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## Pine Knoll Ass'n v. Cardon, 484 S.E.2d 446 (N.C. Ct. App. 1997)

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therefore, constituted a taking.

The court found that because the DEM had determined that less environmentally damaging alternatives for construction of the road existed, the state had not denied Plaintiff all economically viable use of her property. The State had no obligation to allow Plaintiff the most profitable use of her property; it must only allow some economically viable use of the property.

Under *Lucas v. South Carolina Coastal Council*, the U.S. Supreme Court held that to support a takings claim, Plaintiff must show either a physical invasion or that the State's action has denied her all economically beneficial or productive use of her land. The test in North Carolina for determining whether a taking has occurred, set out in *Finch v. City of Durham*, is whether the property has a practical use and a reasonable value. The State contends that because the decision not to grant the permit only affects one quarter of Plaintiff's entire parcel, and because other alternatives for road construction and development of the property are available, the property still has a practical use and reasonable value. Therefore, an essential element of Plaintiff's takings claim—deprivation of all practical use and reasonable value, is eliminated. By establishing that alternatives existed to Plaintiff's proposed plan, the court determined that the State had met its burden of proving that Plaintiff had not been deprived of all practical use and reasonable value of her property.

*Heidi A. Anderson*

**Pine Knoll Ass'n v. Cardon, 484 S.E.2d 446 (N.C. Ct. App. 1997)** (holding that where the configuration of the shoreline is irregular, the proper allocation of water space between abutting riparian owners is governed by a "rule of reasonableness," and is a question for the jury).

Pine Knoll Shores Association ("Pine") and Cardon owned adjacent waterfront property along the Davis Landing Canal (the "Canal"). Pine, a homeowner association, owned a tract of land that ran along the Canal's end. Cardon, a member of the association, owned a lot situated immediately west of Pine's property with a small protrusion of its boundary located on the western bank of the Canal. A seawall ran east-west along Pine's property and north-south along Cardon's land. Pine had earlier adopted a restrictive covenant prohibiting the placement of obstructions in the extensions of the property lines abutting the Canal. Cardon maintained a dock along his property and moored two boats, approximately thirty feet in length, perpendicular to the dock and parallel to Pine's seawall.

Pine claimed that the boats intruded upon, and interfered with, its right of access to the Canal, and sued for violation of the restrictive covenants, trespass and violation of its riparian rights. At trial, Pine withdrew its complaint for violation of the covenants, and the court granted summary judgment for the Defendant on the two remaining

issues. The appellate court quickly dispensed with the trespass claim, noting that as a member of the association, Cardon had authorization to access the property in question.

The remaining issue was the allocation of the riparian rights to the canal. The court defined riparian rights as vested property rights that arise out of ownership of land bounded or traversed by navigable water. The court explained that a riparian owner has a qualified property right in the water frontage belonging, by nature, to his land. The chief advantage growing out of the appurtenant estate in the submerged land was the right of access over an extension of waterfronts to navigable water, and the right to construct wharfs, piers or landings.

The court first examined the validity of each party's property rights. Both parties produced valid deeds which conveyed the respective properties with all riparian rights attached. Furthermore, both deeds originated from a common source of title. The court then turned to the general rules of apportionment of disputed riparian rights. Normally, such apportionment involved drawing a line along the channel in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. However, this rule applied to situations in which the shoreline was substantially straight, whereas the shoreline in question was essentially a right angle.

The court noted an absence of controlling precedent, and evaluated the rules from nearby jurisdictions. The court recognized two such methods of allocation, the "angle bisection formula" and the "reasonable use" test. The court concluded that where the shoreline was at a right angle, such as the Canal's shoreline, the "reasonable use" test was the most equitable method of determining the owners' rights. According to the test, the owners' rights depend on a rule of reasonableness, and must be restricted so as not to interfere with the correlative rights of other owners. As a reasonableness inquiry, the question was one of fact for the jury, rendering summary judgment inappropriate.

*Stephen Lawler*

## NORTH DAKOTA

**Mougey Farms v. Kaspari**, 579 N.W.2d 583 (N.D. 1998) (holding the parties' written easement and lease expressed an intent contrary to the creation of an easement implied from a preexisting use or an easement by necessity, and that partitioning the underground irrigation system was not in error because the parties' written easement identified the ownership rights).

In 1982, the State Engineer of North Dakota issued the Kasparis a conditional water permit requiring beneficial use of the water before