

GEORGE F. CONWAY, JR., TRUSTEE, et al.	*	IN THE CIRCUIT COURT
Plaintiffs	*	
vs.	*	FOR CECIL COUNTY
CHESAPEAKE ISLE CIVIC ASSOC., INC.	*	
Defendant	*	CASE NO.: 07-C-11-265

* * * * *

OPINION AND ORDER

Plaintiffs are the owners of lots 10 through 14 as shown on a plat entitled "Section Two, Final Plat, Rolling Hills" dated July 27, 1960 and recorded among the Land Records of Cecil County at W. A. S. 1, folio 13 (lots 12 & 13 were subsequently combined to form a new lot 12A and the subdivision is now known as Chesapeake Isle). In addition to Plaintiffs' mentioned lots there is also a stretch of roadway approximately 600+ feet long known as Mason Lane shown on the above plat. Plaintiff Smith, the owner of lot 14, uses Mason Lane as the exclusive means of ingress and egress to lot 14. The remaining Plaintiffs use Mason Lane as access to the waterfront portion of their respective lots which adjoin the North East River. Although Mason Lane has existed in excess of 50+ years, the issue of ownership and maintenance of such roadway has and remains a disputed issue over the years.

Plaintiffs have filed a Complaint for Declaratory Judgment and Injunctive Relief against the Chesapeake Isle Civic Association, Inc. (CICA). In their Complaint Plaintiffs seek the Court to:

1. Determine and adjudicate the rights and liabilities of the parties with respect to the ownership of Mason Lane;
2. Determine and adjudicate the rights and liabilities of the parties with respect to the obligation to repair and maintain Mason Lane; and,
3. Seek affirmative injunctive relief ordering the Defendant to make immediate and regular repairs and maintenance to Mason Lane as determined by the Court.

From the testimony and exhibits submitted during the trial the Court makes the following findings:

1. That the at time of the recording of the above final plat for Section Two, the title to the bed of Mason Lane was reserved in the developer. On such recorded plat the following is clearly noted: "The streets and/or roads shown hereon and the mention thereof in deeds are for the purpose of description only and the same are not intended to be dedicated to the public use; the fee simple title to the beds thereof is expressly reserved in the grantors of the deed to which this plat is attached, their heirs, and assigns." (emphasis added)
2. That the final plat for Section Two clearly separates the area of the streets as shown on such plat from the area of the lots. Noted on such plat under note 3 is the following:

Area	Streets	0.620+/- AC.
	Lots	<u>12.319+/- AC.</u>
	Total	12.939+/- AC.

The Court accepts the testimony of Timothy Granger, a licensed professional land surveyor, that the area of the 50 foot wide Mason Lane and the area of the lots shown on the final plat are almost identical to the areas listed on the final plat. The Court further finds that the only street and/or road shown within Section Two is Mason Lane.

3. That the Plaintiffs have a fifty (50) foot right of way to use Mason Lane for the purposes of ingress, egress and regress to their respective properties.
4. That on February 29, 2000, the Defendant CICA executed a Road Maintenance Agreement (RMA) with the Board of County Commissioners of Cecil County wherein the CICA agreed to make repairs and maintenance to the roads in the Chesapeake Isle/Rolling Hills subdivision. Under such RMA the Defendant CICA "Covenants to make all repairs or maintenance to the said streets of the development, as shall be required to make such streets passable for a single vehicle during normal weather conditions. This paragraph shall not include the obligation of 'snow removal' or any improvements beyond what shall be necessary to make

the driveway passable by a two-wheel drive automobile; however it is the intent of the said Chesapeake Isle Civic Association to provide the service of snow removal for the development, and the Chesapeake Isle Civic Association reserves the right to make repairs to the streets beyond the 'Essential Maintenance' described in the paragraph."

