

STATE OF MICHIGAN  
IN THE SUPREME COURT  
APPEAL FROM THE COURT OF APPEALS  
(Fort Hood, P.J., and Cavanagh and K. F. Kelly)

2000 BAUM FAMILY TRUST, BAUM  
FAMILY TRUST; JOSEPH BEAUDOIN AND  
SANDRA BEAUDOIN, husband and wife,  
ADELE MEGDALL REVOCABLE TRUST;  
PAUL NOWAK and JOAN NOWAK TRUST;  
MARILYN ORMSBEE; MARK SCHWARTZ  
and WENDY SCHWARTZ, husband and wife;  
and THOMAS THOMASON,

Plaintiffs/Counter-  
Defendants/Appellants,

v

WILLIAM and JUDY BABEL, husband and  
wife; JAMES CAHILL and GLORIA CAHILL,  
husband and wife; JAMES EHINGER and MARY  
EHINGER, husband and wife; DANIEL  
ENGSTROM and PENNY ENGSTROM, husband  
and wife; THOMAS HELZERMAN and PATSY  
HELZERMAN, husband and wife; SHAUN MAC  
MILLAN and RACHEL MAC MILLAN, husband  
and wife; DAVID OSHABEN and PAMELA  
OSHABEN, husband and wife; MARION PARKER;  
SALLY J. SIPPEL, DOUGLAS H. PHILP, JR. and  
NANCY M. PHILP, husband and wife; ARTHUR A.  
RANGER, Trustee of the Arthur A. Ranger Trust;  
PATRICIA L. RANGER, as Trustee of the Patricia L.  
Ranger Trust; GAYLE SHELDON and SHERRY  
SHELDON, husband and wife; and CHARLEVOIX  
COUNTY ROAD COMMISSION,

Defendants/Counter-  
Plaintiffs/Appellees.

and

Supreme Court No. 139617  
Court of Appeals No. 284547

Charlevoix County Circuit Court  
Case No. 07-61121-CH



AL GOOCH and ELIZABETH GOOCH,  
husband and wife; JESSE HALSTEAD and  
LINDA HALSTEAD, husband and wife;  
MICHAEL MAC MILLAN and KAYE  
MAC MILLAN, husband and wife; ROBERT  
SCHOFIELD and KATHY SCHOFIELD,  
husband and wife; RICHARD BERGLUND  
and LINDA BERGLUND, husband and wife;  
ROGER NESBURG and ANNETTE  
NESBURG, husband and wife; THOMAS E.  
BERGMANN; LOUIS M. SAPPS; ELTON  
WILKERSON and JUDY WILKERSON,  
husband and wife; MARY HENSEN; and  
DAVID NIEWEICK and WENDY NIEWICK,  
husband and wife,

Intervening Defendants/Counter-  
Plaintiffs/Appellees,

and

CHARLEVOIX TOWNSHIP; EDWARD  
ENGSTROM; RICHARD SAYWARD,  
JOHN DOE, and JANE DOE,  
Defendants-Appellees.

**BRIEF ON APPEAL - APPELLANT**

ORAL ARGUMENT  
REQUESTED

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**STATEMENT OF APPELLATE JURISDICTION**

**This Court has jurisdiction pursuant to MCR 7.302(B)(3), MCR 7.302(5), and MCR 7.302(C)(2)(c).**

**APPELLANT'S STATEMENT IDENTIFYING  
ORDER APPEALED FROM AND RELIEF SOUGHT**

Appellants seek leave to appeal an opinion of the Michigan Court of Appeals. The opinion of the Court of Appeals is attached and marked as **Exhibit 1a**. The Appellants sought reconsideration of the Court of Appeals decision. The Court of Appeals denied Appellants motion for reconsideration on August 6, 2009. A copy of the order denying reconsideration is attached as **Exhibit 2a**. Appellants sought review, as a matter of right, of the Charlevoix County Court decision granting partial motion for summary disposition in favor of Appellees herein. A copy of the trial court decision is attached and marked **Exhibit 3a**.

Appellants seek a reversal of the lower court decisions and a determination that they exclusively hold certain riparian privileges as is more specifically set forth below.

**APPELLANT'S STATEMENT OF QUESTIONS PRESENTED**

- I. Does a statutory plat dedication of a public way or road which runs contiguous/parallel to an inland lake constitute a conveyance of a fee simple interest in the land over which the way is platted, thereby conveying riparian rights to the accepting municipality.

Appellants say "No."

