



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item 1
Meeting Date: May 14, 2007

SUBJECT: Consideration of Council action to address continued public and/or private use of City-owned parcel of property adjacent to Walled lake (Lot 12, Bentley Subdivision, Parcel No. 22.03-155-004) or other disposition of such property.

SUBMITTING DEPARTMENT: City Manager

CITY MANAGER APPROVAL:

EXPENDITURE REQUIRED	N/A
AMOUNT BUDGETED	N/A
APPROPRIATION REQUIRED	N/A
LINE ITEM NUMBER	N/A

BACKGROUND INFORMATION:

The City Council conducted a public hearing on March 19, 2007 in order to hear input from residents regarding issues related to the City's ownership and use of Lot 12 of the Bentley Subdivision, a platted lot fronting on Walled Lake, at the intersection of West Lake Drive and Penhill Street. The City has owned the parcel since 1980. It is encumbered by a "pedestrian right-of-way" across the lot for lake access. The use of that access by residents of nearby Penhill/Pickford Streets has been the subject of dispute in recent years. Council requested the public hearing and resident input in anticipation of conducting a discussion with regard to the past, present, and possible future use or disposition of Lot 12. The City Attorney has prepared a document discussing the City's ownership interest in Lot 12, the access encumbrance, and the City's options with regard to using or disposing of the property. That document is attached for the City Council's review.

RECOMMENDED ACTION: Consider action to address continued public and/or private use of City-owned parcel of property adjacent to Walled lake (Lot 12, Bentley Subdivision, Parcel No. 22.03-155-004) or other disposition of such property

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

May 10, 2007

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Thomas R. Schultz
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Mayor Landry and City Council
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

***RE: Bentley Subdivision Lot 12—Boat Docking/Mooring Issue
Our File No. 55142 NOV***

Dear Mayor and Council:

On March 19, 2007, the City Council held a public hearing to get residents' input regarding the past, present, and possible future use or other disposition of Lot 12 of the Bentley Subdivision, a roughly 30-foot wide platted lot adjacent to Walled Lake. Lot 12 fronts on West Lake Drive and is located at the foot of Penhill Street. The City also owns the immediately adjacent Lot 11 of the Bentley Subdivision. The City acquired its interest in both of these parcels within a few years of each other. It bought Lot 11 in 1984 for \$9,000, securing a warranty deed as title. The City took a quit claim deed to Lot 12 as a donation (i.e., without consideration or payment by the City) from the Slavik Company, recording that deed on September 3, 1980. (See attached deeds.)

City records reflect that Lot 11 was acquired primarily because it was adjacent to an existing stormwater drain on West Lake Drive; it was thought that purchasing the property would assist in the City's stormwater management efforts. No particular "purpose" was stated by the City in connection with its acceptance of Lot 12 shortly before then. There is no indication in the City records that the City acquired Lot 12 specifically for any park or lot access purposes or that the City made any specific use of it thereafter for such purposes.

What follows from this point is a discussion of the nature of the City's ownership interest in Lot 12; the extent of the encumbrance(s) on Lot 12; the City's historical efforts to regulate or control the use of Lot 12 for lake access; and the City's options for doing so in the future.

The Nature of the City's Ownership Interest in Lot 12

The first aspect of Lot 12 that requires discussion is the question whether the City in fact owns it. Questions have been raised over the years as to whether the quit claim deed properly transferred title. As a result of these concerns, the City has secured title insurance in the amount of \$100,000 from Seaver Title, which means the title company

has concluded that the quit claim deed from Slavik was sufficient to convey an ownership interest to the City. ***Given the existence of the title insurance policy, the City can appropriately take the position, in determining what the future use and/or disposition of Lot 12, that it is the owner of Lot 12.***

The Extent of the Encumbrance(s) on Lot 12

Lot 12 is encumbered by right of pedestrian lake access to Walled Lake that runs in favor of certain non-lakefront property owners in the area. There is some question as to who actually has been granted the access right. We find in the chain of title for Lot 12 references contained in four deeds to other properties that refer to the use of Lot 12 as a “pedestrian right-of-way” to the lake. Interestingly, these deeds (which are all quite old) are for parcels in an adjacent subdivision known as the Blomfield Subdivision:

- Lot 97: “Lot 12 of Bentley Sub. to be used as pedestrians right-of-way to the lake for all purchasers of lots on Pine Street each purchaser to pay his proportion for dock improvements and taxes.” (Liber 378, Page 458, 1920)
- Lots 87, 88, and 89: “lot twelve of Bentley Subdivision is to be used for pedestrians right-of-way to the lake for all purchasers of lot [sic] on Pine Street each of said purchasers to pay his proportion for dock improvements and taxes.” (Liber 368, Page 184, 1923)
- Lot 90: “Lot 12 Bentley Sub. to be used for pedestrians right-of-way to the lake for all purchasers of lots on Pine Street each purchaser to pay his proportion for dock improvements or taxes.” (Liber 371, Page 30, 1922)
- Lot 52: “Lot Twelve (12) Bentley Subdivision is to be used for pedestrians right-of-way to lake for all purchasers of lots on Poplar Street, each purchaser to pay his proportion for dock improvements and taxes.” (Liber 351, Page 337, 1921)

Note that the former Pine Street is now known as Penhill Street and the former Poplar Street is now known as Pickford Street. (See attached plat of Blomfield Subdivision.)

Two questions arise from the language in these four deeds. The first is whether their language creates an ownership interest in Lot 12 or some lesser interest as in the nature of an easement. The second is in whom is that interest created—the specifically referenced lots in the Blomfield Subdivision or all of the homeowners on Penhill and Pickford (there are many other platted lots on those two streets).

We conclude that the references in the four deeds create at best an easement interest, not an ownership interest.

In our opinion, the reference to “pedestrian’s right-of-way” is intended to create an access right only, not an ownership interest. There are none of the typical statements

that go along with the transfer of a “fee simple” interest, and no separate recording of a transfer document. The further reference to an obligation for continuing regular payments of proportionate shares for dock improvements and taxes would not normally exist in the context of a conveyance of an ownership interest. In fact, an argument could conceivably be made that the language creates only a “license” to use Lot 12, rather than an actual easement, given the continuing payment obligations (a license is usually revocable; an easement is usually not). To this point, though, the City has not disputed the fact that this language creates a continuing access interest, most likely in the form of an easement.

We conclude that an argument can be made that the access right runs not just to the lots referenced in the four deeds listed above, but to all of the owners on Penhill and Pickford.

