

VARNUM

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December 22, 2021

Via Overnight Delivery

Russell Beach Homeowners Association
Attn: Board of Directors
8484 Cascade Street
Commerce, Michigan 48382-4705

FOR SETTLEMENT PURPOSES ONLY
MRE 408

Re: Subject Property Contiguous to 1676 Point Drive, Commerce, Michigan 48382

Dear Board of Directors:

Please be advised that Varnum LLP ("Varnum") represents Steve Potocsky ("Steve") and Christine Potocsky ("Christine"; collectively the "Potocskys"). If Russell Beach Homeowners Association (the "Association") is represented by an attorney, please forward this correspondence to said attorney.

The Potocskys are aware that the Association is planning to develop a park and install a seawall (the "Development") along the shoreline of Point Street. Specifically, the Development, as proposed, consists of the abandoned/vacant lot along the canal and the abandoned road known as Maple Avenue (the "Subject Property"). As you know, the property commonly known as 1676 Point Drive, Commerce, Michigan 48382 (the "Potocsky Property") is contiguous to the Subject Property, lying just south of the canal. See Potocsky Property Deeds and Surveys enclosed. Since August 18, 2021, or earlier, the Association has been put on notice that the Potocskys object to the Development, as they have used the Subject Property as a driveway and an access point to the canal since 2011 and previous homeowners, including Nancy K. Meininger (the "Grantor") and Thomas Meininger, similarly used the Subject Property since 2000. See August 18, 2021 Russell Beach Association Monthly Members Meeting Minutes enclosed; Abandonment Procedures enclosed. Despite the Association's awareness of this use, it claims that it has an interest in the Subject Property, by way of cutting down vegetation on same and planning for the seawall for the Development. See August 18, 2021 Russell Beach Association Monthly Members Meeting Minutes.

The Subject Property is vacant and/or abandoned property, which owners of the Potocsky Property have used and maintained since January 4, 2000. Specifically, Maple Avenue is a private road, which the Oakland County Road Commission acknowledges it does not own. See Abandonment Procedures enclosed; Charter Township of Commerce Ex Parte Order enclosed. Likewise, no records suggest that the Association owns the Subject Property or the road located thereon. As depicted in the Surveys enclosed, it is believed that Maple Avenue was originally

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intended to traverse the canal,¹ but the road was never further developed. Instead, since as early as January 4, 2000, the Subject Property, including Maple Avenue, has been used and maintained by subsequent Potocsky Property owners, with the Association's and neighbor's full knowledge and acquiesce.

Pursuant to MCL 560.227(a)(1), the Potockys could seek to have Maple Avenue vacated and have a court declare title to same. See also *2000 Baum Family Trust v Bable*, 488 Mich 136, 156 (2010) ("[i]t is elementary that upon the vacation of a street . . . the land reverts to the abutting owner"). Moreover, a claim of adverse possession is simple. "In Michigan, adverse possession must be 'established by clear and cogent proof of possession that is actual, visible, open, notorious, exclusive, continuous, and uninterrupted for the statutory period of 15 years, hostile and under cover of a claim of right.'" *Davis v Davis*, 179 Mich App 72; 445 NW2d 460 (1989) (quoting *Connelly v Buckingham*, 136 Mich App 462, 467-68; 357 NW2d 70 (1984) (internal citations omitted)). Where a party cannot meet the statutory period alone, but can show that there is privity of the estate between an adverse possessing grantor and the grantee, the individual may tack the successive period of adverse possession to fulfill the 15-year statutory period. *Martyn v White*, Case No. 337867, 2018 WL 3789065, at *4 (Mich Ct App August 9, 2018) (citing *Siegel v Estate of Renkiewicz*, 373 Mich 421, 425 129 NW2d 876 (1964)). For nearly 21 years, successive owners of the Potocsky Property have continuously used the Subject Property in the same manner, such that it was actual, visible, open, and notorious to the Association and neighboring homeowners. Before the Association proposed the Development, it never interrupted this 21-year period, and successive owners of the Potocsky Property have practiced exclusive use of the Subject Property. Likewise, because the Potockys have enough evidence to support a claim of adverse possession, they too could assert a claim of acquiescence. See *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000) (while similar to a claim of adverse possession, the elements of acquiescence do not require hostility or privity necessary to employ tacking).

Despite the Potockys' potential claims related to the Subject Property, they are wholly interested in resolving this manner without excessive litigation. Accordingly, while the Potockys have strong claims for adverse possession and acquiescence to the Subject Property, the Potockys are willing to enter into discussions to address their rights to the Subject Property and their use of Maple Avenue. In fact, the Potocsky are willing to submit a proposed appurtenant easement agreement, permitting the Association to have access to the vacant/abandoned lot. Should the Association reject this request and proceed with the Development without resolving these issues, the Potockys are prepared to proceed to litigation pursuing, *inter alia*, exclusive rights to the Subject Property and costs, interest, and attorney's fees regarding same.

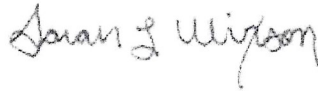
¹ As depicted, the canal was originally intended to be a lagoon.

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Thank you for your immediate attention to this matter. Please contact me with any questions.

Sincerely,

VARNUM



Sarah L. Wixson

SLW/jdd
Attachments

Russell Beach Association (RBA) Property Definition Committee Outline

Property Description: Russell Beach Subdivision – A subdivision on the south part of the south half of Sec. 36 White Lake Twp. And all the NW1/4 of the NE1/4 and part of the E1/2 of the NE1/4 of the NW1/4 of Sec. 1 Commerce Twp. Oakland Co. Mich

Why a Property Definition Committee is Needed: residents who had/have property abutting private roads next to RBA common areas have attempted to claim rights to the land. These roads are critical to all Lot owners in the RBA as some are access points to Cooley Lake and Long Lake, and all are considered common area open spaces for the enjoyment of all Lot owners including modernly named Cooley Lake Boat Launch (Oak St.), North Park (West Grove St.), South Park (W. Grove St., E. Grove St., and Maple Rd), and Point Street Park (Maple Rd).

Committee Members:

President: Scott Obrec, Directors and Co-Chairs of the Parks Committee: Tony Sorge and Carlo Ginotti, Volunteer Investigator: Linda Obrec

Committee Authority: The committee reports to the RBA Board of Directors and has no independent authority. Because legal action initiated by either Lots owners or the RBA itself could lead to litigation, the work of this committee will remain confidential by the RBA Board until legal actions are settled.

Scope of Work: define ownership of originally platted roads that abut RBA common areas that are not confirmed to be already public, i.e., under the authority of the Oakland County Road Commission, and confirm ownership of all common areas.

Specific roads according to the RBA original plat include:

- 1) Originally platted **Oak St.** – west border of Lot #3, running from north to south between the Cooley Lake water line and Cascade
- 2) Originally platted **West Grove St.** running from north to south at Cascade to Cooley Lake Rd., along the west border of the North Park, and the Immensee (originally platted Long Lake Rd) intersection with Galena (originally platted West Grove St.) along the west border of the South Park to originally platted Maple St.
- 3) Originally platted **East Grove St.** running from north to south from Grinshaw to Maple St. along the east border of the South Park
- 4) Originally platted **Maple St.** – running from west to east along the Long Lake water line from originally platted West Grove St., connecting to Grinshaw, then to Point St. (part of this road is under water)

Specific common areas according to the RBA original plat include:

- 1) Tennis Courts (Lot 57)
- 2) North Park (Lot 60)
- 3) South Park (Lot 61)
- 4) Athletic Field (Lot 109)
- 5) Point Park (Lot 194)