

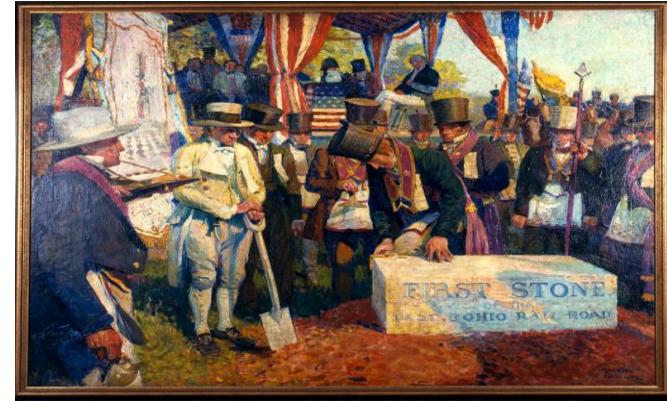
# Railroad Rights-of-Way



# Purpose of the Presentation

- Clarify the legal nature of railroad rights-of-way in Maryland.
- Explain types of ownership and use.
- Examine several cases.
- Cover implications for surveyors and other land professionals.

# Railroads in Maryland



- Baltimore & Ohio, first common carrier in the US, chartered 1827.
- Railroads in Maryland were built primarily in the 19<sup>th</sup> century.
- Railroads were the tech start-ups of their era with plentiful investors and capital to purchase land and build.
- Maryland has roughly 886 miles of RR down from a peak of 1472 miles in the 1920s.
- Hundreds of miles of abandoned railroad rights of way still in existence.