According to the information presented at the March 19 public hearing, Lot 12 has historically been used not just by the lots in the Blomfield Subdivision listed above, but also by other owners on Penhill and Pickford. The language in the deed does refer to “all” purchasers of the lots on Pine and Poplar (Penhill/Pickford), but delivery of the deeds was only to the four purchases whose deeds are listed above, and nothing appears to exist in the chain of title for the other purchasers on those streets. We therefore reach no firm conclusion as to whom the access rights run. In order to determine that to a legal certainty—that is, in order to prohibit the use of Lot 12 for lake access to the other, unlisted owners of Penhill and Pickford—would require some formal declaration of legal rights, probably by a court.¹

The City’s Past Enforcement Efforts as Owner of Lot 12

As discussed at the March 19, 2007 public hearing, the scope of the use of Lot 12 under the “pedestrian’s right-of-way” has been the subject of an apparently long-standing dispute between the lakefront owners in the Bentley Subdivision and the Blomfield Subdivision residents on Penhill and Pickford. Both our office and the former city attorneys, Fried Watson, have issued opinions dating back to 1999 addressing what use can be made of the lots. As the attached opinions (previously released by the City) establish, the City has consistently taken the position that the Penhill/Pickford residents have the right to maintain a dock, to use the waters for swimming, wading, fishing, and boating, and to also temporarily anchor boats—but **not** to construct boat hoists, maintain seasonal boat docking, or even overnight boat docking.

The main issue in the dispute between the lakefront and the Penhill/Pickford residents seems to be the overnight boat storage, which occurs either adjacent to the dock or as

¹This discussion is also relevant to the ownership issue addressed above. Even if the suggestion that the City’s acquisition of title through the quit claim deed was inadequate were correct, it does not necessarily follow that any of the residents of Penhill or Pickford would be found to have an ownership interest in the property. As noted above, the four deeds create **at best** an easement interest in Lot 12.

mooring away from the dock out into the water along the bottomland of Lot 12. While the City's position has been that this is not permitted within the scope of the easement, during the pendency of the discussions regarding the use of this lot, the City Administration has not taken specific enforcement actions on behalf of the City as the *owner* of Lot 12. Nor has the City taken other *regulatory* enforcement activity under any ordinance regulations during the pendency of this dispute.

The purpose of the March 19 public hearing was to gather facts to allow the City Council to discuss ways to put the ongoing dispute as to the use of this lot to rest in a manner that fairly addresses the rights of the City, the Penhill/Pickford residents and the other lakefront owners in the Bentley Subdivision. The City has an additional interest to discuss at this point, however, and that is its ownership and control of a lakefront parcel from which it can exclude members of the public generally—but not those few members of the public living on Penhill and Pickford Streets. Those individuals are permitted to make private use of the City parcel, which raises risk and liability questions of the sort that would face any owner of property.

For example, the four deeds referred to above give someone the right to erect a structure in the water (a dock) on the bottomland of the lot. In terms of actual use, though, there have been other uses made of the bottomland as well (e.g., the sinking of poles for boat mooring) that are not permitted under the access grant. At a minimum, this presents an “ownership obligation” issue for the City.

In addition to the limitations that attached to the use of Lot 12 by Penhill/Pickford residents, there is a City ordinance governing lakefront lot use. Section 36-62 of the City Code states as follows with respect to “lakefront use standards”:

(2) No parcel of land contiguous to a lake shall be used to provide lake access for water skiing, swimming, water sports, boating access or similar lake uses to the owners or occupants of adjacent or neighboring subdivisions, multiple residential developments, cluster housing developments or home parks, unless the parcel includes a non-public lakefront recreational park in accordance with the requirements of this section.

This is the City's “anti-keyholing” ordinance. It is primarily intended to apply to new development, to prevent developers from using property in such a way that takes advantage of a small lakefront access as a right to gain full riparian lake use rights for essentially non-riparian (i.e., non lakefront) land. The ordinance does this primarily by requiring the size of any lake access area to be substantial and by limiting docking rights based on frontage.

Lot 12 had been used for lake access and certain docking before adoption of the above ordinance in 1995. To our knowledge, the City has not applied this provision to Lot 12 or similar properties around the lake whose use and development pre-dated it.

Options for Future Use/Disposition of the Property

Given the recent contentiousness of the docking question and the desire to address some of the ownership and use obligations that have not gotten recent consideration by the City Council (since the initial acquisition of the properties many years ago), Council asked our office to outline some of the options for the City with regard to the future use and/or disposition of this property, in light of the above history.

We see three broad categories of options for the City.

1. Convey the property away.

The City would take this approach if it no longer wanted to be the primary enforcement entity with regard to the limitations of the use of Lot 12 by the Penhill/Pickford residents. We have previously shared with the City attorney-client privileged correspondence regarding the procedures that the City is required to follow to accomplish conveyance of property, and would be happy to make that correspondence separately available to the City Council. In a nutshell, the City can—but is not required to—engage in a public bidding process for the sale of the property and the compensation for the property is determined at the discretion of the City Council. The City Council, in other words, can determine to convey the property for what it believes the property is worth to an individual or individuals, or to an entity such as a subdivision association. The lot is not separately buildable, and the City would likely want to retain an appropriate easement over it (e.g., for drainage).

Conveyance of the property would not necessarily solve the dispute between the Bentley Subdivision and the Penhill/Pickford residents. The City's continuing regulatory authority would be minimal. As noted, the lakefront use regulations in Chapter 36 were adopted after the establishment of the Penhill/Pickford lake access rights (and in fact after the City's ownership of Lot 12). The disputes regarding the use of the property would largely become private riparian vs. non-riparian issues, except to the extent of perhaps a public nuisance.

2. Seek formal declaratory relief from a court, probably the Oakland County Circuit Court, with regard to the scope of the lake access rights of the Penhill/Pickford residents.

This would require the filing of a lawsuit for declaratory and possibly injunctive relief, and possibly to quiet the City's title to the property. The lawsuit would allege what the City believes the rules regarding access and use to be, and would ask the court to declare that to be the case. This approach would have the advantage of establishing beyond real dispute the rights of all affected parties over Lot 12, ranging from ownership to boat docking. The defendants in the suit would likely be the Penhill/Pickford residents. The suit would likely require discovery and motions and possibly a hearing or trial, but the

clarity of the issues could possibly shorten or simplify the proceedings as compared to a typical circuit court case.

3. ***Retain the City's interest in the property, but articulate and follow a clear set of rules for use of the property as the underlying owner of the property.***

There are a number of ways to accomplish the clarification and regular enforcement of rules for the Penhill/Pickford users of Lot 12. The City could attempt to reach a formal arrangement with some or all of those residents, to be reduced to document that is recorded against the property. The "rules" embodied in that kind of arrangement would have the same status and be enforceable in the same way as the right of access is contained in the deeds. A document recorded against the property without the consent of those with current access rights could be subject to a challenge, however, so an effort would need to be made to get all of the residents of Penhill/Pickford to sign the document.

Alternatively, the City could again "declare" its position with regard to the use of the easement by the Penhill/Pickford residents—e.g., by statements similar to the position set forth in the various City Attorney opinions issued to date, only in a more formal way, such as by Council resolution. It would then fall on the City to enforce its understanding of its rights as owner of Lot 12 on a fair and regular basis, including a program to ensure the safe and appropriate use of any dock structure placed on or near the property and a prohibition on the placement of any other structures or uses of the property not specifically authorized by Council. Enforcement in this context could include anything from issuing tickets for trespass to seeking relief in the district or circuit courts to enjoin activities that the City believes are outside the scope of the lake access rights.

Summary

Like the former City Attorneys, our office has concluded that the City is the owner of Lot 12 by virtue of the 1980 quit claim deed from the Slavic Company.


