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ROSATI | SCHULTZ
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March 8, 2023

**CONFIDENTIAL COMMUNICATION
ATTORNEY-CLIENT PRIVILEGE**

Mayor Gatt and City Council
City of Novi
45175 Ten Mile Road
Novi, MI 48375

**RE: City of Novi v Emanuel N. Malles II (Acquisition of Sidewalk Easement) -
Oakland County Circuit Court Case No. Case No. 2022-193912-CZ
Hon. Yasmine I. Poles**

Dear Mayor Gatt and Councilmembers:

We are writing to follow up on comments made by the residents of the Lake Wall Subdivision regarding the pending lawsuit relating to the annual installation of a dock that currently accommodates the parking of approximately 15 boats. Based on the size of the lot, the City's Lakefront Protection Ordinance would permit the installation of a dock for one boat.

The lawsuit does not seek to impact the residents' access to their lake front lot, which, pursuant to the Declaration of Covenants established by the subdivision developer, allows right-of-way to the lake (see attached). The Declaration does not provide for any dock or rights to dock or store a boat.

Although it seems likely based on the statements and affidavits of residents that some form of dock may have been placed at the lot over the years, based on the observations of the City's Code Enforcement Officers, the size of the dock has increased over the years, and more and apparently much larger boats are being docked there.

Trial is scheduled for April 24, 2023 in front of Judge Poles. Judge Poles denied the City's Motion for Summary Disposition regarding enforcement of the ordinance, finding that the application of the ordinance, whether the City delayed to long in enforcing it, and whether the lot owners have "grandfathered" rights to use the lot for a dock, are all questions of fact for trial.

Defendant's attorney contacted us on January 30, 2023 and proposed a settlement of the case consisting of the parties agreeing to cap the docking at the current dock with no more than 15 boats, and requested a counter-offer if the number was too high. Based on a prior settlement by the City with similar circumstances, the recommendation of the City's Community Development Director, we provided feedback that we could bring a counterproposal of two boats with a short

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dock back to City Council for discussion and consideration. Defendant's attorney objected to the number proposed. We are enclosing a copy of the previous settlement.

There was also discussion by some of the speakers the other night that the City is trying to "take away" the use of the outlot. For Council's information, also attached is a copy of the complaint as filed. As you can see, it's primarily aimed at the expansion of the dock, but the relief requested does ask the Court to review what uses are permitted. As we get closer to trial we might have a chance to confirm what uses of the lot are allowed that don't involve a massive dock. It's worth noting that one thing that the dock expansion has done is itself take away use of the waterfront area for swimming/beach purposes, given the intensity of the boating use. Again, the declaration on which these folks rely is essentially just a pedestrian right-of-way.

Please feel free to contact me with any questions or concerns regarding this matter.

Very truly yours,

ROSATI SCHULTZ JOPPICH
& AMTSBUECHLER PC



Elizabeth Kudla Saarela

EKS

C: Victor Cardenas, Interim City Manager
Cortney Hanson, Clerk
Charles Boulard, Community Development Director
Barb McBeth, Planner
Maureen Underhill, Ordinance Enforcement Officer
Thomas R. Schultz, Esquire