

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

PAUL JOHN CISAR
2 Poplar Grove Avenue
Aberdeen, Maryland 21001

and

SARAH ELIZABETH GONZALEZ
1636 Perryman Road
Aberdeen, Maryland 21001

and

JUSTIN ANDREW PICKERING
1605 Perryman Road
Aberdeen, Maryland 21001

and

NORMA GAIL TILTON
313 Fords Lane
Aberdeen, Maryland 21001

and

TAMIE MARIE WAINWRIGHT
11 Spesutia Road
Aberdeen, Maryland 21001

and

SHAWN ROGER WARNICK
1835 Mitchell Drive
Aberdeen, Maryland 21001

Case No. _____

and

3P PROTECT PERRYMAN PENINSULA, LLC

Plaintiffs

v.

F.O. MITCHELL & BRO.

Serve on:

427 Michaelsville Road
Perryman, Maryland 21130

and

FREDERICK WARD ASSOCIATES, INC.

Serve on:

Torrence Pierce
845 Flintlock Drive
Bel Air, Maryland 21015

and

HARFORD COUNTY, MARYLAND

Serve on:

Melissa Lambert, Esquire
County Attorney
Harford County, Maryland
Law Department
220 South Main Street
Bel Air, Maryland 21014

and

CHESAPEAKE REAL ESTATE GROUP, LLC

Serve on:

James Lighthizer

1 Boone Trail
Severna Park, Maryland 21146

Defendants.

* * * * *

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY
JUDGMENT AND PRIVATE ACTION
FOR NUISANCE AND PUBLIC NUISANCE**

Plaintiffs Paul Cisar, Sarah Gonzalez, Justin Pickering, Norma Tilton, Tamie Wainwright, Shawn Warnick and 3P Protect Perryman Peninsula, LLC, by their undersigned attorneys, Rignal Baldwin V, Michael Cuches, and Baldwin | Seraina, LLC, sues F.O. Mitchell & Bro., Inc., Frederick Ward Associates, Inc., Harford County, Maryland and Chesapeake Real Estate Group, LLC, and states:

Prefatory Statement

1. This action relates to the planned development and construction of a multi-building, 5.2 million square foot, Freight Terminal on a collection of parcels in Harford County.

2. The parcels, colloquially known as the "Mitchell Farm," are located on the Perryman Peninsula and are primarily undeveloped agricultural land zoned pursuant to Harford County's Zoning Code as Light Industrial ("LI").

3. According to Defendant Fredrick Ward, the engineer for the planned development:

The subject property is over 700 acres and mostly zoned Light Industrial. A small portion is zoned General Industrial fronting Chelsea Road. And there are some AG parcels, some

residential parcels also, and a business parcel. A portion of the property, about 10%, is in the Chesapeake Bay Critical Area, Designations Limited Development Area, and Resource Conservation Area. And about 31% in the Water Source Protection District of the Perryman Well Field. We are proposing 5 warehouses totaling 5.2 million square feet. And another 2,000 square feet of commercial retail use integrated into the overall project. Presently the primary access to the property is from Perryman and Canning House Road. We are proposing a new primary access via connection road from Chelsea Road to Perryman. The development will be served by public Water and Sewer.

4. In fact, the "5 warehouses" are a massive Freight Terminal, that, on information and belief, will be operating 24-hours a day.

5. The Freight Terminal, as proposed, will be the largest in the State of Maryland and the 3rd largest in the Country. It will be larger than, and create traffic volumes higher than, many commercial airports.

6. The Freight Terminal, as proposed, will bring over 1000 additional tractor trailers and over 2000 additional passenger vehicles onto a single rural road.

7. This rural road is the sole access road for over 400 residential properties on Perryman Peninsula. The proposed Freight Terminal will render that single road impassable during certain times of the day, create exceptionally hazardous traffic conditions, hinder emergency service response times, and endanger school aged children and other pedestrians.

8. The proposed development is unlawful, as a Freight Terminal is a prohibited use for LI zoned property in Harford County.

