Circuit Court for Baltimore City
Case No. 24-C-22-004607

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 600

September Term, 2023

IN THE MATTER OF THE PETITION OF THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Beachley,
Kehoe, S.,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: October 29, 2024

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

This case stems from an administrative appeal from the Maryland Insurance Administration ("MIA") regarding the denial of insurance coverage to Roxbury View, LLC ("Roxbury View") by Security Title Guaranty Corporation of Baltimore ("Security Title"). Property owned by Roxbury View had been the subject of litigation, and Roxbury View had sought litigation expenses under a title insurance policy provided by Security Title in relation to Roxbury View's property. After Security Title denied the claim, Roxbury View filed a complaint with the MIA. Following a hearing at the Office of the Insurance Commissioner (the "Commission" or "Insurance Commission"), the Commission found that Security Title had a duty to defend Roxbury View in the pending litigation, and the Commission ordered Security Title to pay Roxbury View's litigation costs. After Security Title filed a petition for judicial review in the Circuit Court for Baltimore City, the circuit court affirmed.

In this appeal, Security Title presents three questions for our review. For clarity, we have rephrased and consolidated those questions as a single issue:

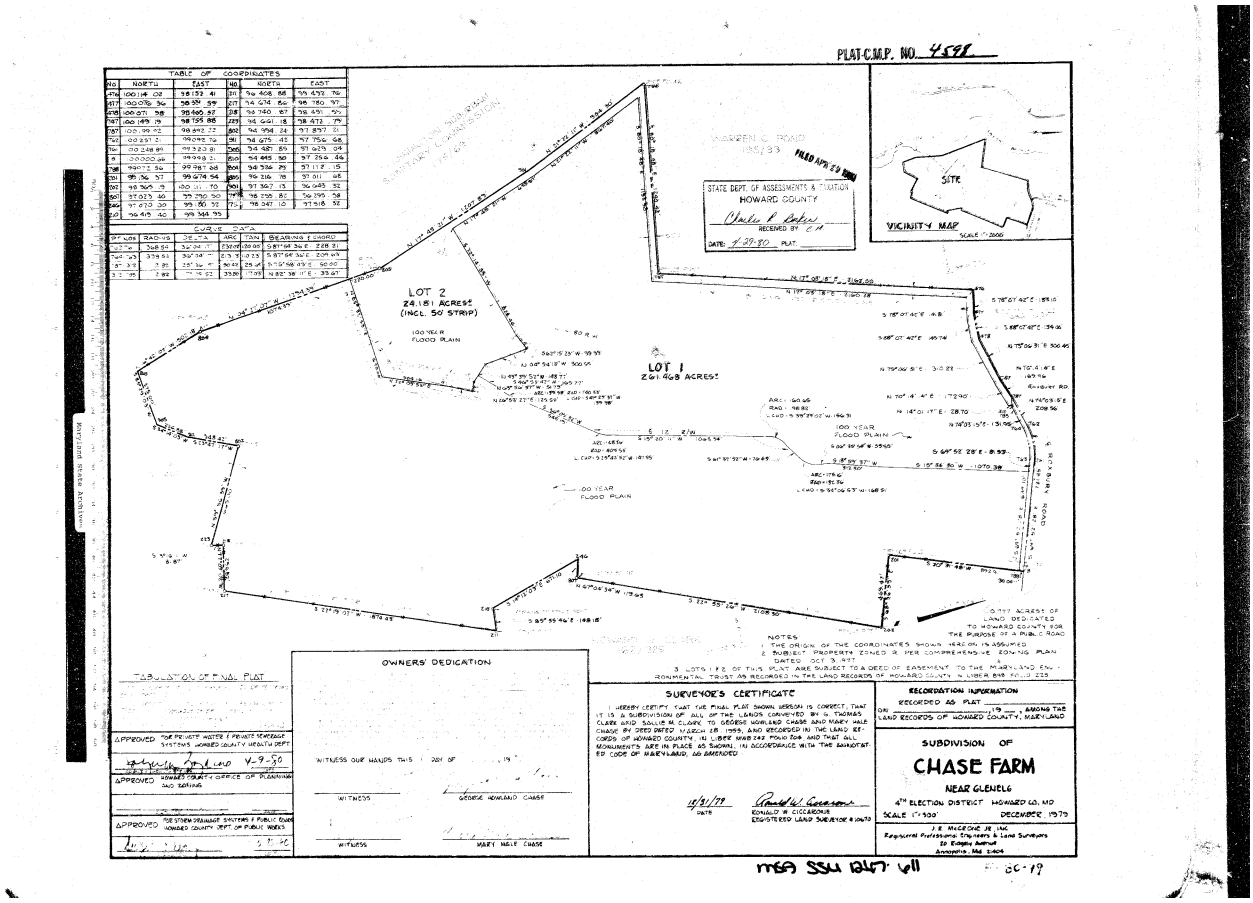
> Was the Insurance Commission's determination that Security Title had a duty to defend Roxbury View legally correct and supported by substantial evidence?

For reasons to follow, we affirm.

BACKGROUND

At issue in the instant case is a large tract of land that sits adjacent to Roxbury Road in Howard County. The land was formerly owned by George and Mary Chase (the "Chases"). At the time, the land was divided into two lots. The first lot ("Lot 1") encompassed the majority of the land and was bordered, on its eastern edge, by Roxbury

Road, a public road. The second lot ("Lot 2") was much smaller and was located toward the western part of the land. Lot 2 was connected to Roxbury Road by a long driveway that ran through Lot 1. The following plat shows both lots at the time they were owned by the Chases[1]:



In 1979, Lot 1 was conveyed to Charles and Linda Zepp (the "Zepps") by way of a deed (the "Zepp Deed") recorded among the Land Records of Howard County. The Zepp Deed subjected the Zepps to a 12-foot-wide right of way (the "12 foot ROW") that ran through Lot 1 and along the center line of the driveway connecting Lot 2 to Roxbury Road.