Like the former City Attorneys, our office has concluded that title to Lot 12 comes burdened with a right of lake access in at least certain residents on Penhill and Pickford, and possibly all residents of Penhill and Pickford.

Like the former City attorneys, our office has concluded that the right of access is not an ownership interest, and is also limited to true access over Lot 12, and not use of that underlying property. Those rights include crossing the property in order to make use of the lake in the normal way—swimming, fishing, temporarily mooring boats at a dock. The dock itself we believe is expressly permitted under the access grant, but we agree that it is for the temporary mooring boats, not overnight or permanent storage. In other words, we do not believe—as the former City Attorneys also concluded—that the Penhill/Pickford residents were given the right to establish some sort of substantial or extensive marina facility by virtue of the grant in the four deeds referenced above.

As the owner of a lot so encumbered, the City is also the "owner" of the problems that go along with it, including the need to enforce reasonable use under the access grant. We have attempted to provide to the City a range of options for the City to discuss publicly. While the foregoing opinion does not contain a substantial amount of citation to cases and other legal authorities, we have previously submitted to the City Council privileged correspondence that addresses in greater detail many of those items.

We look forward to discussing this matter further with the City Council at its pleasure.

Very truly yours,



Thomas R. Schultz

TRS/jah
Enclosures

cc: Clay J. Pearson, City Manager
Pam Antil, Assistant City Manager
Maryanne Cornelius, City Clerk

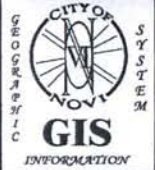
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Lot #12 - Bentley Blomfield Subdivision

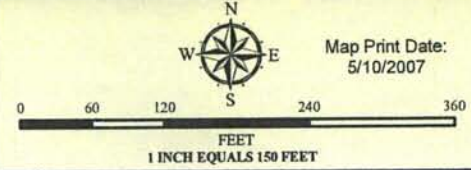
2006 Aerial Photo Reference



Lot #12



CITY OF NOVI
 GEOGRAPHIC INFORMATION SYSTEMS OFFICE
 DEPARTMENT OF INFORMATION TECHNOLOGY
 NOVI CITY HALL/CIVIC CENTER
 45175 W. TEN MILE ROAD
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MAP INTERPRETATION NOTICE
 Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor or as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

BENTLEY SUBDIVISION

LOCATED IN
NW 1/4 SECT. 3 T. 1 N. R. 8 E. TOWNSHIP OF NOVI.
OAKLAND CO., MICHIGAN

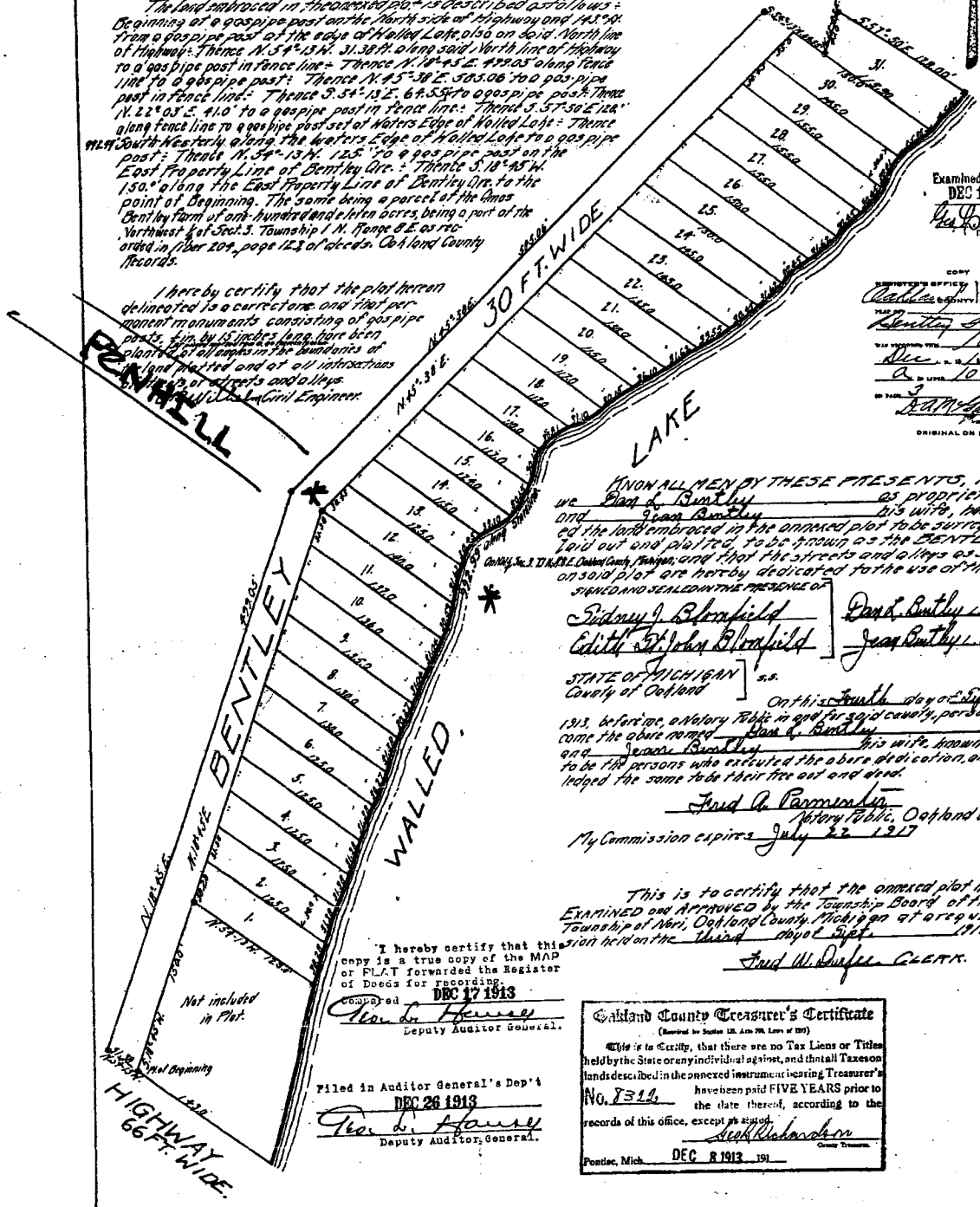
Scale = 1" = 60ft

All distances given on this plot are in feet and decimals thereof

The land embraced in the annexed plat is described as follows:
Beginning at a gas pipe post on the North side of Highway and 143.74' from a gas pipe post at the edge of Walled Lake, also on said North line of Highway: Thence N. 54° 13' N. 31.38' to a gas pipe post; North line of Highway to a gas pipe post in fence line: Thence N. 18° 45' E. 229.05' along fence line to a gas pipe post: Thence N. 45° 38' E. 305.06' to a gas pipe post in fence line: Thence S. 34° 13' E. 67.55' to a gas pipe post: Thence N. 22° 03' E. 41.0' to a gas pipe post in fence line: Thence S. 57° 30' E. 124.1' along fence line to a gas pipe post set at Waters Edge of Walled Lake: Thence N. 22° 03' E. 41.0' to a gas pipe post: Thence N. 54° 13' N. 125.1' to a gas pipe post on the East Property Line of Bentley Dr.: Thence S. 18° 45' W. 150.1' along the East Property Line of Bentley Dr. to the point of Beginning. The same being a parcel of the James Bentley farm of one hundred and eleven acres, being a part of the Northwest 1/4 Sect. 3, Township 1 N., Range 8 E., and recorded in Liber 209, page 123 of records, Oakland County Records.

