

PAUL JOHN CISAR, et al.	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
F.O. MITCHELL & BRO, et al.	*	ANNE ARUNDEL COUNTY
Defendants.	*	
	*	CASE NO.: C-02-CV-22-000988
* * * * *		

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT F.O. MITCHELL & BRO.’S MOTION TO DISMISS

F.O. Mitchell & Bro. (“Mitchell”), by and through its undersigned counsel, Robert S. Lynch, Esquire, David S. Lynch, Esquire, and Stark and Keenan, P.A., respectfully submit this Memorandum of Law in Support of Mitchell’s Motion to Dismiss:

INTRODUCTION

Plaintiffs’ Verified Complaint for Injunctive Relief and Declaratory Judgment and Private Action for Nuisance and Public Nuisance (“Complaint”) improperly seeks an advisory opinion from the Circuit Court of Anne Arundel County concerning the Harford County Zoning Code, injunctive relief, and a finding of an anticipatory nuisance and nuisance *per se* regarding a proposed warehouse development in Perryman, Harford County, Maryland. Plaintiffs correctly acknowledge throughout their Complaint that the developer and contract purchaser

of the Subject Property¹, Chesapeake Real Estate Group, LLC (“Chesapeake”), has submitted, pursuant to the Harford County Development Regulations, various development plans for review and approval by the Harford County Department of Planning and Zoning (“DPZ”). These plans include a Forest Conservation Plan, Landscape Plan, Preliminary Plan, Site Plan, and Stormwater Management Concept Plan (collectively referred to herein as “Development Plans”). *See* Forest Conservation Plan, Landscape Plan, Preliminary Plan, Site Plan, and Stormwater Management Concept Plan, attached, respectively, as Exhibits A, B, C, D, E². Similarly, Plaintiffs correctly acknowledge that each development approval remains under review by Harford County (“the County”). Nonetheless, without basis in Maryland law or logic, Plaintiffs construct a transparent straw-man argument and utilize that fallacy to improperly seek extraordinary relief from this Court, which includes a demand that Mitchell be enjoined from “performing any actions to [the Subject Property].” *See* Complaint, p. 17, ¶A. For the reasons set forth below, Mitchell urges this Honorable Court to dismiss Plaintiffs’ Complaint.

¹ Plaintiffs fail to identify with any specificity the property subject to their Complaint. Without waiving objection to the failure of Plaintiffs to specifically identify the property subject to this lawsuit and for the reasons more fully set forth *infra* at pages 3-5, Mitchell will refer to the land included in Chesapeake’s proposed Perryman warehouse development as the “Subject Property.”

² *See also* DPZ webpage which provides access to public records related to the proposed development of the Subject Property: <https://hcgweb01.harfordcountymd.gov/weblink/0/fol/8098795/Row1.aspx> (last visited July 14, 2022)

SUBJECT PROPERTY

Plaintiffs' Complaint fails to identify with any specificity the subject of this land use dispute. Indeed, the Complaint merely refers to the land at issue as the "Mitchell Farm," without any reference to the property's address, tax account number(s), tax map, or parcel numbers. *See* Complaint, ¶¶ 2, 28 ("[t]he 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")."). Mitchell asserts that such information is necessary to sustain this action which seeks a declaratory judgment and injunctive relief concerning the zoning and processing of development approvals for a particular property located in Harford County. *See* Md. Rule 2-322(d) ("If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering..."). Here, Plaintiffs' statement that the "Mitchell Farm is located on the Perryman Peninsula in Harford County and is primarily undeveloped agricultural land...in the middle of a residential community" does not satisfy the requirements under Maryland law that the Plaintiffs plead with specificity such that Defendants and this Court understand the alleged land use dispute. For this reason alone, this Court should dismiss Plaintiffs' Complaint.

Nonetheless, without waiving its argument that Plaintiffs' Complaint is too vague, for the sake of clarity with respect to the arguments set forth below, Mitchell will assume that the Subject Property in this lawsuit is the assemblage of six parcels consisting of approximately 708 acres, zoned LI – Light Industrial, GI – General Industrial, AG – Agricultural, R1- Urban Residential and located at Tax Map 63, Parcels 53, 62, 216, and 306. The Subject Property includes the following property addresses: 1) 1714 Perryman Road, Perryman, MD 21130; 2) Perryman Road, Perryman, Maryland 21130; 3) Fords Lane, Aberdeen, Maryland 21001; 4) 1625 Perryman Road, Aberdeen, Maryland 21001-4216; 5) Michaelsville Road, Perryman, Maryland 21130; and 6) 1607 Perryman Road, Perryman, Maryland 21130. *See Exs. A-E; see also* Excerpt of Preliminary Plan, attached as Exhibit F. Mitchell owns the majority of the Subject Property. *Id.* Charles A. Maslin, III owns approximately 4.64 acres of the Subject Property, located at 1607 Perryman Road. *Id.* Mr. Maslin has not been named as a party to this lawsuit.

