



Virginia State Bar
An agency of the Supreme Court of Virginia



The FEE TAIL

The Real Property Section's
email supplement to
The FEE SIMPLE

The Virginia State Bar's Real Property Section is pleased to provide its members with ***The Fee Tail***: a new email newsletter with current and timely updates to case law pertinent to the practice of real estate law in the Commonwealth. We hope you will find these updates helpful, and we welcome all of our section members to submit any ideas for future *Fee Tail* emails to Heather Steele at hsteele@pesner.com.

The Fee Tail is meant to be a "junior" form of the *Fee Simple*—it is a short update with very current cases, preferably drawn from our membership, so that we can give credit where credit is due! If you have recently litigated (or are aware of) a current real estate case, either at the trial court or appeals level, and would like to share your story with the section, please contact us to be featured in *The Fee Tail*.

Below are a few recent cases of interest. Click the links for articles about the decisions and actual opinions from the Supreme Court of Virginia.

Cases of Interest

[Morgan v. Board of Supervisors](#) — Decided Feb. 3, 2023.

In an action by several homeowners seeking declaratory and injunctive relief, claiming that the Board of Supervisors of Hanover County violated Virginia law when it approved rezoning and special-exception requests that authorized construction of a large distribution and warehousing facility nearby, the circuit court erred in finding that the homeowners' allegations did not allege a sufficient factual basis for standing. The court also erred when it dismissed Counts VI, VII, and VIII on the alternative ground that those Counts asserted speculative claims not ripe for adjudication. No opinion is offered, however, on the merits or demerits of the various claims pleaded by the homeowners or what, if any, judicial relief should be awarded at the conclusion of this case. The appealed judgment is reversed, and the case is remanded. [Read the full decision.](#)

[Horn v. Webb](#) — Decided Feb. 9, 2023.

In litigation between neighboring parties owning land near a lake, the evidence supports [the circuit court's rejection](#) of a claimed prescriptive easement for the defendants to store small watercraft, such as canoes, on the plaintiff's land,

and an award of compensatory damages for such storage is affirmed. However, the judgment is reversed in connection with the claim of a prescriptive easement to dock a boat on the plaintiff's property. Even if it is assumed that the original docking was permissive, the prior sale of the land vitiated the permission granted by the original owners.

No evidence indicates that any of the subsequent owners granted any kind of permission to dock a boat on their land. Defendants established the existence of a prescriptive easement to dock a boat as well as to maintain the electrical wiring and outlet to charge the boat. Finally, award of punitive damages is reversed, because nothing in the record establishes malice on the part of the defendants in filing their own lawsuit to vindicate their property rights. Thus, the judgment is affirmed in part and reversed in part, and the case is remanded for entry of an order consistent with the judgment of this Court. [Read the full decision.](#)



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