I hereby certify that the plat herein delineated is a correct one and that no monument consisting of gas pipe posts, 3/4" by 1/2" inches long, have been placed at all angles in the boundaries of the land platted and at all intersections of streets and alleys.

W. L. Duffee
Civil Engineer



Examined and Approved
DEC 16 1913
Geo. L. House
Deputy Auditor General

COPY
REGISTERED OFFICE
PLAT
Bentley Subd.
FILED
DEC 10 1913
J. W. Duffee
CIVIL ENGINEER
ORIGINAL ON FILE

KNOW ALL MEN BY THESE PRESENTS, that we, James Bentley as proprietor, and Jean Bentley his wife, have caused the land embraced in the annexed plat to be surveyed, laid out and platted, to be known as the BENTLEY SUBDIVISION, and that the streets and alleys as shown on said plat are hereby dedicated to the use of the public, signed and sealed in the presence of

Judney J. Blomfield David Bentley s.
Edith M. John Blomfield Jean Bentley s.

STATE OF MICHIGAN } s.s.
County of Oakland }
On this fourth day of September 1913, before a Notary Public in and for said county, personally came the above named James Bentley and Jean Bentley his wife, known to me to be the persons who executed the above dedication, and acknowledged the same to be their free act and deed.
Jud A. Parmelee
Notary Public, Oakland Co., Mich.
My Commission expires July 22 1917

This is to certify that the annexed plat has been EXAMINED and APPROVED by the Township Board of the Township of Novi, Oakland County, Michigan at a regular session held on the third day of Sept 1913.
Jud W. Duffee CLERK.

I hereby certify that this copy is a true copy of the MAP or PLAT forwarded the Register of Deeds for recording.
Recorded DEC 17 1913
Geo. L. House
Deputy Auditor General.

Filed in Auditor General's Dep't
DEC 26 1913
Geo. L. House
Deputy Auditor General.

Oakland County Treasurer's Certificate
(Revised by Section 18, Act 296, Laws of 1911)
This is to certify, that there are no Tax Liens or Titles held by the State or any individual against, and that all Taxation lands described in the annexed instrument bearing Treasurer's No. 1314 have been paid FIVE YEARS prior to the date thereof, according to the records of this office, except as stated.
Seck Richardson
County Treasurer.
Pontiac, Mich. DEC 8 1913

Examined and approved
April 3-1920
Jas. L. Haines

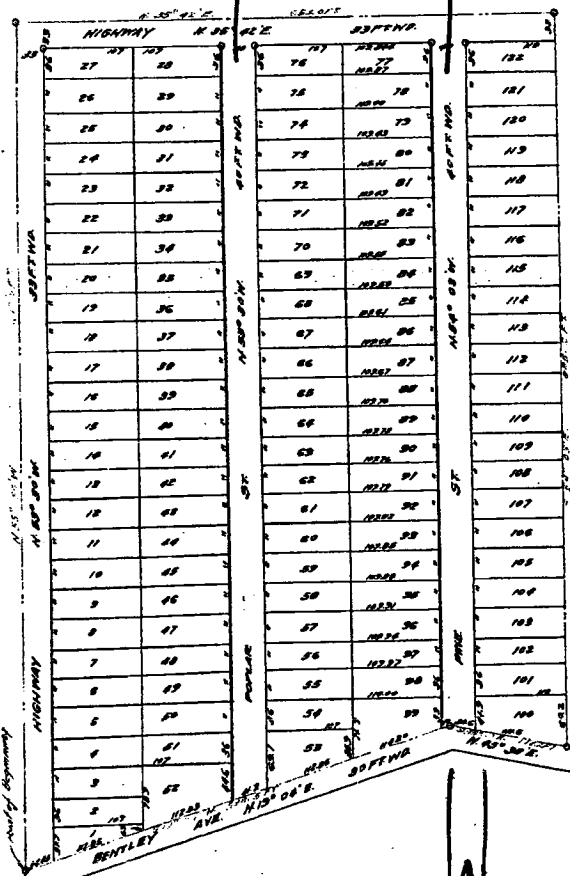
KNOW ALL MEN BY THESE PRESENTS, That Daniel L. Bentley
Jan L. Bentley his wife of Oakland Mich.
& Bloomfield Trust of Oakland Mich. do hereby certify
that the within and foregoing plat of the
BENTLEY TRACT
containing 12 lots
situate in the Township of
Oakland
County of Oakland
State of Michigan
was by them lawfully devised, partitioned, and subdivided into the
lots therein shown, and acknowledged the same
before me a Notary Public for said county, personally came the
said Daniel L. Bentley
Jan L. Bentley his wife
Stanley Bloomfield
Wayne
Notary Public
City, Mich.
Feb 14 - 1920

"BLOMFIELD SUB."
OF PART OF THE NW 1/4 OF SECTION 3 T. 1 N. R. 8 E.
NOW TWP
OAKLAND CO MICH.
SCALE 100'-1"
2 1/2" = 100'

The land embraced in the annexed plat of BLOMFIELD SUB. OF THE NW 1/4 OF SECTION 3 T. 1 N. R. 8 E. NOW TWP. OAKLAND CO. MICH. (Showing the subdivision of the land of Daniel L. Bentley & his wife (Jan L. Bentley) Beginning at a point 11.83' west 11' distant from a point in angle of 1661 West Lake Rd. thence 260' west 107.41' to a stake thence 115' 41.5' east 1/2 to a stake thence 200' 2' east 1/2 to a stake thence 5' 42' west along N. line of Bentley Ave. 100' 1/2 to a stake thence 5' 4' west along N. line of Bentley Ave. 200' 1/2 to the point of beginning.

This plat was approved by the township board
of the Township of Oakland
at a meeting held on the 14th day of Feb. 1920
by W. R. S. Clark

Clerk of County Treasurer's Certificate
There are no Tax Liens or Titles
of the State against the property
described in the annexed plat of
No. B 5595
have been paid FIVE YEARS prior to
the date thereof, according to the
records of this office, except as stated
W. B. Parrin
Clerk, Mich. Mar. 22 1922



(now Pickford)
(now Penh. 11)

Oakland
Bloomfield Trust
April 30 1920
Plat
Stanley L. Rogers
April 3-1920
Jas. L. Haines

April 7-1920
Jas. L. Haines

This plat was approved by the
March 1920
P. A. C. [Signature]
Edmund [Signature]
[Signature]

Lot 12

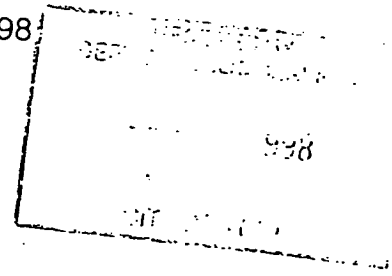
DAVID M. FRIED
LOUIS D. BUGBEE
DENNIS WATSON
PAUL D. WEISBERGER

FRIED, WATSON & BUGBEE, P.C.
ATTORNEYS AND COUNSELORS
30700 TELEGRAPH ROAD, SUITE 3655
BINGHAM FARMS, MICHIGAN 48025
TELEPHONE (248) 645-1003

