

DRAFT FOR SETTLEMENT DISCUSSION ONLY 9.5.23

SUBJECT TO MRE 408

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

CITY OF NOVI, a Michigan Municipal Corporation,

Plaintiff,

vs.

Case No. 2022-193912-CZ
Hon. Yasmine I. Poles

Emanuel N. Malles II,

Defendant.

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CONSENT JUDGMENT

This matter having come before the Court pursuant to Plaintiff, City of Novi's ("Novi"), Complaint filed on April 29, 2022. Defendant, Emanuel Malles II ("Malles" or "Defendant"), having responded, the parties having engaged in discovery, the Court having reviewed the City's motion for summary disposition, and the Court being otherwise fully informed in the premises:

IT IS HEREBY ORDERED AS FOLLOWS:

- A.** Novi filed a Complaint seeking declaratory and injunctive relief relating to allowable uses of Lot 9 of the Lake Wall Subdivision, a vacant lot fronting on Walled Lake in the City of Novi that Defendant Malles does not own, but over which Defendant and other similarly-situated property owners who own properties within the Lake Wall Subdivision have a right to access the Lake, and which Defendant and the other property owners have used to install a seasonal dock for the mooring of boats and/or jet skis and for other recreational purposes. The legal description of the parcel is T1N, R8E, SEC 3, LAKE WALL SUB LOT 9, Parcel Number 50-22-03-204-014, hereinafter called the “Subject Property.”
- B.** The City’s Complaint asserted, among other things, that Defendant (and the other similarly-situated property owners on whose behalf Defendant engaged in certain activities relating to installation of the seasonal dock) were not permitted to install or use the seasonal dock, including for the mooring of boats or other watercraft. The basis for the City’s Complaint included provisions of its zoning ordinance (which Novi alleged classifies the property for single-family residential use), provisions of its lakefront protection ordinance (which Novi alleged limits use of lakefront lots by backlot owners like Malles), and public nuisance (which Novi alleged resulted from the use by Malles and others).
- C.** Defendant Malles denied that the City was entitled to the relief requested, citing historical use of Lot 9 by property owners within the Lake Wall Subdivision for lake access and docking and other recreational purposes.
- D.** The City filed a motion for summary disposition pursuant to MCR 2.116(C)(8), which the Court denied, finding that there is some likelihood that the homeowners of the Lake Wall Subdivision used Lot 9 for boat docking and lakefront recreational uses before the adoption of the lakefront protection ordinance, and potentially even preceding the City’s zoning ordinance.

- E. While the City contends that use of Lot 9 for installation of a seasonal dock and recreational purposes is not (and cannot be) “grandfathered,” the City and Defendant have determined to settle this matter by having the Court establish a use and limitations on such use of Lot 9 based on information relating to the historical use of Lot.
- F. During discovery it was established that other individuals than Defendant who are property owners of residential lots within the Lake Wall Subdivision who have an interest in the seasonal dock and who have been using the dock to moor boats and other watercraft. Resolution of this case is therefore dependent upon, and would not proceed without, the concurrence in the resolution and the relief set forth herein, without a clear indication by such other individuals that they fully concur in and intend to be bound by this Consent Judgment.

NOW, THEREFORE:

1. The parties agree that Defendant and other owners or legal occupants of real property within the Lake Wall Subdivision may continue to install a seasonal dock on Lot 9 for boat/watercraft docking and lake access, subject to the following limitations:
 - a. *Length of Dock:* The seasonal dock may not exceed its current length of [please confirm] feet.
 - b. *Number of Watercraft:* The seasonal dock may not be used to moor more than eight (8) watercraft at any time, including overnight mooring; provided, however, that the dock may be used to assist in brief and temporary loading/unloading of no more than one other watercraft at any given time. A jet ski or “personal watercraft” shall be considered to be a boat if moored at the dock.
 - c. *Placement of Dock:* The seasonal dock shall be installed from Lot 9 in such a manner as to permit docking only along the south side of the dock.

- d. *Owners/Occupants Only*: Only the owners or occupants of homes located on lots within the Lake Wall Subdivision whose deeds include lake access rights shall be permitted to use the dock. Owner/occupants shall not rent to, or share the dock space with, third parties who do not own or occupy a home within the Subdivision.
- e. *Compliance with laws and regulations*: All activities in connection with the use of Lot 9 for lake access and mooring watercraft shall be done in accordance with the City of Novi Code of Ordinances, including without limitation the noise provisions of Section 22-96 of the City Code.
2. This Consent Judgment has been signed by and stipulated to below as to both form and content by Defendant and also the other individuals who have access rights over Lot 9 and also an interest in the dock at issue and who have in the past used the dock to moor their boats/watercraft. The Court finds that no other owners/occupants within the Lake Wall Subdivision have established any use rights related to Lot 9 that Novi is required to acknowledge or permit.
3. This Judgment shall be recorded in the Oakland County Register of Deeds as to Lot 9 and the Lots owned by the signatories below, only. However, all owners/occupants of the Lake Wall Subdivision are to be given notice of the recording of this Consent Judgment.
4. The Court, Defendant, and the other signatories below acknowledge and agree that the limitations in Paragraph 1 above are essential to Novi's decision to enter into this Consent Judgment. Defendant and the other signatories below, who collectively control the installation and use of the seasonal dock, shall be solely responsible for ensuring compliance with its terms and limitations. In the event that the City is required to take action to enforce this Judgment at any time in the future, and succeeds in securing relief

under this Judgment, Defendant and the signatories below shall be responsible, jointly and severally, for the Novi's attorneys' fees, court, and enforcement costs. In addition, and because of Novi's interests in ensuring reasonable limitations on the use of Lot 9 for boat docking purposes, in the event Novi establishes two violations of this Consent Judgement in any year (e.g., boating season), Novi shall have the right (but not the obligation) to declare this Consent Judgment to be null and void and to re-open this case, or file a new action in the Oakland County Circuit Court that shall not be subject to this Consent Judgment. Novi shall also have the right (but not the obligation) to declare this Consent Judgment to be null and void and to re-open this case, or file a new action in the Oakland County Circuit Court that shall not be subject to this Consent Judgment, if any formal action (e.g., filing a new lawsuit or a motion in this case) is undertaken by any owner or occupant of a Lot in the Lake Wall Subdivision not represented by the signatories below.

5. This Court retains continuing jurisdiction to assure enforcement and compliance with the terms of this Order.
6. This is a Final Order and closes the case.

HONORABLE YASMINE I. POLES

Stipulated as to form and content:

Richard D. Linnell (P59339)
Attorney for Defendant, Emanuel Malles II

Thomas R. Schultz (P42111)
Attorney for Plaintiff, City of Novi

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Stipulated to by dock users of the Lake Wall Subdivision:

[List by lot/name]

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