

Circuit Court for Anne Arundel County  
Case No. C-02-CV-21-001374

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 0313

September Term, 2023

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BLUE HERON COVE CONDOMINIUM  
ASSOC. INC. ET AL  
v.  
JESSICA L. PACHLER, ET AL

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Reed,  
Shaw,  
Sharer, J. Frederick  
(Senior Judge, Specially Assigned)

JJ.

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Opinion by Shaw, J.

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Filed: July 2, 2024

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

This appeal arises from the grant of summary judgment by the Circuit Court for Anne Arundel County. Appellees, Jessica Pachler and Karen Jennings, filed a Complaint for Declaratory Judgment against Appellants, Blue Heron Cove Condominium, its residents, and the City of Annapolis, requesting that the court “adjudicate the rights and liabilities of the parties with respect to the Right of Way and Landing at Wells Cove.” Both parties filed motions and cross motions for summary judgment. Following a hearing, the court granted in part and denied in part, the parties’ motions. The court determined that Appellees had standing and that “members of the Public have the right to access the Right of Way and Limited Waterfront Area as illustrated on the Blue Heron Cove Plat” which includes the right of “access to the water,” also referred to as “riparian rights” to access Wells Cove.

Appellants noted this timely appeal, and present six questions for our review.

1. Whether it was error for the lower court to grant Appellee’s Motion for summary judgment when Appellees did not have standing to bring a declaratory judgment action.
2. Whether it was error for the [circuit court] to grant summary judgment on a declaratory judgment claim when a necessary party was not joined.
3. Whether the [circuit court] erred when it failed to properly interpret the Plat and Easement as a matter of law.
4. Whether the [circuit court] erred when it held that Appellees and the general public have a license of riparian rights to access Wells Cove.

5. Whether the [circuit court] erred when it granted summary judgment in favor of [] Appellees in violation of the doctrine of collateral estoppel, collateral attack, and res judicata.
6. Whether the [court court] erred when its decision to grant summary judgment to [] Appellees and grant unfettered access to Wells Cove amounted to a taking of real property without compensation.

We answer yes to question one and therefore, we do not reach the remaining questions.

### **BACKGROUND**

Blue Heron Cove (“BHC”) is a planned residential development consisting of six single family homes on Boucher Avenue in Annapolis, Maryland. In 1986, the BHC Limited Partnership petitioned the City of Annapolis for a conditional use permit for the development of a residential community on the land where BHC is now located. The City issued the permit, premised on the developer complying with restrictions the City found were “necessary for the public interest and to ensure that the standards and requirements” of the City Code were complied with. The resolution provided that there shall be a “[four] foot wide path for public access to the open space and waterfront areas . . . .”

On June 23, 1992, BHC Limited Partnership dedicated an easement/right of access to the City. Its purpose was to, in part:

. . . dedicate a new variable width and a 5' wide pedestrian path (**public access to the water**) and limited waterfront area.

(Emphasis added). Under paragraph twenty, the “General Notes” section on the Plats, the dedication provided that:

The 5' pedestrian path and limited waterfront area is a **right of way for public access to the water**. This 5' path and limited waterfront area has been

dedicated to public use and shall be deeded to the City of Annapolis upon request. See easement plat recorded in Liber 5691 Folio 698.

(Emphasis added). The Plat with the Dedication was recorded in 1992.

One year later, BHC partnered with the City, and recorded a Declaration of Restrictions. This was to ensure the proper development and use of BHC. Under Article IV “Section 6: Existing Easements,” the Declaration provides that the “property as designated in Exhibit A is subject to the easements, encroachments, and rights-of-way as heretofore recorded among the Land Records of Anne Arundel County as well as Resolution R-22-86 . . . .”

In August 2021, BHC granted a Deed of Easement to the City providing that the five-foot-wide path, Boucher Avenue, running along Wells Cove on BHC property, would only be used by the public to view the water. In the Deed, BHC declared that it held:

exclusive right to enter and exit the water and to launch vessels in the water; such rights shall **NOT** be transferred or determined to be nonexclusive as part of this Deed of Easement.

WHEREAS, the Grantor, in Resolution R-22-86, dated April 14, 1986, and affirmed by the Declaration of Restrictions, as recorded among the Land Records of Anne Arundel County at Liber 5960, folio 831, agreed to dedicate, upon request by the Grantee, ***a five (5) feet wide path from Boucher Avenue to the edge of the water for the sole purpose of viewing the water.***

WHEREAS, the ***Resolution R-22-86 is not interpreted to provide and did not provide public access to enter or exit the water.***

(Emphasis added).

