

CITY OF NOVI MONTHLY ATTORNEY REPORT

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SUBMITTED BY: ROSATI SCHULTZ JOPPICH & AMTSBUECHLER

May 2024

I. PENDING LITIGATION

A. CASES BEING HANDLED BY OUR OFFICE

- **William Nofar vs. City of Novi.**; Oakland County Case No. 2020-183155-CZ; Hon. Nanci Grant.

General: Plaintiff's lawsuit claims that under the existing Michigan case law, the City's water and sewer rates constitute a disguised tax that the City has imposed on the system users in violation of the Michigan Constitution. A primary argument put forth by the Plaintiff is that the combined water and sewer fund balance—claimed in the complaint to be over \$60 Million, but actually as of today more like \$43 Million—is, according to Plaintiff, unreasonable and far in excess of what is reasonably needed to operate and maintain these two systems, thereby allegedly making the user rates established by the City unreasonable and excessive. Plaintiff claims that, as a result, the City has been unjustly enriched by the alleged overcharges at the expense of the rate payers, and also that the rates have been established in a manner that is in violation of the City's ordinances and Michigan statutes.

Furthermore, Plaintiff argues that the City unlawfully transferred, loaned, and used millions of dollars in water and sewer fund reserves to finance other governmental activities unrelated to the City's water and sewer systems. Plaintiff further asserts that these loans and transfers are evidence supporting its claim that the City has collected far more than it needs for the water and sewer system operations and management. Plaintiff asserts, as a remedy for these alleged wrongs, that the Court should order the City to refund a significant portion of the fund balance to the system users, adjust the rates downward accordingly, and pay their attorney fees and costs.

At the forefront of the City's defenses will be arguments based on the Home Rule City Act (HRCA) and the Michigan Revenue Bond Act (RBA) in support of an argument that the City's water and sewer charges are lawful fees, as opposed to unlawful taxes, and that the City has the authority to charge such fees. Another argument in the City's defense will involve establishing the reasonable, non-arbitrary reasons and support underlying the water and sewer rates that the City Council has adopted and the resulting fund reserves.

Based on the discussions we have had with City staff so far, as well as the information that we have gathered to date, there appears to be good reasoning behind the accumulation of these reserves. Accordingly, while the initial impression of a third-party observer might be that the City is overcharging and hoarding profits in these funds, we expect to be able to establish through both witness testimony and documentary evidence that there is a well thought-out plan and good reasoning behind it. Foremost among those reasons is a long list of capital infrastructure replacement and enhancement efforts that the City has established for both the water and sewer systems.

Status:

As City Council is aware, Judge Grant issued an Opinion and Order on September 23 ruling in the City's favor on both the Plaintiff's motion for summary disposition as to funds spent on the Eight Mile Retention Facility and the City's motion for summary disposition seeking to dismiss Plaintiff's entire complaint. That Opinion and Order ended the case in the circuit court.

Unfortunately, the Plaintiff has appealed to the Court of Appeals. That claim of appeal (which is an appeal by right and does not require a grant of leave to appeal) was filed on October 12, 2022. The transcript of the hearing before Judge Grant was filed on Friday October 14, 2022.

The Plaintiff's brief in the Court of Appeals is due 56 days from October 14, or around December 9, 2022, unless he asks for an extension of time. Our brief will be due 35 days after his brief, unless we ask for an extension.

Once the briefs are filed, it takes some time for the case to be set for argument and for the Court to issue an opinion. We would expect that to be well into 2023.

Addressing Plaintiff's appeal of Judge Grant's September ruling should be relatively straightforward. It will be time-consuming to re-work the trial court materials into an appellate brief, but we don't necessarily anticipate any surprises.

The main issue the City has to decide right now, though, doesn't have to do with Judge Grant's September ruling. It is whether to **cross-appeal** either of her two previous rulings that went against the City.

A cross-appeal by the party who won in the trial court is not unusual—but it is only filed if the party who lost appeals. It is an opportunity to challenge any adverse rulings that the trial court might have made during the case in the event the primary appeal is granted and the trial court's ultimate determination is reversed. In this case, the issues that Judge Grant ruled against Novi on before ruling for Novi were **(a) her decision early in the**

case to certify the class and treat this as a class action, and (b) her decision to deny the City's early motion for summary disposition (back in 2021) alleging that the equitable theories of unjust enrichment and/or assumpsit were actually not valid claims through which to challenge the City's water and sewer rates.