5. That part of the streets/roads which CICA obligated itself to maintain and repair was the streets/roads shown on the final plat of Section Two which the Court previously found to be Mason Lane.
6. That the contractual obligation to maintain and repair Mason Lane was further acknowledged by the testimony of William Dryden, the Court representative of CICA, when he testified and acknowledged that the CICA obligation to maintain and repair Mason Lane is outlined in a letter/agreement dated November 19, 2007 which was executed by its counsel on behalf of CICA and recorded among the Land Records of Cecil County in Liber 2444, folio 181 (Plaintiffs' exhibit 5). Under such agreement CICA agreed to maintain Mason Lane "... "passable for a single vehicle during normal weather conditions", and also to fill potholes and grade as necessary to maintain Mason Lane at its present width with the same degree of attention and reliability afforded the community's other streets."
7. That the duty to maintain and repair Mason Lane has also been acknowledged by the CICA by its actions over the years by seeking proposals to repair and/or upgrade all of the roads within Chesapeake Isle, including Mason Lane. While the members of CICA ultimately did not approve these proposals, the Court finds that the members and/or Board of CICA cannot vote away their legal obligation to maintain and/or repair Mason Lane to the degree required under the RMA and the recorded letter dated November 19, 2007.
8. That CICA has not maintained and/or repaired Mason Lane "with the same degree of attention and reliability afforded the community's other streets". The Court finds that with

the exception of an occasional grading and snow plowing, CICA has not performed any other maintenance and/or repair to Mason Lane while other streets within the community have been graded, covered in gravel and millings, and in some areas blacktopped.

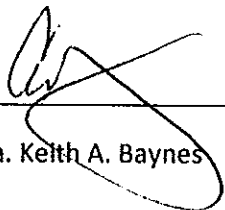
9. That the Court cannot determine what repairs or future maintenance is necessary since the Court finds that the evidence presented on such issues exceeded the CICA's obligation to maintain and repair. The evidence presented by Mr. Wilen, while very professional and accurate, was based upon a 10 year storm event. When questioned by the Court whether this 10 year weather event represented 'normal weather conditions' he indicated it did not and that normal weather conditions would be more accurately reflected by either a 1 or 2 year storm event. While the Court finds that CICA has not maintained and/or repaired Mason Lane over the years per it's legal obligation, and while it further finds that Mason Lane is in immediate need of repairs and/or maintenance with regard to stormwater runoff, stabilization of slopes, grading and the adding of gravel and millings, the Court cannot guess as to what is needed to bring Mason Lane up to the same degree of attention and reliability that has been afforded the community's other streets.
10. That the Plaintiffs are not estopped from asserting their claims outlined in their Complaint for Declaratory Judgment nor is their claim barred by the doctrine of laches or limitations.

Based upon the above findings of fact the Court hereby Declares and Orders as follows:

1. That the Chesapeake Isle Civic Association, Inc. is the owner in fee simple of the bed of Mason Lane as shown on the Final plat of Section Two and as described in the attached description prepared by American Engineering and Surveying, Inc., dated March 16, 2012.
2. That the Plaintiffs have a fifty (50) foot right of way to use Mason Lane for the purpose of ingress, egress, and regress to the respective properties.

3. That the Chesapeake Isle Civic Association, Inc. is obligated to maintain and/or repair Mason Lane to the standards outlined in the Road Maintenance Agreement and to the same degree of attention and reliability afforded the community's other streets.
4. That the Chesapeake Isle Civic Association, Inc. shall conduct an immediate assessment of Mason Lane to determine its immediate needs for repair or maintenance to insure it's current and continued use by Plaintiffs and to bring the condition of such road to the same degree of attention and reliability that has previously been afforded the other streets within the community as applicable, appropriate and necessary.

Date: October 25, 2012



Hon. Keith A. Baynes

COPIES SENT TO
ALL COUNSEL AND
UNREPRESENTED PARTIES

12 OCT 25 AM 11:22
CECIL COUNTY, MD.
PER DERRICK W. LOWE,
CLERK

TRUE COPY
TEST Derrick W. Lowe