Circuit Court for Talbot County
Case No. C-20-CV-18-000079

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1146

September Term, 2019

RDC MELANIE DRIVE, LLC

v.

MARK R. EPPARD, ET AL.

Berger,
Nazarian,
Beachley,

JJ.

Opinion by Berger, J.

Filed: October 9, 2020

This case arises from a judgment entered in the Circuit Court for Talbot County. Appellant/Cross-Appellee RDC Melanie Drive, LLC ("RDC") acquired title to Lot 6 of the Swan Point Subdivision ("Lot 6"). RDC is involved in the redevelopment and operation of a golf course, the "Links at Perry Cabin" ("the Links") in Talbot County, Maryland. RDC sought to relocate a driving range to Lot 6. RDC applied for and was granted a special exception to permit the driving range in the Swan Point subdivision, as well as for two variances authorizing encroachment into the shoreline development buffer. Appellees/Cross-Appellants, Mark R. Eppard, Patricia A. Eppard, Madeleine C. Homes, Norman S. Hastings, Lily S. Hastings, Albert G. Boyce and Kim T. Boyce ("the Homeowners"), own residential property within the Swan Point subdivision. The lots within Lot 6 were subject to a "Declaration of Restrictions, Covenants and Conditions Swan Point" dated August 29, 1988 by Peatmore Land Joint Venture and Rosemont Land Corporation ("Original Declaration").

Subsequent to RDC notifying the Homeowners of its plans to relocate a driving range to Lot 6, the Homeowners executed the "Amended Declaration and Reaffirmation of Restrictions, Covenants and Conditions for Swan Point Subdivision" ("Amended Declaration"), which expressly prohibited the driving range in Lot 6. Following the Talbot County Board of Appeals's ("the Board") approval of the special exception and variances, and the circuit court's affirmance of that decision, the Homeowners filed a

declaratory action in the Circuit Court for Talbot County.[1] The Homeowners sought to have the rights of the parties declared pursuant to the restrictive covenants. The Homeowners filed a motion for summary judgment and RDC filed a motion to dismiss or in the alternative, a motion for summary judgment. The circuit court granted the Homeowner's motion for summary judgment and granted in part and denied in part RDC's motion for summary judgment.

RDC presents several issues on appeal, which we have rephrased as follows:[2]

[1] We addressed the zoning manner in *Eppard v. RDC Harbourtowne, LLC*, No. 590, Sept. Term 2019 (filed October 9, 2020) and affirmed the decision of the Talbot County Circuit Court. We held that the zoning issues in the instant case are separate and apart from the declaratory judgment case, which involved the construction of private covenants. We do, however, recite some of the same facts in the instant case.

[2] RDC's questions presented are as follows:

> I. Whether the Original Covenants prohibit golf course uses, driving ranges, or commercial activity?
>
> II. Whether the Court's ruling that the Amended Declaration does not add additional burdens to Lot 6 is legally correct?
>
> III. Whether the Amended Declaration is enforceable where the Amended Declaration adds new restrictions to Lot 6?
>
> IV. Whether the restriction in Article III, Paragraph 1, Subparagraph (a) of the Original Covenants prohibiting any "noxious or offensive trade or activity" or any use that "may become an annoyance or nuisance to the neighborhood or other owners" is too vague to be enforced?

I. Whether the Original Declaration prohibits a driving range in Lot 6?

II. Whether the Amended Declaration is a valid restriction against Lot 6?

III. Whether, alternatively, the factual issue of whether the driving range will be a "noxious or offensive trade or activity" or cause any "annoyance or nuisance" has been fully litigated and is precluded by collateral estoppel?

IV. Whether the Trial Court erred in failing to grant RDC summary judgment on the Homeowners' claims arising from Article III, Paragraph 1, Subparagraph (m) and the Zajic Declaration?

Homeowners have filed a cross-appeal and assert the following two issues for our review:

I. Whether the trial court erred in declaring the Zajic Covenant moot and declining to declare the rights of the parties under the Zajic Covenant and Article III, subparagraph 1(m) of the Original Covenants, and are Appellees entitled to judgment on those issues?