# Legal Foundations of Railroad Rights-of-way

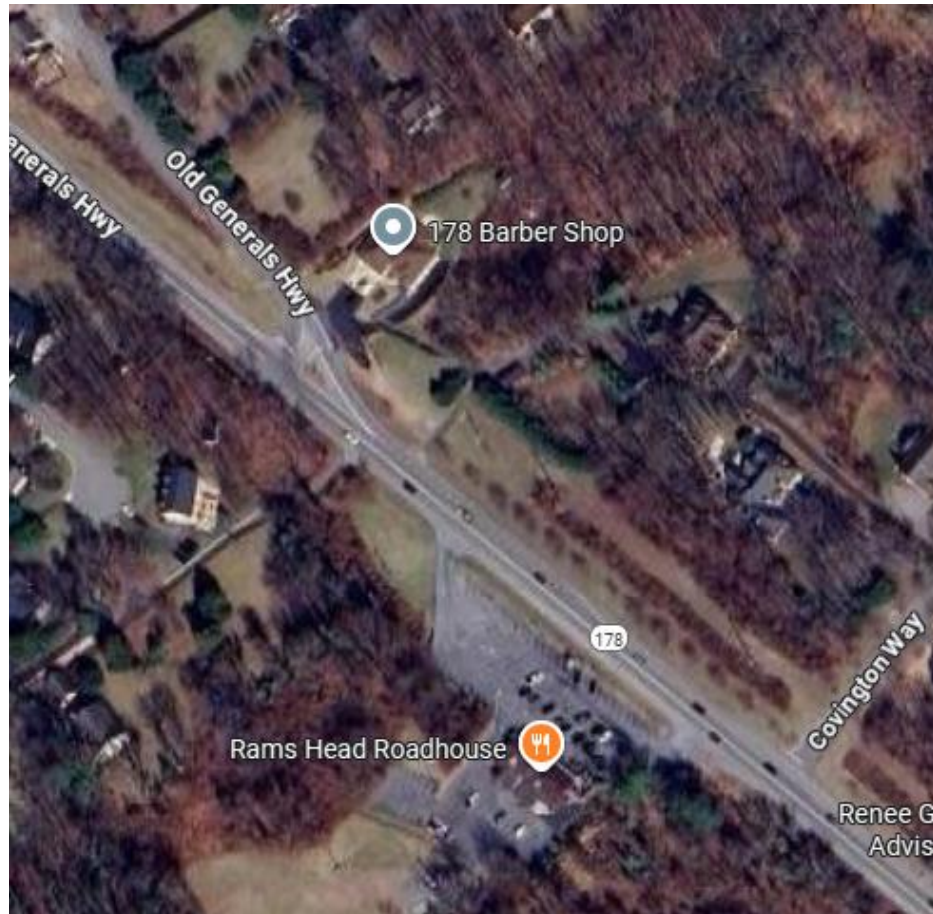


- Early railroads were chartered by an act of the MD legislature.
- The charters gave the railroads the power, if it could not agree with a property owner, to apply to the justice of the peace to summon a jury to impartially value the damages the owner would sustain by the use or occupation of the same by the company, an inquisition.
- Annapolis & Elkridge Railroad chartered 1837 with the same powers as the Baltimore & Ohio.

# How is a Railroad Right-of-way created?

- Fee simple: Deed from property owner to railroad.
  - Deed can contain reverter language, that once railroad use has ceased the land reverts to the property owner.
- Easement: Implied or expressed for use by railroad.
- Inquisition: A jury is formed and the damages assessed and the land taken for use by railroad by the language of the inquisition itself or a deed.

# Rudy's Right-of-Way



# *State Roads Commission of Maryland v. Rudolphus Johnson*, 222 Md. 493 (Md. Ct. App. 1960)

- Rudy's Tavern (the Original Original on the East Side of MD 178, RIP).
- Right-of-Way passed through the parking lot of the tavern.
- Rudy files an action in Anne Arundel County Circuit Court to clear title.
- Granted a decree that found Rudy was vested with fee simple title to the strip of land through parking lot, right-of-way was an easement.
- State Roads Commission appeals decree.

# *State Roads Commission of Maryland v. Rudolphus Johnson*

- Annapolis and Elkridge Railroad right-of-way crosses Rudy's property.
- Annapolis and Elkridge acquired land via inquisition power.
- Summoned a jury to determine damages for the land taken but also the bounds and the quantity or duration of interest in the same.
- Jurors declared: "land represented as belonging to the said Iglehart . . . as of an absolute estate in perpetuity as is contained within the lines of said lands . . ."

# *State Roads Commission of Maryland v. Rudolphus Johnson*

- Annapolis and Elkridge railroad becomes Washington, Baltimore and Annapolis Electric Railway.
- W, B & A eventually goes bankrupt in the 1930s, tracks removed, ceases to be a railroad.
- The rights-of-way are conveyed to the Washington, Baltimore and Annapolis Realty Company then conveyed to State Roads Commission.
- State Roads Commission intended to use the land for roads, e.g. W B & A Road in Severn, MD.