3/2/98
Council packet

FACSIMILE
(248) 645-5106

February 6, 1998



Mr. Anthony Nowicki
Director of Public Services
Novi Civic Center
45175 W. Ten Mile Road
Novi, MI 48375

RE: Easement over Lot 12 of the Bentley Subdivision

Dear Mr. Nowicki:

This is in response to Shannon Herrington's letter which was forwarded to our office. Ms. Herrington's letter requested an answer to each of the following questions:

- "A: If the residents of Penhill St. does (sic) not own the property (lot 12), who owns it, and if the city from whom did the city purchase the property from. ||
- "B: If the city owns lot 12 Bentley sub, is it considered a park open to the public.
- "C: Is (sic) the residents of Penhill St. able to put in a dock as indicated on our deed.
- "D. Lot 12 seems to be blocked by a barrier waving the residents access. If so how and when can this barrier be moved."

It is our understanding that:

- 1) Todd Herrington is the owner of Lot 90 of the Blomfield Subdivision ("Lot 90");
- 2) Ms. Herrington resides at Lot 90, commonly known as 135 Penhill Street;
- 3) Lot 90 fronts Penhill Street;
- 4) Penhill Street was once Pine Street;

- 5) An easement was granted in 1922 to the purchaser of Lot 90 which stated that "Lot 12 Bentley Subdivision to be used for pedestrians right of way to the lake for all purchasers of lots on Pine St., each purchaser to pay his proportion for dock improvements or taxes" (See attached Warranty Deed dated August 15, 1922 and recorded in Liber 30, Page 371 of Oakland County Records); and
- 6) In 1980, the Slavik Company gifted to the City of Novi Lot 12 of the Bentley Subdivision ("Lot 12") (See attached Quit Claim Deed dated August 29, 1980 and recorded September 3, 1980 in Liber 7850, Page 699 of Oakland County Records).

The pedestrian right-of-way easement granted to Ms. Herrington's predecessors in title passed by deed to each subsequent purchaser and ultimately to Ms. Herrington. The passing of the easement by deed occurred even if it was "not expressly mentioned in the instrument of transfer". Haab v Moorman, 332 Mich 126, 144 (1952). Conversely, the burden of the easement also passes automatically with each conveyance of Lot 12.

The pedestrian easement granted to the owners of lots on Pine Street (now Penhill Street) is still a valid easement unless that easement has been abandoned or acquired by adverse possession. We have not received any evidence which would lead us to believe that the easement has either been abandoned or acquired by adverse possession. If you have or if any records of the City contain any information concerning this easement being abandoned or that the easement holders have been precluded by the City or prior owners of the lot from using the easement, please inform us of such fact.

The City of Novi, as the owner of Lot 12, must give to the easement grantees "not only a right to an unobstructed passage at all times . . . but also such rights as are incident or necessary to the enjoyment of such right of passage." Lakeside Assoc v Toski Sands, 131 Mich App 292, 299 (1983). Thus, any barrier obstructing or inhibiting a pedestrian right-of-way over Lot 12 should be removed or altered.

The owners of lots on Penhill Street (Pine Street) may use Lot 12 as provided in the easement and are confined to the purposes for which the easement was created. A reasonable interpretation of the easement restriction would be that the City, as the owner of Lot 12, must allow for the ingress and egress to pedestrians (only those owning lots on Penhill Street), that the right-of-way should be about the size of a sidewalk, and that the City must allow the erection and maintenance of a dock. It is, however, beyond the scope of the easement to allow the ingress or egress of cars or boats, sunbathing, picnicking or lounging, the erection of boat hoists or the permanent mooring or anchoring of boats Jacobs v Lyon Twp, 181 Mich App 386 (1989).

Further, it should be noted that just because Lot 12 is vacant and owned by the City, does not make it a public park. "A municipal corporation, no less than a private owner of property, has power to preserve the property under its control". McQuillin Mun Corp, § 28.23.10(3rd Ed).

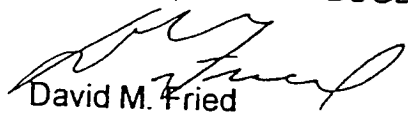
In conclusion, it is our opinion, based upon the information provided to us, that the answer to Ms. Herrington's questions are as follows:

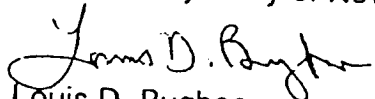
- A. The City of Novi owns Lot 12 pursuant to Quit Claim Deed executed by Slavik Company on August 29, 1980;
- B. Lot 12 is not a public park and its use is limited to pedestrian ingress and egress over a reasonable portion of lot 12 to and from the lake by owners of lots on Penhill Street, but not to be used, for example, for such things as parking, storing or mooring of boats and vehicles, picnicking, lounging or the like;
- C. It is within the scope of the easement for the owners of lots on Penhill Street to erect and maintain a dock for limited use, but not to be used, for example, for the erection of a boat house, boat hoist or long term mooring or anchoring of watercraft; and
- D. The City should remove any obstruction or part thereof which may impede the pedestrian ingress and egress of the owners of Lots on Penhill Street to and from the lake.

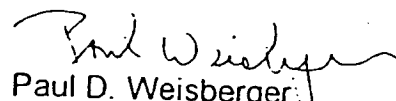
Should you have any questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

FRIED, WATSON & BUGBEE, P.C.


David M. Fried
City Attorney - City of Novi


Louis D. Bugbee
Assistant City Attorney - City of Novi


Paul D. Weisberger
Assistant City Attorney - City of Novi

DMF/LDB/PW:dm

Encs.

cc Tonni Bartholomew, w/encs.
Edward Kriewall, w/encs.

**SECRET, WARDLE, LYNCH, HAMPTON,
TRUEX AND MORLEY, P.C.**

VAHAN C. VANERIAN
DIRECT DIAL (248) 539-2819
vvanerian@secretwardle.com

Counselors at Law
30903 Northwestern Highway
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Fax (517) 886-9284

1550 East Beltline, SE, Suite 305
Grand Rapids, MI 49506-4361
(616) 285-0143
Fax (616) 285-0145

2902-D Crossing Court
Champaign, IL 61822-6163
(217) 378-8002
Fax (217) 378-8003

March 30, 2005

Cindy Uglow, Neighborhood Services Director
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: *Lot Number 12*
Bentley Subdivision
*Our File No. 55142 NOV***

Dear Cindy:

You asked that I respond to the issues raised in Mr. Oliver's correspondence dated March 8, 2005 regarding Lot Number 12 in Bentley Subdivision. My review of this matter reflects that I previously prepared a written opinion, dated July 13 2004, regarding the scope of the back lot owners' easement for lake privileges. I've attached a copy of that opinion for your reference. After extensively researching the legal and factual issues I concluded as follows:

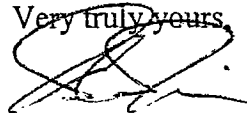
Consequently, a reasonable interpretation of the easement rights of the Penhil/Pickford residents would include the right to maintain a dock, and to use the waters for swimming, wading, fishing, boating and to temporarily anchor boats. However, the easement does not include the right to construct boat hoists or maintain seasonal or over night boat storage.