Appellee Jennings and Appellee Pachler live in nearby neighborhoods and neither own property in the Blue Heron Cove community. Ms. Jennings moved into her home that

is located approximately a quarter mile from Blue Cove in 2009. Appellee Pachler moved to her home, which is approximately a third of a mile from the area, in 1999. Prior to the issuance of the Deed of Easement and the restrictions that followed, Appellees used Boucher Avenue to access Wells Cove and the water taxis that travel to surrounding areas. According to Ms. Pachler, because BHC blocked all public access, her family and friends have not been able to visit her by boat or water taxi.

Appellees filed a Complaint for Declaratory Judgment in the Circuit Court for Anne Arundel County in October 2021, seeking access to the headwaters of Wells Cove. Appellants filed an answer and both parties filed cross motions for summary judgment. On January 31, 2022, the court held a hearing on Appellee’s first motion for summary judgment. At the hearing, Appellants raised several issues which included that Appellees lacked standing to bring a lawsuit against BHC and the City, and that Appellees failed to join a necessary party, the owners of a floating pier in Wells Cove. At the hearing, the court denied the motion for summary judgment, finding that there were material facts in dispute. In its ruling, the court did not specifically address standing.

On January 23, 2023, the court held a hearing on BHC’s cross motion for summary judgment, Appellee’s second motion for summary judgment and the City’s motion to dismiss. Following the arguments of counsel, the court took the matter under advisement. On April 5, 2023, the court issued a “Declaratory Judgment.” The court declared that:

***[M]embers of the Public have the right to access the Path and the Limited Waterfront Area*** as illustrated in [BHC] Plat of Condominium Subdivision in the City of Annapolis recorded among the land records of Anne Arundel County at Liber 68, Folio 42 (“the Plat”) . . .

. . . the ***Right of Way and Limited Waterfront Area access includes the right of “access to the water”*** also referred to as “riparian rights” to access the Wells Cove; and it is further

. . . that the ***“Deed of Easement” executed by the City of Annapolis and the Blue Heron Cove Condominium Association***, and recorded amongst the land records of Anne Arundel County on August 26, 2021 at Liber 37719, Folio 241, ***is in conflict with the previously recorded Easement Plat recorded on July 8, 1992*** in the land records of Anne Arundel County at Liber 5691, Folio 698, which established the Public’s independent right to access the headwaters of Wells Cove through the Path and the Limited Waterfront Area, and that the August 26, 2021 ***“Deed of Easement” is void ab initio . . . .***

(Emphasis added).

Within the judgment issued, the court denied Appellant’s “request to Dismiss the Plaintiff’s Complaint for lack of standing.” Appellants timely appealed.

### STANDARD OF REVIEW

Under Maryland Rule 2-501(f), a trial court may grant a motion for summary judgment “if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law.” *Mitchell v. Baltimore Sun Co.*, 164 Md. App. 497, 506 (2005). The question of whether the court properly granted summary judgment is a question of law and is subject to *de novo* review on appeal. *Spring v. Erie Ins. Exch.*, 439 Md. 142, 156 (2004). When a matter of summary judgment is appealed, we review “only the grounds upon which the trial court relied in granting summary judgment.” *Id.* (quoting *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006)).

### DISCUSSION

Appellants argue that Appellees lack standing to litigate the action against BHC and the City. Appellants assert that Appellees do not have property owner standing or taxpayer standing. They contend that Appellees were not “specially harmed” by the decisions or actions of the entities in a manner different from the general public, they failed to allege any pecuniary loss or increase in taxes, and they did not allege being parties to the drafting of the Resolution, Plat, or Dedication.

Appellees contend that they have standing to bring the actions as “(1) property owners, (2) taxpayers, and (3) residents of the City of Anne Arundel County.” They assert, like the “hundreds of neighbors,” they are no longer “able to access the City’s water taxi services near their homes at Wells Cove . . . .” (emphasis removed).