Appellees say "Yes."

The Trial Court says "Yes."

The Court of Appeals say "Yes."

- II. Does a statutory plat dedication of a public way or road convey a limited determinable fee title to the land comprising the way or road to the municipality?

Appellants say "Yes."

Appellees say "No."

The Trial Court says "Uncertain."

The Court of Appeals says "No."

- III. Do the owners of a platted lot adjacent to a platted lakeside parallel road or way control and own the riparian rights opposite the public way or road adjacent to their respective lots?

Appellants say "Yes."

Appellees say "No."

The Trial Court says "No."

The Court of Appeals says "No."

- IV. Is the Michigan appellate case law in this situation well-settled, such that it is governed by *McCardel v Smolen*, 71 Mich App 560; 250 NW2d 496 (1976), reversed in part, 404 Mich 89; 273 NW2d 3 (1978), *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935), and progeny?

Appellants say "Yes."

Appellees say "No."

The Trial Court says "No."

The Court of Appeals says "No."

## APPELLANT'S STATEMENT OF FACTS

This appeal involves a dispute over riparian rights on a portion of Lake Charlevoix bottomlands.

The Appellants are front lot owners in a platted subdivision on Lake Charlevoix. The Appellees include off lake property owners, Charlevoix Township and the Charlevoix County Road Commission.

The plat of North Charlevoix was dedicated on July 15, 1911 (**Exhibit 4a**) and laid out 49 lots. As platted, the subdivision ran to the edge of Pine Lake (now known as Lake Charlevoix). Lots 1 through 11 front on Lake Charlevoix, with only Beach Drive intervening between these first tier lots and the lake itself. Beach Drive runs in a meandering east-west direction contiguous to the lake on one side and the first tier lot owners on the other side.

The plat includes six dedicated streets, one of which was Beach Drive, the road at issue in this case. The plat contained the following dedication language relating to the streets:

“... the streets and alleys as shown on said Plat are hereby dedicated to the use of the public.”

In 1911, the dedication was accepted by Defendant Charlevoix County Road Commission.

The minutes of the meeting held on August 7, 1911 state:

“Mr. D.C. Littleton presented the plat of North Charlevoix. Said plat was accepted and the streets as delineated on the annexed plat. The motion was made by A. Reynolds and supported by A. Edwards. Said motion was carried.”

**(Exhibit 5a)**

The road commission has paved a portion of platted Beach Drive and maintains the paved portion as a public road running parallel to Lake Charlevoix. Between the paved portion of Beach Drive and the waters edge are trees and beach itself (**Exhibit 6a**, satellite photograph).

From the time of the dedication until shortly before this lawsuit, the road commission had never claimed that it held or controlled the riparian adjacent to Beach Drive. The road commission has never itself installed a dock along the lakeshore nor has the public been permitted to maintain docks in that area.<sup>1</sup> In fact, each of the Appellants has maintained a seasonal dock, boat moorings, boat hoists, and otherwise exercised exclusive riparian rights in the beachfront directly across the street from their respective properties. The current configuration is shown in **Exhibits 6a** and **7a**.

In 2006 and 2007, the Army Corps of Engineers contacted the Appellants and advised the Appellants that the Corps had jurisdiction over Lake Charlevoix. The Corps further advised Appellants it was necessary to obtain a seasonal dock permit from the Corps to maintain a dock in Lake Charlevoix. Appellants applied for permits, but the Corps refused to issue any permits because, according to the Corps, the road commission claimed that it possessed the riparian rights adjacent to Beach Drive. One of the Appellants advised the Corps of the decision in *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935). The Corps then issued permits to all of the Appellants who requested them, and denied permits to the off lake property owners.

Several off lake property owners threatened to sue various Appellants herein, demanding the right to maintain seasonal docks and riparian activities. Based on the foregoing activities the owners of the first tier lots brought this declaratory action.

The Charlevoix County Road Commission filed a counterclaim seeking to prevent the docks from being maintained adjacent to its right-of-way. The counterclaim requests only this relief:

“A. Determine the unlawful nature of the encroachments by Counter-Defendants into Beach Drive as shown on the Plat of North Charlevoix.

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<sup>1</sup>Certain individual members of the public may have periodically installed a dock at the terminus of Central Avenue which is of course a permissible activity. See *Jacobs v Lyon*, 199 Mich App 667 (1993).

B. Order the removal of all encroachments”

The road commission did **not** assert in its counterclaim that it held the riparian rights because of the dedication of Beach Drive.

