

IN THE CIRCUIT COURT FOR HARFORD COUNTY, MARYLAND

PAUL JOHN CISAR

and

SARAH ELIZABETH GONZALEZ

and

NORMA GAIL TILTON

Case No. C-12-CV-22-000888

and

TAMIE MARIE WAINWRIGHT

and

SHAWN ROGER WARNICK

and

3P PROTECT PERRYMAN PENINSULA, LLC

Plaintiffs,

v.

F.O. MITCHELL & BRO.

and

FREDERICK WARD ASSOCIATES, INC.

and

HARFORD COUNTY, MARYLAND

and

CHESAPEAKE REAL ESTATE GROUP, LLC

and

CHARLES A. MASLIN, III,
100 Washington Street
Havre de Grace, Maryland 21078,

Defendants.

* * * * *

**VERIFIED AMENDED COMPLAINT FOR INJUNCTIVE RELIEF AND
DECLARATORY JUDGMENT AND PRIVATE ACTION FOR NUISANCE
AND PUBLIC NUISANCE, WITH COMPENSATORY DAMAGES**

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

Prefatory Statement

1. This action relates to the development and construction of a multi-building, 5.2 million square foot, Freight Terminal, with 3,956 parking spaces for tractor trailers and other vehicles, on a collection of parcels in Harford County.
2. The parcels, colloquially known as the "Mitchell Farm," are located on the Perryman Peninsula on approximately 711.72 acres located within the Chesapeake Bay Critical Area, and are primarily undeveloped agricultural land zoned pursuant to Harford County's Zoning Code as Light Industrial ("LI"). A copy of the Notice of

Community Input Meeting with a description of the property at issue, to which is attached the site plan appended to that Notice, is Exhibit A hereto.

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 "non-sort high cube fulfillment center" is a massive Freight Terminal, that, on information and belief, will be operating 24-hours a day.

5. The Freight Terminal, as proposed, will be among the largest in the United States. It will be larger than, and create traffic volumes higher than, many commercial airports.

6. The Freight Terminal, as proposed, will bring over 2,370 additional tractor trailers and over 5,530 additional passenger vehicles per day onto a single rural road.

7. This rural road is the sole access road for over 400 residential properties on the Perryman Peninsula. The 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 illegal, as a Freight Terminal is a prohibited use for LI zoned property in Harford County.

9. The Freight Terminal project has already caused a substantial decrease in the value of the individual Plaintiffs' property, which will likely continue to decrease in value in the future because of this project.

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

11. 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.

12. Plaintiffs also 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*.

13. Plaintiffs further seek a preliminary injunction and permanent injunctive relief to prevent a nuisance and private nuisance that the Freight Terminal has caused and will indisputably cause.

14. Finally, Plaintiffs seek an award of compensatory damages for the diminution in their property values caused by the Defendants' illegal conduct, including the maintenance of private and public nuisances.

The Parties

15. 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.

16. 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.

17. 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.

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

19. 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.

20. 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.

21. 3P is comprised of individual members who reside in, and primarily have interests in, real property on the 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' past actions and proposed actions effect adversely and will continue to affect adversely 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, including the individual Plaintiffs

22. 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. 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.

23. Defendant Charles A. Maslin, III ("Maslin") owns a separate property needed for the project and, thus, has an interest in this litigation.

24. 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 of, and ultimate developer of, the Mitchell Farm.

25. 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.

26. 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 legal obligation to prevent unlawful development of real property in Harford County, Maryland, including this Freight Terminal.

Jurisdiction and
Venue

27. 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.

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

29. This Court has personal jurisdiction over Defendant Maslin because he is domiciled in the State of Maryland.

Factual Allegations Applicable to All Counts

30. Plaintiffs incorporate all numbered paragraphs in this Amended Complaint as if fully set forth herein.

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

32. Until recently Mitchell Farm has been owned by Defendant F.O. Mitchell & Bro. and/or its agents and alter egos, and, as to a smaller portion, Defendant Maslin.

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

34. Defendants CREG and Frederick Ward have begun development of the Mitchell Farm by seeking and in some instances receiving approvals for the Freight Terminal. Defendants CREG and Frederick Ward have, among other things, submitted concept plans, Forest Stand Delineation Plans, Forest Conservation Plans, Preliminary Plans, Site Plans, Stormwater Management Plans, and presented multiple versions of a traffic impact study.

35. CREG and Frederick Ward have also undertaken significant work on and around the Mitchell Farm in relation to the construction and development of the Freight Terminal, including constructing and installing utility features.

36. 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.

37. The development and use of the Mitchell Farm as a Freight Terminal is unlawful. It will harm all Plaintiffs, and it has already caused the real property owned

and/or occupied by the individual Plaintiffs to lose substantial value because of the nature of the project.

38. 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.

39. 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.

40. Its provisions and requirements apply to all lands and their uses within the territorial limits of Harford County, including the Mitchell Farm.

41. 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.

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

43. 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).

44. A "Freight Terminal" is specifically prohibited in a Light Industrial zone.

45. The unlawful development has already caused and will continue to cause special damage to the individual Plaintiffs that differs from that impressed on the public. The harm has already and will continue to directly lower the value of their property,

diminish their use and enjoyment thereto, and endanger their health and safety.

