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A Division of Pender & Coward, P.C.

www.waterfrontpropertylaw.com

A low-angle photograph of a modern, multi-story office building with a glass facade and white structural elements. The building is set against a clear blue sky. The Pender & Coward logo is visible on the lower right side of the building's facade.

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Riparian Property Rights at Waterfront Properties in Virginia

Presentation For
Virginia State Bar
Advanced Real Estate Seminar
by Jim Lang
March 2, 2019

This is not your standard CLE

- This is a game
- With quiz questions
- Listen closely
- Answer the question
- Win a waterfront property themed prize!
- OH, AND IT'S OK TO ASK QUESTIONS DURING THE PRESENTATION

Riparian property rights = \$\$\$

- Residential estimate
 - 45% premium for oceanfront
 - 25% premium for river or lake front
- Industrial estimate
 - 2 acre parcel on inlet of Elizabeth River in Norfolk
 - Value of land \$230k/acre (\$110k (48%) attributable to value of riparian property rights)

Traps for the unwary in waterfront real estate transactions

- Riparian property rights can be severed in the chain of title
- No riparian property rights if the land does not contact the water (this is not a game of horseshoes . . . close is not good enough!)
- Practice tip: Have a riparian property rights attorney evaluate your client's waterfront real estate transaction ***prior to closing***



Broad Bay Point Greens

Birdneck Point in Linkhorn Bay

Another Lease Application
(new leaseholder)



Low Tide



High Tide– Stand Up Paddle Boarders Cross the Same Area
(January 2016)

Where is the upland owner's property line?

- The “mean” low-water mark is the property line (Va. Code §28.2-1202)
- The waterfront property line “shifts with the shifting sands”
 - Accretion
 - Erosion

Who owns the bottomland?

- Commonwealth owns all the beds of the bays, rivers, creeks and the shores of the sea (Va. Code §28.2-1200)
- May be used ***as a common*** by all the people of the Commonwealth for fishing, fowling, hunting, and taking and catching oysters and other shellfish (see also Va. Const. Article XI, §4)
 - Except oyster planting grounds Va. Code §§28.2-600 to 650

Bottomland can be privately owned

- The bed of non-navigable streams
- The bed of a lake
- Excavated upland filled with water
- King's grant
- Pre-2007 conveyance by Commonwealth
- Va. Code §28.2-1200.1
 - Commonwealth shall NOT convey fee simple title to state owned bottom lands covered by waters
 - Exception: State-owned bottom lands that have been lawfully filled
 - Commonwealth can grant a lease or easement

Quiz Question #1

- Prize: Oyster infused vodka from the James River Distillery in Richmond
- Question: Name three (of the six) ways that bottomland can be privately owned

Industrial Waterway



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What are riparian property rights?