The majority of the Subject Property has been zoned LI since 1997, when the County classified the Subject Property as LI as part of the County's 1997 comprehensive zoning. Now, twenty-five years later and before the County has approved any Development Plan for the Subject Property, Plaintiffs improperly seek to constrain Mitchell's and Chesapeake's right to develop the Subject Property in accordance with Harford County Code (2008, as amended) ("Code"), Chapter 267

(“Zoning Code”), which explicitly permits the development of a warehouse and accessory retail/service use at the Subject Property.

ARGUMENT

Plaintiffs, without definition or explanation, baldly assert that Mitchell and Chesapeake seek to develop a “freight terminal” on the Subject Property despite the fact that all relevant Development Plans and other relevant documents³ for the proposed development plainly reference a proposed warehouse and commercial retail use. Plaintiffs ignore the fact that DPZ has yet to approve any development plan for the proposed warehouse and commercial retail use on the Subject Property and proceed to assert in their 94-paragraph Complaint that a “freight terminal” is not a permitted use on the Subject Property, which is primarily zoned LI. To be clear, under the Zoning Code, a warehouse and commercial retail use is expressly permitted in the LI zoning district. Zoning Code, Art. VII, “Permitted Use Charts,” p. 146. A “freight terminal” and many other uses, like a recycling center, leather tannery, nightclub, or driving range are not. *Id.*, pp. 129-46. Without basis, Plaintiffs simply chose a use that is not permitted in the LI zoning district, “freight terminal,” and ascribed that use to the proposed development on the Subject Property to argue that it should not be permitted on the Subject Property. Plaintiffs’ Complaint is

³ These additional documents include, but are not limited to, the advertisement for the Community Input Meeting (attached as “Exhibit G”) and the Development Advisory Committee (“DAC”) Minutes (introduction attached as “Exhibit H”).

frivolous and is brought in bad faith. Despite the frivolity of Plaintiffs' straw-man argument, this Court need not address the merits as this Complaint should be dismissed for the following myriad reasons, which are set forth in detail below: 1) improper venue; 2) lack of a justiciable controversy; 3) failure to exhaust administrative remedies; 4) failure to state a claim; and 5) failure to add necessary parties. Alternatively, if this Court does not dismiss this matter, then this case should be transferred to the Circuit Court for Harford County under Maryland Rule 2-327(c) and the principles of *forum non conveniens*.

I. The Complaint Should be Dismissed for Improper Venue.

Maryland Code (1974, 2006 Repl. Vol.), Courts and Judicial Proceedings (“CJP”) Article, section 6-201 controls where a plaintiff shall file a cause of action.

Where there are multiple defendants, like this case, section 6-201(b) provides:

If there is more than one defendant, **and there is no single venue applicable to all defendants**, under subsection (a) of this section, all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose.

Id. (emphasis supplied). In this case, Harford County is the single venue applicable to all defendants (and Plaintiffs) and is the jurisdiction where the Subject Property is located. Indeed, Mitchell owns property in Harford County and carries on regular business in Harford County. *See* Affidavit of Louis F. Friedman, attached as Exhibit I (“F.O. Mitchell & Bro. does not carry on a regular business in Anne Arundel County, Maryland, and has never done so. F.O. Mitchell & Bro. carries on a regular