On the first issue, class certification, there is currently a case from Farmington Hills pending in the Court of Appeals in which the Oakland County Circuit Court (different judge) denied class certification and the plaintiff (represented by the same firm, Kickham Hanley) is the one appealing. It involves essentially the same arguments that we made in this case, but the judge in that case ruled for the city. On the off chance that Novi were to lose on Plaintiff's main appeal, it would be unfortunate if the Court of Appeals upheld that denial of class certification in the Farmington Hills case and we did not preserve the issue in the Court of Appeals in this case.

The other issue that Judge Grant ruled against Novi on was our argument that the unjust enrichment/assumpsit claims that she eventually found had no merit should actually have been dismissed at the beginning of the case for a few different reasons: (1) that they are implied contract claims and the Michigan Supreme Court has clearly barred contract causes of action, including those for restitution (i.e., refunds), that arise from and seek to enforce *legislation*—i.e., statutes, charters, and ordinances; (2) that as a matter of law Plaintiff does not have a *private* right of action against the City to enforce its City charter or the state law asserted; (3) that the Supreme Court has found that asserting *equitable* claims in a case challenging public utility fees is an improper attempt to avoid utility fee challenge claims, at *law*, under the Headlee Amendment, which are subject to a one-year statute of limitations; and (4) that Plaintiff's claims in equity are improper because Novi—as specifically authorized by lawful state statutes, charter provisions, and Michigan Department of Treasury requirements—imposes, collects, and ultimately uses the subject charges for the utility systems and the benefit of the putative class members, not itself, so the equitable claims shouldn't even be available for Plaintiff to assert.

As with the class certification issue, some of these general arguments have been made in other cases that are percolating through the appellate court process. If one of those cases rules in the local government's favor, it would be unfortunate if the City didn't preserve the argument in this case. It would also be good just generally to get favorable rulings on these issues.

The case is now fully briefed in the Court of Appeals both defending the trial court's ultimate decision and her determination not to make the ruling in the City's favor earlier in the case. We are just waiting for oral argument date in the Court of Appeals. [This remains the status—just waiting for an oral argument date]

- **City of Novi v Malles;** (Boat docking case); Oakland County Circuit Court Case No. Case No. 2022-193912-CZ; Hon. Yasmine I. Poles

General:

We filed a Complaint for Declaratory and Injunctive Relief regarding Defendant's violation of the City's Lakefront Protection Ordinance and Zoning Ordinance for maintaining a seasonal dock for approximately 10-15 boats on Walled Lake at Lot 9 in the Lake Wall Subdivision. The City's enforcement resulted from the complaints to the City by the adjacent neighbor. The subdivision deed restrictions applicable to Lot 9 authorize its use for a "right-of-way" to the lake. "Right-of-way" is typically determined by courts to mean "access" and does not grant riparian rights such as docking. *Dyball v. Lennox*, 260 Mich. App. 698, 680 N.W.2d 522 (2004). The City's Lakefront Protection Ordinance would prohibit using Lot 9 for a park or for a dock because Lot 9 does not meet the minimum standards set forth in the ordinance, as it lacks the minimum area and the minimum frontage, and the necessary frontage for a dock facility.

Defendant's Answer to Complaint cites historic use of Lot 9 as a park with a dock and the plaintiff's intent to use the lot for a park as having given the lot owners vested rights in the dock, and the City should be prohibited from enforcing the ordinance due to the passage of time.

Status:

~~At the last Council meeting, City Council reviewed a redlined draft of a consent judgment that had made some progress but still wasn't complete. The document settles on 8 watercraft permitted to be docked from the property at any one time, and some other general details.~~

~~The issue is how to enforce that limitation. At the last closed session, Council did not want to give up much as far enforcement options, including the right to just declare the settlement null and void and just re-start the litigation.~~

~~I met with Charles Boulard after the last closed session, and we took another crack at it. The attached clean version of a proposed consent judgement (the redline was just getting too difficult to read) basically sets up this matrix:~~

- ~~▪ **Violation by HOA itself.** A violation of the 8 boat limitation by a member of the HOA that is to be formed, or the 15 property owners who would sign this document is treated the harshest: We can go into court for any single violation and seek whatever relief we think is appropriate~~

(up to declaring the consent judgment void) but we aren't obligated to do that. And regardless of whether we do that or not, if the City itself finds that the 8 boat limit has been violated 3 times during a boating season, the City Council can unilaterally declare the consent judgment void, with notice to the HOA/property owner signatories.