9. Defendants' conduct is therefore a nuisance *per se*.

10. Defendants' conduct is also a private nuisance because it is an intentional and unreasonable legal cause of a substantial interference and invasion to Plaintiffs' interests in the use and enjoyment of their land.

11. Plaintiffs further seek a declaratory judgment pursuant to the Maryland Declaratory Judgment Act, Md. Code, Ann., Cts. & Jud. Proc. Art., § 3-401, *et seq.* for the purpose of determining a question of actual controversy between the parties and terminating uncertainty and controversy giving rise to this proceeding, as more fully described *infra*.

12. Finally, Plaintiffs seek a preliminary injunction and permanent injunctive relief to prevent a nuisance and private nuisance that the Freight Terminal will indisputably cause.

The Parties

13. Plaintiff Paul John Cisar, 2 Poplar Grove Avenue, Aberdeen, Maryland, is a resident of Harford County who lives adjacent to the Mitchell Farm with his wife and three children. He has been a resident of that location since 1994.

14. Plaintiff Sarah Gonzalez, 1636 Perryman Road, Aberdeen, is a resident of Harford County who lives adjacent to the Mitchell Farm with her husband, and four children. She has been a resident of that location since 2022.

15. Plaintiff Justin Andrew Pickering, 1605 Perryman Road, Aberdeen, Maryland, is a resident of Harford County who lives adjacent to the Mitchell Farm with his wife and two children, and has been a resident of that location since 2016.

16. Plaintiff Norma Gail Tilton, 313 Fords Lane, Aberdeen, Maryland, is a resident of Harford County who lives adjacent to the Mitchell Farm with her husband, and has been a resident of that location since 1993.

17. Plaintiff Tamie Wainwright, 11 Spesutia Road, Aberdeen, Maryland, is a resident of Harford County who lives in close proximity to the Mitchell Farm with her husband and son, and has been a resident of that location since 2017. Perryman Peninsula is her ancestral home.

18. Plaintiff Shawn Warnick, 1835 Mitchell Drive, Aberdeen, Maryland, is a resident of Harford County who lives adjacent to the Mitchell Farm and has been a resident of that location since 2019.

19. Plaintiff 3P Perryman Peninsula, LLC. ("3P") is a Maryland corporation located in Harford County dedicated to preserving and protecting the unique natural, aesthetic, and historical aspects of the Perryman Peninsula area and its environment.

20. 3P is comprised of individual members who reside in, and primarily have interests in real property on, Perryman Peninsula. 3P is authorized to engage in all lawful business and activity for which a Maryland limited liability company may engage, including, but not limited to, instituting legal actions. Defendants' actions and proposed actions affect the environment and value of real property where 3P's members reside, prevent safe and comfortable enjoyment of their property, and endanger the health and safety of its members.

21. Defendant F.O. Mitchell & Bro. is a corporation organized under the laws of Maryland that maintains its principal place of business in Maryland. It, and, or its

predecessor entities, has owned the Mitchell Farm for Decades. Of late it has sold portions of, and is in the process of further selling portions of, the Mitchell Farm in furtherance of the unlawful Freight Terminal development.

22. Defendant Chesapeake Real Estate Group ("CREG") is a corporation organized under the laws of Maryland that maintains its principal place of business in Anne Arundel County, Maryland. CREG is also the purchaser, contract purchaser, legal and beneficial owner of certain portions, and ultimate developer of, the Mitchell Farm.

23. Defendant Frederick Ward Associates, Inc. ("Frederick Ward") is a corporation organized under the laws of Maryland, which maintains its principal place of business in Maryland. Defendant Frederick Ward is the engineering firm engaged to design, submit, request, apply for and obtain permits from Harford County, Maryland for the unlawful development of the Mitchell Farm on behalf of, and in concert with, the developer Defendant CREG.

24. Defendant Harford County, Maryland ("Harford County") is a political subdivision of the State of Maryland responsible for the approval and granting of permits for development of real property in its jurisdiction. It has the obligation to prevent unlawful development of real property in Harford County, Maryland, including this Freight Terminal.