V. Whether, alternatively, the restriction in Subparagraph (a) must be enforced in an objective manner?

VI. Whether, alternatively, the factual issue of whether the driving range will be a "noxious or offensive trade or activity" or cause any "annoyance or nuisance" has been fully litigated and is precluded by collateral estoppel, and if not, whether RDC is entitled to trial on the merits?

VII. Whether the Trial Court erred in failing to grant RDC summary judgment on the Homeowners' claims arising from Article III, Paragraph 1, Subparagraph (m) and the Zajic Declaration?

II. Whether the trial court erred in granting partial summary judgment for Appellant, and declaring that it was proper under the Original Covenants to annex a portion of Lot 6 to an adjacent golf course for use as a driving range?

For the reasons stated herein, we hold that the Amended Declaration is legally enforceable against Lot 6 and that the factual issue of whether the driving range will be a "noxious or offensive trade or activity" or cause any "annoyance or nuisance" is not precluded by collateral estoppel. We further hold that the court did not err when it declared the Zajic Declaration moot and that the court correctly determined that it was proper under the Original Covenants to annex a portion of Lot 6 to an adjacent golf course for use as a driving range. We, therefore, affirm the judgment of the Circuit Court for Talbot County.

FACTS AND PROCEDURAL HISTORY

RDC is engaged in the redevelopment and operation of The Links, a golf course located at 9489 Martingham Drive, St. Michaels, in the Martingham subdivision. The Links, formerly known as the Harbourtowne Golf Course, was originally developed in the 1970s and was acquired by RDC in March of 2015. The course is now associated with the Inn at Perry Cabin, a luxury resort near St. Michaels. In connection with the redevelopment of The Links, RDC sought to relocate a driving range to a waterfront property at 9599 Melanie Drive, St. Michaels. The 29.711 acre Property is designated as Lot 6 of the Swan Point subdivision. By deed dated July 29, 2016, Vladimir D. Zajic and Etta K. Zajic conveyed their interest in Lot 6 of Swan Point to RDC. This deed was

recorded among the land records of Talbot County at MAS Liber 2372, folio 227. On October 23, 2008, the Zajics executed a "Declaration of Restrictive Covenant," which is recorded among the land records of Talbot County at MAS Liber 1649, folio 503 ("Zajic Declaration"). The Zajic Declaration provides in pertinent part:

> Commencing upon the Effective Date as hereinafter defined, no structure, habitation or other building may be constructed on the Property. This Declaration shall not prohibit, limit, restrict or otherwise impair the Declarants' rights, in their sole discretion, to use, maintain, repair, replace or improve the driveway located on the Property.

There are 6 lots in the Swan Point Subdivision. The Mark R. Eppard and Patricia A. Eppard are the owners of Lot C; Madeleine C. Homes is the owner of Lot A; Norman S. Hastings and Lily S. Hastings own Lot D; Albert G. Boyce and Kim T. Boyce own Lot B; and Old Martingham, LLC owns Lot A. The proposed driving range would occupy approximately 13 upland acres of the Property. The Property is shown as Lot 6 of Parcel 90 on Tax Map 23 in the Swan Point subdivision and would be consolidated into the adjacent golf course parcel shown as Parcel l on Tax Map 23. Previously, the Property was used as a spray field for the treated effluent from the Martingham subdivision. Because the Martingham subdivision is now served by a public sewer, it is no longer necessary to use the Property as a spray field for treated effluent. The Property is partially located in a Critical Area on lands designated as a Resource Conservation Area.

Lots 5, 6, A, B, C and D of this subdivision were subject to the Original Declaration. Article III of the Original Declaration provides, in pertinent part:

> l. Prohibited Uses and Nuisances. Except for the activities of the Declarant during the construction or development of the community:
>
> > (a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot. No snowmobiles, go-carts, motor bikes, trail bikes or other loud engine recreational vehicles shall be run or operated upon any Lot or serving upon the roads serving the Property.
> >
> > (k) No Lot shall be subdivided; provided, however, that this restriction shall not be construed to prohibit the adjustment or realignment of boundary lines between Lots as long as such adjustment or realignment shall not create an additional Lot.