The off lake lot owners also counterclaimed, asserting that they had obtained riparian rights by means of adverse possession or prescriptive easement. Some of these off lake owners own lots within the plat of North Charlevoix, but most of them do not.

Appellants filed a motion for partial summary disposition with respect to the road commission claims. The motion was heard on November 30, 2007.

The trial court issued its opinion on January 22, 2008. The court ruled that the Appellants herein could have riparian rights only if “they own the fee in the land under the public roadway (Beach Drive).” The trial court stated that “(t)he Court concludes that they do not and thus, their motion must fail.”

The trial court also ruled that the effect of a dedication was to “vest fee title in the local unit of government .”

Therefore, the trial court concluded, the front lot owners had no riparian rights because under the statutory dedication of the road, “the fee of this (lakefront) property has been vested in the public.”

The trial court’s opinion concludes:

Pursuant to the plat act in effect at the time the plat was made, the fee of the area designated for streets within the plat, including Beach Drive, has been statutorily dedicated to the public for its uses. The dedication was accepted by the public, both formally and informally.

. . . Because the (sic: they) do not hold fee title to the waterfront land in front of their respective lots, they do not possess riparian rights.

Appellants timely filed a motion for reconsideration in the circuit court, which was denied on March 11, 2008. Appellants timely sought leave to appeal to the Court of Appeals on September 10, 2008. The Court of Appeals issued its opinion upholding the trial court ruling on June 23, 2009. Appellants motion for reconsideration of the Court of Appeals decision was denied on August 6, 2009. Appellants now seek review from this Court.

## I. THE DEEDS OF THE FRONT TIER LOT OWNERS

On January 27, 2010, this Court granted Appellant's application for leave. In the order granting the application this Court requested a determination as to whether or not "the deeds of the front tier lot owners have specific language granting riparian rights;". The deeds of the front tier lot owners are attached and included within Appellant's appendix. The deeds are marked as **Exhibits 8a** through **17a** in Appellant's appendix. As can be seen from a review of **Exhibits 8a** through **17a**, none of the front tier lot owners deeds contain specific language granting riparian rights. A review of existing case law as set forth below does not require such specific language granting riparian rights in order to attach those rights. To the contrary existing case law prohibits severing the riparian rights.

## II. ARGUMENT

### A. Does a Statutory Dedication of a Road or Public Way Convey a Fee Simple Interest to the Accepting Municipality?

#### 1. Standard of review

This case issue involves a matter of statutory interpretation. Statutory interpretations are questions of law reviewed *de novo* on appeal.

#### 2. A statutory dedication of a public road or way does not convey fee simple title

When ruling on the motion for partial summary disposition, the trial court below (“Trial Court”) concluded that the public (via the Charlevoix County Road Commission) holds fee title to the land beneath statutorily-dedicated Beach Drive (the public road at issue).<sup>2</sup> The Trial Court came to the wrong conclusion on this issue, and as a result, ruled incorrectly on the motion. Likewise, the Court of Appeals also wrongfully opined that a statutory plat dedication conveyed an unlimited, absolute fee interest.

The question of what kind of interest a statutory public road dedication (*i.e.*, created via plat) creates in favor of the accepting municipality is well-settled in this state. There is no confusion and no split of authority.

The plat of North Charlevoix (which created Beach Drive) was made and recorded in 1911. Therefore, the 1887 Plat Act applies. The operative statutory language states:

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<sup>2</sup> At page 3 of the Trial Court decision, Judge Richard M. Pajtas stated, “A threshold issue is whether Beach Drive is an easement with fee residing in the front lot owners or whether the public holds fee title.”

At page 8 of the Court of Appeals decision, the presiding panel asserted “Accordingly, we conclude that the 1887 plat act vests in the public a fee title interest . . . .”

The map so made and recorded in compliance with the provisions of this act shall be deemed a sufficient conveyance to vest the fee of such parcels of land as may be therein designated for public uses in the city or village within the incorporate limits of which the land platted is included, or if not included within the limits of any incorporated city or village, then in the township within the limits of which it is included in trust to and *for the uses and purposes therein designated, and for no other use or purposes whatever.* (Emphasis added.)

The initial question becomes one of statutory interpretation or construction. The principle or cardinal rule is to determine the legislative intent from reference to the statutory language itself, if possible.

