

E-MAILS

Date: Thu, 21 Aug 2008 07:27:42 -0400  
From: Ed Papenfuse <edp@mdsa.net>  
User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
To: Richard Richardson <richardr@mdsa.net>  
CC: Tim Baker <timb@mdsa.net>, Leslie Frazer <leslief@mdsa.net>, edp@mdsa.net  
Subject: [Fwd: Letter from Gary Setzer]  
X-RCPT-TO: <richardr@mdsa.net>  
X-IMail-ThreadID: 5137016d000004b3

Richard:

This is a high priority request on which we have done considerable work already. I have talked with Adam Snyder and will be informally reviewing the work done at Martenet this Friday. This may be the ideal patent issue to train Jen on, if indeed your recommendation still stands re: your successor.

There is also another letter in the mail file which came in from the Rich firm offering to provide us with all the documentation they have used. We need to follow up on it and will send on a copy by separate email. I have put the DOE off until your return.

I realize you may have a lot on your desk, but push this to the top and see me re: as soon as you get settled in. If Jen is to be involved, we probably should talk about this first separately.

Leslie:

Please call Mr. Zivkovich (09-2584) and explain that I would like to review his documentation with my deputy who is currently on vacation.

Could he supply copies for our review? When my deputy returns we will call him with any questions we may have.

410-267-5900

Ed

Received: from 172.16.24.194 [172.16.24.194] by msamail.mdsa.net with ESMTP (SMTPD-10.01) id AAA901FC; Tue, 12 Aug 2008 17:03:37 -0400

To: <edp@mdsa.net>

Cc:

Date: Tue, 12 Aug 2008 21:03:37 GMT

Mime-Version: 1.0

From: "Leslie Frazer" <leslief@mdsa.net>

Subject: Letter from Gary Setzer

Content-Type: multipart/mixed;

boundary="-----Boundary-00=\_O6I3PFF5ODJ0VLHR0NKS"

Message-Id: <20080812170308.SM03720@[172.16.24.194]>

X-RCPT-TO: <edp@mdsa.net>

X-IMail-ThreadID: faa9009300000092

Ed,

Attached is a pdf of a letter from Gary Setzer, Program Administrator for the Wetlands and Waterways Program of the Maryland Department of the Environment. He is asking for your assistance in determining the validity of patents submitted to their office by Warren Rich of Rich and Henderson Attorneys at Law re: Fells Point Recreation Pier.

I would normally forward this to Richard, but he is on leave until 2 Sep 08. The original letter is in the General Mail folder in your office.

I cannot remember if someone has been named as Richard's successor as the Deputy Commission of Land Patents, so I'm not sure who else would handle the request.

Leslie



gary\_setzer\_12aug08.pdf

Date: Thu, 21 Aug 2008 07:33:38 -0400  
From: Ed Papenfuse <edp@mdsa.net>  
User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
To: Leslie Frazer <leslief@mdsa.net>,  
Richard Richardson <richardr@mdsa.net>  
Subject: [Fwd: land patent review]  
X-RCPT-TO: <richardr@mdsa.net>  
X-IMail-ThreadID: 529c008f000004f5

Richard:

followup letter

Leslie:

This is insufficiently described when sent on to me as an email attachment. If nothing else, be sure that the subject field as it appears in the mail file is in the subject line of the email, along with the name of the sender. Given the severe limitation of our email system as it is, I would normally search on the sender's name or a unique word I know should be in the subject line (it was on the log sheet but not any searchable field in my email).

Received: from 172.16.24.194 [172.16.24.194] by msamail.mdsa.net with ESMTP (SMTPD-10.01) id A2C701C4; Mon, 18 Aug 2008 13:35:03 -0400  
To: <edp@mdsa.net>  
Cc: <leslief@mdsa.net>  
Date: Mon, 18 Aug 2008 17:35:03 GMT  
Mime-Version: 1.0  
From: "Crystal Stewart" <crystals@mdsa.net>  
Subject: land patent review  
Content-Type: multipart/mixed;  
boundary="-----Boundary-00=\_Q5EAPWMXAYTWYFP8MGYJ"  
Message-Id: <200808181335612.SM02148@[172.16.24.194]>  
X-RCPT-TO: <edp@mdsa.net>  
X-IMail-ThreadID: b2c7009600000a7b

Leslie,

Here is a pdf re: the above subject.