Article VI further provides the following:

> 1. Amendment. This Declaration may be amended by an instrument executed and acknowledged by two-thirds (2/3) of the Owners of the Lots within the community, which instrument shall be recorded among the Land Records of Talbot County, Maryland. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. Except as required by the appropriate zoning authorities of Talbot County, while Declarant owns any Lot, no substantial change shall be made in this Declaration without the written consent appended to the amending instrument of all Owners, including Declarant.
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> 2. Duration. Unless amended in accordance with the provisions of Paragraph 1 of this Article and the other

requirements of this Declaration, and except where permanent easements or other permanent rights or interests are herein created, the covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date of the recordation of this Declaration, after which the said covenants shall be automatically be extended until terminated by a vote of two-thirds (2/3) of the Owners of the Lots.

3. Construction and Enforcement. The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property. The Declarant shall have the authority, in its sole and absolute discretion, at any time and from time to time, to annul, waive, change or modify any provision of this Declaration as long as such annulment. waiver, change or modification shall not substantially affect the rights of any Owner. Where, in the opinion of the Declarant, the rights of any Owner shall be affected by any annulment, waiver, change or modification, the Declarant shall, prior to approving any such annulment, waiver, change or modification, obtain the written consent to, and approval of, the annulment, waiver, modification or change of two-thirds (2/3) of the Owners of the Lots, evidenced by a written agreement to be duly executed and recorded among the Land Records of Talbot County, Maryland. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenants or restriction, either to restrain or enjoin violation or to recover damages or both, and against any Lot to enforce the lien created hereby; and the failure or forbearance by the Declarant or the Owner of any Lot to enforce any covenant or restriction herein contained shall not be deemed a waiver of the right to do so thereafter.
The provisions hereof may be enforced by the Declarant or any Owner of any Lot which becomes subject to the provisions hereof.

> There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages.

On July 2l, 2016, RDC wrote a letter to the owners of the other properties in the Swan Point subdivision, outlining its plans to convert Lot 6 into a driving range that would be part of the neighboring golf course. The letter also discussed plans to seek an amendment to the Talbot County Zoning Code in order to permit the driving range on the golf course.[3]

On September 11, 2017 Appellees, who collectively own four of the six lots in the Swan Point Subdivision, recorded an "Amended Declaration and Reaffirmation of Restrictions, Covenants, and Conditions for Swan Point Subdivision" (the "Amended Declaration"). Article III, Paragraph I, Sub-paragraph (u), of the Amended Declaration provides the following language:

> (u) No Lot within the Property, nor any portion thereof, shall be converted from residential or agricultural use into a commercial or private golf course use, nor shall any Lot be utilized as or in connection with a driving range or similar commercial use in connection with a golf course, it being the intent of the subscribers hereto that the Swan Point Subdivision retain its character as a residential, single family dwelling community, and not be converted into a commercial resort property for use by members of the public, golf course members, or resort hotel guests.

In January 2018, RDC recorded a plat entitled "Minor Revision Plat of the Lands of RDC Melanie Drive, LLC and RDC Harbourtowne, LLC" ("Minor Revision Plat"). The Minor

[3] Indeed, RDC did obtain the necessary amendment to the Zoning Code.

Revision Plat adjusted the boundary line between Lot 6 and the neighboring golf course in the Martingham subdivision.

Critical Area Variance and a Special Exception Application

On May 12, 2017, RDC submitted a Critical Area Variance and a Special Exception Application for the driving range. The Board held hearings on the matter on August 7, 2017 and August 21, 2017. Before the Board, the Homeowners argued that the restrictive covenants applicable to the Swan Point subdivision ("Swan Point Covenants") prevented the Board from granting the special exception. Following the submission of legal briefs on the issue, the Board determined that it did not have the authority to consider the effects of or to enforce any private restrictive covenants that may impact the property. On August 7, 2017 the Board voted 4 to 1 to approve RDC's request for a special exception and voted 5 to 0 to approve the requested variances.