To be sure, the existence of a justiciable controversy is a prerequisite to the maintenance of a declaratory judgment action. *Md. State Admin. Bd. of Election Laws v. Talbot Cnty.*, 316 Md. 332, 339 (1988). Standing is an element of justiciability and “is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution.” *Hand v. Mfrs. & Traders Trust Co.*, 405 Md. 375, 399 (2008) (quoting *Sec. Pac. Nat’l Bank v. Evans*, 820 N.Y.S.2d 2, 3–4 (2006)); see *Talbot Cnty.*, 316 Md. at 339 (observing that “[j]usticiability encompasses a number of requirements,” including that “the plaintiffs must have standing to bring suit”). “Under Maryland common law, standing to bring a judicial action generally depends on whether one is ‘aggrieved,’ which means whether a plaintiff has ‘an interest such that he [or she] is personally and specifically affected in a way

different from ... the public generally.’” *Jones v. Prince George’s Cnty.*, 378 Md. 98, 118 (2003) (first alteration in *Jones*; second alteration in *Sugarloaf*) (quoting *Sugarloaf Citizens’ Ass’n v. Dep’t. of the Env’t*, 344 Md. 271, 288 (1996)); see, e.g., *Evans v. State*, 396 Md. 256, 328 (2006). An individual “has no standing in court unless he has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public.” *Kendall v. Howard Cnty.*, 431 Md. 590, 604 (2013) (quoting *Medical Waste Assocs., Inc. v. Md. Waste Coalition, Inc.*, 327 Md. 596, 612 (1992)). A plaintiff must satisfy the court that “the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” *Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970); accord *120 West Fayette St., LLLP v. Mayor of Baltimore*, 407 Md. 253, 270 (2009).

In land use cases, in order to bring a claim, the party must have either property owner standing or taxpayer standing. *State Ctr. v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 517–18 (2014). The property owner standing doctrine provides that owners of real property must be “‘specially harmed’ by a decision or action in a manner different than the general public.” *Id.* “Unless the complainant alleges sufficient ‘special aggrievement,’ the complainant has no standing to challenge the act, but rather is merely ‘generally aggrieved,’ in a similar manner as the rest of the public.” *Id.* at 521.

The Supreme Court of Maryland in *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 90 (2013), reviewed rezoning standing cases, and found that “proximity is the most



important factor to be considered.” The Court noted that standing could be found in cases involving property owners who are prima facie aggrieved and those farther away from an adjoining, confronting, or nearby property owner, but are still close enough to the site of the action. *Ray*, 430 Md. at 85. They are considered “almost prima facie” aggrieved. *Id.* An almost prima facie aggrieved party must provide “plus factors” to support their claim that they have been injured. *Greater Towson Council of Cmty. Ass’ns v. DMS Dev., LLC.*, 234 Md. App. 388, 410 (2017) (quoting *Ray*, 430 Md. at 83). Importantly, this additional factor must establish that the plaintiff’s personal or property rights are “personally and specially affected in a way different from that suffered by the public generally.” *Ray*, 430 Md. at 77.

Here, it is undisputed that Appellees are not property owners within BHC. They live in nearby neighborhoods, and they have made no claims that they are affected differently than the public. In fact, in Appellees’ Complaint for Declaratory Judgment, they argued that they, along with “hundreds of neighbors,” have been affected by the agreement between the City of Annapolis and BHC. Furthermore, Appellees in their brief, did not assert that they have such standing. In sum, Appellees do not have property owner standing.

Taxpayer standing “exists to ensure that government acts within the bounds of the law[,]” and to “protect [] citizen[s] from the consequence of [] unauthorized or illegal acts.” *Id.* (quoting *Bell*, 442 Md. at 576) (cleaned up). The doctrine of taxpayer standing, however, does not “provide unfettered access to the courts to citizens unhappy with all

actions taken by state or local governing bodies[.]” *Bell*, 442 Md. at 576. To establish taxpayer standing, the complainant must demonstrate that (1) “the suit is brought, either expressly or implicitly, on behalf of all other taxpayers;” and (2) the complainant asserts a “special interest” distinct from the general public. The special interest requirement is met when two additional elements are found. The complainant must (1) successfully put forth evidence to prove that the government action is “illegal or *ultra vires*,” and (2) prove the government’s action “may result in pecuniary loss to the taxpayer or an increase in taxes.” *Paula v. Mayor*, 253 Md. App. 566, 586 (2022). The proponent need only “allege, in good faith, an *ultra vires* or illegal act by the State or one of its officers . . . .” *Id.* Under the “specific injury” prong, however, claimants must “demonstrat[e] that they suffered the appropriate type of harm, that there is a nexus between the illegal or *ultra vires* act and the alleged harm incurred, and that there is some measure of the degree of harm.” *Paula*, 253 Md. App. at 586-87. “Uncertainty surrounding the potential loss to the taxpayer is not disqualifying, as this uncertainty ‘is the reason that we do not require taxpayers to demonstrate in the pleading the exact pecuniary loss or increase in taxes.’” *State Ctr.*, 438 Md. at 451. The “taxpayer plaintiff is not required to allege facts which *necessarily* lead to the conclusion that taxes will be increased.” *Inlet Assoc. v. Assateague House Condominium Ass’n.*, 313 Md. 413, 441 (1988) (emphasis in original). The test is “whether the taxpayer ‘reasonably *may* sustain a pecuniary loss or a tax increase’—‘whether there has been a showing of *potential* pecuniary damage.’” *Inlet Assoc.*, 313 Md. at 441 (quoting

*Citizens Planning & Housing Ass’n v. Co. Executive of Baltimore Co.*, 273 Md. 333, 344 (1974)) (emphasis in original).