business in Harford County, Maryland, and owns property there.”). Likewise, Defendants Chesapeake, Frederick Ward, and Harford County, Maryland carry on regular business in Harford County. *See* “Affidavit of James Lighthizer,” attached as Exhibit J; “Affidavit of Torrence Pierce,” attached as Exhibit K; “Affidavit of Barry Glassman,” attached as Exhibit L. Nonetheless, Plaintiffs selectively applied CJP, section 6-201 and relied on the fact that the principal office for Chesapeake is located in Anne Arundel County to file this action in this Circuit Court for Anne Arundel County for an issue which squarely focuses on Harford County zoning law. To be sure, there can be no question that Chesapeake carries on regular business in Harford County since Chesapeake is the developer for the proposed warehouse development at the Subject Property. Moreover, Mr. Lighthizer testified in his affidavit that Chesapeake “has developed more than...900,000 sq. ft. of property in Harford County since 2016,” “is currently developing approximately...100,000 sq. ft. of property in Harford County,” “is currently engaged in the development planning process of approximately...5,197,000 sq. ft. of property in Harford County,” “has managed over...2,373,800 sq. ft. of property in Harford County,” and that Chesapeake and its executives “have sold and/or leased approximately...4,500,000 sq. ft. of property in Harford County.” Ex. J, ¶¶ 4-8. Because Harford County is the single venue applicable to all defendants, the Circuit

Court for Anne Arundel County lacks jurisdiction over this action. For this reason alone, Mitchell urges this court to dismiss Plaintiffs' Complaint.

II. The Complaint for Declaratory Judgment Should be Dismissed Because there is No Justiciable Controversy Between the Parties.

In any declaratory judgment action, "it has always been clear 'that the existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action.'" *Anne Arundel County v. Ebersberger*, 62 Md. App. 360, 367-68 (1985) (citing *Hatt v. Anderson*, 297 Md. 42, 45 (1983)). CJP, section 3-409(a)(1) allows a court to grant a declaratory judgment where "an actual controversy exists between contending parties." Maryland's appellate courts have consistently held that "'a controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded.'" *120 W. Fayette St., LLLP v. Mayor of Balt. ("Superblock IP")*, 413 Md. 309, 356 (2010) (citing *Reyes v. Prince George's County*, 281 Md. 279, 288 (1977)). "To be justiciable the issue must present more than a mere difference of opinion, and there must be more than a mere prayer for declaratory relief. Indeed, the addressing of non-justiciable issues would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State." *Id.* (citing *Hatt*, 297 Md. at 46). **"A declaratory relief action that requests adjudication based on facts that have yet to occur or develop lacks ripeness and should be dismissed for failure to allege a justiciable controversy."**

Id. (citing *Hickory Point P'ship v. Anne Arundel County*, 316 Md. 118, 130 (1989)) (emphasis supplied).

Here, Plaintiffs have failed to allege a justiciable controversy and ask this court to render an advisory opinion based upon a wholesale misrepresentation of the use proposed at the Subject Property. Throughout their Complaint, Plaintiffs acknowledge that the County has not yet approved any Development Plans for the Subject Property. Indeed, Plaintiffs interchangeably refer to the proposed use at the Subject Property as “planned development” or “proposed development.” Complaint, ¶¶ 1, 3, 5, 6, 7, 8, 49, 74. Plaintiffs more explicitly acknowledge that the Development Plans remain under review when they write that their “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.” *Id.*, ¶ 63 (bolded emphasis supplied). More explicitly, Plaintiffs allege, “Defendants [] have begun development of the Mitchell Farm by **seeking approvals** for the Freight Terminal.” *Id.*, 32. To be clear, no developer in Harford County may begin construction on any land prior to the County’s approval of a series of development plans required under the County’s Subdivision Regulations and Zoning Code. *See generally*, Code, Ch. 268 (“Subdivision Regulations”) and Zoning Code. A review of the record reveals that no allegation rises to the level of an actual dispute between the parties that would

merit declaratory relief. Indeed, Plaintiffs are seeking a judgment for a project that has yet to be approved.

The Court of Appeals' decision in *Superblock II* directly informs this Court's analysis of whether the submission of proposed development plans, which remain under review, is sufficient to establish a justiciable controversy for the purpose of a declaratory judgment action. In that case, plaintiff alleged that a proposed plan for development of the property known as the "Superblock" in Baltimore City would violate a Memorandum of Agreement ("MOA") and an Urban Renewal Plan. The Court explained that "[plaintiff] effectively alleges that the proposed plan for the 'Superblock' will violate the MOA and the Renewal Plan, but the City has not yet adopted or approved any plans." *Superblock II*, 413 Md. at 357. Citing *Boyd's Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 690 (1987), the *Superblock II* Court wrote, "[i]n a declaratory judgment proceeding, the court will not decide future rights in anticipation of an event which may never happen, but will wait until the event actually takes place[.]" *Id.* at 357. Expanding upon this point, the Court wrote, "[t]he disagreement over which declaratory relief is sought **must not be nebulous or contingent but must have taken on fixed and final shape** so that a court can see what legal issues it is deciding." *Id.* (citing *Hickory Point P'ship*, 316 Md. at 131) (emphasis supplied). Ultimately, the *Superblock II* Court held that "because none of the facts evidences the City's intent to adopt a proposal that

violates the MOA or the Renewal Plan, [plaintiff] failed to allege facts sufficiently ripe to rise to [the] level of a justiciable controversy.” *Id.* at 359.

