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ENVIRONMENT

Cape St. Claire planned to restore its eroding shoreline. Too late, county says, sea-level rise washed it away.

By RACHAEL PACELLA
CAPITAL GAZETTE | APR 12, 2020



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Courtesy for ONE TIME USE for building of Cape Beach Pier (JB) Cape St. Claire residents are expressing concern about the construction of a pier on the Magothy River. (Jim Lodico)

Cape St. Claire has spent years planning a shoreline project to restore its eroding beach, only to face a surprise roadblock.

Their community beach isn't just eroding, part of it is gone — along with waterside building rights known as riparian rights.

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The association owns lots once connected by a strip of shoreline. But Anne Arundel County says that strip is gone now, and has issued permits for two piers requested by the new waterfront property owners.

Councilwoman Amanda Fiedler, R-Severna Park, said the case will likely set a precedent in a county with 533 miles of shoreline. Many waterfront communities have similar agreements with property owners, she said.

“I think that we could see more of these situations as community beaches erode and get closer to property lines of residents,” she said.

Kate Fritz, [Alliance for the Chesapeake Bay](#) executive director, said the situation puts an exclamation point on warnings about climate change and sea-level rise. The effects are being felt today and make similar projects to keep land from literally disappearing are now more urgent than ever, she said.

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While the association did at one point own property between 1222 and 1224 River Bay Road and the Magothy River, county officials have checked and said that land is now gone — underwater, county Environmental Policy Director Matt Johnston said. What was land in 1949 is now river bottom.

“So much shoreline has eroded that all the evidence points to, the community lost that lot that was their community beach,” Johnston said.

Now lot lines at 1222 and 1224 River Bay Road go into to the high water line, giving the owners the riparian right to build beside and in the water. The homeowners applied to permits last year, which were granted by the county.

“We have no basis to say they don’t have riparian rights,” Johnston said. “We have no legal justification to stop a permit from moving forward.”

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Construction of a pier at 1224 River Bay Road began this week. The Cape St. Claire Improvement Association said in a statement that it disagrees with the county's decision to grant the permits and is taking legal action. Representatives of the association did not respond to a request for comment.

Alan and Steven Hyatt are representing homeowners at 1224, 1222 and 1220 River Bay Road and they said their clients were shocked in July, when they received a notice about the beach restoration in the mail from the Maryland Department of Environment as part of its normal public notice process.

The shoreline project, still pending Anne Arundel County's approval, would create a living shoreline along 970 feet as well as an 8,000-square-foot wetland.

The plan called for more than 1,500 plants along the shoreline adjacent to those homes, among other changes to prevent shore erosion. They were unaware of the ongoing work to plan the restoration, Steven Hyatt said.

"We said 'well this is kind of problem,'" Hyatt said. "You don't have riparian rights and we have some issues with this being built on our property."

Hyatt said while 1224 River Bay Road is owned by a limited liability company managed by Reid Buckley, the property is not a commercial interest for her or her husband Charlie Buckley, a local real estate agent who bills himself as "Mr. Waterfront." The home is not tied to the business but is rather an extra residence, and the Buckleys are not trying to increase its value to "flip" it, Hyatt said.

In their statement, Cape St. Claire says River Bay Properties LLC did not get approval for the addition, a violation of a community agreement. Hyatt denied that his clients have violated the covenant.

The association filed a civil suit Thursday against River Bay Properties LLC and Robin and Suzanne Sparrow, owners of 1222 River Bay Road, where the county has also approved a pier.

While Anne Arundel County approved the pier construction, it has also funded the restoration project. Through the Alliance for the Chesapeake Bay, the project was granted \$298,868 from the county's Watershed Restoration Grant program. In January, the Anne Arundel County Council also approved a special tax district in Cape St. Claire to collect money to pay back a \$650,000 loan which was taken out to pay for construction of the project.

Fritz said her organization is focused on how they can spread the kind of community environmentalism shown in Cape St. Claire to other places, and how to move forward with the project.

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Disputed Cape St. Claire pier must go, lawsuit over erosion and property rights settled

By RACHAEL PACELLA
CAPITAL GAZETTE | SEP 26, 2020



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A lawsuit between property owners and the Cape St. Claire Improvement Association was settled this month with the agreement that a pier built this spring would come down, but no easements would be granted for public access on the private land.

Alan Hyatt, an attorney representing three property owners, said he doesn't think developers anticipated some homes becoming waterfront through erosion when the covenants were written more than 70 years ago. At one point the community-owned a strip of land separating the lots from the water, a beach for community residents to walk along.

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“What happens when a community-owned property washes away and then you end up with waterfront lots that weren't anticipated when covenants were adopted in 1940s?” he said. “It's a pretty interesting academic question that may have to wait for another set of circumstances.”

Cape St. Claire's attorney Tim Larsen said they don't dispute that some land has washed away and that the mean water level sits up against some of the homeowners' lots now.

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But he said the association's riparian rights are specified in covenant agreements created when the development was first built in 1949, and regardless of who owns the lot the developer has reserved riparian rights.

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“You can reserve the riparian rights to the property when you sell it,” he said. “Whoever then holds the property expressly gives it to them by the deed.”

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The covenant states that the River Bay Co., the predecessor to the homeowner's association, reserved riparian rights to the land it owned in 1949 and would come to develop as Cape St. Claire.

Larsen said they had no choice but to sue the property owners to protect their rights. The settlement specifies the community association owns the riparian rights to 1224 and 1222 River Bay Road. Complaints related to a third property were dismissed without prejudice.

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include an easement, so the public doesn't have the
said.

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River Bay Properties LLC needs to remove the pier at 1224 River Bay Road within 90 days and cannot build another pier without the association's permission.

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Larsen said he is frustrated the county didn't investigate further before approving permits to build the piers at 1222 and 1224 River Bay Road.

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