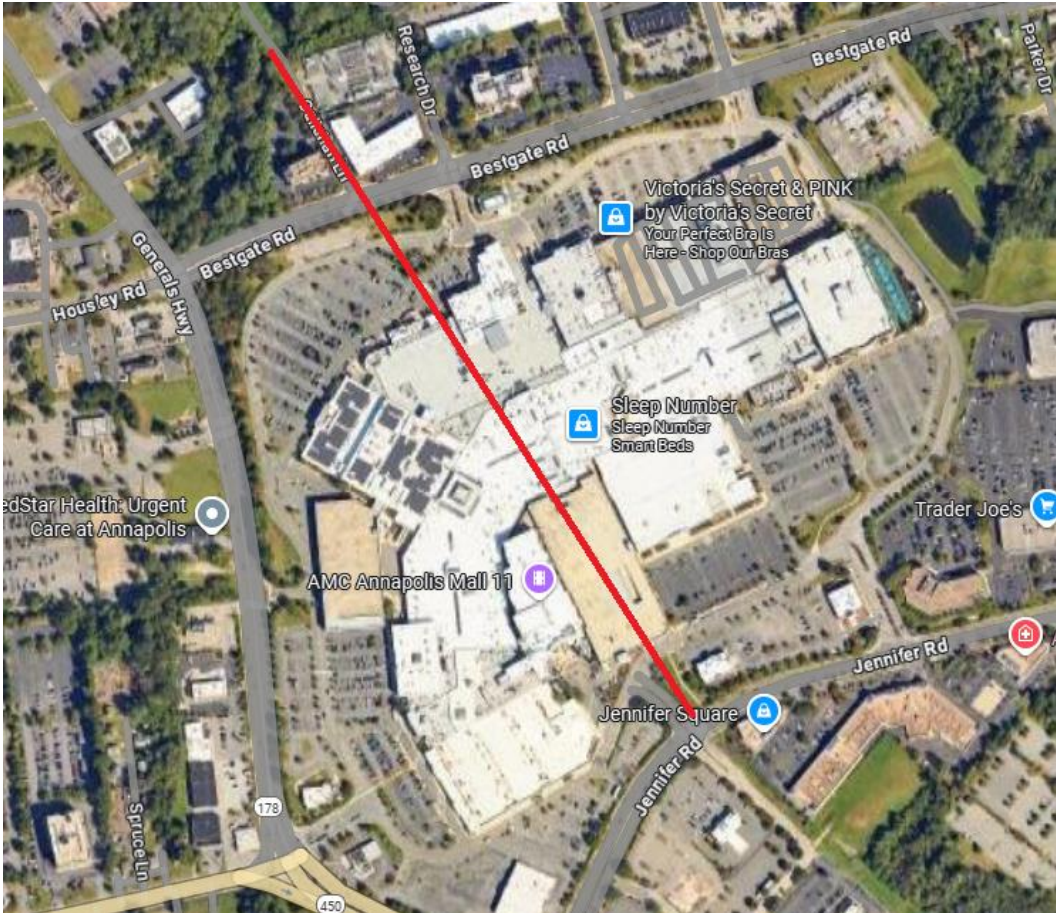
# *State Roads Commission of Maryland v. Rudolphus Johnson*

- Circuit Court declared that Annapolis and Elkridge had only acquired an easement which was lost upon abandonment of the easement for railroad purposes.
- In appealing SRC relied on the Inquisition its granting of an “absolute estate in perpetuity.”
- Rudy’s argument for the land cited several other cases one of which concerned a railroad building turned into “a tavern, in which spiritous liquors are sold; which is such an illegitimate and improper use of the building, that the company have forfeited all right to the same.”

# *State Roads Commission of Maryland v. Rudolphus Johnson*

- The Court of Appeals did not find Rudy's argument a holding or even compelling and relied on the language of an "absolute estate in perpetuity."
- While not the clearer language of modern deeds, the court observed that the term was used similarly as fee simple title.
- Illustrates that the lack of a deed does immediately imply an easement.

# Annapolis Mall



# *State Highway Administration v. Annapolis Mall Center, Co.*, 41 Md. App. 698 (Md. Ct. Spec. App. 1978)

- Abandoned Railroad right-of-way through the Mall property.
- Variable width right-of-way crosses Bestgate Road to the parking lot then enters the Mall through Stoney River Steaks exits at the Sbarro then through the parking garage and over Jennifer Road to the side of the Restaurant Park.
- Potentially discovered by an overzealous title abstractor.
- Mall files suit in Anne Arundel County Circuit to clear title to the property, court finds the Mall to be in title.
- State Highway Administration appeals.

# *State Highway Administration v. Annapolis Mall Center, Co.*

- Annapolis and Elkridge Railroad enters arbitration agreement with land owner Robert Welch of Ben in 1841.
- Arbitrator found that the Company “ought to pay to the said Welch, the sum of five-hundred dollars (\$500.00), current money.”
- Annapolis and Elkridge railroad becomes Washington, Baltimore and Annapolis Electric Railway.
- W, B & A eventually goes bankrupt in the 1930s, tracks removed, ceases to be a railroad.
- The rights-of-way are conveyed to the Washington, Baltimore and Annapolis Realty Company then conveyed to State Roads Commission.