Thanks,

Chris Stewart



land\_patent\_review\_fells\_point\_rec\_pier\_18aug08.pdf

Date: Fri, 22 Aug 2008 15:51:32 -0400  
 From: Ed Papenfuse <edp@mdsa.net>  
 User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
 To: Richard Richardson <richardr@mdsa.net>  
 Subject: [Fwd: [Fwd: Letter and CD from Trent Zivkovich]]  
 X-RCPT-TO: <richardr@mdsa.net>  
 X-IMail-ThreadID: 18c3008d00000c1a

In the Martenet files there are two plats relevant to the inquiry:

Series 05-45 and Series 10-7-1469. The latter purports to show the shore line as of 1784 and is an original?

The issue relates to the finding whether or not the 'land' under the part of the pier over water is private or public wetlands (huge difference in cost for a permit). Do the laws in the 50s and 60s trump a patent?

Are they relevant to what we were asked to respond to ?

See me re: as soon as you can when you get back.

Ed

Received: from [127.0.0.1] [172.16.26.82] by msamail.mdsa.net with ESMTP  
 (SMTPD-10.01) id AF8E01C4; Fri, 22 Aug 2008 15:12:14 -0400  
 Message-ID: <48AF0F90.7070300@mdsa.net>  
 Date: Fri, 22 Aug 2008 15:12:16 -0400  
 From: Leslie Frazer <leslief@mdsa.net>  
 User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
 MIME-Version: 1.0  
 To: edp@mdsa.net  
 Subject: [Fwd: Letter and CD from Trent Zivkovich]  
 Content-Type: multipart/mixed;  
 boundary="-----010101080809030903000503"  
 X-RCPT-TO: <edp@mdsa.net>  
 X-IMail-ThreadID: 0f8e009200000b63

Ed,

The contents of the CD are located in a folder titled "zivkovich" on S1761-0458, which is currently associated with edtest9.

Leslie

Message-ID: <48AF0B2F.3060002@mdsa.net>  
 Date: Fri, 22 Aug 2008 14:53:35 -0400  
 From: Leslie Frazer <leslief@mdsa.net>  
 User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)

MIME-Version: 1.0  
To: edp@mdsa.net  
Subject: Letter and CD from Trent Zivkovich  
Content-Type: multipart/mixed;  
boundary="-----050707020503040802070206"

Ed,  
Attached is a pdf of a letter from Trent.Zivkovich that he dropped off today with a CD of the original source materials related to the land patents referenced in Warren Rich's letter of 28 May 08 to Secretary Wilson DOE. The original letter and the CD are in the General Mail folder in your office.  
Leslie



trent\_zivkovich\_22aug08.pdf

Date: Tue, 02 Sep 2008 11:54:22 -0400  
From: Leslie Frazer <leslief@mdsa.net>  
User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
To: Richard Richardson <richardr@mdsa.net>  
Subject: [Fwd: Fells Point Recreation Pier Patent Review]  
X-RCPT-TO: <richardr@mdsa.net>  
X-IMail-ThreadID: 61b0019a00002acf

Richard,

Ed would like to talk to you about this today. You should be able to reach him on his home phone, 410-467-6137.

Leslie

Received: from mailgw2.msa.md.gov [167.102.241.230] by msamail.mdsa.net (SMTPD-10.01) id A3F5022C; Tue, 02 Sep 2008 10:55:49 -0400

Received: from mail.richlaw.com (localhost [127.0.0.1]) by mailgw2.msa.md.gov (Spam Firewall) with ESMTP id C41602847F8 for <leslief@mdsa.net>; Tue, 2 Sep 2008 10:55:48 -0400 (EDT)

Received: from mail.richlaw.com (mail.richlaw.com [71.16.198.171]) by mailgw2.msa.md.gov with ESMTP id 7Yi0dvTEfbPfbZ6y for <leslief@mdsa.net>; Tue, 02 Sep 2008 10:55:48 -0400 (EDT)

Content-class: urn:content-classes:message

MIME-Version: 1.0

Content-Type: multipart/alternative;

boundary="----=\_NextPart\_001\_01C90D0B.EA6CDA0C"

