

**Another Victory at the Court of Appeals
for Epsten Grinnell & Howell**
Coronado Cays Homeowners Association v. City of Coronado

By: Rian W. Jones, Esq.

In the 1960's the City of Coronado sold undeveloped land that had previously been farm land, a hog farm and a dump to a developer to be built into a waterfront community of luxury homes and condominiums with channels and boat docks. The Special Use Permit (SUP) issued by the City called for the development to contain 100 foot wide channels giving every lot a waterfront. It also called for these channels to be dedicated back to the City, the same as a public road. To create the channels, the developer constructed bulkheads along each side of the waterway and dredged the channels after the bulkheads had been installed.

The SUP requires the City to accept the interior waterways for dedication and maintenance, including maintenance of any easement and right-of-way areas reserved by the Developer. The City is required to re-dredge the interior waterways as necessary to maintain the original dredged depths.

The channels are designed and dredged in such a way so that the sides slope up towards the bulkheads, providing lateral support for the bulkheads. These sloping sides are called "berms." If the berms erode too much, the bulkhead will fail and kick out at the base. Over the years since the original construction the mud line along the base of the bulkheads has eroded. The Association and the City disputed who was responsible for maintaining the berms. To settle the issue once and for all, the Association filed a Declaratory Relief lawsuit against the City asking the court to interpret the meaning of the SUP and dedication to the City of the waterways and to make a determination as to who is responsible for the maintenance of the berms.

The Association was represented at trial by Rian W. Jones and Vince Sincek. After a two day trial, the court ruled in favor of the Association, ruling that

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“...[t]he plain reading of the documents involved demonstrates that the City, in fact, has the responsibility for maintaining the waterways bulkhead to bulkhead, which includes future dredging to the original depths, including dredging of the easement areas reserved by the developer. Accordingly, the Court finds that the City, in fact, has the responsibility for maintaining the berm on Lot C, and the Association is to maintain the bulkheads adjacent thereto.”

Not satisfied with this ruling, the City appealed the judgment to the Fourth District Court of Appeal. After extensive briefing and oral argument by the parties, the Appellate Court, in a published opinion, ruled in favor of the Association stating:

“The City contends the court erred by granting the Association declaratory relief as there was no actual controversy between the parties; misinterpreting the operative documents, a special use permit and an assessor's parcel map; and not including in the judgment certain information included in the statement of decision. We find all contentions lack merit and affirm the judgment.”

The waterways at Coronado Cays are the same as any public street and the City, by accepting the dedication of the waterways from the developer, also accepted the responsibility to maintain the waterways, including maintaining the berms!

The potential cost to the Association for maintaining the berms, had not the court ruled in its favor, could have run into the millions of dollars. Instead, that responsibility, and cost, falls on the City of Coronado, as affirmed by the Court of Appeals.