[1] An enlarged version of the plat can be found in the appendix to this Opinion.

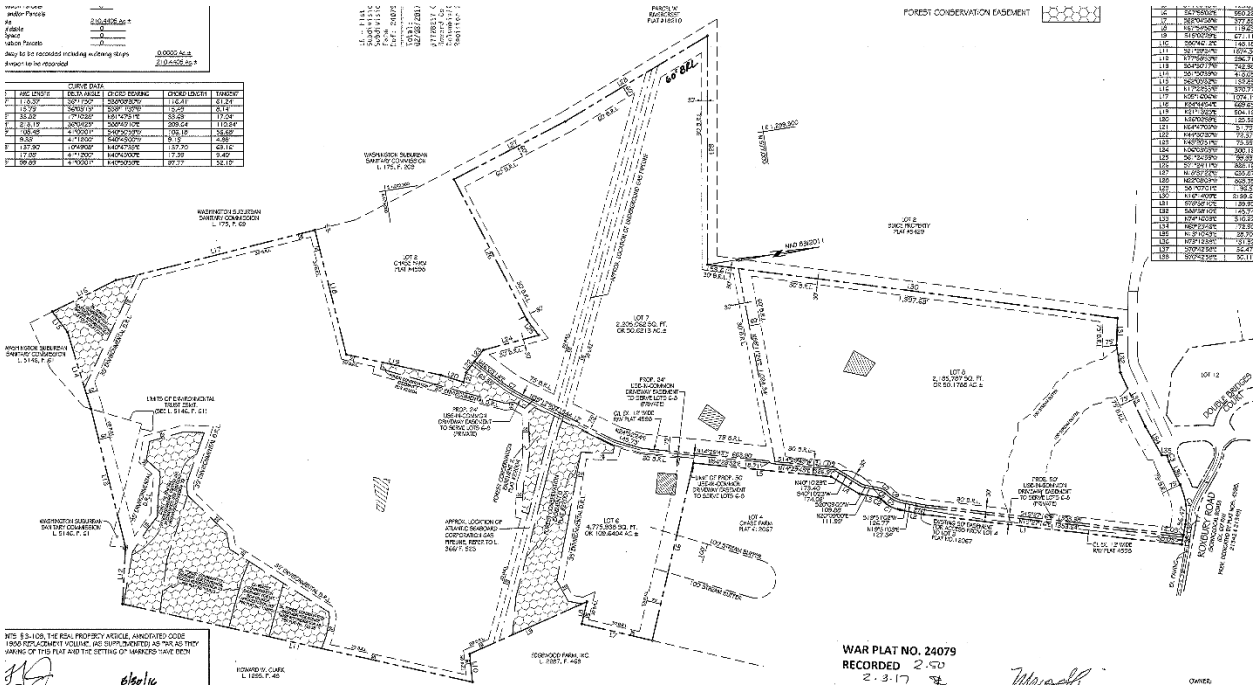
Per the terms of the Zepp Deed, the 12 foot ROW was "reserved by the [Chases] herein for ingress and egress to and from Roxbury Road[.]"

In 1994, Denise and Charles Sharp (the "Sharps") acquired Lot 1 by way of a deed recorded among the Land Records of Howard County. The Sharps thereafter subdivided Lot 1 into three smaller lots ("Lot 3," "Lot 4," and "Lot 5"). In 2012, the Sharps conveyed all three lots to Sharp's Wild Horse Meadow, LLC ("Sharp's Meadow"). Sharp's Meadow thereafter subdivided Lots 3 and 5 into three new lots ("Lot 6," "Lot 7," and "Lot 8").

As for Lot 2, the Chases retained ownership of that parcel until 1987, at which point the parcel was gifted to a third party. In 2017, Lot 2 was acquired by Edward and Leslie McCauley (the "McCauleys").

In 2018, Roxbury View acquired Lots 4, 7, and 8 from Sharp's Meadow. All of the foregoing conveyances were subject to the 12 foot ROW set forth in the Zepp Deed. The following plat shows the state of the properties at the time Roxbury View acquired Lots 4, 7, and 8[2]:

[2] An enlarged version of the plat can be found in the appendix to this Opinion.



As the above image indicates, Lots 4 and 8, both of which were owned by Roxbury View, sat adjacent to Roxbury Road and were separated by the 12 foot ROW, which ran through the two lots from Roxbury Road. The 12 foot ROW continued toward Lot 2, running between Lot 7, which was owned by Roxbury View, and Lot 6, which was owned by Sharp's Meadow. Thus, in order for Roxbury View to access Lot 7 from Roxbury Road, it would need to either traverse Lot 8 or the 12 foot ROW. A significant portion of the 12 foot ROW passed through land owned by Roxbury View.

In May 2018, around the time that it obtained Lots 4, 7, and 8, Roxbury View purchased an owner's title insurance policy (the "Policy") from Security Title. The Policy provided title insurance coverage for Lots 4, 7, and 8, subject to certain terms and conditions. Those terms and conditions were, in relevant part, as follows:

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE, a Maryland corporation (the "Company") insures as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the insured by reason of:

* * *

3. Unmarketable Title.

4. No right of access to and from the Land.

* * *

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

* * *

CONDITIONS

* * *

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, . . . the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

* * *

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

1. Rights or claims of parties in possession not shown by the Public Records.

2. Easements, or claims of easements, not shown by the Public Records.

* * *

6. Taxes and special assessments which become due and payable subsequent to Date of Policy.

* * *

As to Lots 4, 7 and 8:

* * *

o) Subject to a 12 foot Right of Way reserved in a Deed dated December 19, 1979 by and between George Howland Chase and Mary Hale Chase and Charles Gerald Zepp and Linda Collins Zepp and recorded among the Land Records of Howard County, Maryland in Liber 998, folio 219.