On December 13, 2017, the Homeowners submitted a petition for judicial review of the Board's decision. The Homeowners argued that the Board erred in failing to deny the application for a special exception because it represents a use that is not permitted under the applicable restrictive covenants. Further, the Homeowners averred that the Board erred in failing to provide a factual basis for its findings in granting of the special exception and the variances. Following a hearing on May 16, 2018, the Circuit Court for Talbot County found that the Board supplied reasons, however meager, that were supported by substantial evidence to support most of its findings. The circuit court, however, remanded the case to the Board to provide a factual basis to support its findings

7, 11, 15, and 17. The Board issued its decision on the remand issues on November 19, 2018, providing a factual basis to support its findings 7, 11, 15, and 17. The Homeowners sought judicial review of the Board's decision for a second time. The Board's decision was affirmed again by the circuit court on May 6, 2019.

Declaratory Judgment Action

Following the circuit court's refusal to consider the restrictive covenants applicable to Lot 6, the Homeowners sought a declaratory judgment in the Circuit Court for Talbot County. The Homeowners sought the circuit court's determination of the parties' rights regarding the Original Declaration, specifically, that the applicable covenants prohibited the conversion of Lot 6, or any portion thereof, into a commercial golf course or driving range. RDC filed an Answer and Counter Complaint seeking a declaratory judgment that that the Original Declaration does not prohibit RDC from using Lot 6 for golf course activities including use as a driving range, do not prohibit RDC from adjusting the boundary lines of Lot 6 where no new lot is created, and a determination that the Amended Declaration is illegal and unenforceable because it is targeted at RDC and Lot 6 and does not apply uniformly to all lots and all owners. The Homeowners filed a motion for summary judgment and RDC filed a motion to dismiss or in the alternative, a motion for summary judgment. The circuit court granted the Homeowners' motion for summary judgment and granted RDC's motion for summary judgment regarding the Minor Revision Plat. The circuit court entered a declaratory judgment as follows:

DECLARED that the "Amended Declaration and Reaffirmation of Restrictions, Covenants and Conditions for Swan Point Subdivision", dated On September 11, 2017, and executed by Ms. Homes, Mark R. Eppard, Patricia A. Eppard, Lily S. Hastings and Norman S. Hastings, Albert G. Boyce and Kim T. Boyce, and recorded among the Land Records of Talbot County at MAS Book 2476, page 432 is a valid restriction upon the lots located in the Swan Point Subdivision, created by a subdivision plat, titled "SUBDIVISION LOTS A THRU D, SWAN POINT & REVISION TO LOTS 4 THRU 6, OLD MARTINGHAM, 2nd ELECTION DISTRICT. TALBOT CO. MD." prepared by William W. Ludlow, Jr. dated November 28, I987, Scale 1" = 100' and recorded among the Plat Records of Talbot County, Maryland in Plat Book 79, Folio l6, and that the prohibition against using any lot in the Swan Point Subdivision, including Lot 6, as a driving range or in connection with a golf course, is a valid prohibition; and it is further

DECLARED that the "Minor Revision Plat of the Lands of RDC Melanie Drive, LLC and RDC Harbourtowne, LLC" prepared by Lane Engineering, LLC and recorded among the Plat Records of Talbot County at Plat Cabinet MAS 86, Sheet 05 is consistent with the "Declaration of Restrictions, Covenants and Conditions Swan Point" dated August 29, 1988, by Peatmore Land Joint Venture and Rosemont Land Corporation ("Original Declaration") and recorded among the land records of Talbot County at MAS Liber 657, folio 446 as amended by an Amended Declaration and Reaffirmation of Restrictions, Covenants and Conditions for Swan Point Subdivision" and recorded among the Land Records of Talbot County a MAS Book 2476, page 432; and it is further

DECLARED, the issue as to whether the use of Lot 6 a driving range would violate the restrictions set forth in a "Declaration of Restrictive Covenant" dated October 23, 2008, executed by Vladimir D. Zajic and Etta K. Zajic, and recorded among the land records of Talbot County at MAS Liber 1649, folio 503 is moot by virtue of the other declarations set forth in this Declaratory Judgment; and it is further

> ORDERED, that any prayers for relief not specifically addressed in this Final Judgment and Declaratory Judgment be, and are hereby, DENIED.