Jurisdiction and Venue

25. This Court has personal jurisdiction over Defendants pursuant to Maryland Code Ann., Cts. & Jud. Proc. § 6-102(a) because Defendants F.O. Mitchell & Bro.,

Frederick Ward, and CREG are corporations organized under the laws of Maryland and maintain their principal place of business in Maryland.

26. This Court has personal jurisdiction over Defendant Harford County because it is a political subdivision of the State of Maryland.

27. Anne Arundel County is the proper venue pursuant to Maryland Code Ann., Cts. & Jud. Proc. § 6-201 because Defendant CREG's principal place of business is in Anne Arundel County.

Factual Allegations Applicable to All Counts

28. Mitchell Farm is located on the Perryman Peninsula in Harford County and is primarily undeveloped agricultural land. It is a farm in the middle of a residential community.

29. Plaintiffs Cisar, Gonzalez, Pickering, Tilton, Wainwright and Warnick own and reside on real property adjoining or in proximity to the Mitchell Farm.

30. Until recently Mitchell Farm has been owned by Defendant F.O. Mitchell & Bro. and/or its agents and alter egos.

31. Defendant F.O. Mitchell & Bro. has of late sold portions of, and is in the process of further selling portions of, the Mitchell Farm to Defendant CREG.

32. Defendants CREG and Frederick Ward have begun development of the Mitchell Farm by seeking approvals for the Freight Terminal. Defendants CREG and Frederick Ward have, among other things, submitted concept plans, Forest Stand Delineation Plans, Preliminary Plans, Site Plans, and presented a traffic impact study.

33. CREG and Frederick Ward have also begun constructing and installing utility features on and around the Mitchell Farm in anticipation of the Freight Terminal's construction.

34. On information and belief, Defendant F.O. Mitchell & Bro., or one of its agents, still maintains a beneficial ownership interest in the Freight Terminal development.

35. The development and use of the Mitchell Farm as a Freight Terminal is unlawful and will harm all Plaintiffs.

36. Harford County, like other jurisdictions in Maryland, has adopted a Zoning Code pursuant to Article 25A of the Annotated Code of Maryland and the Harford County Charter.

37. The purpose of the Harford County Zoning Code is to promote the health, safety, and general welfare of the community by regulating, among other things, the size and use of buildings, structures and land.

38. It's provisions and requirements apply to all lands and their uses within the territorial limits of Harford County, including of course, the Mitchell Farm.

39. The Zoning Code establishes and delineates specific Zoning Districts and the principal uses permitted in each district. The principal uses permitted, and those that are not permitted in each zoning district are also defined.

40. The Mitchell Farm is zoned "Light Industrial" or "LI," pursuant to the Harford County Zoning Code.

41. Section 267-60(A)(2) of the Harford County Zoning Code defines a Light Industrial District as one that is intended to permit a mix of light manufacturing, warehousing and service uses (emphasis supplied).

42. Pursuant to the Harford County Zoning Code, a "Freight Terminal" is not a permitted use in a Light Industrial zone.

43. The unlawful development will cause special damage to the individual Plaintiffs that differs from that impressed on the public in that the harm will directly lower the value of their property and diminish the use and enjoyment thereto.

44. According to a representative of the Aberdeen Fire Department speaking at a Development Advisory Committee meeting regarding the planned development of the Mitchell Farm, "this project will further increase the traffic hazards and congestion in this area even more if there are no other road infrastructure improvements to this area."

45. There are no adequate road infrastructure improvements constructed, planned, or intended for this project.

46. As a result, back-ups, traveling hazards, and increased response times for emergency vehicles will result from the proposed development.

47. These back-ups, hazards, and increased response times create real, substantial, and likely dangers to residents of Perryman Peninsula, specifically the individual plaintiffs.

48. Despite the illegality and danger posed to Plaintiffs and other residents, Defendant Harford County has acquiesced to, and actively promoted, the unlawful development of the Freight Terminal.