In October 2019, the McCauleys, owners of Lot 2, filed a lawsuit against Roxbury View and various other parties. The McCauleys alleged, among other things, that they, as the owners of Lot 2, had exclusive rights to the 12 foot ROW and that Roxbury View had been using the 12 foot ROW without the McCauleys' permission to access Lots 4, 7, and 8. Based on those allegations, the McCauleys sought various relief, including: a preliminary and permanent injunction enjoining Roxbury View from using the 12 foot ROW for any purpose; a declaratory judgment establishing the McCauleys' exclusive

rights to the 12 foot ROW; and, an award of monetary damages and attorneys' fees and expenses.

Shortly after the lawsuit was filed, Roxbury View submitted a claim to Security Title asking Security Title to provide a defense to the lawsuit. Around the same time, Roxbury View received a letter from a lender, MidAtlantic Farm Credit, regarding a loan that Roxbury View was trying to secure in relation to Lots 4, 7, and 8. The letter informed Roxbury View that MidAtlantic was "not able to continue to process your loan request at this time due to the pending litigation that was initiated against you by [the McCauleys]." The letter stated further that the "action in the courts raises the issue as to the use of the property, and the ability for MidAtlantic Farm Credit, ACA to have a clear lien position for our proposed loan."

On November 1, 2019, counsel for Security Title sent an internal email regarding Roxbury View's claim. In that email, counsel stated that the McCauleys' lawsuit "may fall under Covered Risk #4 – no right of access to and from the land" because "[e]xclusive use would prevent [Roxbury View] from reaching at least Lot 7."

On November 6, 2019, Security Title sent a letter to Roxbury View denying the claim. The letter included the following relevant explanation for Security Title's decision:

> There is no mention of McCauley or his predecessors in interest having an exclusive right to use the 12 foot right of way nor is there any other document that we have found that would support McCauley's allegation of the right to exclusive use. However, the determination of coverage under a title insurance policy is not determined by the validity of the allegations of the complaint but by the allegations themselves and whether those allegations fall within the coverage afforded under the policy.
>
> * * *

> The Owner's Title Policy referenced takes exception to the 1978 Easement, the 12 foot Right of Way reserved in the 1979 Deed as well as the 2001 Clarification. See Schedule B No. 6 o) & p) of the Policy. The Policy also contains an exception as to the plat which shows the easement. See Schedule B No. 6 f). Therefore any allegation and prayer for relief based upon those recorded documents would be excepted from coverage under the terms of the Policy.
>
> As to the lack of a right of access which is set forth in Covered Risk 4 and which is implicated in the Complaint's prayer for relief to prevent the defendants from using the 12 foot right of way, the insured lots are contiguous and lots 4 and 7 are located directly on Roxbury Road, therefore the insured has access to all lots from Roxbury Road. In the event that McCauley is successful in preventing the Insured from using the 12 foot right of way to access the Land, the Insured will still have access directly to Roxbury Road without use of the 12 foot right of way and as indicated previously, the Policy did not insure access to the land by way of the 12 foot right of way.

On January 1, 2020, Roxbury View filed an administrative complaint with the MIA. After considering the complaint and Security Title's response, the MIA determined that, in denying Roxbury View's claim, Security Title had violated §§ 4-113(b)(5) and 27-303(2) of the Insurance Article ("Ins.") of the Maryland Code. Under Ins. § 4-113(b)(5), the MIA may discipline an insurer if the insurer "refuses or delays payment of amounts due claimants without just cause[.]" Under Ins. § 27-303(2), an insurer may not "refuse to pay a claim for an arbitrary or capricious reason based on all available information[.]" Based on those alleged violations, the MIA ordered Security Title to provide coverage for Roxbury View's costs in defending the lawsuit.

Security Title subsequently filed a request for an administrative hearing before the Insurance Commission. At the hearing that followed, the MIA argued that Security Title was required to provide a defense pursuant to the terms of the Policy, namely, Covered

Risk 3 ("unmarketable title") and Covered Risk 4 ("no right of access to and from the land"). The MIA claimed that the lawsuit had the potential to implicate both covered risks because, if the lawsuit were successful, Roxbury View would not have access to Lot 7. The MIA also claimed that the exclusions contained in Schedule B of the Policy were ambiguous and therefore unenforceable.

Security Title countered that its denial of Roxbury View's claim was not arbitrary and capricious, but rather was based on the express terms of the Policy. Security Title noted that the lawsuit was centered on the 12 foot ROW, which was expressly excluded from coverage under Schedule B of the Policy. Security Title further argued that the lawsuit did not implicate the marketability of the title because the policy only insured the marketability of the *title*, not the marketability of the land. Lastly, Security Title argued that the lawsuit did not implicate Roxbury View's access to Lot 7 because Roxbury View had access via Lot 8, which was also owned by Roxbury View.

Ultimately, the Insurance Commission found in favor of the MIA and Roxbury View. The Commission found that Security Title had a "duty to defend" Roxbury View because the McCauleys' lawsuit had the potential to implicate Covered Risk 3, marketability of title, and Covered Risk 4, access to and from the land. The Commission determined that, because the McCauleys sought exclusive use of the 12 foot ROW, and because the 12 foot ROW crossed into land owned by Roxbury View, the lawsuit could hinder Roxbury View's access to its land. The Commission rejected Security Title's reliance on the exclusion set forth in Schedule B, finding the language ambiguous. The Commission also determined that the lawsuit threatened to render Lot 7 landlocked, which

not only affected Roxbury View's access to the land but also the marketability of the title. Based on those findings, the Commission ordered Security Title to pay Roxbury View's litigation costs, "but only to the extent that those costs pertain to issues regarding the use of the 12-foot right of way and the demonstrable lack of marketability of title[.]"

After Security Title filed a petition for judicial review, the circuit court affirmed the Insurance Commission's decision. This timely appeal followed. Additional facts will be supplied as needed below.

DISCUSSION

Parties' contentions

Security Title contends that the Insurance Commission's decision was erroneous for several reasons. First, Security Title argues that Lot 7 was not "landlocked" because Roxbury View could access Roxbury Road via Lot 8, which it also owned. Second, Security Title argues that none of the allegations in the McCauleys' lawsuit implicated the marketability of the title because Maryland law does not equate a property being landlocked with the title to the property being unmarketable. Finally, Security Title argues that they had no duty to defend Roxbury View because the 12 foot ROW, which served as the entire basis for the McCauleys' lawsuit, was expressly exempt from coverage by the Policy.