Based on the Complaint and Motions filed by the parties in the present case, Appellees brought this action on behalf of themselves, and all persons similarly situated within the Eastport neighborhood where BHC is situated. They have, thus, met the first prong for taxpayer standing. The illegal act Appellees claim Appellants engaged in was the agreement entered into between BHC and the City that allegedly “violated the rights of the public who live in the City of Annapolis neighborhood of Eastport.” Because Appellees have asserted an illegal act based on their good faith allegation raised, this prong has been met. *See State Center, LLC*, 438 Md. at 556 (“We assume that the facts well-pleaded in [the] [a]ppellees’ Amended Complaint are true and, therefore, we must assume further that the complained-of State officials’ actions were, in fact, *ultra vires*.”); *see also Paula*, 253 Md. App. at 586 (As long as the claimant makes the allegations in good faith, the allegations will be sufficient to confer taxpayer standing.).

In support of their assertion that they have a “specific injury,” Appellees state that they are “no longer able to access the City’s water taxi services,” and are “likewise, unable to launch their kayaks or small boats ... or access moorings on Spa Creek.” As for any pecuniary loss Appellees claim they have suffered, they argue that “it is beyond dispute that for Appellees and members of this assumed class, who have been denied access to the waters of the United States, which are otherwise within a short walking distance of their homes, this is a tremendous loss of actual value.” They rely on our decision in *Inlet Assoc.*

In *Inlet Assoc.*, taxpayers filed a lawsuit to enjoin a developer from trading improvements for the transfer of public property and riparian rights of the city that would result in the taxpayers’ view being obstructed, loss of access to the bay, loss of guest parking, and loss of metered parking which brought revenue into the neighborhood. *Inlet Assoc.*, 313 Md. at 441. We found the complainants satisfied the damages requirement under the “specific injury” prong after they presented findings that: (1) the present value of the property before the transfer was at about one million; (2) if the City received a fair value for the transfer the City may have reduced taxes; (3) the metered parking for guest of the taxpayers would be removed for construction and that loss of revenue could increase taxes; (4) the development would result in the taxpayers losing access to a street for guest parking that would decrease the value of their homes; *and* (5) the development would also cause them to lose access to a seventy-five foot wide street that gave them access to the bay which would decrease the value of their property. *Id.* at 441-43.

Appellees, here, have failed to sufficiently plead “a monetary burden[,]” or harm suffered unique from the harm suffered, if any, by the general public. *Floyd v. Mayor and City of Baltimore*, 463 Md. 226, 248 (2019) (quoting *State Ctr.*, 438 Md. at 579). Although Appellees are “not required to prove an exact amount of pecuniary damage that [they] will suffer,” Appellees, nevertheless, have the burden to plead how they would ““uniquely bear [] excessive costs’ and increased taxes” as a result of Appellants being prohibited from using BHC’s property to access Wells Cove. *Floyd*, 463 Md. at 248 (quoting *State Ctr.*, 438 Md. at 581). We note that Maryland appellate courts have consistently required that

claimants plead with some particularity what pecuniary injury they would suffer. *See State Ctr.*, 438 Md. at 577; *see also Floyd*, 463 Md. at 258; *see also Boitnott v. Mayor and City Council of Baltimore*, 356 Md. 226, 234 (1999). Appellants have not made any such assertions.

As a result, the injuries alleged here “are imprecise and, for the most part, undefined.” *Floyd*, 463 Md. at 260. In *Inlet*, this Court did not rely solely on the appellant’s lack of access to water in finding that the appellants had standing. Rather, as provided above, this Court’s conclusion considered how close the appellants’ property was to the water and the factually supported ways in which the appellants suffered a “special injury.” Here, the injury that Appellees claim to have suffered is merely one of inconvenience, not a “special injury” that would result in a tax increase or pecuniary loss. We, therefore, conclude that Appellees lack standing and the court erred in granting declaratory judgment in Appellees’ favor.

**JUDGMENT OF THE  
CIRCUIT COURT FOR ANNE  
ARUNDEL COUNTY  
REVERSED; COSTS TO BE  
PAID BY APPELLANT.**