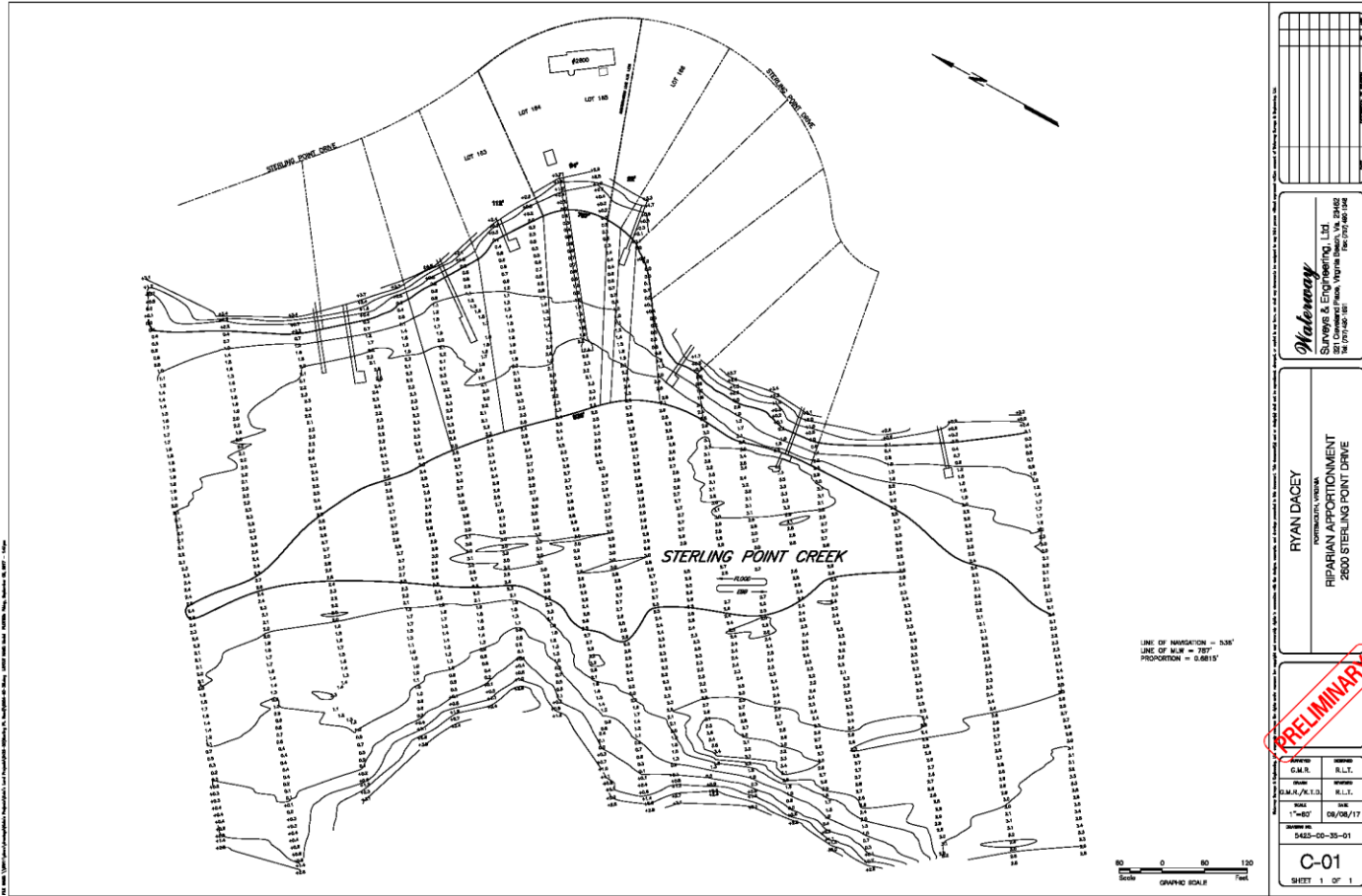
Five benefits that accrue to the owner of land adjacent to a navigable river, bay, creek or the ocean:

- The right to be and remain a riparian proprietor and to enjoy the natural advantages thereby conferred upon the land by its adjacency to the water.
- The right of access to the water, including a right of way to and from the navigable part.
- The right to build a pier or wharf out to navigable water, subject to any regulations of the State.
- The right to accretions or alluvium.
- The right to make a reasonable use of the water as it flows past or laves the land.

What and where is the Riparian Area?

- measure the length of the shore and ascertain the portion thereof to which each riparian proprietor is entitled (use shore line created by Mother Nature . . . not the man made portion created with fill)
- measure the length of the line of navigability, and give to each proprietor the same proportion of it that he is entitled to of the shore line
- draw straight lines from the points of division so marked for each proprietor on the line of navigability to the extremities of his lines on the shore

Riparian Area



Quiz Question #2

- Prize: \$50 gift certificate Rappahannock Oyster Company
- Question: What is one of the “traps for the unwary” in any real estate transaction involving waterfront real estate?