The MIA contends that the Insurance Commissioner's decision should be upheld. The MIA notes that, under Maryland law, an insurance carrier is required to provide a defense to an insured if there is a potentiality of coverage. The MIA argues that such a "potentiality" existed here, as the McCauleys' lawsuit had the potential to impact the

marketability of Lot 7's title and Rockbury View's right of access to Lot 7, both of which were covered under the Policy. The MIA argues that the lawsuit also had the potential to impact Roxbury View's right to access its land, as the lawsuit threatened to preclude Roxbury View from using the 12 foot ROW, which undisputedly crossed through Roxbury View's property. The MIA contends that the exceptions to coverage outlined in the Policy with respect to the 12 foot ROW were ambiguous and should not be read to negate Security Title's duty to defend. The MIA further contends that, even if those exceptions were not ambiguous, they would not negate Security Title's duty to defend because the allegations in the McCauleys' lawsuit went beyond those exceptions.

Standard of Review

"In an appeal from judicial review of an agency action, we look through the decision of the circuit court and review the agency's decision directly." *W. Montgomery Cnty. Citizens Ass'n v. Montgomery Cnty. Plan. Bd. of the Md.-Nat'l Cap. Park & Plan. Comm'n*, 248 Md. App. 314, 332-33 (2020). In so doing, we are "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Motor Vehicle Admin. v. Usan*, 486 Md. 352, 362 (2024) (quotation marks and citation omitted). Under the substantial evidence test, we defer to the agency's fact finding and decide "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Motor Vehicle Admin. v. Carpenter*, 424 Md. 401, 412-13 (2012) (quotation marks and citation omitted). As to the agency's conclusions of law, we generally review those decisions without deference. *Chicago Title Ins. Co. v. Jen*,

249 Md. App. 246, 258 (2021). Where, however, the agency's decision is premised upon an interpretation and application of a statute the agency administers, we afford that decision a degree of deference. *Carpenter*, 424 Md. at 413.

Analysis

"Title insurance protects property holders against loss or damage resulting from defects or unmarketability in the title of the property held by the insured." *Back Creek Partners, LLC v. First Am. Title Ins. Co.*, 213 Md. App. 703, 712 (2013). "Title insurance can also serve as 'litigation insurance,' . . . to the extent that the policy requires the insurer to defend the policy holder from attacks by third parties against the insured title." *Id.* Moreover, under Ins. § 27-303(2), "an insurer may not arbitrarily or capriciously discard or ignore particular information favorable to the insured when making a claim determination." *Chicago Title*, 249 Md. App. at 266 (quotation marks and citation omitted).

"Maryland law is well settled that the insurer owes a duty to the insured to defend if there is a potentiality that a claim could be covered by the policy." *Id.* "The insurer's duty to defend is a contractual duty arising out of the terms of a liability insurance policy." *Litz v. State Farm Fire & Cas. Co.*, 346 Md. 217, 225 (1997). Whether an insurer owes a duty to defend is primarily determined by the allegations raised in the underlying action for which the insured is seeking a defense. *Harleysville Preferred Ins. Co. v. Rams Head Savage Mill, LLC*, 237 Md. App. 705, 721 (2018). Thus, "a title insurer's duty to defend depends on (1) the scope of the policy's coverage and (2) whether the allegations in the underlying suit bring the claim within this coverage." *Back Creek*, 213 Md. App. at 712.

In evaluating the first factor, we look to the coverages and defenses under the terms of the insurance policy, which we construe according to the general principles of contract interpretation. *Harleysville Preferred*, 237 Md. App. at 721-22. Pursuant to those principles, we construe the contract as a whole, reading the contract's words according to their ordinary and accepted meaning. *Id.* at 722. If the contract's language reasonably suggests more than one meaning, the contract is ambiguous. *Id.* In that case, "'any ambiguity will be construed liberally in favor of the insured and against the insurer as drafter of the instrument.'" *Id.* (cleaned up) (quoting *Md. Cas. Co. v. Blackstone Int'l Ltd.*, 442 Md. 685, 695 (2015)). Moreover, "[b]ecause 'exclusions are designed to limit or avoid liability, they will be construed more strictly than coverage clauses and must be construed in favor of a finding of coverage.'" *Id.* (quoting *Megonnell v. United Servs. Auto. Ass'n*, 368 Md. 633, 656 (2002)).

Once coverage is determined, we look to the allegations of the underlying suit to determine whether the suit would trigger coverage. *Id.* at 721. As noted, Maryland follows the "potentiality rule," which requires an insurer to provide a defense if there is a potential of coverage. *Chicago Title*, 249 Md. App. at 266. "The duty to defend is broader than the duty to indemnify." *Litz*, 346 Md. at 225. "Under the potentiality rule, the insurer will be obligated to defend more cases than it will be required to indemnify because the mere possibility that the insurer will have to indemnify triggers the duty to defend." *Id.* "Even if a tort plaintiff does not allege facts which clearly bring the claim within or without the policy coverage, the insurer still must defend if there is a potentiality that the claim could be covered by the policy." *Brohawn v. Transamerica Ins. Co.*, 276 Md. 396, 408 (1975).

Although the duty to defend is generally determined by the complaint itself, "[a]n insured may rely on extrinsic evidence where the underlying complaint 'neither conclusively establishes nor negates a potentiality of coverage.'" *Walk v. Hartford Cas. Ins. Co.*, 382 Md. 1, 16 (2004) (quoting *Aetna Cas. & Sur. Co. v. Cochran*, 337 Md. 98, 108 (1995)). Ultimately, "[i]f there is any doubt as to whether there is a duty to defend, it is resolved in favor of the insured." *Id.*

A.