I note the City's previous City Attorneys reached the same result when they were asked to render an opinion on this same issue. Upon reviewing the legal authorities cited by Mr. Oliver, namely, *Czeryba v Marzolo*, an unpublished/ non-binding per curiam Court of Appeals opinion dated November 2, 2004, I find no basis for changing my original opinion in this matter. Specifically, the easement language in *Czeryba, supra*, unlike the easement language in our case, makes no reference to a dock/pier which means that case is factually distinguishable from the case at hand. When interpreting the scope of a lake access easement, the Court's have consistently held that the language creating the easement, and the surrounding circumstances in cases of ambiguity, ultimately control.

Consequently, because the easement language in the case at hand expressly mentions the maintenance of a dock, the scope of the easement would include the right of the back lot owners to erect a dock and temporarily moor their boats. Even if the text of the easement itself was deemed ambiguous, the existence of a dock at the time the easement was created, and subsequent replacement of the original dock, would be extrinsic evidence that the scope of the easement includes maintenance of a dock.

Please feel free to contact me at my office should you have any further questions or comments regarding this matter.

Very truly yours,



VAHAN C. VANERIAN

VCV/yr

SECRET, WARDLE, LYNCH, HAMPTON,
TRUEX AND MORLEY, P.C.

94 Macomb Place
Mt. Clemens, MI 48043-5651
(586) 465-7180
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VAHAN C. VANERIAN
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July 13, 2004

Craig M. Klaver, Chief Operating Officer
CITY OF NOVI
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Lot Number 12
Bentley Subdivision
Our File No. 55142 NOV**

Dear Mr. Klaver:

You asked that I respond to the issues raised in Mr. Brennan's correspondence dated April 2, 2004 regarding Lot Number 12 in Bentley Subdivision. My review of the deeds and the title report from the Seaver Title Company dated June 1, 2004, reflects that the City of Novi has owned Lot Number 12 since 1980 subject to an easement "for pedestrians right-of-way to the lake for all purchasers of lots on [Penhill and Pickford Street], each person to pay his portion of dock improvements and taxes" Both my office and the former City attorneys have extensively researched the scope of the easement granting lake access privileges to the Penhill and Pickford Street residents.

Specifically, pursuant to *Little v. Kin*, 249 Mich App. 502 (2002), *aff'd*, 468 Mich 699 (2003), non-riparian lot owners who hold an easement for lake access have the limited right to use the surface of the water in a reasonable manner for such activities as boating, fishing and swimming. The extent to which the lake use privileges exceed these limited rights to include broader privileges such as the construction and maintenance of a dock, depends upon the language of the easement itself. *Id.* If the text of the easement itself is ambiguous, extrinsic evidence may be considered to determine the scope of the easement. *Id.* In *Cabal v Kent County Rd. Commision*, 72 Mich. App. 532 (1976), the deeds to non riparian lots granted a "general easement" across a strip of land across the street from the non riparian lots for access to the lake, similar to the case at hand. On the basis of the language in the deeds, the Court ruled that "the right of Defendants to maintain docks is reasonably appurtenant to their easement to enjoy boating in the lake." *Id.* at pg. 536.

Higgins Lake Property Owners Association v. Gerrish Township, 225 Mich App. 83 (2003), although arguably distinguishable, provides instructive guidance regarding the extent of boat docking privileges in the case at hand. The *Higgins* Court held that a *public* right of way terminating at the waters edge carries an implied right to erect a dock. The *Higgins* Court further held that the implied right to build a dock also carries the right to temporarily moor boats. However, the construction of boat hoists or seasonal/long term boat storage, are not presumed nor implied and therefore exceed the scope of the easement unless expressly granted. *Id.* With respect to Lot Number 12 in the case at hand, seasonal boat storage or erecting boat hoists are not expressly granted and therefore exceed the scope of the easement.

Consequently, a reasonable interpretation of the easement rights of the Penhil/Pickford residents would include the right to maintain a dock, and to use the waters for swimming, wading, fishing, boating and to temporarily anchor boats. However, the easement does not include the right to construct boat hoists or maintain seasonal or over night boat storage.

The issue has also been raised that the language referring to Lot 12 in the Penhil/Pickford deeds transferred a fee ownership in lot 12 to the Penhil/Pickford residents and because the Penhil/Pickford residents never transferred any interest in Lot 12 to anyone other than successor Penhil/Pickford residents, the Penhil/Pickford residents still own a fee interest in Lot 12. A few points are worth noting regarding any claim of ownership by the Penhil/Pickford residents. First, other than a few current residents who have lived on Penhil/Pickford since the 50's, there is no language making any reference to Lot Number 12 contained in any of the current deeds for any of the current lot owners on Penhil or Pickford Streets. Unlike an easement, an ownership interest in real property cannot be transferred or otherwise conveyed by implication but must be express and in writing. In effect, with the possible exception of a few long time residents, the current residents would have no rights or interest whatsoever in Lot Number 12 if it is assumed that the language conveys ownership interests in Lot 12 as opposed to easements.

However, because the interest at issue is in fact an easement as opposed to an ownership interest, the passing of the easement by deed occurred even if it was not expressly mentioned in the instrument of transfer. Conversely, the burden of the easement also passes automatically with each conveyance of Lot Number 12. See, Haab v. Moorman, 332 Mich 126, 144 (1952).

Secondly, the chain of title for Lot Number 12 contains no instruments or deeds containing any language transferring any ownership interest to any current or former residents of Penhil or Pickford Streets. Specifically, my review of the deeds pertaining to transfers of interest in Lot Number 12 reveals the following:

- a) On December 18, 1916, Daniel and Joan Bentley deed a fee ownership interest to Sidney Blomfield.

Craig M. Klaver, Chief Operating Officer
July 13, 2004
Page 3

- b) Between 1921 and 1923, Sidney Blomfield and wife deed a fee ownership interest in Lots 87, 88, 89 to Henry Urquhart; Lot 97 to Cyril Blomfield; Lot 90 to James Pullford; and Lot 52 to Ira Killam (presumably, these lots are located on either Penhil or Pickford).

The deeds to Cyril Blomfield, Henry Urquhart, and James Pullford further state as follows:

Lot 12 Bentley Sub to be used for pedestrian right-of-way to the lake for all purchases of lots on Pine [Penhil] Street, each person to pay his portion for dock improvements or taxes.

The deed to Ira Killam further states as follows:

Lot twelve (12) Bentley Subdivision is to be used for pedestrians right-of-way to lake for all purchasers of lots on Popular [Pickford] Street, each purchaser to pay his portion for dock improvements and taxes.