This timely appeal followed.

STANDARD OF REVIEW

The interpretation of restrictive covenants involves both the application of facts and law. *Dumbarton Improvement Ass'n, Inc. v. Druid Ridge Cemetery Co.*, 434 Md. 37, 55 (2013). Although a reviewing court will overturn a trial court's findings of fact when the findings are clearly erroneous, whether the language of a restrictive covenant is ambiguous is an issue of law, which we review *de novo*. *Id.* (citing *United Servs. Auto. Ass'n v. Riley*, 393 Md. 55, 79 (2002)). In addition, as the Court of Appeals noted in *City of Bowie v. MIE Properties, Inc.*, 398 Md. 657, 677 (2007), "the interpretation of a restrictive covenant, including a determination of its continuing validity is subject to de novo review as a legal question."

In *Dumbarton Improvement Ass'n*, *supra*, 434 Md. at 52, the Court of Appeals addressed the role of a reviewing court in interpreting restrictive covenants:

> Our task, therefore, when interpreting a contract, is . . . to "determine from the language of the agreement itself what a person in the position of the parties would have meant at the time it was effectuated." *General Motors Acceptance v. Daniels*, 303 Md. 254, 261, 497 A.2d 1306, 1310 (1985).

In *Dumbarton*, the Court of Appeals expressly noted that we should be governed by the intent of the parties as "appears or is implied from the instrument itself." *Id*.

DISCUSSION

I. The Amended Declaration is enforceable against Lot 6.

RDC contends that the Original Declaration authorized the driving range and that the Amended Declaration is not enforceable against RDC because it adds new restrictions to Lot 6. The standard for interpreting restrictive covenants is well-established:

> In construing covenants, "[i]t is a cardinal principle ... that the court should be governed by the intention of the parties as it appears or is implied from the instrument itself." The language of the instrument is properly "considered in connection with the object in view of the parties and the circumstances and conditions affecting the parties and the property...." This principle is consistent with the general law of contracts. If the meaning of the instrument is not clear from its terms, "the circumstances surrounding the execution of the instrument should be considered in arriving at the intention of the parties, and the apparent meaning and object of their stipulations should be gathered from all possible sources."
>
> If an ambiguity is present, and if that ambiguity is not clearly resolved by resort to extrinsic evidence, the general rule in favor of the unrestricted use of property will prevail and the ambiguity in a restriction will be resolved against the party seeking its enforcement. The rule of strict construction should not be employed, however, to defeat a restrictive covenant that is clear on its face, or is clear when considered in light of the surrounding circumstances.

City of Bowie v. MIE Properties, Inc., 398 Md. 657, 679 (2007) (quoting *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n,* 321 Md. 152, 157–58 (1990)).

Article VI, Paragraph 3 of the Original Declaration provides that "[t]he provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Property." The Original Declaration further

provides that the declarants state that it is their desire and express intention "to impose upon the Property the covenants, restrictions, easements, and equitable servitudes" that will "provide for the preservation of the values and amenities in the community comprised of their collective properties." The Homeowners argue that the purpose of the Original Declaration was to create a uniform plan of residential development. RDC, however, argues that the Original Declaration did not preclude all commercial uses, and therefore, the Original Declaration permitted the driving range. Although the Original Declaration did not expressly prohibit the driving range, Article III, Paragraph l, Subparagraph (a) allowed property owners to prohibit the following:

> (a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot. No snowmobiles, go-carts, motor bikes, trail bikes or other loud engine recreational vehicles shall be run or operated upon any Lot or upon the roads serving the Property.

Indeed, the Swan Point lots were purely residential, unlike the bordering Martingham subdivision.