46. 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."

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

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

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

50. 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, including by listing the approvals and allowing for planned modifications by the developer that escalate the intensity of use.

51. Among other things, Defendant Harford County has stonewalled the legitimate efforts of Plaintiffs to obtain accurate information about the nature and status of the Freight Terminal project, so that their attempts to voice their objections to the project are less effective.

52. The Freight Terminal includes five massive freight distribution terminal buildings, totaling 5.2 million square feet of built-upon space.

53. In addition to the 5.2 million square feet of Freight Terminal buildings, the Freight Terminal will have 2,000 square feet of commercial space, and an additional 5 million square feet of internal roadway and parking, including 1,414 tractor trailer parking spaces and 2,542 passenger vehicle parking spaces.

54. The scale and intensity of use of an around-the-clock Freight Terminal, with thousands of loading docks, and storage of over 1,000 commercial trailers, is irreparably incompatible with Harford County's Light Industrial zoning code designation for the Mitchell Farm.

55. Plaintiffs' interests in their real property have suffered and will likely continue to suffer irreparable harm occasioned by current and planned future unlawful use and development of the Mitchell Farm by the Defendants, individually and collectively.

56. 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.

57. 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.

58. 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 Plaintiffs' real property.

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

60. Defendants' past and proposed unlawful acts will result in irreversible and irreparable damage to the air, water, and other natural resources, all of which are imminent.

61. 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, as well as continued diminution in Plaintiffs' property value.

COUNT ONE – DECLARATORY ACTION

Against All Parties

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

63. 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.

64. 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.

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

66. The proposed Freight Terminal, and the past and current acts by the Defendants in furtherance of its approval and construction, have already injured Plaintiffs, deprived them of their procedural rights, diminished the value of their property, and caused them to have to hire counsel, so that this case presents a practical rather than theoretical question that is ripe for adjudication, and Plaintiffs' position and that of the Defendants are antagonistic.

67. Plaintiffs seek a declaratory judgment that the Freight Terminal is and would be illegal and in violation of 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. A declaratory judgment by this Court would also protect the public interest, it would avoid needless time and money through an early resolution of a concrete question, and it would mitigate the economic damages Plaintiffs have already suffered and will continue to suffer without such relief. Plaintiffs also seek injunctive relief consistent with their prayer for declaratory relief.

WHEREFORE, Plaintiffs seek an order from this Court as follows:

1. Declaring that the Freight Terminal is and would be an illegal use of the Mitchell Farm;
2. Entering a preliminary and permanent injunction barring the Defendants from proceeding with the development or construction of the Mitchell Farm for a Freight Terminal or other illegal use and;
3. For such other relief as is necessary and/or appropriate.

COUNT TWO – PRIVATE ACTION FOR NUISANCE

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

70. This Count adopts by reference all numbered paragraphs in the Amended Complaint as if fully set forth herein.
 71. Defendants' conduct is a legal cause of an invasion to Plaintiffs Cisar, Gonzalez, 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, Tilton, Wainwright, Warnick and 3P's use and enjoyment of their property.

74. Plaintiffs are entitled to an award of compensatory damages, as well as injunctive relief, against Defendants to compensate them and to prevent the unlawful actions and nuisance created by Defendants' development and construction of the Freight Terminal on the Mitchell Farm.

WHEREFORE, Plaintiffs each seek an award of compensatory damages in an amount that exceeds \$75,000.00, and a preliminary and permanent injunction barring the Defendants from proceeding with the development or construction of the Mitchell Farm for a Freight Terminal or other illegal use.

COUNT THREE – PRIVATE ACTION FOR PUBLIC NUISANCE

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

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

76. Defendants' conduct is illegal and violates the Harford County Amended Zoning Code and therefore constitutes a nuisance *per se*.

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

78. The Freight Terminal that Defendants have commenced and intend to continue to construct and operate is and will continue to be a nuisance because of its nature, locality and surroundings as well as the way it will be maintained.

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

80. The harm suffered by Plaintiffs Cisar, Gonzalez, 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.

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

82. Plaintiffs are entitled to an award of compensatory damages and to injunctive relief against Defendants.

WHEREFORE, Plaintiffs each seek an award of compensatory damages in an amount that exceeds \$75,000.00, and a preliminary and permanent injunction barring the Defendants from proceeding with the development or construction of the Mitchell Farm for a Freight Terminal or other illegal use.

COUNT FOUR –FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

Against All Defendants

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

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

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

86. 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.

87. 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.

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

89. 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.

90. 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 provision, and by extension, deprive Plaintiffs of their rights.

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

92. The public interest is best served by granting the injunction, in that the public benefits when laws are followed by developers, particularly laws designed to protect the public's health and welfare.

WHEREFORE, Plaintiff demands:

A. That this Court determine and adjudicate the rights and liabilities of the parties with respect to the development and operation of the Freight Terminal 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 related to a Freight Terminal on that property.

C. That this Court award Plaintiffs costs, attorney's fees, and any other such

appropriate relief in these proceedings.

Respectfully submitted,

/s/
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v.

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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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