- ~~**Excess boats resulting from some random 3rd party using the dock.**~~ This is the situation where a boat just docks there with no connection to the Lake Wall Sub, or the HOA, etc. This is not considered a violation so long as they cooperate with the City in whatever enforcement actions we take against the violator. This seems unlikely ever to happen, so I doubt it will ever be an issue but if it did happen, it seems no different than if someone just tied up at a lakefront owner's dock without permission—we would likely treat it as a criminal trespass eventually.
- ~~**Violation caused by a person who lives on a back lot in the Lake Wall Subdivision but doesn't join the HOA and doesn't agree to be bound by the terms of this consent judgement.**~~ This subdivision has 30-something back lot houses. The attorney for the Defendant says he can get 15 of them to sign onto this Consent Judgment. So, this part of the judgment is about what happens if one of the other parcels who *doesn't* sign this and *doesn't* agree to join the HOA uses the dock or moors a boat off the property without the HOA's approval. The HOA would like that to be the City's problem to enforce. We have written this to be the HOA's problem to deal with, and if it fails to deal with it, then the City Council can declare the consent judgment void. **This is the biggest sticking point in this settlement at this point, I think.**

Defendant's counsel has been able to obtain 14 out of an expected 15 signatures on the last draft of the Consent Judgment that was reviewed and discussed with City Council from lot owners who are currently using the dock. The 15th lot owner is believed to be out of the country and dealing with a family crisis. It is the Defendant's counsel's understanding that the 15th lot owner is no longer interested in using the dock and may ultimately be selling his/her home. If the 15th signature is eliminated, the 15th lot owner would be treated the same as other subdivision residents who cannot use the dock without joining the Association. One issue City Council needs to decide is whether to proceed with the settlement absent that one signature.

The lot owners have made an additional request to add language that would allow the Association to meet with the City and discuss re-opening the Consent Judgment in the event that the City amends or repeals the Lakefront Protection Ordinance and the amendment or repeal of the ordinance would allow for less restrictive use of the property than is authorized by the Consent Judgment. We don't see an issue with that ***so long as*** there is no obligation on the City's part to ***necessarily*** amend the Consent judgment. Language to that limited effect could be along the following lines:

~~In the event that the City's Lakefront Protection Ordinance is amended or repealed, owners/occupants of the homes located on lots within the Lake Wall Subdivision, or, once the Homeowners Association is formed, the Association only, may meet with the City to discuss whether the amendment or repeal of the City's Lakefront Protection Ordinance would allow for less restrictive use of the dock than this Consent Judgment, taking in to consideration all other applicable ordinances and laws.~~

~~Trial has been adjourned by the Court until May, 2024 to continue working toward a Consent Judgment.~~

The Consent Judgment as approved by the City Council in April (following a closed session) has been entered with the Court, and this case is resolved. Copy of the final version attached.

BEING HANDLED BY OTHER ATTORNEYS FOR INSURANCE COMPANIES

None this report.

C. CASES BEFORE THE MICHIGAN TAX TRIBUNAL (MTT)

None this report.

II. OTHER MATTERS OF NOTE

None this report.

Prepared by:

**ROSATI SCHULTZ JOPPICH &
AMTSBUECHLER**

THOMAS R. SCHULTZ

DRAFT FOR SETTLEMENT DISCUSSION ONLY (rev'd 2/2/24)

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~~assert 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. Novi’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 Novi’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 Novi 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. Novi 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 the Subject Property for boat docking and lakefront recreational uses before the adoption of the lakefront protection ordinance, and potentially even preceding Novi’s zoning ordinance.

E. While Novi contends that use of the Subject Property for installation of a seasonal dock and recreational purposes is not (and cannot be) “grandfathered,” Novi and Defendant have agreed to settle this matter by having the Court establish a use and limitations on such use of the Subject Property based on information relating to the historical use of the Subject Property, subject to the terms and conditions of this Consent Judgment.