Pursuant to the Original Declaration, the Homeowners were authorized to amend the Swan Point Covenants. Article Vl provides the following pertinent language:

> 1. Amendment. This Declaration may be amended by an instrument executed and acknowledged by two-thirds (2/3) of

> the Owners of the Lots within the community, which instrument shall be recorded among the Land Records of Talbot County, Maryland. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. Except as required by the appropriate zoning authorities of Talbot County, while Declarant owns any Lot, no substantial change shall be made in this Declaration without the written consent appended to the amending instrument of all Owners, including Declarant.

The Homeowners exercised their right pursuant to Article IV and added the following provision:

> Article III, Paragraph I, Sub-paragraph (u), Prohibited Uses and Nuisances:
>
> > (u) No Lot within the Property, nor any portion thereof, shall be converted from residential or agricultural use into a commercial or private golf course use, nor shall any Lot be utilized as or in connection with a driving range or similar commercial use in connection with a golf course, it being the intent of the subscribers hereto that the Swan Point Subdivision retain its character as a residential, single family dwelling community, and not be converted into a commercial resort property for use by members of the public, golf course members, or resort hotel guests.

We agree with the circuit court that this amended provision is consistent with the Original Declaration and supports a uniform plan for the development of the property. Notably, a driving range would not support the uniformity of an otherwise residential community.[4]

[4] We disagree with RDC's contention that "pursuant to the circuit court's ruling, a majority of owners can now amend to declare virtually any activity an 'annoyance' and restrict that activity: housing children, driving cars, walking dogs, riding bikes, operating lawn equipment, planting gardens." Further, it contends that "the result is that no owner in Swan Point can be safe in their property rights as those rights may be restricted at any time and in any manner upon which a two-thirds majority agree." This interpretation of

Critically, RDC provides no persuasive Maryland authority to support its contention that the Amended Declaration is invalid because it adds new restrictions to Lot 6.

RDC relies on multiple out-of-state cases to support its argument that the Amended Declaration is invalid. However, RDC's reliance is misplaced because the terms of the Original and Amended Declarations in this case differ vastly from the restrictions and covenants in the out-of-state cases. Particularly, RDC relies on *Boyles v. Hausmann*, 517 N.W.2d 610 (Neb. 1994), a case dealing with an amended covenant that added a setback restriction to the land. *Boyles, supra*, 517 N.W.2d at 613–14. The Supreme Court of Nebraska found that this amended covenant was invalid because it added new restrictions to the land and effectively created different covenants and burdens on the parties. *Id.* at 617.

The Amended Declaration in this case differs from that in *Boyles* because it does not create new restrictions or burdens, nor does it add additional covenants. Rather, the Amended Declaration simply clarified the terms of the Original Declaration by giving a definition to residential or agricultural land use that may become "an annoyance or nuisance to the neighborhood or other Owners."[5] We, therefore, hold that the Amended

the covenants leads to an unreasonable result. Indeed, many of the activities suggested by RDC are residential in nature that, of course, would not be prohibited by any amendment to the Original Declaration.

[5] RDC cites to a number of other out-of-state cases to support the same argument. Their reliance on those cases is also inapposite for the same reason as in *Boyles.* In all of these cases, the original covenants or restrictions allowed for amendments or alterations of the original covenants, but the courts in these cases found that the amended covenants were unreasonable and outside the scope of the powers delegated by the original writings.

Declaration validly clarified the terms of the Original Declaration consistent with the intent of the Original Declaration that the Swan Point subdivision be used uniformly for residential development.