49. The proposed development includes five massive freight distribution terminal buildings, totaling 5.2 million square feet of built-upon space.

50. In addition to the 5.2 million square feet of Freight Terminal buildings, the site plans include 2,000 square feet of commercial space.

51. The plans call for an additional 5 million square feet of internal roadway and parking, including 2,178 tractor trailer parking spaces and 3,773 passenger vehicle parking spaces.

52. The scale and intensity of use of an around-the-clock Freight Terminal, with thousands of loading docks, and storage of over 2000 commercial trailers, is irreparably incompatible with Harford County's Light Industrial zoning code designation for the Mitchell Farm.

53. Plaintiffs' interests in real property are in danger of irreparable harm occasioned by current and planned future unlawful use and development of the Mitchell Farm by the Defendants, individually, and collectively.

54. This unlawful use and resulting harm to all Plaintiffs invades the rights of the adjacent and other property owner Plaintiffs, and all residents of Harford County, Maryland, in that it will render many of the small rural roads unusable and/or unsafe for residents.

55. The unlawful development will exponentially increase the number of tractor trailers on the peninsula. The increased tractor trailer traffic will make travel to the surrounding residential communities unsafe, and at shift changes, practically impossible.

56. The increased traffic will exacerbate diesel exhaust and cause health problems for nearby residents. The resulting environmental impacts will impair the water resources, wildlife, land, and other environmental, recreational, and economic uses of Plaintiff's real property.

57. Defendants' past and proposed unlawful acts present an imminent danger to the health, welfare, and safety of the people near the Mitchell Farm, those living on Perryman Peninsula, and those residing in the greater Harford County, Maryland community.

58. Defendants' past and proposed unlawful acts will result in irreversible and irreparable damage to the air, water, and other natural resources.

59. This Court's intervention is required to prevent the pollution, destruction, and substantial and unreasonable impairment of the air, water, and other natural and civic resources of the Perryman Peninsula.

COUNT ONE - DECLARATORY ACTION

Against All Parties

60. This Count adopts by reference all numbered paragraphs in the Complaint as if fully set forth herein.

61. The Act provides an opportunity to any person, including corporations, to settle and to obtain relief from uncertainty and insecurity with respect to rights, status, and other legal relations.

62. Parties, pursuant to Section 3-406, may seek determination of a question of construction or validity arising not only under a contract, but also under a statute, ordinance, administrative rule, or regulation, and obtain a declaration of rights, status, or other legal relations thereunder.

63. Plaintiffs Cisar, Gonzalez, Pickering, Tilton, Wainwright, Warnick and 3P's rights, status and legal relations are affected by Defendants' *ultra vires* interpretation, application, and planned contravention of a statute, municipal ordinance, administrative rule, or regulation.

64. There exists a justiciable issue and controversy relating to a question of construction or validity of the instrument, statute, ordinance, or rule, i.e. the zoning code.

65. The justiciable issue presents more than a mere difference of opinion, in that Defendants are violating the zoning code.

66. There is more than a mere prayer for declaratory relief in the complaint.

67. Plaintiffs seek a declaratory judgment that the planned Freight Terminal is unlawful and violates the Zoning Code's clear prohibition against its construction in a Light Industrial zoned district.

68. A declaratory judgment by this Court will terminate this controversy.

69. Plaintiffs are entitled to injunctive relief against Defendants.

COUNT TWO – PRIVATE ACTION FOR NUISANCE

Against Defendants CREG, Frederick Ward, and F.O. Mitchell & Bro.

70. This Count adopts by reference all numbered paragraphs in the Complaint as if fully set forth herein.

71. Defendants' conduct is a legal cause of an invasion to Plaintiffs Cisar, Gonzalez, Pickering, Tilton, Wainwright, Warnick and 3P's members' interest in their private use and enjoyment of their land.

72. Defendants' invasion by way of unlawful development is intentional and unreasonable, and in disregard of the rights of Plaintiffs.