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 all such other individuals who have utilized the dock or moored boats in the past that they fully concur in and intend to be bound by this Consent Judgment and are bound by it.**

NOW, THEREFORE:

1. The parties agree that Defendant and other owners or legal occupants of real property within the Lake Wall Subdivision with lake access rights in their deeds may continue to install a single seasonal dock on the Subject Property for the overnight mooring of boats/watercraft, installation/removal of a dock and for general lake access, subject to the following limitations:

- a. *Length of Dock:* The seasonal dock may not exceed its current length of Two Hundred Fifty-Four feet (254’).
- b. *Number of Watercraft:* The seasonal dock may not be used to moor more than eight (8) watercraft at any time, including overnight mooring, except as otherwise provided herein. Two (2) jet skis (personal watercraft) shall be considered the

equivalent of one (1) watercraft; provided, however, that no more than four (4) jet skis may be moored or docked at the property at any one time.

- c. *Placement of Dock:* The seasonal dock shall be installed from the Subject Property plainly within the lot lines of the Subject Property as if extended from shore consistent with the lot lines of adjacent parcels on either side, and in a manner that is compatible and harmonious with the use of the adjacent parcels on either side, and that in no way interferes with the ability of adjacent parcels to place a dock and/or moor boats.
- 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 Subject Property for lake access and mooring watercraft shall be done in accordance with the City of Novi Code of Ordinances. The restrictions and benefits of this Consent Judgment shall bind and inure to the benefit of all Lake Wall Subdivision owners or occupants in perpetuity.

2. This Consent Judgment has been signed by and stipulated to below as to both form and content by Defendant and the other signatories who have access rights over the Subject Property and also an interest in the dock at issue and who have in the past used the dock or Lot 9 to moor their boats/watercraft (regardless of whether previously authorized or allowed to do so). Defendant and the other signatories represent, and the Court finds, that no other owners/occupants within the Lake Wall Subdivision have previously used the dock for the over-night mooring or temporary loading/unloading of boats related to the Subject Property.

3. This Consent Judgment shall be recorded in the Oakland County Register of Deeds as to the Subject Property. However, all current owners/occupants of the Lake Wall Subdivision shall 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, and the ability of the Defendant and the other signatories hereto to limit and control the use of the dock by others, 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.

5. In order to assist the Parties in compliance with the terms and conditions of this Consent Judgment, Defendant and the signatories hereto agree to establish and legally form, and keep in place during the term of this Consent Judgment, a Lake Wall Subdivision homeowners association ("Association") in accordance with all applicable laws in the State of Michigan, including but not limited to the Michigan Nonprofit Corporations Act, MCL 450.2101, *et seq.*, to manage the activities at the Subject Property in accordance with the stipulations set forth in this Consent Judgment, including the following:

- a. Membership of Association. The Association will for so long as this Consent Judgment is effective permit all property owners in the Lake Wall Subdivision who have deeded access to the Subject Property, the opportunity to join the Association if the respective property owner agrees to use the Subject Property pursuant to the Consent Judgment and any other rules promulgated by the Association regarding the use of the Subject Property. The Association shall be maintained in good standing in accordance with all applicable laws in the State of Michigan, including but

not limited to the Michigan Nonprofit Corporations Act, MCL 450.2101, *et seq.*, for as long as a dock is installed on the Subject Property. In the event of a failure at any time to maintain the Association in good standing, then upon notice and seven (7) days opportunity to cure, this Consent Judgment may be declared by the City Council to be null and void, in which event the case shall be reinstated or reopened by notice from either party to the Court, or a new action may be filed in this Court that shall not be subject to this Consent Judgment.

- b. Designated Representatives. The Association shall designate two of its members to monitor and enforce compliance with this Consent Judgment in regard to usage of the dock, and the Association must provide (and keep current) the names and contact information of those two designees.
- c. Enforcement of Number of Watercraft. The following will govern enforcement of the limitations on the number of watercraft permitted at the dock as set forth above. It is intended to balance the interest of Novi in ensuring the limited use rights herein with concerns by the Defendant and other signatories about use of the dock by unauthorized users and/or unintentional violations by authorized users.