Here, like *Superblock II*, Chesapeake’s proposed Development Plans are not yet approved. There are no facts whatsoever in the Complaint to suggest that the County intends to approve a use that is not permitted in the LI zoning district. The proposed Development Plans have yet to take on a fixed and final shape because they remain under review by the County. In fact, while the County could approve the Development Plans, the County also maintains the authority to deny the plans. Plaintiffs have failed to allege facts that are ripe for adjudication and have thus failed to establish a justiciable controversy. For these reasons, Mitchell respectfully urges this Court to dismiss Count I of Plaintiffs’ Complaint.

III. The Complaint Should be Dismissed Because Plaintiffs Have Failed to Exhaust Administrative Remedies.

A fundamental principle in Maryland’s land use jurisprudence is that administrative remedies must be exhausted before actions for declaratory judgment, mandamus, and injunctive relief may be brought. *See Md. Reclamation v. Harford Cnty.*, 382 Md. 348, 362 (2004) (“[W]hen administrative remedies exist in zoning cases, they must be exhausted before other actions, including requests for declaratory judgments, mandamus, and injunctive relief, may be brought....”). “If there is no final administrative decision in a case before an administrative agency, there is ordinarily no exhaustion of the administrative remedy.” *Renaissance Centro*

Columbia, LLC v. Broida, 421 Md. 474, 485 (2011). The policy behind this rule is one of judicial restraint and efficiency – the exhaustion doctrine avoids deciding issues in the circuit court that could be resolved at the agency level, where the case would benefit from the agency’s greater expertise. *See Falls Road Community Ass’n, Inc. v. Balt. Cnty.*, 437 Md. 115, 136-137 (2014). When the local jurisdiction (the County) provides a particular administrative remedy for the grievance involved, the aggrieved party typically must exhaust those remedies before bringing the case to court. As the Court of Appeals has explained:

[W]hen a chartered county . . . has established a Board of Appeals under the Express Powers Act, the appeal to that board provided for parties ‘aggrieved by a decision of a local zoning official’ is at least primary, and may be exclusive. Similarly, the Maryland Uniform Declaratory Judgments Act provides that ‘[i]f a statute provides a special form of remedy for a specific type of case, that statutory remedy shall be followed in lieu of [a declaratory judgment].’

Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cty., 437 Md. 115, 136 (2014).

Here, the Harford County Zoning Code provides an administrative remedy relevant to Plaintiffs’ claims that the proposed use at the Subject Property is a “freight terminal” disallowed in the LI zoning district. Indeed, the Subdivision Regulations provide for an appeal of development plans:

Any interested person whose property is effected by any decision of the Director of Planning, may within 30 calendar days after the filing of such decision, appeal to the Circuit Court for Harford County. Upon the hearing of such appeal, the decision of the Director of Planning shall be presumed by the Court to be proper and to best serve the public interest. **The burden of proof shall be upon the appellant, or appellants, to show that the decision complained of was illegal.** The said Court shall have the power to affirm, modify or reverse in part or in whole any decision appealed from and may remand any case for the entering of a proper order or for further proceedings, as the Court shall determine.

Subdivision Regulations, § 268-28(A) (emphasis supplied). To be clear, at this time there is no final administrative decision to appeal as the Development Plans for the Subject Property remain pending. *See Broida*, 421 Md. at 485 (“If there is no final administrative decision in a case before an administrative agency, there is ordinarily no exhaustion of the administrative remedy.”) However, upon approval, the Subdivision Regulations provide that the Plaintiffs, in an administrative appeal, may raise the question presented in their Complaint - whether the proposed use at the Subject Property is illegal? Plaintiffs have ignored the plain language of the Zoning Code, the Subdivision Regulations, and Maryland’s well-established law requiring Plaintiffs to exhaust their administrative remedies prior to seeking a declaratory judgment or injunctive relief. Plaintiffs do not have standing to bring this action because they have failed to exhaust their administrative remedies. Mitchell respectfully urges this Court to dismiss Plaintiffs’ counts for declaratory judgment and injunctive relief.