Reviewing the relevant terms of the Policy at issue in the instant case, there is little question that Security Title had a general duty to defend Roxbury View in the event that Roxbury View was subjected to litigation that threatened either the marketability of the title to any of its lots or Roxbury View's right to access those lots. The Policy expressly stated that Security Title "shall provide for the defense of [Roxbury View] in litigation in which any third party asserts a claim covered by this policy adverse to [Roxbury View]." Further, the Policy expressly stated that "unmarketable title" and "[n]o right of access to and from the Land" was covered with respect to all three lots.

It does not appear that Security Title disputes that general duty. Rather, Security Title claims that such a duty was not triggered in the instant case because the sole basis of the McCauleys' lawsuit – the 12 foot ROW – was exempted from coverage under "Schedule B" of the Policy.

We disagree. First, we find the relevant language of the Policy, which was drafted by Security Title, to be ambiguous. Schedule B is entitled "Exceptions from Coverage" and includes the following preamble: "This policy does not insure against loss or damage,

and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of[.]" That statement is followed by six items, numbered one through six, with the final item being: "6. Taxes and special assessments which become due and payable subsequent to Date of Policy." That statement is followed by an additional 18 items, which are lettered "a" through "r" and are subdivided by lot number. Under the subdivision pertaining to "Lots 4, 7 and 8" is the following: "o) Subject to a 12 foot Right of Way reserved in a Deed dated December 19, 1979 by and between George Howland Chase and Mary Hale Chase and Charles Gerald Zepp and Linda Collins Zepp and recorded among the Land Records of Howard County, Maryland in Liber 998, folio 219."

Security Title apparently interprets Schedule B in a manner that would qualify each of the numbered and lettered statements as an independent exclusion for which Security Title is not required to pay costs, attorneys' fees, or expenses. That is, Security Title would have us read Schedule B as stating that the Policy "does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of . . . [the] 12 foot Right of Way[.]" Although that interpretation is understandable given Security Title's position, we cannot help but notice that such an interpretation becomes strained when we consider the entirety of the document, specifically, the formatting of Schedule B and the inclusion of the "subject to" language. Read in its entirety, the relevant language states that Security Title "will not pay costs, attorneys' fees or expenses, that arise by reason of … [*s*]*ubject to* a 12 foot Right of Way[.]" That sentence makes little sense and does not comport with the language used in the six numbered exclusions that immediately follow the "by reason of" statement.

In any event, even if we accept Security Title's interpretation as reasonable, we cannot say that it is the only reasonable interpretation. For instance, because the provision at issue – part "o)" – was contained within a sequential list that immediately followed exclusion number six, which exempted from coverage "[t]axes and special assessments which become due and payable subsequent to Date of Policy[,]" a reasonable person could interpret the Policy such that only exclusion number six was "subject to" the 12 foot ROW. That reading becomes even more reasonable when we consider the letter sent by Security Title to Roxbury View denying coverage, in which counsel for Security Title referenced the alleged exception as "No. 6 o)" of the Policy.

Other interpretations are equally plausible. The Policy could reasonably be interpreted as indicating that all of the exceptions from coverage, not just exception number six, were "subject to" the 12 foot ROW. In addition, because subsection "o)" was preceded by a heading indicating that the subsection pertained to Lots 4, 7, and 8, that portion of Schedule B could reasonably be interpreted as simply a reminder that Lots 4, 7, and 8 were "subject to" the 12 foot ROW. Clearly, the language at issue is ambiguous. Because the language was drafted by Security Title, and because the language involves an exclusion from coverage, the language must be construed in favor of finding coverage.

Assuming, *arguendo*, that the language is not ambiguous and that the 12 foot ROW was excluded from coverage, we are not convinced that the McCauleys' lawsuit was limited solely to that exclusion such that Security Title would be relieved of its duty to defend. Schedule B expressly identifies the 12 foot ROW as the one reserved in the Zepp Deed, and the Zepp Deed, aside from providing a physical description of the location of

the right of way, merely states that the 12 foot ROW was being "reserved by the [Chases] herein for ingress and egress to and from Roxbury Road[.]" The problem here is that the allegations in the McCauleys' lawsuit were not limited to the 12 foot ROW as described in the Zepp Deed. That is, the allegations were not limited to "ingress and egress to and from Roxbury Road." On the contrary, the McCauleys were seeking exclusive use of the 12 foot ROW and an injunction barring Roxbury View from using the right of way for any purpose. Those allegations clearly exceeded the scope of the exclusion. As Security Title admitted in its letter to Roxbury View denying coverage: "There is no mention of McCauley or his predecessors in interest having an exclusive right to use the 12 foot right of way nor is there any other document that we have found that would support McCauley's allegation of the right to exclusive use." As such, even if the 12 foot ROW was exempted from coverage, the McCauleys' lawsuit went beyond that exemption and, as discussed in greater detail below, had the potential to trigger coverage under the Policy.

B.

Having determined the Policy's coverage, we now look to see whether the allegations in the underlying suit brought the claim within that coverage. Again, Maryland follows the "potentiality rule," which requires an insurer to provide a defense if there is a potential of coverage. *Chicago Title*, 249 Md. App. at 266. Here, the Insurance Commission determined that the lawsuit had the potential to implicate Covered Risk 3 ("unmarketable title") and Covered Risk 4 ("no right of access to and from the Land"). The Commission found that the lawsuit threatened to render Lot 7 landlocked, which had the potential to affect the marketability of the title and Roxbury View's access to the land.

The Commission also found that, because the McCauleys sought exclusive use of the 12 foot ROW, and because the 12 foot ROW crossed into land owned by Roxbury View, the lawsuit could hinder Roxbury View's access to its land.