(1) *Means of authorizing users.*

The Association shall annually, upon installation of the dock, provide Novi with a list of authorized watercraft, including the name of the owner and MC number, and shall update the list as appropriate. A copy of the list shall also be provided to all members of the Lake Wall Subdivision by first class mail.

(2) *Violation involving authorized (Association) watercraft.*

If more than eight (8) watercraft that are designated as authorized under Paragraph (1) above are moored at the dock at any time—except for the permitted temporary loading/unloading provided in 5.d. below—it shall be considered a violation of this Consent Judgment. Such violation shall be abated by the Association upon notice by Novi. Failure by the Association to effect abatement within 48 hours after notice by Novi shall be cause for the City to seek enforcement of this Consent Judgment, including a declaration of violation, sanctions or penalties, or termination of this Consent Judgment. If Novi secures any such relief, it shall be entitled to its costs and attorney fees. “Abating the violation” shall include the Association removing any watercraft to come into compliance with the terms of this Consent Judgment (i.e., not just the specific watercraft that caused the violation).

The City is not obligated to pursue the enforcement relief in court as described immediately above; however, notwithstanding the existence of such remedy, if the City can establish three (3) or more violations in any boating season—whether abated by the Association or not—Novi shall have the right (but not the obligation) to declare this Consent Judgment to be null and void and to reopen this case, or file a new action in the Oakland County Circuit Court that shall not be subject to this Consent Judgment.

Such declaration shall be made by the City Council following notice to the Association and/or the properties and signatories below.

- (3) *Violation caused by un-authorized watercraft (not belonging to Association members designated as authorized users under Paragraph (1) above).*

If a violation of the limitation to eight (8) watercraft is caused by the mooring of completely unauthorized watercraft at the dock, not invited by any member of the Association, then the following shall apply depending on whether the unauthorized user is a property owner within the Lake Wall Subdivision:

- i. *Not a property owner within the Lake Wall Subdivision.*

If the watercraft causing the number of watercraft allowed to exceed eight (8) is not owned or controlled by a property owner in the lake Wall Subdivision (i.e., is a completely random uninvited stranger to the Association or signatories to this Consent Judgment), it shall only be considered a violation if the Association fails to take all appropriate action to abate the violation within 48 hours of notice by Novi. If, after good faith, diligent, and reasonable efforts to do so, the Association is unable to cause the removal of the unauthorized watercraft, the Association shall report that to the Novi Community Development Department, and shall further provide (a) any information known to the Association regarding the offending watercraft and its owner; (b) copies of any notice of violation or communications from or between the Association and the offender; (c) photograph of notice as affixed

to the watercraft. If requested, the Association shall file a police report. Novi may pursue enforcement or legal action against the offender as Novi deems appropriate (e.g., criminal trespass action). The Association shall cooperate with Novi in such enforcement action and/or prosecution.

Notwithstanding the foregoing, if three (3) instances of violations caused by such unauthorized mooring of watercraft occur in one boating season, then Novi shall have the right (but not the obligation) to seek enforcement of this Consent Judgment, including a declaration of violation, sanctions or penalties, or termination of this Consent Judgment.

ii. *A property owner in the Lake Wall Subdivision.*

If the watercraft causing the number of watercraft allowed to exceed eight (8) is a property owner in the Lake Wall Subdivision but not a member of the Association, the Association shall have the responsibility to resolve the violation, including but limited to seeking relief in court. The Association may ask Novi to address the violation as a trespass issue, utilizing the process above for non-subdivision property owners. Novi shall have the right but not the obligation to do so. While such unauthorized watercraft is moored or docked, and pending/during any investigation or enforcement actions by Novi, the Association shall remedy the violation by removing other watercraft while it attempts to address the violation. If the violation continues for a period of more than forty-

eight (48 hours), Novi shall have the right (but not the obligation) to declare this Consent Judgment to be null and void and to reopen this case, or file a new action in the Oakland County Circuit Court that shall not be subject to this Consent Judgment. Such declaration shall be made by the City Council following notice to the Association and/or the properties and signatories below.