# *State Highway Administration v. Annapolis Mall Center, Co.*

- Md Court of Special Appeals Affirms Circuit Court Decree.
- Held that Robert Welch of Ben's interest in the property was not conveyed by the Arbitration.
- Arbitration was not sufficient to convey the fee in the property itself, required deed.
- Arbitration only granted the privilege of constructing a railroad on the property, an easement by prescription.
- The railroad having been abandoned, the easement is also and cannot be transferred.

# *Baltimore & Southern Railroad Holdings LLC v. Dayton Hudson Corporation* 00-CV-01528-WMN

- In 1889, Baltimore and Drum Point Railroad was granted by property owner a 66' strip of land.
- B & D became Baltimore & Southern Railway Co. under sole proprietorship of Edward Lauterbach.
- Rail line never constructed, Lauterbach dies in 1923 without conveying interest.
- The larger parcel which the R/W runs through transferred several times before a developer buys it, sells one piece to make garden apartments, keeps the other.
- Property investor finds property interests of B & S Railway Co..

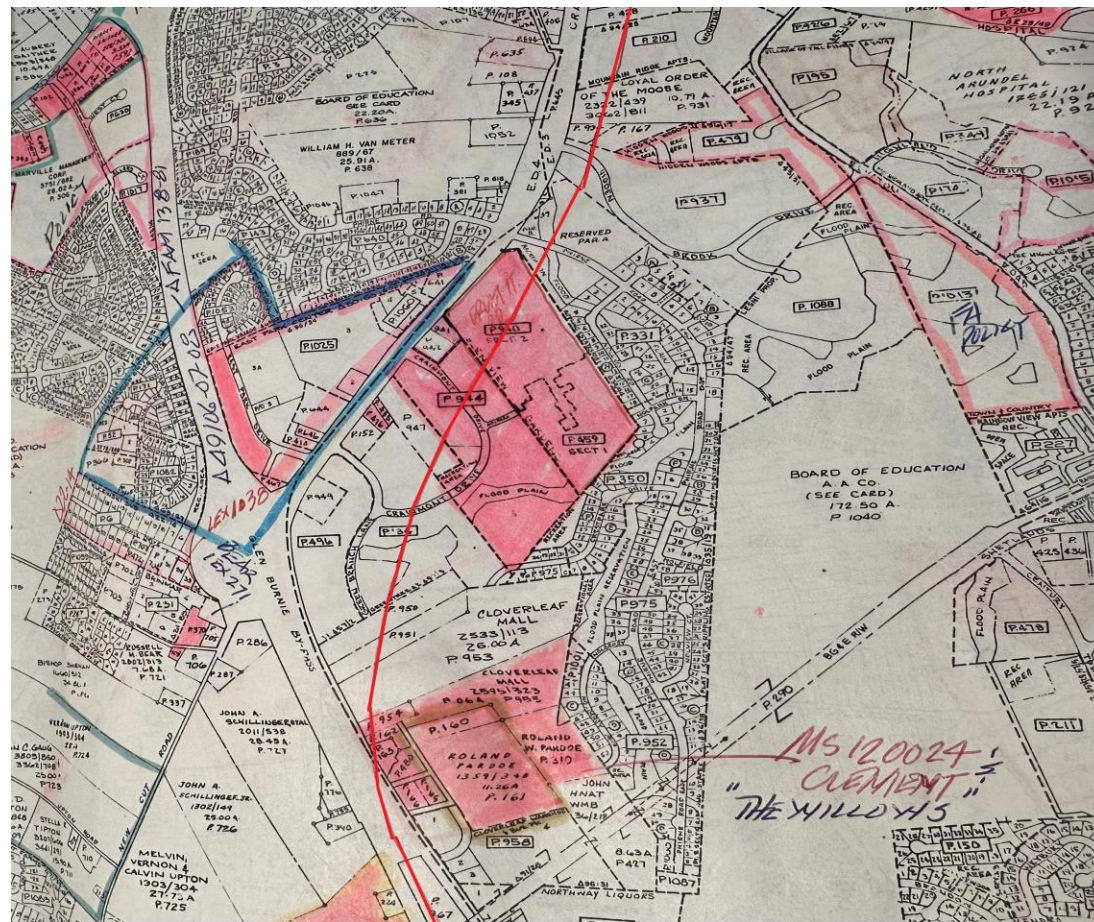
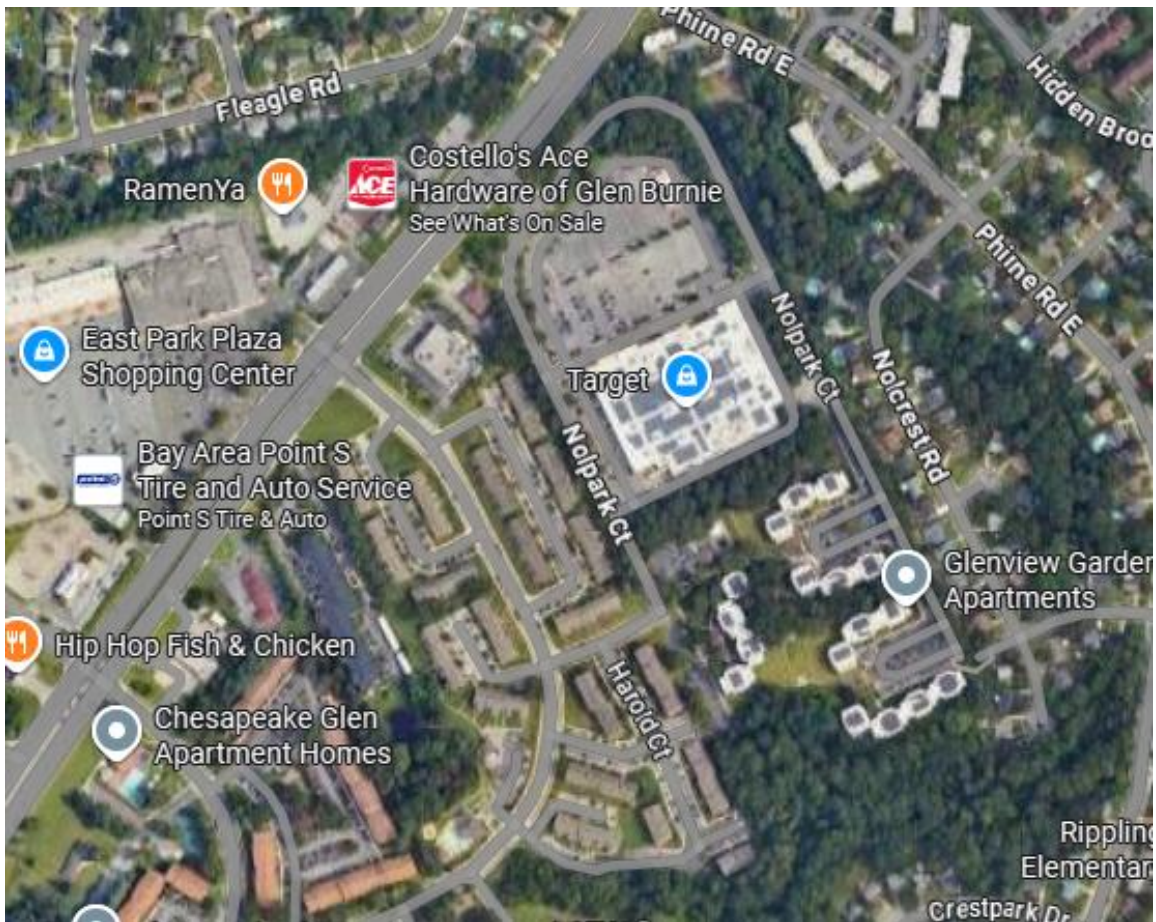
# *Baltimore & Southern Railroad Holdings LLC v. Dayton Hudson Corporation*