IV. The Complaint's Counts for Private and Public Nuisance Should be Dismissed Because Plaintiffs Failed to State a Claim upon Which Relief Can be Granted.

Maryland Rule 2-322 permits a party to file a motion to dismiss for failure to state a claim upon which relief can be granted. In considering a motion to dismiss for failure to state a claim under this rule, “a [trial] court must assume the truth of all well-pleaded material facts and all inferences that can be drawn from them.” *Tavalkoli-Nouri v. State*, 139 Md. App. 716, 725 (2001) (quoting *Rossaki v. NUS Corp.*, 116 Md. App. 11, 19 (1997)). Dismissal for failure to state a claim is proper only if the alleged “well pled” facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff. *Ricketts v. Ricketts*, 393 Md. 479 (2006). But, for purposes of a motion to dismiss, the facts comprising a cause of action must be pled with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice. *Bobo v. State*, 346 Md. 706 (1997). In this case, dismissal is proper because the Complaint fails to allege facts sufficient to state a cause of action for private or public nuisance against Mitchell, or any Defendant.

Indeed, Plaintiffs have inappropriately pleaded an anticipatory nuisance. In *Leatherbury v. Gaylord Fuel Corp.*, 276 Md. 367, 377 (1975), the Court of Appeals explained that “[o]rdinarily, an injunction will not be granted to restrain future activity unless it is the type of activity which constitutes a nuisance per se.” *Id.*

(citing *King v. Hamill*, 97 Md 103, 111 (1903)). “To constitute a nuisance per se, the activity sought to be enjoined must be a nuisance ‘at all times and under any circumstances regardless of location or surroundings.’” *Id.* (citing *Adams v. Commr’s of Trappe*, 204 Md. 165, 170 (1954)). “Where an individual proposes to engage in what is otherwise a lawful venture, the presumption is that he will conduct his activities in a proper manner. Thus, a court will not act, in anticipation of a threatened nuisance, to enjoin a legitimate activity unless the circumstances plainly show that the activity will be conducted as a nuisance.” *Id.* (citations omitted).

In *Leatherbury*, similar to the Plaintiffs in this case, landowners filed an action seeking an anticipatory injunction to restrain the proposed operation of a limestone quarry on nearby property on the ground that the quarry will constitute a nuisance. Unlike this case, where no development approvals have been issued, the owners of the proposed quarry in *Leatherbury* had obtained the necessary permits to operate their proposed quarry. Like this case, the neighboring landowners in *Leatherbury* brought their action prior to the operation of the quarry. Even where permits had been issued, the *Leatherbury* Court affirmed the lower court’s denial of the neighbor’s nuisance claim on the basis that it was premature. *See id.* at 379.

Here, the only conduct allegedly taken by Mitchell and Chesapeake in furtherance of their proposed warehouse development on the Subject Property is to engage in the well-established statutory development process in Harford County,

which includes conducting a community input meeting, engaging in the Development Advisory Committee process, and submission of Development Plans to the County for review. The only conduct allegedly taken by the County in furtherance of the proposed warehouse development is its administrative acceptance and ongoing review of Chesapeake's Development Plans. On its face, none of these actions can possibly be found to "cause substantial and unreasonable injury and interference" with Plaintiffs use and enjoyment of their property. *See* Complaint, ¶ 73. Likewise, submitting Development Plans for review by the County (and the County's review of those plans) cannot possibly constitute an "invasion to [Plaintiffs'] interest in their private use and enjoyment of their land" or an "unreasonable" and "unlawful development" which "has and will continue to cause a diminution" in Plaintiffs' property values. *Id.*, ¶¶ 71-75. No Development Plans have been approved, nor has any construction been initiated at the Subject Property in accordance with the proposed Development Plans. The Complaint fails to state a claim for private or public nuisance. Mitchell and Chesapeake are simply engaging in the lawful venture of seeking development approvals for a proposed warehouse development on the Subject Property. Plaintiffs' bald assertions and conclusory statements do not suffice to state a claim for private or public nuisance upon which relief can be granted.

Moreover, Plaintiffs' actions for private and public nuisance are premised on their incorrect assertion that the proposed use is not a warehouse development, which is a principal permitted use in the LI zoning district. Zoning Code, Art. VII, "Permitted Use Charts," p. 146. This question, as set forth in Argument, section III, *supra*, must be raised pursuant to the multiple administrative remedies available to the Plaintiffs. Plaintiffs have not exhausted their administrative remedies. A warehouse development is a principal permitted use in the LI zoning district and it cannot be considered a nuisance per se under the law.

