

ELIZABETH KUDLA SAARELA  
esaarela@rsjalaw.com

27555 Executive Drive, Suite 250  
Farmington Hills, Michigan 48331  
P 248.489.4100 | F 248.489.1726  
rsjalaw.com



ROSATI | SCHULTZ  
JOPPICH | AMTSBUECHLER

February 2, 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:

As you are aware, our office 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 plattor'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.

We filed a Motion for Summary Disposition to strike Defendant's defenses as invalid or inapplicable under the law since Defendant cannot have vested rights in the application of a regulatory ordinance. *Square Lake Hills Condo. Ass'n v. Bloomfield Twp.*, 437 Mich. 310, 471 N.W.2d 321 (1991). Furthermore, we argued that the passage of time in enforcing an ordinance does not prevent enforcement. *Twp. of Fraser v. Haney*, 509 Mich. 18 (2022). The Court declined to grant the Motion and stated that the issues remain a question of fact. We filed a Motion for Reconsideration, which is currently pending. Trial is scheduled for April 24, 2023 in front of Judge Poles.

Mayor Gatt and City Council  
City of Novi  
February 2, 2023  
Page 2

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. Defendant did not indicate a reason for settlement other than avoiding the creation of binding case law that could impact the City's ordinance going forward.

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