Appellees argue that a statutory base or determinable fee is indistinguishable from a fee simple title. Their argument that “the fee is the fee” as if they are identical. This ignores both the 1887 Plat Act and the case law that has applied that statute to dedications.

Again, the 1887 Plat Act provides:

The map ... shall be deemed a sufficient conveyance to vest the fee of such parcels of land as may be designated therein for public use ... in trust to and for the uses and purposes therein designated, and for no other use or purposes whatever. [Emphasis added]

If the statute had ended at the words “vest the fee,” then there might be some credence to the argument of Appellees. But the statute goes on to impose rigid limits on the statutory fee thus created. The concluding phrase “for no other use or purposes whatever” demonstrates that the base or determinable fee is a very limited fee.

As this Court observed most recently in *Jonkers v Summit Twp*, 278 Mich App, 263; 747 NW2d 901 (2008):

[P]latted public roads convey either a mere public easement or, at most, a “base fee” that amounts to little more than nominal title and no beneficial ownership whatsoever. [*Jonkers* at 278; emphasis added]

It is clear that the Michigan Legislature did not intend that the recordation of a plat under the 1887 Plat Act would constitute a conveyance to the municipality of a public roadway in fee simple absolute because the statute did not so say. The statutory conveyance or fee referred to in the 1887 Plat Act is the conveyance of a very limited “base fee.” *Kirchen v Remenga*, 291 Mich 94, 112; 288 NW 344 (1939). It is a statutory fee subject to qualification or a condition subsequent and is thereupon determinable. That condition or qualification is that the road be continued to be used as such and if such use be abandoned, the fee in the municipality would terminate.

The Legislature continued further and said that the determinable fee was held in trust to be used solely for the purposes stated in the dedication. By such language, the Legislature evidenced a further intent to limit the nature and extent of the interest of the trustee municipality to what was reasonably sufficient to exercise its responsibility for the dedicated item (here, road use only).

After making the estate defeasible and determinable and held in trust subject to such fiduciary responsibility, the Legislature (via the 1887 Plat Act) went on additionally to say that the fee was to be used for no other use or purposes than those designated, whatever. This language (“... for the uses and purposes therein designated, and for no other use or purpose whatsoever”) evidences a clear legislative intent that the street or road so designated could not be used for any purpose in addition to or apart from the dedicated purpose (*i.e.*, here, for anything beyond road use). The Legislature was not satisfied that the use of the property received by the public be used for any other public use. If it were used otherwise than as just a road, then the fee in the municipality would terminate. The Legislature went further to state with specificity that such use (here, road use) was the exclusive purpose for which such conveyance would or could be utilized. The addition of this language reflects an intent to preclude the utilization of other uses or purposes in addition to those specifically designated in the plat dedication.

The “metes and bounds” description and drawing of a plat limit the horizontal boundaries of the estate conveyed. The conveyance in trust, subject to the conditions and qualifications and limited only to those uses and purposes, limit the trustee in utilizing the property to the extent necessary to effect the purposes and uses designated and anything reasonably and necessarily incidental thereto. The dedication, as a practical matter, albeit with less precision, affects, defines, and limits the vertical interest in such property (the interest in the soil) received by the “trustee.” The trustee municipality takes whatever fee is reasonably necessary for the maintenance and utilization of the road as a roadway and nothing more (under the language of the 1887 Plat Act, for “no other use or purpose whatever”). The statutory language reflects such legislative intent. Thus, unless the Defendants/Appellees in this case can prove that the riparian interests in the vicinity of Beach Drive were of a reasonable and practical necessity for the use or maintenance of the property as a street or road, the Trial Court and the Court of Appeals were both clearly wrong.

The Michigan Supreme Court in *Rathbun v State*, 284 Mich 521, 534; 280 NW 35 (1938), recognized that a statute which required conveyance by the state of “an absolute title and fee” would allow the state to convey less than the fee to the surface rights and to retain all other rights. The Court said that such statutory language did not preclude the reservation of minerals and the severance of the same from the surface.

The term ‘absolute’ as used in the statutory language, ‘absolute title \* \* \* in fee,’ refers to the nature of the title and not to the nature of the property included under such title. [*Rathbun* at 534.]

The last phrase of the 1887 Plat Act “and for no other use or purpose whatever” was intended to have the effect of a reservation of so much of the estate as was not otherwise reasonably necessary for the uses and purposes in the plat dedication (here, road use only). Such language would otherwise be without purpose, and such an interpretation would be contrary to the rule of statutory

interpretation which requires that meaning should be given to every word and phrase and that every word and phrase has some purpose. *Wyandott Savings Bank v State Banking Comm'r*, 347 Mich 33; 78 NW2d 612 (1956).