RDC further contends that the restriction in Article III, Paragraph 1, Subparagraph (a) of the Original Declaration is void for vagueness. RDC refers us to two cases from the Court of Appeals of North Carolina[6] and two cases from the Court of Chancery of

See Dreamland Villa Cmty. Club, Inc. v. Raimey, 226 P.3d 411, 420 (Ariz. Ct. App. 2010) (holding an amended covenant requiring membership of an association was outside of the scope of authority of the original covenant which only provided for the creation of such an association); *Lakeland Property Owners Ass'n v. Larson*, 459 N.E.2d 1164, 1170–71 (Ill. App. Ct. 1984) (holding an amended covenant invalid because it provided authority for an assessment of fees upon individual owners by an association which was given no such authority in the original covenant); *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 849 P.2d 310, 312 (Nev. 1993) (finding that an amended covenant was invalid because it assessed fees on commercial properties when the original covenant only assessed fees on residential properties); *Armstrong v. Ledges Homeowners Ass'n*, 633 S.E.2d 78, 87 (N.C. 2006) (finding that an amended covenant's requirement to require yearly assessments was unreasonable and created new restrictions from the original covenant which only intended payments for the upkeep of one sign at the front of the property); *Erkes v. Kasparek*, 399 S.E.2d 6, 7–8 (S.C. Ct. App. 1990) (finding an amendment to a restrictive covenant invalid because it established a minimum lot size for each subdivision when the original covenant allowed for the free power to subdivide the land); *Meresse v. Stelma*, 999 P.2d 1267, 1273–74 (Wash. Ct. App. 2000) (holding an amended covenant relocating an access road invalid because the original covenant only provided for ordinary maintenance and repairs, not something as burdensome as relocation). In contrast, the Amended Declaration in this case does not exceed the scope or authority provided to the Homeowners in the Original Declaration. Instead, the terms of the Amended Declaration only clarify terms explicitly mentioned in the original covenant.

[6] *Ethral v. May*, 736 S.E.2d 514 (N.C. App. 2012); *Steiner v. Windrow Estates Home Owners' Ass'n, Inc.*, 713 S.E.2d 518 (N.C. App. 2011).

Delaware.[7] We are not persuaded. Although in each of these out-of-state cases the courts ruled that the language in the covenants was too broad to be enforceable, the cases are readily distinguishable from the extant covenants in this case. In *Steiner*, *supra*, 713 S.E.2d at 522, the Homeowners' Association sought to banish two pet Nigerian goats from the Steiners, who acquired the goats and wanted to keep goats as pets on their property. The restrictive covenants barred certain animals, livestock or poultry from being raised, bred or kept on any lot. The trial court, as well as the Court of Appeals of North Carolina, determined that the restrictive covenants did not define the words "livestock," "pets," and "household pets," and therefore, the restrictive covenants at issue were so broad to allow virtually any animal which may be treated as a "household pet" to be kept on the homeowner's property.[8] *Id.* at 525. Indeed, RDC has not cited -- nor are we aware of -- any Maryland authority in support of its contention that Subparagraph (a) is void for vagueness. We, therefore, reject RDC's argument on appeal that Article III, Paragraph 1, Subparagraph (a) is void for vagueness.

[7] *Seabrook Homeowners Ass'n, Inc. v. Gresser*, 517 A.2d 263 (Del. 1986); *Edgemoor Terrace Civic Ass'n v. Spinning Wheel Inn*, 256 A.2d 284 (Del. 1969).

[8] Similarly, the facts of the other cases cited by RDC are also easily distinguishable from the instant case. *See Ethral*, *supra*, 736 S.E.2d at 514 (Neighbors brought action against equestrian community residents seeking an injunction preventing residents from making any commercial use of their land to board horses); *Seabreak Homeowners Ass'n, Inc.*, *supra*, 517 A.2d at 263 (Court of Chancery held that the architectural review committee of a homeowners association could not adopt setback requirements under restrictive covenant giving the committee the power to refuse approval of design plans); *Edgemoor Terrace Civic Ass'n*, *supra*, 256 A.2d at 284 (Court of Chancery held that the evidence established that the refusal of the association to approve a restaurant business was not based on the more specific and enforceable covenant and that the more general covenant was not independently enforceable).

II. The issue of whether the driving range will be a "noxious or offensive trade or activity" or cause any "annoyance or nuisance to the neighborhood or other owners" has not been fully litigated.