We hold that the Commission's decision was legally correct and supported by substantial evidence. At the time of the lawsuit, the only means of ingress and egress between Lot 7 and Roxbury Road was through the 12 foot ROW. The McCauleys' lawsuit threatened to preclude Roxbury View from using that right of way, which had the potential to leave Roxbury View without a right of access to Lot 7 from a public road. In fact, Security Title all but admitted that potentiality in its internal email, in which counsel for Security Title stated that "[e]xclusive use [of the 12 foot ROW by the McCauleys] would prevent [Roxbury View] from reaching at least Lot 7." Because the McCauleys' lawsuit had the potential to leave Roxbury View without access to Lot 7, the lawsuit had the potential to trigger Covered Risk 4 ("no right of access to and from the Land"). For the same reasons, the lawsuit had the potential to trigger Covered Risk 3 ("unmarketable title"). *See Stewart Title Guar. Co. v. West*, 110 Md. App. 114, 138 (1996) ("[T]here are few title problems that are more palpable than complete lack of access to a public road.").[3] Thus,

[3] Security Title suggests that our discussion of the relationship between a landlocked property and the marketability of title in *Stewart Title* should be ignored because the discussion was not part of our ultimate holding and was therefore "pure dicta." We disagree. Our discussion of the matter in that case was extensive and well-reasoned, and it was made in direct response to an argument raised by the appellant. *Stewart Title*, 110 Md. App. at 137-40. Thus, while the discussion did not impact our ultimate holding, it is nevertheless entitled to some deference as, at the very least, "judicial dicta." *See State v. Baby*, 404 Md. 220, 278-79 (2008) (Raker, J., concurring).

under the "potentiality rule," Security Title had a duty to defend Roxbury View against the allegations raised in the McCauleys' lawsuit.

Security Title argues that Roxbury View's right of access to Lot 7 could not be affected by the lawsuit because, even if Roxbury View was unable to utilize the 12 foot ROW, it still could access Roxbury Road via Lot 8, which it also owned. Security Title contends that where, as here, a landholder owns two adjacent lots and one of those lots abuts a public road, then the landowner cannot be said to have no "right of access" to the second lot, as the landowner may utilize the first lot to access the second. Security Title argues, therefore, that the Commission erred in finding that Lot 7 was "landlocked."

We disagree. Although there is some authority suggesting that a landowner has a "right of access" to purportedly landlocked property by way of adjacent property owned by the same landowner, *see Chicago Title*, 249 Md. App. at 262-63, we are not persuaded that the Commission's finding in the instant case was erroneous. In *USA Cartage Leasing, LLC v. Baer*, 202 Md. App. 138 (2011), for instance, we stated that a landowner may be entitled to an easement "where a parcel is 'landlocked' by other land that was originally held by a common grantor, such that the only way to reach a public road is by crossing adjacent property." *Id.* at 175-76. That description of "landlocked" supports the Commission's finding in the instant case. In another case, *Stansbury v. MDR Development, LLC*, 390 Md. 476 (2006), the Supreme Court of Maryland held that the owner of landlocked property was entitled to an easement over another landowner's property even though the landlocked owner owned an adjacent parcel through which the owner could access a public road. *Id.* at 489-90. That case suggests that ownership of an adjacent

property is not dispositive of whether a property is "landlocked," at least for the purposes of determining whether the property is qualified for an easement.

In light of that authority, we cannot say that Roxbury View's access to Roxbury Road via Lot 8 conclusively established that the McCauleys' lawsuit had *no* potential to render Lot 7 "landlocked" or otherwise prevent Roxbury View from having access to Lot 7 via Roxbury Road. In other words, there is at least some doubt as to whether the McCauleys' lawsuit triggered Security Title's duty to defend under the Policy. Pursuant to the "potentiality rule," that doubt must be resolved in favor of Roxbury View. *Walk, supra*, 382 Md. at 16.

Regardless, we need not belabor that issue any further because the Commission's decision can be upheld based entirely on its alternate finding that, because the McCauleys sought exclusive use of the 12 foot ROW, and because the 12 foot ROW crossed into land owned by Roxbury View, the lawsuit could hinder Roxbury View's access to its land. On this point, our decision in *Chicago Title* is instructive, if not conclusive. In that case, a couple, the Jen-Shulers, purchased a residential property that sat adjacent to another residential property that was owned by another couple, the Bulls. *Chicago Title*, 249 Md. App. at 251-52. The two properties shared a long, paved driveway, which the Jen-Shulers used to access a nearby public road, despite the fact that the Jen-Shulers' property was abutted by a different public road. *Id.* at 252. The driveway was situated mostly on the Bulls' property, but a portion of the driveway encroached upon the Jen-Shulers' property. *Id.*

At some point, the parties got into a dispute over the Jen-Shulers' use of the portion of the shared driveway that ran through the Bulls' property. *Id.* at 254-55. The Jen-Shulers eventually filed a lawsuit seeking an injunction that would allow them to use the driveway, and the Bulls filed a counterclaim alleging that the Jen-Shulers had been unjustly enriched by using the Bulls' portion of the driveway. *Id.* at 255. During the course of the litigation, the Jen-Shulers submitted several claims to their title insurance carrier, Chicago Title, seeking coverage under their title insurance policy, which insured the Jen-Shulers' property against "a lack of a right of access to and from the land." *Id.* at 252, 255-56 (cleaned up). After Chicago Title denied all of the Jen-Shulers' claims for coverage, the Jen-Shulers filed a complaint with the MIA, and a hearing was held before the Insurance Commission. *Id.* at 255-56. At the hearing, Jen-Shulers argued that, without use of the shared driveway, they would not have access to and from their property because access to the other public road that abutted their property was not feasible and because they were not permitted by county rules and regulations to extend the existing paved driveway. *Id.* at 259. Ultimately, the Insurance Commission found that Chicago Title had properly denied coverage with respect to the claims made in the Jen-Shulers' initial lawsuit because, even if the Jen-Shulers lost the ability to use the shared driveway, they still had a "right of access" to their property through alternative means. *Id.* at 256-57. On the other hand, the Insurance Commission found that Chicago Title had improperly denied coverage for the claims made in the Bulls' counter-complaint because those claims raised a possibility that the Jen-Shulers' access to their portion of the shared driveway would be challenged. *Id.* at 257.