There is no reference to a joint tenancy, tenancy in common or any other form of joint ownership with respect to the language contained in the above referenced deeds regarding Lot Number 12. Furthermore, Sidney Blomfield and wife were repeatedly conveying the same interest in Lot Number 12 to many different individuals over a course of several years in separate and unrelated transactions which clearly reveals an intent by Sidney Blomfield to retain ownership of Lot Number 12 and merely grant easements to the purchasers of Popular and Pine Streets. Moreover, the language "to be used for pedestrian right-of-way to the lake" clearly and unambiguously reflects an express intention to merely convey an easement and further negates any intention to grant an ownership interest. See, *Dobie v Morrison*, 227 Mich. App. 536 (1998).

In Sum, The City of Novi is the rightful owner of Lot Number 12 in the Bentley Subdivision subject to the above referenced easement/access rights of the Penhil and Pickford residents. The easement does not include over night or long term boat mooring/storage, nor does it include any mooring or docking privileges for guests/invitees of Penhil/Pickford residents. Any activities that exceeded the scope of the easement would constitute a trespass.

Very truly yours,

VAHAN C. VANERIAN

VCV/yr

QUIT CLAIM DEED

STATUTORY FORM FOR CORPORATION

LIBER 7850 PAGE 699

71811

Q.C. DEED TO NOVI

KNOW ALL MEN BY THESE PRESENTS: That The Slavik Company, a Michigan Corporation the address of which is* 26011 Evergreen, Southfield, Michigan, 48076

Quit Claim to the City of Novi, a Michigan municipal corporation

whose street number and postoffice address is 45225 West Ten Mile Road, Novi, Mi., 48050

the following described premises situated in the City of Novi County of Oakland and State of Michigan, to-wit:

Lot No. 12 of Bentley Subdivision, a subdivision of part of the northwest 1/4 of Section 3, T.1N., R.8E., City of Novi, Oakland County, Michigan, as recorded in liber 10 of Plats, page 3, Oakland County Records.

together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining for the sum of a gift from Grantors to Grantees, exempt pursuant to MCLA 207.505 (5) (a)

Dated this 29th day of AUGUST 1980

Signed in the presence of:

Signed by:

Mariam Lebet
Mariam Lebet

THE SLAVIK COMPANY

Cheryl Williams
Cheryl Williams

By Stephan F. Slavik, Sr.
Stephan F. Slavik, Sr.
President

STATE OF MICHIGAN }
COUNTY OF Oakland }

On this 29th day of August 1980 before me, a Notary Public

in and for said County, personally appeared Stephan F. Slavik, Sr.

known, who, being by me duly sworn, did

say that he is

the President

of The Slavik Company, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said Stephan F. Slavik, Sr., President acknowledged said instrument to be the free act and deed of said corporation.

Joseph C. Kapeiczak
Joseph C. Kapeiczak, Notary Public, Oakland County, Michigan

My Commission expires January 17 1983

NOTE—It must be shown that the officer acknowledges in part 1 "each for himself" and at 2 "they are respectively."

When recorded return to Recording Fee Drafted by: J.C.Kapeiczak, R.L.S.

BURTON ABSTRACT AND TITLE COMPANY HAS OPERATED CONTINUOUSLY SINCE 1880

MAKE YOUR REAL ESTATE TRANSFERS SAFE BY USING BURTON TITLE INSURANCE

1980 SEP - 3 PM 3:25

Sidney J. Blomfield & wife
to
Cyril S. Blomfield

Received for Record this 10 day of May A. D. 1923 at 3 o'clock P. M.
as a proper certificate was furnished in compliance with Section 2957, Compiled Laws of 1922.
Loelle AVERY Register of Deeds

This Indenture, Made this 6th day of April
in the year of our Lord one thousand nine hundred and twenty-three

BETWEEN Sidney J. Blomfield and Edith M. St. John Blomfield his wife of Detroit, Mich.

Cyril S. Blomfield of Springfield, Mass.

parties of the first part, and
party of the second part

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of

One (other valuable consideration) dollars

to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, do
by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said party of the second part, and his
heirs and assigns, Forever, all that certain piece or parcel of land situate and being in the township
Novi County of Oakland, and State of Michigan, and described as follows, to-wit:

Lot Fifty seven (97) of Blomfield's subdivision of part of the north-west
quarter of section three town one north range eight east as recorded in liber 22,
page 5 of plats Oakland County records, Lot 12 of Bentley Sub. to be used for
pedestrians right of way to the lake for all purchasers of lots on Pine St. each
purchaser to pay his proportion for dock improvements and taxes.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging or in anywise appertaining; To Have and to
Hold the said premises, as herein described, with the appurtenances, unto the said party 1st of the second part, and to
his heirs and assigns, Forever. And the said Sidney J. Blomfield, one of the
part 1st of the first part, for himself, his heirs, executors and administrators, do covenant, grant,
bargain, and agree to and with the said party of the second part, his heirs and assigns, that at the time of the executing
and delivery of these presents, he well seized of the above granted premises is free from all encumbrances
whenever;

and that he will, and his heirs, executors, and administrators, they shall Warrant
and Defend the same against all lawful claims whatsoever.

In Witness Whereof, The said party 1st of the first part has hereunto set their hand and seal the day and year
first above written.

Signed, Sealed and Delivered in Presence of

Ira Killam
George A. Schwaltzer

O. R. L. R.
\$1.00
May 10
1923

Sidney J. Blomfield
Edith M. St. John Blomfield
[Signatures]

STATE OF MICHIGAN,
County of Oakland

On this 6th day of April
thousand nine hundred and twenty

in the year one
before me, a Notary Public

in and for said County, personally appeared

Sidney J. Blomfield and Edith M. St. John Blomfield, his wife to me known to be the same person as

described in and who executed the within instrument, who have acknowledged the same to be their free act and deed.

My commission expires Feb. 2,

19 27

Ira Killam
Notary Public, Wayne County, Michigan.

Sidney J. Blomfield & wife

Recorded for Record this 24 day of APR. A. D. 1923 12:15
as a proper certificate was furnished in compliance with Section 2937, Compiled Laws of 1921

Lucille Avery Register of Deeds

Henry Ross Urquhart

This Indenture, Made this 12th day of April
in the year of our Lord one thousand nine hundred and twenty-three

WITNESSETH Sidney J. Blomfield and Edith M. St. John Blomfield his wife of Detroit Mich.

parties of the first part, and

Henry Ross Urquhart of the same place

parties of the second part.

WITNESSETH. That the said parties of the first part, for and in consideration of the sum of

One (other valuable consideration) dollars

to them in hand paid by the said part Y of the second part, the receipt whereof is hereby confessed and acknowledged, do

by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said part Y of the second part, and his

heirs and assigns, Forever, all those certain piece B or parcel B of land situate and being in the Township

Novi County of Oakland, and State of Michigan, and described as follows, to-wit:

Lots eighty-seven, eighty-eight and eighty-nine of the Blomfield's subdivision of part
of the northwest quarter of section three town one north range eight east as recorded in
liber 22 page 5 of plat Oakland County records. lot twelve of Bentley's subdivision is to be
used for pedestrians right of way to the lake for all purchasers of lot on Pine St. each of
said purchasers to pay his proportion for dock improvements and taxes. building restriction,
one cottage on each lot to cost not less than \$1000. and to be set back twenty five feet from
the front lot line.