Municipalities have no proprietary interest in the land underlying a road or street, nor does it act as a municipality's own private property. A municipality acquires no beneficial interest in the land dedicated to the public use as a road or street. It has, in the dedicated public road or street, no title or interest of which it can divest itself by deed, lease, or other conveyance. The use of such land has already been determined by the dedication to the public use. By constitution and statute, the supervision and reasonable control of all platted public streets and roads are given to municipalities, but their powers extend no further. *In Re Petition of Albers*, 113 Mich 640; 71 NW 1110 (1897); *City of Detroit v Railway Co*, 76 Mich 421; 43 NW 447 (1889).

Michigan case law clearly supports this interpretation of the statute. In *Cuming v Prang*, 24 Mich 514 (1872), the Court held:

Lands dedicated to the public as a highway, are by law subject only to the use of the public as such. The fee remains in the owner of the adjacent property of which it was a part, subject to the public easement. It is true that in this state, trees and the soil on a highway may be used in the improvement of it. But I do not understand that the public would have any title to a mine, a bed or peat, or turf, or gravel, found therein.

Therefore I cannot find as a conclusion of law, in the absence of any proof tending to show that the lands within the limits of the alley in question were condemned and taken by the city under the provisions of its charter, that the defendant was justified in taking the 531 yards of gravel found in the alley on the ground or that the gravel was the property of the city of Grand Rapids.

If it was the property of the city, his authority, derived through, and by means of, the arrangement with the people to whom permission was given to grade the alley, would be wholly immaterial in the case, for the plaintiff could in that case have no cause of action against him for removing it. Whether the title to the gravel was in the plaintiff or in the city, is not material in the consideration of the extent of defendant's authority. It would be the same in either case. His authority would extend no further than to justify him in using or removing as much soil or gravel as would be necessary

and proper in the execution of the improvement, and I understand that the consent of the plaintiff to the making of the improvement is to the same affect and goes no further. [*Cuming* at 517, 518.]

The Michigan Supreme Court then went on in *Cuming* to rule that because the gravel so removed was not used for the improvement of the alley (rather, the defendants excavated the gravel and transported it away for construction on another street), the defendants were liable for the removal. The Court held that the defendants' authority was derived from the municipality (the City of Grand Rapids) and that irrespective of who had title to the gravel, it could not be taken and utilized other than for the improvement of the alley even if the title to the same was in Grand Rapids.

In *Bissell v Collins*, 28 Mich 277, 278; 446 NW2d 91 (1873), the Court, in a case dealing with a street that was duly laid out on a plat and recorded as provided by law, followed *Cuming v Prang, supra*, but held that the utilization of the gravel found within the street or highway was not limited to the mere block of the street from which it was taken. It was proper to use the gravel mined on another portion of the street, thereby distinguishing the same from *Cuming*, which dealt only with a block-long alley.

*Cuming* and *Bissell* are directly precedentially dispositive of the instant case.

In *County of Wayne v Miller*, 31 Mich 447, 448-449 (1875), the Court held:

It is not very clear what sort of title the act of 1839 designated to vest in the county: whether a fee simple, or only a conditional fee, or possibly a perpetual easement. There are some questions which suggest themselves here which we should be quite indisposed to encounter until it should become absolutely essential. Unquestionably the purpose was to vest in the county such a title as would enable the public authorities to devote the lands to all the public uses contemplated in making the plan, and to charge them with corresponding obligations when the title should vest. It is very clear that no purpose existed to give a title in the nature of a private ownership. This is all we deem it necessary to say on this point in the present case, and further questions must be dealt with when they arise.

The Court in the case of *In Re Petition of Albers, supra*, stated:

Our understanding is that the city has no proprietary interest in the land, all of its authority over it growing out of its legal duty to maintain the public ways, which are placed in its charge. *City of Detroit v Railway Co*, 76 Mich 421. Such interest in the land is in the abutting proprietors ordinarily, and is apparently so in this instance, and by the express provision of the statute their rights are recognized. This statute has been applied in many cases and its constitutionality does not appear to have been questioned. [*In Re Albers* at 641-642.]