The Jen-Shulers subsequently filed a petition for judicial review in the circuit court, and the court reversed. *Id.*

After Chicago Title noted an appeal, this Court reversed the circuit court's decision and affirmed the decision of the Insurance Commission. *Id.* at 268. In so doing, we held that the Commission was correct in finding that Chicago Title had properly denied coverage for the claims raised in the Jen-Shulers' initial lawsuit. *Id.* at 259-64. We explained that an insured's "right of access" did not equate to "reasonable access" but rather meant "legal access," which the Jen-Shulers had without relying on the Bulls' portion of the shared driveway. *Id.* We held that the Commission was also correct in finding that Chicago Title had a duty to defend the Jen-Shulers with respect to the claims raised in the Bulls' counter-complaint. *Id.* at 266-68. We noted that the Bulls' claim for unjust enrichment was not limited to the Jen-Shulers' use of the Bulls' portion of the shared driveway but rather encompassed their use of the entire driveway, including the portion that was on the Jen-Shulers' property. *Id.* at 267-68. We held that, under the "potentiality rule," Chicago Title had a duty to defend the Jen-Shulers against the claims raised in the Bulls' counter-complaint. *Id.* We concluded: "Inasmuch as this counterclaim could potentially interfere with the Jen-Shulers' use of their own property, there was substantial evidence to find that the failure to provide a defense under the lack of right of access provision was arbitrary and capricious[.]" *Id.* at 268.

Turning back to the instant case, we see significant similarities. As in *Chicago Title*, we are faced with a situation in which an insured, Roxbury View, sought a defense in a lawsuit that raised the possibility that the insured's access to its property would be

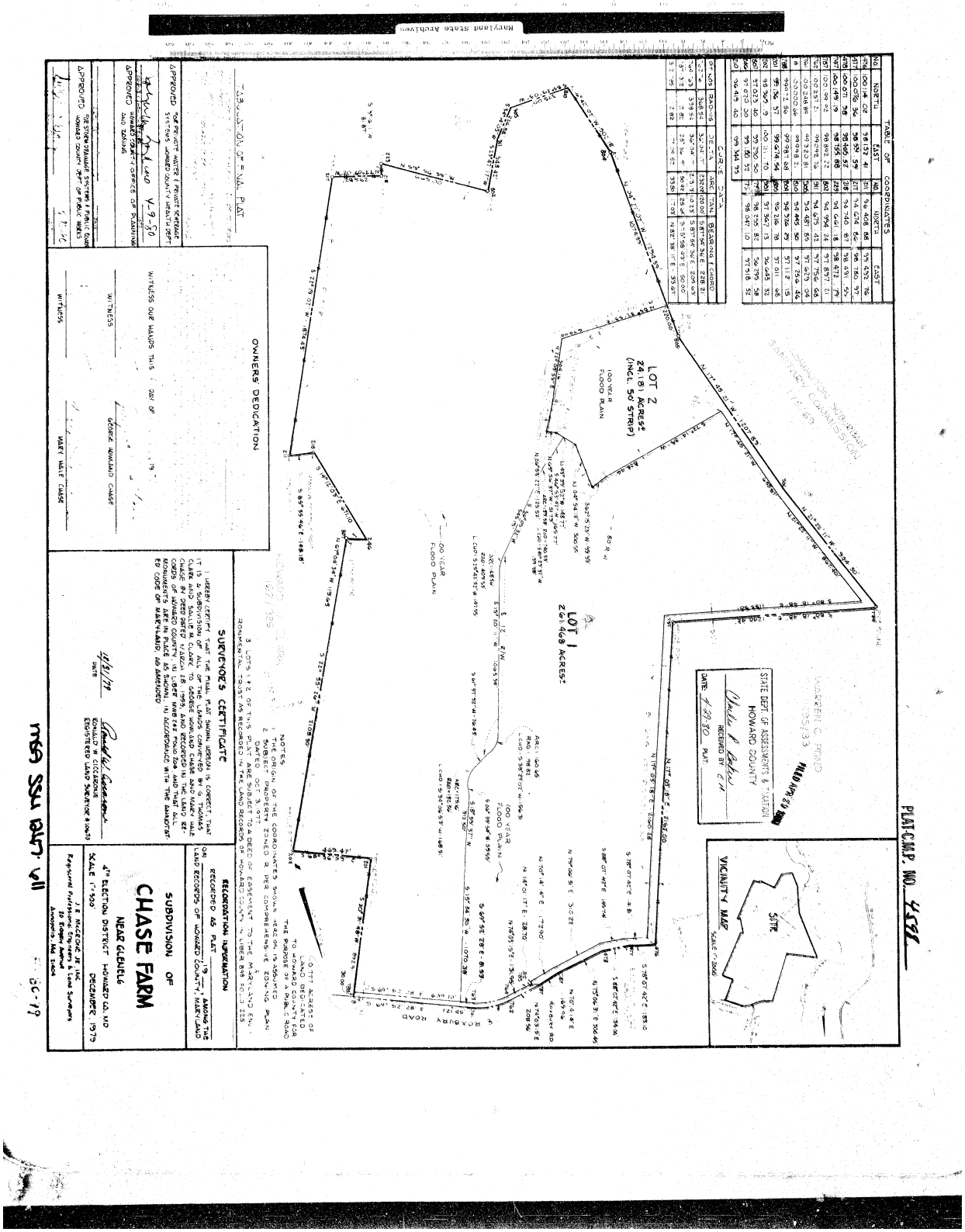
challenged. It is undisputed that the 12 foot ROW crossed into Roxbury View's property, and it is equally undisputed that the McCauleys sought exclusive use of that right of way, which meant that Roxbury View could potentially be barred from accessing its own property. Importantly, that challenge, like the challenge faced by the Jen-Shulers, was independent from and not influenced by any additional "legal access" Roxbury View may have to its property. That is, it is clear from our holding in *Chicago Title* that an insurer's duty to defend under a "right of access" insurance provision can be triggered even when the insured has an alternate means of access to the property in question. As such, we hold that there was substantial evidence to find that Security Title's failure to provide a defense was arbitrary and capricious.