TOGETHER with all and singular the hereditaments and appurtenances therunto belonging or in anywise appertaining; To Have and to
Hold the said premises, as heretofore described, with the appurtenances, unto the said part Y of the second part, and to

his heirs and assigns, Forever. And the said Sidney J. Blomfield one of the

parties of the first part for himself, his heirs, executors and administrators, do covenant, grant,

bargain, and agree to and with the said part Y of the second part, his heirs and assigns, that at the time of the executing

and delivery of these presents, he is well seized of the above granted premises in fee simple; that they are free from all encumbrances

whatever;

and that he will and his heirs, executors, administrators, shall Warrant

and Defend the same against all lawful claims whatsoever.

In Witness Whereof, The said parties of the first part have hereunto set their hand and seal the day and year
first above written.

Signed, Sealed and Delivered in Presence of

Walter V. McGreevy
Frank L. McGreevy

U. S. I. R.
\$1.50
S. J. B.

Sidney J. Blomfield
Edith M. St. John Blomfield

STATE OF MICHIGAN. }
County of Oakland } On this 12th day of April in the year one
thousand nine hundred and twenty-three, before me, a Notary Public

in and for said County, personally appeared Sidney J. Blomfield and Edith M. St. John Blomfield
his wife to me known to be the same person B
described in and who executed the within instrument, who have acknowledged the same to be their free act and deed.

My commission January 6th 1925 Frank L. McGreevy
Notary Public Wayne County, Michigan

Sidney J. Blomfield and wife } Received for Record this 15 day of August A.D. 1922 at 2:30 o'clock P.M.,
 as a proper certificate was furnished in compliance with Sec. 3937, Compiled Laws 1897.
 to } Stanley C. ROBERTS, Register of Deeds.

This Indenture, Made this 10th day of July

James E. Pullford et al } in the year of our Lord one thousand nine hundred and twenty - two

BETWEEN Sidney J. Blomfield and Edith M. St. John Blomfield, his wife of Detroit, Wayne County, Michigan

James E. Pullford and Margaret Pullford, his wife, of the same place parties of the first part, and parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable considerations in hand paid by the said parties of the second part, the receipt whereof is hereby confessed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said parties of the second part, and their heirs and assigns, forever, all that certain piece or parcel of land situate and being in the Township of Ovi County of Oakland and state of Michigan, and described as follows, to-wit:

Lot Fifty (50) of Blomfield Subdivision of part of NE 1/4 of Section three Town 1 S.R. 2 East, as recorded in Liber 22 page 5, of plats Oakland County records. No dwelling costing less than \$1000.00 shall be erected, same to be 25 ft from the front lot line.
 Lot 12 Bentley Sub. to be used for pedestains right of way to the Lake for all purchasers of lots on Pine Street each purchaser to pay his proportion for dock improvements or taxes.

TOGETHER with all and singular the hereditaments and appurtenances therunto belonging or in anywise appertaining: **To Have and to Hold** the said premises, as herein described, with the appurtenances, unto the said parties of the second part, and to their heirs and assigns, forever. And the said Sidney J. Blomfield and Edith M. St. John Blomfield, his wife of the first part, for themselves, their heirs, executors and administrators, do covenant, grant bargain and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the conveying and delivery of these presents, they are well seized of the above granted premises in fee simple; that they are free from all encumbrances whatever;

and that they will, and their heirs, executors, and administrators, shall **Warrant and Defend** the same against all lawful claims whatsoever.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, Sealed and Delivered in Presence of
 E. B. Winchester
 A. E. Hogan

U. S. L. R.
 504
 S. J. B.

Sidney J. Blomfield
 Edith M. St. John Blomfield

STATE OF MICHIGAN,)
) ss. On this 10th day of July in the year one thousand nine hundred and twenty-two

County of Wayne before me, a Notary Public in and for said County, personally appeared Sidney J. Blomfield and Edith M. St. John Blomfield his wife, to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

My commission expires May 15, 1925
 Elmer M. Walton
 Notary Public Wayne County Michigan.

Sidney J. Blomfield and wife
Ira Killan et al

Recorded for Record this 12 day of July A.D. 1921 at 11:40 o'clock
A. M., on a proper certificate was furnished in compliance with Sec. 2637, Compiled Laws 1927.

Stanley C. Rogers Register of Deeds

This Indenture, Made this 23rd day of May

BETWEEN Sidney J. Blomfield and Edith M. St. John Blomfield his wife, of the City of Detroit, Wayne County, Michigan.

Ira Killan and Frank W. Perry of the same place. parties of the first part, and parties of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration dollars to us in hand paid by the said part 1st of the second part, the receipt whereof is hereby confirmed and acknowledged, do by these presents, grant, bargain, sell, remise, release, alien and confirm unto the said part 1st of the second part, and their heirs and assigns, Forever, all certain place or parcel of land situate and being in the Township of Novi County of Oakland and State of Michigan, and described as follows, to-wit:

Lot Fifty-two (52) of Blomfield Subdivision of part of the Northwest Quarter of Section Three (3) Town One (1) North Range Eight (8) East, Novi Township as recorded in Liber 22, page 6 of Plats, Oakland County Records.

Lot Twelve (12) Bentley Subdivision is to be used for pedestrians right of way to lake for all purchasers of lots on Poplar Street, each purchaser to pay his proportion for dock improvements and taxes.

It is understood and agreed that this deed is given and accepted subject to the following restrictions. No dwelling costing less than \$1000 shall be erected on said lot and shall be placed at least 25 ft. from front lot line and only one dwelling shall be built on said lot.

TOGETHER with all and singular the benefices and appurtenances thereto belonging or in anywise appertaining; To Have and to Hold the said premises, as herein described, with the appurtenances, unto the said part 1st of the second part, and to their heirs and assigns, Forever. And the said Sidney J. Blomfield and Edith M. St. John Blomfield, parties of the first part, for themselves, their heirs, executors and administrators, do covenant, grant, bargain and agree to and with the said parties of the second part, their heirs and assigns, that at the time of the executing and delivery of these presents, they are well seized of the above granted premises in fee simple; that they are free from all encumbrances whatever; except a mortgage of even date for the sum of Ten Hundred Fifty Dollars (\$1050.00) given by Ira Killan and Frank W. Perry, and that they will, and their heirs, executors, and administrators, shall warrant and defend the same against all lawful claims whatsoever except as aforesaid.

In Witness Whereof, The said part 1st of the first part he do hereunto set their hand and seal the day and year first above written.

Signed, Sealed and Delivered in Presence of
George A. Schweitzer
Hina P. Smith
U.S.L.R. 508 S.J.B.
Sidney J. Blomfield
Edith M. St. John Blomfield

STATE OF MICHIGAN, }
County of Wayne }
On this 31st day of May 1921
I, before me, a Notary Public,
in and for said County, personally appeared Sidney J. Blomfield and Edith M. St. John Blomfield,
his wife,
to me known to be the same persons described in and who executed the within instrument, who severally acknowledged the same to be their free act and deed.

My commission expires Nov. 9th 1921
George A. Schweitzer
Notary Public, Wayne County, Michigan.