The injunctive relief sought by Plaintiffs in conjunction with their nuisance claim underscores the absurdity of this Complaint. For example, Plaintiffs ask this Court to enjoin Defendants from "performing any actions to the [Subject Property]." Complaint, p. 17, ¶B. No local, Maryland, or Federal law allows this court to impose such a restriction on Mitchell's private property rights to utilize their property in accordance with the County's zoning law. Likewise, there is no basis anywhere in the law that would allow this court to enjoin Harford County from processing applications for development plan approvals. The County, a Charter County, has the authority to enact and enforce its Zoning Code and Subdivision Regulations. *See* Md. Code (2012), Land Use Article, § 4-101 ("It is the policy of the State that: (1) the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning controls; and (2)

planning and zoning controls shall be implemented by local government”); *see also* Harford County Charter, § 405 (“The Director of Planning shall be charged with the responsibility and duty of planning for the physical development and growth of the County, including the...administration, and enforcement of a zoning map and of zoning rules and regulations which shall constitute a zoning code. All plans and maps and all rules and regulations relating to planning and zoning shall be approved by legislative act of the Council prior to their taking effect as law.”).

Plaintiffs’ Complaint for anticipatory private and public nuisance is premature and Plaintiffs fail to state a claim upon which relief can be granted. Mitchell urges this Court to dismiss Plaintiffs’ Complaint.

V. The Complaint’s Count for Preliminary and Permanent Injunctive Relief Should be Dismissed for Failure to State a Claim.

An injunction is a form of equitable relief that a court may award after a plaintiff has proven liability on an underlying cause of action. *See Fare Deals Ltd. v. World Choice Travel.Com, Inc.*, 180 F. Supp. 2d 678, 682 n.1 (D. Md. 2001) (“[A] request for injunctive relief does not constitute an independent cause of action; rather, the injunction is merely the remedy sought for the legal wrongs alleged[.]”). Here, the underlying cause of action is a declaratory judgment and private and public nuisance. For all of the reasons set forth in Argument, §§ II-IV *supra* this Court should dismiss each of those counts. Accordingly, Plaintiffs’ count for Preliminary and Permanent Injunctive Relief should also be dismissed.

VI. The Complaint Should be Dismissed Because Plaintiffs Have Failed to Name as a Party a Person Who is Legally Required to be a Party.

Under Maryland law, legally required parties in a declaratory judgment action include all persons who have or claim any legal interest that may be affected by the declaration. CJP, § 3-405(a)(1) (“If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party.”). Moreover, a court may not rule on a declaratory judgment claim if the ruling will prejudice the legal rights of persons who are not parties. *Id.*, § 3-405(a)(2) (“Except in a class action, the declaration may not prejudice the rights of any person not a party to the proceeding.”).

Here, assuming that Plaintiffs’ nonspecific reference to the “Mitchell Farm” refers to the Subject Property, Plaintiffs have completely ignored the fact that Mr. Maslin owns a portion of the Subject Property. His land, located at 1607 Perryman Road, Perryman, Maryland 21130, is included in each of the development plan applications for the Subject Property submitted to the County. *See Exs. A-F*. His legal interests are directly implicated by this lawsuit. *See Bender v. Secretary, Md. Dept. of Personnel*, 290 Md. 345, 350 (1981) (“Any person who, as a result of a declaration, may gain or be deprived of a legal right or other benefit has an interest that might be affected by the outcome of the action and is, therefore, a necessary party.”). Plaintiffs’ failure to name Mr. Maslin as a party to their declaratory

judgment action is fatal to their action and requires this Court to dismiss the Complaint.

VII. In the Alternative, this Case Should be Transferred to the Circuit Court for Harford County under Maryland Rule 2-327(c) and Based on the Doctrine of *Forum Non Conveniens*.

Mitchell hereby adopts by reference herein Argument, section E of the County's Motion to Dismiss.

CONCLUSION

For all of these reasons, Mitchell respectfully urges this court to dismiss, with prejudice, Plaintiffs' Complaint.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 15th day of July, 2022, that a copy of the foregoing Memorandum of Law in Support of Defendant F.O. Mitchell & Bro.'s Motion to Dismiss was served via MDEC on:

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