The Court said in *Scudder v Detroit*, 117 Mich 77; 75 NW 286 (1898):

Where one conveys land bounding upon a public highway, or lots upon a plat, representing them to be bounded by a street, the grantee takes the land to the center of the highway or street. *Snoddy v Bolen*, 122 Mo. 479 (24 LRA 507), and authorities cited. Under a statute identical with our's, it was held that a conveyance of a lot abutting on the street, without any express limitations, conveyed all the interest to the center of the street or alley. *Tousley v Galena; etc., Smelting Co*, 24 Kan. 328. The reservation in the dedication in that case was of 'all the mineral under the surface of such streets and alleys.' The conveyance of the lot contained no reservation. Justice Brewer said: 'If the dedicator may reserve nothing in the street, his conveyance of the lot passes the reservation.' The reservation in this case gave the platter the same interest in the streets that he would have had without the reservation, and his grantees take by virtue of their deeds all the rights he had to the center. [*Scudder* at 79-80.]

In *Loud v Brooks*, 241 Mich 452; 217 NW 34 (1928), , the Court noted:

We hold the correct rule to be that a conveyance of land bounded on a highway, street, or alley carries with it the fee to the center thereof, subject to the easement of public way, provided the grantor at the time of conveyance owned to the center and there are no words in the deed showing a contrary intent, whether the dedication of the highway, street, or alley has been accepted or not, and whether it has been opened or not .... [*Loud* at 456.]

It should be recognized that at the time of the enactment of the 1887 Plat Act, the vast majority of public ways were in the nature of easements. See *Baker v Johnston*, 21 Mich 319, 340; 1 Mich NP Supp SCIV (1887); *People v LaDuc*, 329 Mich 716; 46 NW 442 (1951).

Courts in other jurisdictions have interpreted statutes with similar language in a similar fashion. See *Mallory v Taggart*, 24 Utah 2d 267; 470 P2d 254 (1970); *Mochel v Cleveland*, 51 Ida 468; 5 P2d 549 (1930); *Neil v Independent Realty Co*, 317 Mo 1235; 298 SW 363 (1927); *City of Leadville v Bohn Mining Co*, 37 Colo 248; 86 P 1038 (1906).

The Charlevoix County Road Commission is possessed of nothing as to Beach Drive which it may sell, lease, or transfer. The rights to all interests in the land underlying platted streets, roads, and alley ways which are not reasonably and practically available or reasonably necessary and incidental to the maintenance and operation of such public ways as a street, road, or alley must be owned in fee by either (a) the owners of undivided fee interests in the adjoining lots, or (b) by those persons or entities which have reserved (in prior conveyances) fee title to the same.

*Village of Kalkaska v Shell Oil Co*, 433 Mich 348 (1989) is directly on point. The Court of Appeals did not attempt to distinguish *Kalkaska* from the case at bar and the trial court's attempt to distinguish it was ineffective.<sup>3</sup> Perhaps the Trial Court believed that *Eyde Brothers Development Co v Eaton Co Drain Comm*, 427 Mich 271; 398 NW2d 297 (1986) (which held that a "public easement by highway dedicated by user is not limited to surface gravel ...") was the guiding law. However, in the case at bar, the road dedication is pursuant to the 1887 Plat Act and a highway-by-user situation is not involved.

Another stubborn case which Appellees seek to ignore is this Court's recent opinion in *Jonkers v Summit Twp*, 278 Mich App 263; 747 NW2d 901 (2008). This Court in *Jonkers* stated:

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<sup>3</sup> The Trial Court basically said that mineral interests are different than riparian rights because mineral interests are severable. That misses the point, however. The Charlevoix County Road Commission never received the riparian interest under Beach Drive because it never received fee simple absolute to the property. The base or determinable fee conveyed to it only a limited right to use the surface of the land for a road. The riparian rights were never granted to the municipality.

In the absence of a clearly-expressed contrary intent, ‘the conveyance of a parcel of land bordering on a highway contiguous to a lake shore conveys the appurtenant riparian rights.’ [*Jonkers* at 269 (citing *Croucher v Wooster*.)]

Like the Village of Kalkaska, the Appellees herein claim that a statutory plat dedication conveys an absolute fee. This Court *Village of Kalkaska* rejected that argument. See *Village of Kalkaska, supra* at 354-356. This Court should reject that notion again in the instant matter.

**B. Does a Statutory Dedication of a Public Way Create a Determinable Fee?**

**1. Standard of review**

This case issue involves a matter of statutory interpretation. Statutory interpretation are questions of law are reviewed *de novo* on appeal.