RDC contends that the issue of whether the driving range will be a "noxious or offensive trade or activity" or cause any "annoyance or nuisance to the neighborhood or other owners" has been fully litigated because it was decided by the Board of Appeals. RDC argues, therefore, that the Homeowners are barred from relitigating the issue under the doctrine of collateral estoppel. "The doctrine of collateral estoppel precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action." *Shader v. Hampton Improvement Ass'n, Inc.*, 217 Md. App. 581, 605 (2014), *aff'd*, 443 Md. 148 (2015) The elements of collateral estoppel are well-established: (1) the issue decided in the prior adjudication must be identical with the one presented in the action in question; (2) there was a final judgment on the merits; (3) the party against whom the plea is asserted is a party or in privity with a party to the prior adjudication; and (4) the party against whom the plea is asserted was given a fair opportunity to be heard on the issue. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 369 (2016).

Section 190-56 of the Talbot County Code, which authorizes the Talbot County Board of Appeals to grant special exceptions, requires that "[t]he use will not constitute a nuisance to other properties and will not have significant, adverse impacts on the surrounding area due to trash, odors, noise, glare, vibration, air and water pollution, and

other health and safety factors or environmental disturbances. By contrast, the language of the Original Declaration provides the following:

> (a) No noxious or offensive trade or activity shall be carried on upon any Lot or within any dwelling, nor shall anything be done therein or thereon, which may be or become an annoyance or nuisance to the neighborhood or other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other improvements constructed upon any Lot. No snowmobiles, go-carts, motor bikes, trail bikes or other loud engine recreational vehicles shall be run or operated upon any Lot or upon the roads serving the Property.

RDC successfully argued before the Board, the circuit court, and this court, that the Board did not have jurisdiction to construe the Original Declaration. Accordingly, the substance of the Original Declaration has not been litigated, and the Homeowners have not been given a fair opportunity to be heard on the issue.[9]

III. The Zajic Declaration

"This Court ordinarily does not render judgment on moot questions." *La Valle v. La Valle*, 432 Md. 343, 351 (2013). A case is moot when there is no longer an existing controversy or when there is no longer an effective remedy the Court could grant.

[9] This is entirely consistent with our holding in *Eppard*, slip op. at 12-16. There, we expressly declined to interpret the issues involving the covenants and held that the Board's consideration of the application for the special exception was independent from any consideration of any applicable restrictive covenants. We further held that although the interpretation and enforcement of restrictive covenants was beyond the authority of the Board, the Homeowners were free to file an action in the Circuit Court for Talbot County to enforce or interpret the Original Declaration.

Suter v. Stuckey, 402 Md. 211, 219 (2007). We agree with the circuit court that the determination that the Amended Declaration is valid and enforceable against Lot 6, necessarily renders the controversy regarding the Zajic Declaration moot. There is no existing controversy between the parties if the Amended Declaration expressly prohibits construction of the driving range.

IV. Minor Revision Plat

In their cross-appeal, the Homeowners allege that Article III, subsection (k) of the Original Declaration prohibits the Minor Revision Plat. The Original Declaration provided that "[n]o Lot shall be subdivided; provided, however, that this restriction shall not be construed to prohibit the adjustment or realignment of boundary lines between Lots as long as such adjustment or realignment shall not create an additional Lot." The circuit court observed the following regarding the Minor Revision Plat:

> There is no controversy about the Minor Revision Plat. Looking at the plain language of Section 111(k) of the Original Declaration, the unambiguous intention is to prevent the creation of new lots within the Swan Point subdivision. It is a lot line revision and does not create a new lot within the subdivision. *See Belleview*, 321 Md. at 157. Section 111(k) also allowed for lot line revisions. Nothing in the Minor Revision plat indicates that it is creating a new lot within the subdivision. Its manifest purpose was a lot line revision, albeit with property outside of the reach of the Original Declaration. Therefore, the Minor Revision Plat is consistent with Section 111(k) of the Original Declaration.

We agree with the circuit court that the plain language of the Original Declaration is consistent with the Minor Revision Plat. The Original Declaration expressly prohibits the creation of additional lots, not a lot line revision.

JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.