written by an individual unrelated to the present case, complaining about activities in an entirely different part of the community, could be relevant. Even if the letter were tangentially relevant, the court did not abuse its discretion in excluding Exhibit 50.

¹⁶ The Association’s Certificate of Incorporation lists its purposes as, *inter alia*, “[t]o forward and promote the general welfare and advancement of the residents and property owners . . .,” and “[t]o maintain and promote the general attractiveness and improve the condition of and maintain and increase the value of the properties[.]”

V. Laches

Both parties argue that the other’s claim should be barred by laches. The defense of laches “applies whe[re] there is an unreasonable delay in the assertion of one [party]’s rights and that delay results in prejudice to the opposing party.” *Jones v. State*, 445 Md. 324, 339 (2015) (alterations in original) (quoting *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 586 (2014)). Thus, a court must determine (1) when the claim became ripe; (2) whether the timeliness in raising the claim was reasonable under the circumstances, and (3) if the delay was unreasonable, whether it placed the opposing party “in a less favorable position.” *Id.* at 340 (quoting *State Ctr.*, 438 Md. at 586).

“Whether laches applies depends on an evaluation of each case’s particular circumstances.” *Id.* at 339. This is a mixed question of law and fact. *Liddy v. Lamone*, 398 Md. 233, 245 (2007). We review the court’s factual findings concerning the elements of laches for clear error. *Id.* at 246. This court reviews the ultimate determination of whether laches applies to a claim without deference. *State Ctr.*, 438 Md. at 585.

The court did not make any findings related to either party’s laches argument. Because laches is partially a factual issue, this fact alone would normally require us to remand for further findings. *Doe v. Alt. Med. Md., LLC*, 455 Md. 377, 435-36 (2017). However, we conclude, based on the record in this case, that laches would not bar either claim.

In its one-page argument on laches, the Association argues that Tosé’s claim is subject to laches because “the Association has openly held itself out as the owner of the

Disputed [Area] since 1951[.]” This assertion appears to be a rehash of its adverse possession claim, which we have concluded the court properly denied. In short, the Tosés’ record title to the Disputed Area cannot be undermined by laches—they and their predecessors-in-title have always been the legal owners of the property at issue.

Tosé argues that the Association’s claim should be barred by laches because the Albert Report issued in 1994 informed the Association that it likely did not have good title to the Disputed Area. Tosé argues that he is prejudiced by the delay because Albert has since passed away, and therefore is not available as a witness. However, there is no indication that Albert could shed any more light on the case than he did in his 1994 report to the Association. There is no assertion that Albert was a member of the community or had any more involvement with the Association than the creation of this single report. Tosé’s expert, John Dowling, testified that he conducted a title examination using the same method and relying on the same documents as Albert. Any title examiner could have done the same thing. Moreover, the court rejected the Association’s claims to title of the Disputed Area, leaving Tosé as the title owner of record. Because we fail to see how Tosé was placed “in a less favorable position” as a result of Albert’s unavailability, his laches defense fails as a matter of law. *See Jones*, 445 Md. at 340.

VI. Individual Claims

Lastly, the Association argues that the court erred in its determination that Delia and Strum are not entitled to individual relief. Specifically, the Association challenges the provision in the court’s order stating that,

having presented no evidence of an individual claim of title or right to use the Disputed Area separate from that of the Association, this court finds that neither David Delia nor Lorie Strom [sic], nor any of the other property owners in the community of Arundel-on-the-Bay, who were included as parties in this action but opted out of this litigation, are entitled to any individual relief, but are entitled to the relief set forth herein[.]

“[C]ourt orders are construed in the same manner as other written documents and contracts[.]” *Tallant v. State*, 254 Md. App. 665, 678 (2022) (quoting *Taylor v. Mandel*, 402 Md. 109, 125 (2007)). In interpreting a contract,

where two provisions of a contract are seemingly in conflict, they must, if possible, be construed to effectuate the intention of the parties as collected from the whole instrument, the subject matter of the agreement, the circumstances surrounding its execution, and its purpose and design. And, if a reconciliation can be effected by a reasonable interpretation, such interpretation should be given to the apparently repugnant provisions, rather than nullify any.

Heist v. E. Sav. Bank, FSB, 165 Md. App. 144, 151 (2005) (quoting *Chew v. DeVries*, 240 Md. 216, 220-21 (1965)).

The trial court ordered that “the Association, and the property owners in the community of Arundel-on-the-Bay have a limited implied easement” to use the Disputed Area. In four other parts of the order the court similarly separates “the Association” from “the property owners,” and did not provide the Association any relief that was not also provided to the property owners. It is clear from the order as a whole that the court found that the Association and the property owners both have an easement, and there is no indication that the property owners’ rights were dependent on their membership in the Association. Indeed, the court at one point listed “the Association or any of its members or property owners of Arundel-on-the-Bay,” demonstrating that the court did not consider

“property owners” to be equivalent to “members of the Association.” Although the court’s use of the phrase “separate from that of the Association” suggests a finding that the property owners’ rights came through their membership in the Association, when viewed in the full context of the order, it becomes clear that the meaning of the provision challenged by the Association is that the property owners did not prove that they had *more* rights than those of the Association. In other words, the rights of the Association and of the property owners are not intertwined; they are merely identical.

**JUDGMENT OF THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY
VACATED IN PART AS SET FORTH IN
SECTION III. OF THIS OPINION.
JUDGMENT IS OTHERWISE AFFIRMED.
CASE REMANDED TO CIRCUIT COURT
TO CONFORM ITS DECLARATORY
JUDGMENT TO THIS OPINION. COSTS
TO BE DIVIDED AS FOLLOWS: 75% TO
APPELLANT AND 25% TO APPELLEE.**

The correction notice(s) for this opinion(s) can be found here:

<https://www.mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0057s24cn.pdf>