Subject: Fells Point Recreation Pier Patent Review

X-MimeOLE: Produced By Microsoft Exchange V6.5

Date: Tue, 2 Sep 2008 10:55:18 -0400

Message-ID: <1E762B4E3CFC8247807CE99986D07B1B282F60@RHSERVER1.richlaw.local>

X-MS-Has-Attach:

X-MS-TNEF-Correlator:

Thread-Topic: Fells Point Recreation Pier Patent Review

Thread-Index: AckNC+pDMTUFP1T4Q1GzFFb53TppAQ==

From: "Trent Zivkovich" <tzivkovich@richlaw.com>

To: <leslief@mdsa.net>

X-RCPT-TO: <leslief@mdsa.net>

X-IMail-ThreadID: 53f5014c00002862

Leslie,

I wanted to follow up with you and Dr. Papenfuse to see if there were any questions I could answer regarding the patent review in support of the Fells Point Recreation Pier wetlands permit application. Do you know when Dr. Papenfuse believes he will be able to respond to the MDE?

Thank you,

Trent

M. Trent Zivkovich  
Rich and Henderson, P.C.  
51 Franklin Street, Suite 300  
Annapolis, Maryland 21401

Date: Fri, 22 Aug 2008 15:51:32 -0400  
From: Ed Papenfuse <edp@mdsa.net>  
User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
To: Richard Richardson <richardr@mdsa.net>  
Subject: [Fwd: [Fwd: Letter and CD from Trent Zivkovich]]  
X-RCPT-TO: <richardr@mdsa.net>  
X-IMail-ThreadID: 18c3008d00000c1a

In the Martenet files there are two plats relevant to the inquiry:

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(SMTPD-10.01) id AF8E01C4; Fri, 22 Aug 2008 15:12:14 -0400  
Message-ID: <48AF0F90.7070300@mdsa.net>  
Date: Fri, 22 Aug 2008 15:12:16 -0400  
From: Leslie Frazer <leslief@mdsa.net>  
User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)  
MIME-Version: 1.0  
To: edp@mdsa.net  
Subject: [Fwd: Letter and CD from Trent Zivkovich]  
Content-Type: multipart/mixed;  
boundary="-----010101080809030903000503"  
X-RCPT-TO: <edp@mdsa.net>  
X-IMail-ThreadID: 0f8e009200000b63

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Leslie

Message-ID: <48AF0B2F.3060002@mdsa.net>  
Date: Fri, 22 Aug 2008 14:53:35 -0400  
From: Leslie Frazer <leslief@mdsa.net>  
User-Agent: Thunderbird 2.0.0.16 (Windows/20080708)



MIME-Version: 1.0

To: edp@mdsa.net

Subject: Letter and CD from Trent Zivkovich

Content-Type: multipart/mixed;

boundary="-----050707020503040802070206"

Ed,  
Attached is a pdf of a letter from Trent Zivkovich that he dropped off today with a CD of the original source materials related to the land patents referenced in Warren Rich's letter of 28 May 08 to Secretary Wilson DOE. The original letter and the CD are in the General Mail folder in your office.  
Leslie



trent\_zivkovich\_22aug08.pdf

Subject: RE: Fell's Point Recreation Pier  
Date: Fri, 12 Sep 2008 12:35:20 -0400  
X-MS-Has-Attach:  
X-MS-TNEF-Correlator:  
Thread-Topic: Fell's Point Recreation Pier  
Thread-Index: AckU9R3I3kRcPCMyRw2/zTQg+BYEVwAAGM3g  
From: "Trent Zivkovich" <tzivkovich@richlaw.com>  
To: "Richard Richardson" <richardr@mdsa.net>  
X-RCPT-TO: <richardr@mdsa.net>  
X-IMail-ThreadID: 9a68009500000949

Sounds good, thank you.

---

**From:** Richard Richardson [mailto:richardr@mdsa.net]  
**Sent:** Friday, September 12, 2008 12:32 PM  
**To:** Trent Zivkovich  
**Subject:** Re: Fell's Point Recreation Pier

09/12/2008

Mr. Zivkovich:

Thank you for the follow-up concerning the history of the land patents and other issues for the Fell's Point Recreation Pier. I will let you know if we need additional information or assistance in this matter. I appreciate your offer.