73. Defendants' conduct has caused, and will continue to cause, substantial and unreasonable injury and interference with Plaintiffs Cisar, Gonzalez, Pickering, Tilton, Wainwright, Warnick and 3P's use and enjoyment of their property.

74. For example, the planned development has already impaired Plaintiff's property values.

75. Defendants' conduct has and will continue to cause a diminution in the monetary value and practical use of their property, harming Plaintiffs individual and collective pecuniary interests.

76. Plaintiffs are entitled to injunctive relief against Defendants to prevent the unlawful actions and proposed nuisance contemplated by Defendants.

COUNT THREE – PRIVATE ACTION FOR PUBLIC NUISANCE

Against CREG, Frederick Ward, and F.O. Mitchell & Bro.

77. This Count adopts by reference all numbered paragraphs in the Complaint as if fully set forth herein.

78. Defendants' conduct violates the Harford County Zoning Code, and therefore constitutes a nuisance *per se*.

79. Defendants' conduct prejudices public health and comfort with increased pollution and traffic.

80. The development Defendants have begun to, and further endeavor to create is and will be a nuisance because of their locality and surroundings as well as the way it will be maintained.

81. Defendants' conduct unreasonably interferes with the rights of the community at large.

82. The harm suffered by Plaintiffs Cisar, Gonzalez, Pickering, Tilton, Wainwright, Warnick, and 3P, as residents living adjacent or close to the Mitchell Farm, is of a kind different than that suffered by other members of the public.

83. Defendants' conduct has and will continue to cause a diminution in the value of Plaintiff's properties.

84. Plaintiffs are entitled to injunctive relief against Defendants.

COUNT FOUR –FOR PRELIMINARY AND PERMANT INJUCTIVE RELIEF

Against All Defendants

85. This Count adopts by reference all numbered paragraphs in the Complaint as if fully set forth herein.

86. This is an action for a preliminary and permanent injunctive relief pursuant to Maryland Rules 15-501 through 15-505.

87. Plaintiffs are residents of Harford County, Maryland. They reside adjacent or close to the Mitchell Farm on Perryman Peninsula.

88. Defendants' conduct in developing their Freight Terminal is an unlawful intrusion, without the consent of Plaintiffs, and interferes with the possessory interests of Plaintiffs in the aforesaid property.

89. Plaintiffs have made repeated demands upon Defendants to cease their operations. Defendants refuse to refrain from their unlawful actions and abide by applicable law, county code, or respect the statutory or common law rights of Plaintiffs.

90. There exists strong likelihood that Plaintiffs will prevail on the merits because the proposed development is expressly prohibited by county code.

91. Unless Defendants are restrained by this Court from impinging on the property rights and pecuniary interests of Plaintiffs, Plaintiffs will suffer immediate, substantial, and irreparable injury.

92. On information and belief, all Defendants are proceeding in a manner with the unlawful development in contravention of the law to subvert express Harford County zoning code, and by extension, deprive Plaintiffs of their rights.

93. The benefit of Plaintiffs obtaining injunctive relief is equal to or outweighs the potential harm which Defendants would incur if this Court grants the requested injunctive relief.

94. The public interest is best served by granting the injunction, in that the public benefits when laws are followed by developers.

WHEREFORE, Plaintiff demands:

- A. That this Court determine and adjudicate the rights and liabilities of the parties with respect to the permitted use in the "Light Industrial" Zone pursuant to the Harford County Code;
- B. That this Court issue an Order enjoining Defendants in furtherance of the development of the unlawful Freight Terminal, including, but not limited to, obtaining any permitting or approvals, or performing any actions to the real property at the Mitchell Farm at Perryman Peninsula.
- C. That this Court issue an Order granting Plaintiffs a preliminary injunction restraining and enjoining Defendants from taking any steps in furtherance of the development of the Mitchell Farm at Perryman Peninsula, including but not limited to permitting, approvals, subdividing.