**2. A statutory dedication of a platted public way or road creates a limited determinable fee in favor of the accepting municipality**

Since the promulgation of the very first plat statutes in Michigan, it has always been true that a municipality which has accepted an offer of dedication receives only a conditional and limited property interest.

In the current case, it is undisputed that the plat of North Charlevoix encompasses a former metes and bounds description which ran to the water’s edge. Accordingly, it is undisputed that the proprietor/developer/grantor of the plat held the riparian rights prior to the platting process being completed. No party herein argues that the proprietor/developer/grantor retained the riparian interests after platting.

If the creator of the plat of North Charlevoix had conveyed the area shown on the plat as Beach Drive via an unconditional deed, then the grantee of that deed would have absolute fee simple title (including the riparian interest). Were the Charlevoix County Road Commission to have absolute fee simple title, then it would also hold the adjacent riparian interest. Instead, the Road

Commission received only a limited right to use the land for a road. The issue presented herein is *not* one of first impression.

*Krause v Dept of Commerce*, 451 Mich 420; 547 NW2d 870 (1996), is considered a seminal case in the area of plat law. See *Hall v Hanson*, 255 Mich App 271; 664 NW2d 786 (2003). The *Krause* Court (quoting with authority from *Field v Village of Manchester*, 32 Mich 279; (1875)), opined that when a municipality does not accept a grantor/developer's offer to dedicate a street, the owners of the lands fronting thereon may again take possession of that property and treat it as though, in all respects, no offer of a street dedication had ever been made. See *Krause* at 431. In other words, the fronting land owners hold a reversionary right to the lands dedicated to road use.

In the current case, the "fronting land owners" (or first tier lot owners) are the owners of lots 1-11 of the plat of North Charlevoix. Lots 1-11 front Beach Drive and are only separated from Lake Charlevoix by Beach Drive. The plat showed no land intervening between Beach Drive and the lake at the time of platting. Beach Drive was offered for dedication as a street or road, and for no other purpose whatsoever. See Exhibit D of Appellants' Brief on Appeal in the Court of Appeals.

At least three separate published Michigan Court of Appeals opinions have determined that the owners of platted lots fronting a platted public road at a lake hold the adjacent riparian interest. See *McCardel v Smolen*, 71 Mich App 560, 562; 250 NW2d 496 (1976), reversed in part on other grounds, 404 Mich 89; 273 NW2d 3 (1978); *Kempf v Ellixson*, 69 Mich App 339; 244 NW2d 476 (1976); and *Michigan Central Park Assn v Roscommon County Road Comm'n*, 2 Mich App 192; 139 NW2d 333 (1966). Each of these cases will be discussed in detail below.

The statutory conveyance for Beach Drive in the plat of North Charlevoix is the conveyance of a limited base or determinable fee. *Kirchen v Remenga*, 291 Mich 94, 112; 288 NW 344 (1939). Had the Legislature intended that the statutory dedication would constitute a conveyance in fee

simple absolute, the statute would have said so. The Legislature made it clear that the conveyance was a conveyance for a specified purpose only.

This Supreme Court has indicated that a statutory plat dedication does not transfer all the incidents of ownership that attach to an absolute fee title. In *Kalkaska v Shell Oil Co, supra*, the Village of Kalkaska asserted that a base fee transferred all the incidents of ownership that attach to an absolute fee. See *Kalkaska* at 354. That argument was soundly rejected by the Court.

In *Backus v City of Detroit*, 49 Mich 110; 13 NW 380 (1882), the Michigan Supreme Court said “the purpose of the statute is not to give the county the usual rights of a proprietor, but to preclude questions which might arise respecting the public uses, other than those of mere passage ...” (emphasis added). *Backus* at 115.

There is no evidence in this case to show an intent by the developer of the Plat of North Charlevoix to convey something more than the right of “mere passage” for Beach Drive, then the Charlevoix County Road Commission has received nothing more than that right of passage (certainly not the riparian rights). The intent of the dedication is, in fact, stated in the language of the dedication on the plat, which limits it to “streets and alleys.”

**C. Do the Owners of the Platted Lots Fronting on a Public Way or Road Own the Adjacent Riparian Lands?**

**1. Standard of review**

This case involves a matter of statutory interpretation. Statutory interpretations are reviewed *de novo*.