Floating Oyster Aqua- culture

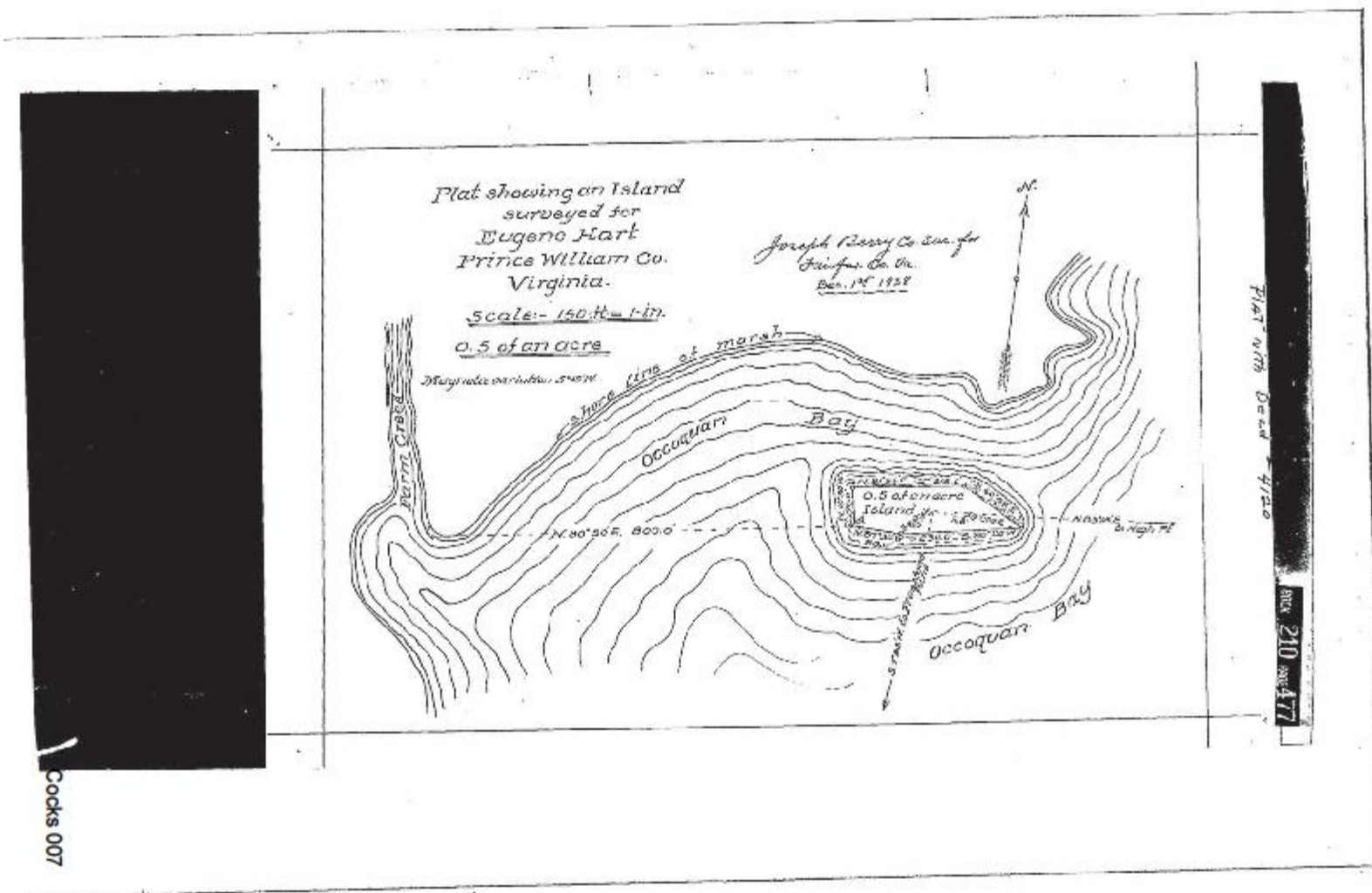
Approximately 120 floats shown here. A typical 5.5 acre installation would be ten times this size (equivalent to 5 NFL football fields). Occupies the bottom, water column and the surface.



Close Up View of Floating Cage



1/2 acre island in 1928



All that remains in 2019



Pier Cases



Permit process: Joint Permit Application (JPA)

- Army Corps of Engineers (usually no hearing)
 - Navigation (Rivers & Harbors Act / NWP)
- Wetlands (occasionally a hearing)
 - Local Wetlands Board or VMRC
- VMRC (occasionally a hearing)
 - Piers: subaqueous encroachment permit (Va. Code §28.2-1205) unless pier statutorily authorized (Va. Code §28.2-1203(A)(5))
 - Oyster lease: (Va. Code §§28.2- 600 to 650)

VMRC Adjudication Statistics

- Infrastructure: 100% approval (28 of 28)
 - Piers
 - Bulkheads
 - Boathouses
- Oyster leases: 76% approval (13 of 17)
- Aquaculture: 67% approval (2 of 3)
- Data gathered over past 12 months

Additional Concerns for Waterfront Property Owner

- Chesapeake Bay Preservation Act
- Coastal Primary Sand Dune Protection Act
- Wetlands

Chesapeake Bay Preservation Act



Coastal Primary Sand Dune Protection Act



Quiz Question #3

- Prize: Oyster infused vodka from the James River Distillery in Richmond
- Question: What is the URL of my water front property law website?