- Property investor finds heirs to Lauterbach, Donald and Edward McDavitt, residents of MA and MA and Virgin Islands.
- Lawyer for McDavitt contacts developer.
- Matter referred to Commonwealth Title Insurance, claim denied.
- Property sold to retailer.
- Action for Ejectment and lost rental income filed in Anne Arundel County Circuit Court
- Case moved to US District Court for the District of Maryland

# *Baltimore & Southern Railroad Holdings LLC v. Dayton Hudson Corporation*

- Case never goes through trial.
- Judge: “This is a case about hunting for treasure . . . Today, this treasure is marked not by an ‘X,’ but by a Target.”
- 66’ strip runs through the middle of Target parking lot in Glen Burnie, MD.
- Judge finds that despite use of the term “fee simple” the deed is ambiguous.
- Fee simple” used to described duration.
- Consideration in deed of \$1.00 infers limite interest rather than full interest of land.
- Payment of \$750 for “damages” apart of construction.
- Supports idea of easement rather than land.

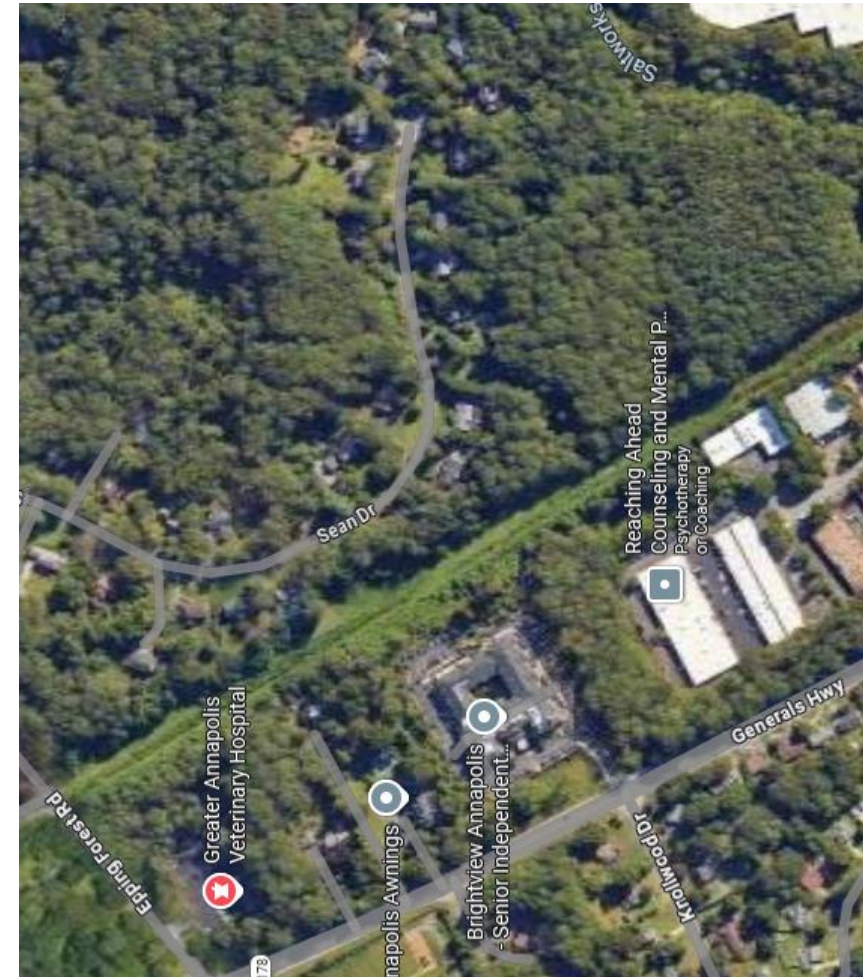
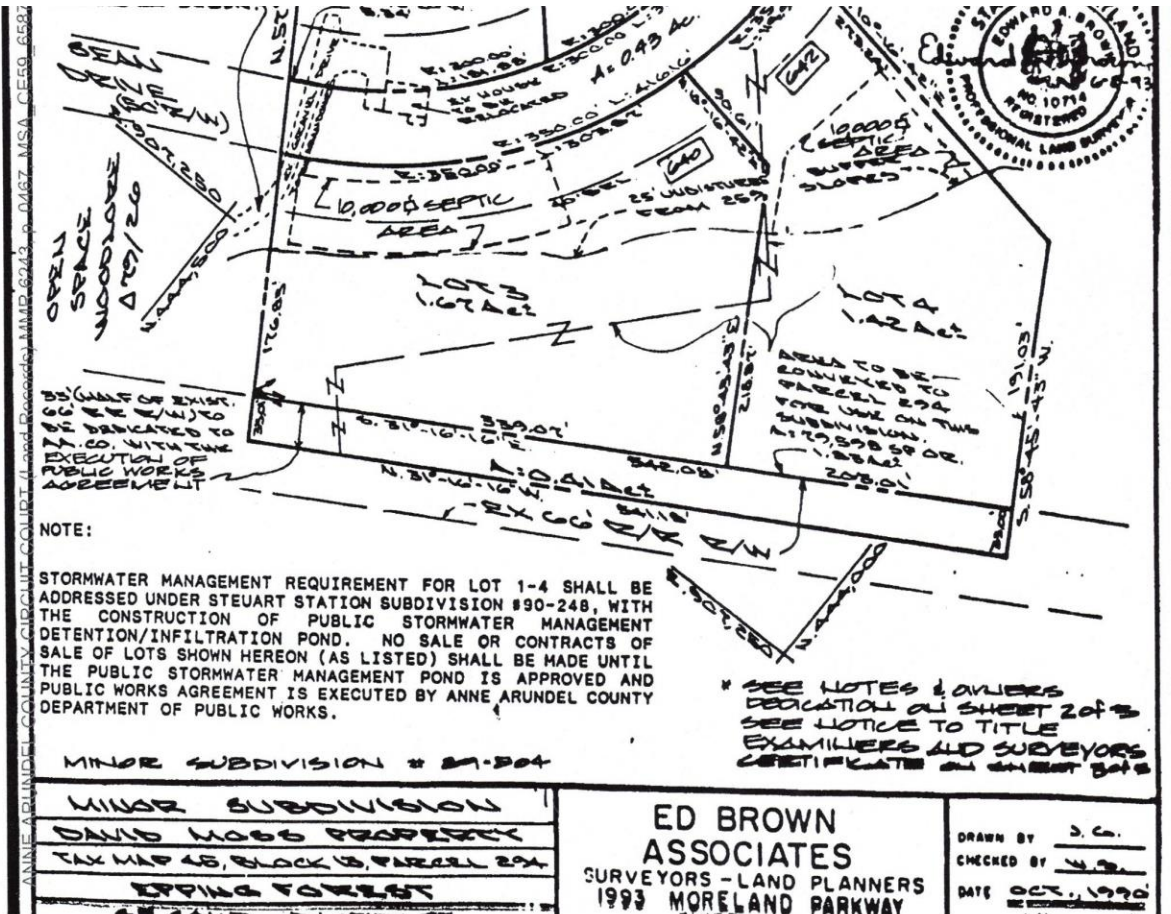
# Target



# Railroad 66'

- Often 66' wide but not always.
- 66' is the length of a Gunter's Chain 100 links.
- Early road statutes set roads at 4 rods in width 66'.
- Wide enough for two tracks but modest enough to keep takings to minimal.

# Annapolis and Elkridge Railroad R/W



# Annapolis and Elkridge Railroad R/W



# Reverter

- Clauses within deeds which allow the property to revert to its prior owner once railroads have been abandoned.
- Generally exist for the life of the railroad.
- In MD rights of reverter have been limited to 30 years for those created after July 1969.
- Generally, most reverters have been extinguished, unless a notice to preserve was recorded.

# Take Aways

- There are still hundreds of miles of railroad right-of-way in Maryland.
- Ownership of these rights-of-way can be inconsistent.
- Location of their boundaries might not be entirely established.
- Look both ways before crossing the tracks.