Sincerely yours,

Richard H. Richardson  
Deputy Commissioner of Land Patents  
Maryland State Archives  
350 Rowe Blvd.  
Annapolis, MD 21401

410-260-6407  
FAX 410-974-3895

At 11:06 AM 9/12/2008, you wrote:

Hello Richard,

I just wanted to follow up on my telephone message from last week offering my assistance with any of the documents I provided on August 22<sup>nd</sup> and with any questions you have concerning our analysis of the land patents issued for that area. Please don't hesitate to contact me if I can be of help.

All the best,

Trent

M. Trent Zivkovich  
Rich and Henderson, P.C.  
51 Franklin Street, Suite 300  
Annapolis, Maryland 21401

410-267-5900 ext. 118  
410-267-5901 fax  
[tzivkovich@richlaw.com](mailto:tzivkovich@richlaw.com)  
[www.richlaw.com](http://www.richlaw.com)

**Please note our new physical address.**

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To: <jenh@mdsa.net>  
 Cc: "richardr" <richardr@mdarchives.state.md.us>, <edp@mdsa.net>  
 Date: Tue, 16 Sep 2008 11:56:21 GMT  
 From: "Edward Papenfuse" <edp@msa.md.gov>  
 Subject: Fw: Maryland's Wetlands: The Legal Quagmire  
 X-RCPT-TO: <richardr@mdarchives.state.md.us>  
 X-IMail-ThreadID: 9ee5009100000489

Enlist Owen to help on this search for the plat, etc.

-----Original Message-----

From: "Edward Papenfuse" <edp@msa.md.gov>  
 Sent 9/16/2008 7:54:37 AM  
 To: "Richard Richardson" <richardr@mdsa.net>  
 Cc: edp@mdsa.net  
 Subject: Re: Maryland's Wetlands: The Legal Quagmire

I have placed a draft of my thoughts re: our response in the ecplio series. Please work with Jen to get all that we have done to date into the series and consolidated from MSAREF as well.

I want Jen to track down the original of the 1797 plat that appears facing page 38 of Sherry Olson's Baltimore. She does not cite sources. I believe this is from the City Archives, but we also have a collection of Bouldin's survey records (he made this copy by the looks of it), and we do have the Superior Court copies of the plats relating to Baltimore City which may also contain a later copy of the same plat. Between it and the 1914 topo survey, the Port Warden's line changed. We need to address that change, but it probably will not affect the letter of advice which probably will oppose the arguments put forth by Warren Rich (depending on our final review of the evidence).

The Caveat case from which I copied the two opinions, in terms of the argument accepted by the Court of Appeals, upholds the principal that the riparian owner, i.e. the lot owner with navigable water directly in front of his lot, acquires title to any land that is added slowly (man made or by accretion as long as it does not interfere with a neighbors riparian rights and with navigation) and the State cannot grant any such emerging land to anyone else. Berthol does not address the impact, however, of the repeal of the laws of 1745, 1784, and possibly 1835, by the enactment of the first Annotated Code (see the law review article which I have read). He only reaffirms the fact that any rights to land under water in front of a waterfront lot as it emerges above the tide are, in 1865, vested in the lot owner. Beginning in 1910, the lot owner(s) in the case of the Municipal Pier, lots 69/76, was the state/city which, regardless of the 1940 law empowering the BPW to grant patents to lands under water (I would like to see the text of that law), is now constrained by the reform of the land patent law and the creation of the wetlands administration ca. 1970. It would appear that the only question is the extent to which the wetlands exist under the Municipal Pier, and thus the area to covered (and paid for) by a public wetlands license fee.

-----Original Message-----

From: "Richard Richardson" <richardr@mdsa.net>  
 Sent 9/15/2008 3:59:25 PM  
 To: edp@mdarchives.state.md.us  
 Subject: Maryland's Wetlands: The Legal Quagmire

Ed:

I am sure that you have seen this article "***Maryland's Wetlands***," from the Maryland Law Review XXX, 3 (Summer, 1970). But if not, I think you will find it useful to our question. The article summarizes riparian rights over time and provides references to laws, court decisions and attorney general opinions.

Richard