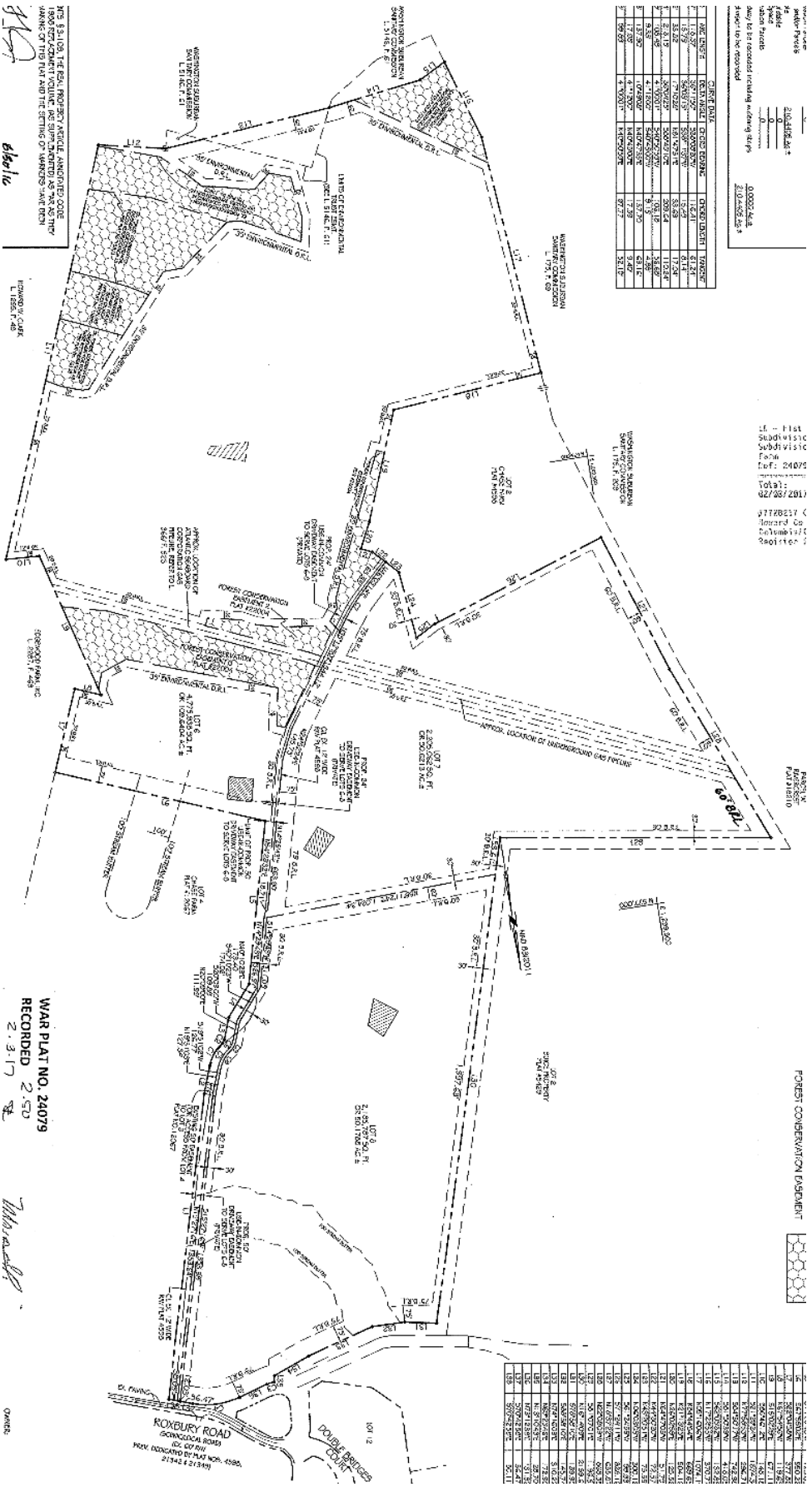
Security Title contends that Roxbury View could not be deprived of any right of access because Roxbury View took the property subject to the 12 foot ROW, and the McCauleys' lawsuit merely sought enforcement of that easement. We disagree. As discussed, Roxbury View took the property subject to the 12 foot ROW as set forth in the Zepp Deed, which merely gave the owner of Lot 2 the right to use the 12 foot ROW for ingress and egress to Roxbury Road. The McCauleys' lawsuit was not aimed at simply enforcing that right, but rather was designed to create an additional servitude that would give them exclusive use of the right of way and would ban Roxbury View from using its own property. For that reason, the instant case falls squarely within our holding in *Chicago Title*.

In sum, we hold that the Insurance Commission's decision imposing a duty to defend on Security Title was legally correct and supported by substantial evidence. Accordingly, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

APPENDIX


PLAT-CAMP. NO. 4581
SUBDIVISION OF
CHASE FARM
NEAR GLENELG
4TH ELECTION DISTRICT HOWARD CO. MD
SCALE 1"=100'
DECEMBER 1979
J. E. McCEAN JR. INC
Registered Professional Engineers & Land Surveyors
20 Ridgely Avenue
Annapolis, Md. 21404
SURVEYOR'S CERTIFICATE
OWNERS' DEDICATION
RECORDATION INFORMATION
TABLE OF COORDINATES
CURVE DATA
LOT 2
24.181 ACRES±
(INCL. 50' STRIP)
LOT 1
2.691 ACRES±
100 YEAR FLOOD PLAIN
SITE
VICINITY MAP
SCALE 1"=2000'
STATE DEPT. OF ASSESSMENTS & TAXATION
HOWARD COUNTY
RECEIVED BY
DATE
PLAT
Maryland State Archives


WAR PLAT NO. 24079
RECORDED 2-3-17
ROXBURY ROAD
DOUBLE BRIDGES COURT
FOREST CONSERVATION EASEMENT