D. That this Court award Plaintiffs costs, attorney's fees, and any other such appropriate relief in these proceedings.

Respectfully submitted,

/s/

Rignal W. Baldwin V, CPF No. 1212110046

Michael A. Cuches, CPF No. 0706110047

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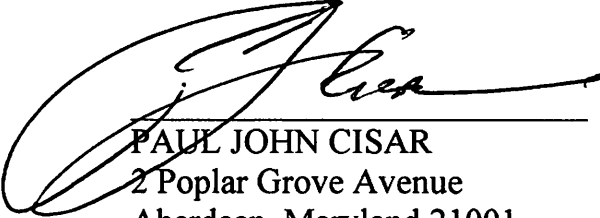
Attorneys for Plaintiffs,

Plaintiffs Cisar, Gonzalez, Pickering, Tilton,

Wainwright, Warnick and 3P Protect Perryman

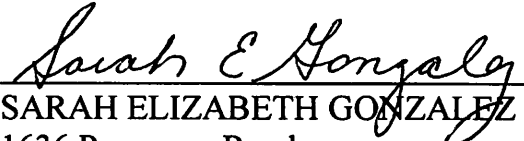
Peninsula LLC

*I solemnly affirm under the penalties of perjury that the contents of the foregoing
Complaint are true to the best of my knowledge, information, and belief.*



PAUL JOHN CISAR
2 Poplar Grove Avenue
Aberdeen, Maryland 21001

*I solemnly affirm under the penalties of perjury that the contents of the foregoing
Complaint are true to the best of my knowledge, information, and belief.*



SARAH ELIZABETH GONZALEZ
1636 Perryman Road
Aberdeen, Maryland 21001

*I solemnly affirm under the penalties of perjury that the contents of the foregoing
Complaint are true to the best of my knowledge, information, and belief.*



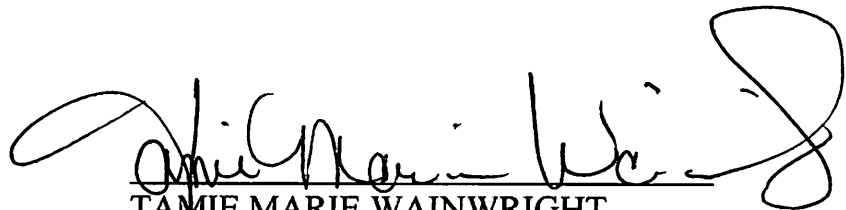
JUSTIN ANDREW PICKERING
1605 Perryman Road
Aberdeen, Maryland 21001

*I solemnly affirm under the penalties of perjury that the contents of the foregoing
Complaint are true to the best of my knowledge, information, and belief.*

A handwritten signature in cursive script that reads "Norma Gail Tilton". The signature is written in black ink and is positioned above a horizontal line.

NORMA GAIL TILTON
313 Fords Lane
Aberdeen, Maryland 21001

*I solemnly affirm under the penalties of perjury that the contents of the foregoing
Complaint are true to the best of my knowledge, information, and belief.*

A handwritten signature in black ink, appearing to read "Tamie Marie Wainwright". The signature is written in a cursive style with a large, looping flourish at the end.

TAMIE MARIE WAINWRIGHT
11 Spesutia Road
Aberdeen, Maryland 21001

*I solemnly affirm under the penalties of perjury that the contents of the foregoing
Complaint are true to the best of my knowledge, information, and belief.*

A handwritten signature in black ink, reading "Shawn Roger Warnick". The signature is written in a cursive style with a large, prominent initial 'S'.

SHAWN ROGER WARNICK
1835 Mitchell Drive
Aberdeen, Maryland 21001

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

PAUL JOHN CISAR, *et. al.*,

Plaintiffs

v.

Case No.:

F.O. MITCHELL & BRO., *et. al.*

Defendants.

PRAYER FOR JURY TRIAL

Plaintiffs hereby prays a jury trial on all claims properly triable to a jury.

/s/ Rignal W. Baldwin V

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