- d. *Temporary Loading/Unloading.* Notwithstanding the eight (8) watercraft limitation herein, the dock may be used by members of the Association to assist in brief and temporary loading/unloading of no more than two (2) other watercraft at any given time, provided that such temporary loading/unloading must not exceed more than one (1) hour at a time, and that it is permitted only between the hours of 8 a.m. through 8 p.m. In the event Novi is able to establish a violation of this section occurring two (2) times in a boating season, this section shall become null and void upon declaration by the City Council following notice to the Association.

6. Novi shall have the right to make reasonable entry onto the Subject Property for purposes of inspection and enforcement of compliance with the terms and conditions of this Consent Judgment. Reasonable entry includes the right to enter onto the dock, and the right to uncover and observe the MC numbers of each and every boat moored at the dock or at the Subject Property.

7. The signatories to this Consent Judgment shall remain liable and obligated by its terms unless and until all of the following occurs:

- a. A duly formed Association as described in paragraph 5 above is formed in accordance with all applicable laws in the State of Michigan, including but

not limited to the Michigan Nonprofit Corporations Act, MCL 450.2101, *et seq.*;

- b. A board of directors for the Association, including a president, vice president, treasurer and secretary are elected;
- c. Bylaws are adopted by the Association empowering the board of directors to sign an agreement accepting the obligations of this Consent Judgment including but not limited to those contained in paragraph 4 above. The agreement will be signed by the board of directors of the association, the signatories to this Consent Judgment and include an acknowledgement to be signed by Novi; AND
- d. The board of directors of the Association executes a document acknowledging that the Association accepts all obligations of this Consent Judgment including but not limited to paragraph 4 above.

If paragraphs 7(a) – (d) are completed, the signatories to this Consent Judgment shall be relieved of any joint and several liability as it relates to this Consent Judgment. If 7(a)-(d) are not completed within ninety (90) days hereof, this Consent Judgment may be declared by the City Council to be null and void, in which event the case shall be reinstated or reopened by notice from either party to the Court, or a new action may be filed in this Court that shall not be subject to this Consent Judgment.

8. For purposes of this Consent Judgment, “notice” of a violation shall include calling the Association at the numbers provided pursuant to the above designation of representatives, as well as other actions that are designed to give actual notice (e.g., posting written notice at the dock). “Notice” of City Council considering a declaration that the Consent Judgment is null and void shall include first class mail to each property listed below.

9. This Court retains continuing jurisdiction to assure enforcement and compliance with the terms of this Order.

10. 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

Elizabeth K. Saarela (P60265)
Thomas R. Schultz (P42111)
Attorney for Plaintiff, City of Novi

Stipulated to by dock users of the Lake Wall Subdivision:

[List by lot/name]

1. Ayyash, Yousef 156 Rexton St.

2. Batalucco, Jeffrey 117 Rexton St. *Jeffrey Batalucco*
for Batalucco, Michael & Georgianna 7818 Sudbury Ln SE Ada, MI 49301 *Georgianna Batalucco*

3. Bertera, Joe 130 Rexton St. *Joe Bertera*

4. Boczkaja, Justin & Karen 147 N. Haven St. *Justin Boczkaja* *Karen Boczkaja*

5. Bolin, Nicodemus & Marites 144 N. Haven St. *Nicodemus Bolin* *Marites Bolin*

6. Curtis, Richard & Glazel 1320 W. Lake Dr. *Richard S Curtis* *Glazel Curtis*

7. Malles, II Emanuel N. 135 N. Haven St. *Emanuel Malles II*

8. Martin, Christopher & Megan 140 N. Haven St. *Christopher Martin* *Megan Martin*

9. Miller, Thomas J. 207 Rexton St. *Thomas J Miller*

10. ~~Donaldson~~, Danielle 146 N. Haven St. *Danielle L. Pierre*
Pierre

11. Prior, John M. 116 N. Haven St.

for ~~Prior~~ *Napoli* Laura 30478 Pennington Ln. Novi, MI 48377 *John M Prior*

12. Scott, Allen J. 115 N. Haven St. *Allen J Scott*

13. Barton, Kirstin 124 Rexton St. *Kirstin Barton*

14. Walley, George & Kimberly 120 Rexton St. *George Walley* *Kimberly Walley*

15. Willer, Lee 121 Rexton St. *Lee Willer*