**2. The owners of lots adjacent to a platted lakeside parallel public road or way control the riparian rights opposite their lots**

It is axiomatic the riparian lands cannot be severed from the adjacent upland. See *Thompson v Enz*, 379 Mich 667, 686; 154 NW2d 473 (1967). It is equally clear that a statutory dedication of

a public way or road conveys no interest beyond mere passage, absent a more specific expansive grant. See *Backus v City of Detroit* and *Kalkaska v Shell Oil Co*, *supra*. In the case at hand, Appellants assert they are the fee title holders to the lands over which Beach Drive is platted. They further assert that as the fee title holders, they control the adjacent subaqueous lands to Lake Charlevoix and their lands are riparian. Every published decision in this state supports Appellants' argument herein.

In *Michigan Central Park Assn v Roscommon County Road Comm'n*, 2 Mich App 192; 139 NW2d 333 (1966), the Court of Appeals decided who owned the riparian rights to submerged lands adjacent to Michigan Central Park Boulevard. In that case, lands were platted in 1902 lying adjacent to the west shore of Higgins Lake. Along the lakeshore, the proprietor dedicated an irregular strip of land and designated it as a boulevard. All the streets, boulevards, and alleys in the subdivision were dedicated to public use. The overall development scheme was very similar to the scheme laid out in the plat of North Charlevoix in this case. The Roscommon County Road Commission argued that since the boulevard was platted and dedicated to public use, the riparian rights were held or shared by the public. The basic issue presented was whether or not the owners of the lots fronting on the boulevard had the exclusive riparian rights to Higgins Lake. The Roscommon County Circuit Court held that they did, *and Court of Appeals agreed*.

Several years after *Michigan Central Park Assn*, the Court of Appeals revisited Higgins Lake and the issue of riparian rights along parallel roads in *Kempf v Ellixson*, 69 Mich App 339; 244 NW2d 476 (1976). In *Kempf*, the Court of Appeals considered two separate lakeside plats known as Lyon Manor Subdivision and Shoppenagon Lodge. The plats were laid out side by side. Both plats adjoin the south shore of Higgins Lake. A lakeside platted public boulevard, known as Sam-o-

Set Boulevard, runs along the lakeshore for the entire width of both plats. Opposite the shore and Sam-o-Set Boulevard are a first tier of lots that are separated from the lake only by Sam-o-Set Boulevard (the same as the lots in the current case). The first tier lots had defined boundaries and were not shown as extending to the water's edge due to the intertwining boulevard (as in the current case). The trial court ruled that the first tier lot owners had the exclusive riparian rights opposite their respective lots, and ordered that so-called "public" docks be removed. *The Court of Appeals affirmed.*

The Roscommon County Road Commission and various back lot owners in the two plats involved in *Kempf* argued that even though there was no express mention of riparian rights in the plat dedication of the boulevard, the placement of a boulevard immediately adjacent to the shore supposedly indicated an intention to create rights for public waterfront recreation. The Court of Appeals rejected the backlot owners' and Road Commission's argument. The Court of Appeals held that only an express limitation in the dedication language can prevent riparian right from attaching to lots abutting a public highway. See *Kempf* at 342. The Court of Appeals went on to say that "appellants have not presented a cogent argument for finding that Sam-o-Set Boulevard is not only a public highway, but also a public recreation area." *Kempf* at 342. See also, *Sheridan Drive Assn v Woodlawn Back Property Owners Assn*, 29 Mich App 64; 185 NW2d 107 (1970). In the case at bar, Appellees cannot point to an express limitation in the plat of North Charlevoix which would prevent the adjacent riparian rights from attaching to lots 1-11 of the plat.

*Kempf*, *Sheridan Drive Assn*, and *Michigan Central Park Assn*, were all cited for supporting authority in *Higgins Lake Property Owners Assn v Gerrish Twp* (unpublished Michigan Court of Appeals Case No. 235418, decided October 30, 2003), wherein the Court of Appeals determined that

Michigan Central Park Boulevard, in the plat of Michigan Central Park First Addition, did not give riparian rights to the public. Those subaqueous rights belonged to the lot owners opposite the boulevard.

Finally, in the matter of *McCardel v Smolen*, 71 Mich App 560 (1976), the Court of Appeals once again addressed riparian ownership adjacent to a public platted road parallel to a lake. In *McCardel*, a developer laid out a lakefront plat on the east shore of Higgins Lake. The plat was created in 1901, also pursuant to the 1887 Plat Act. As part of the development scheme, the developer created a lakeside boulevard, which was over 100 feet in width at some locations.<sup>4</sup> The lakeside boundary of the boulevard was the water's edge. The plaintiffs all owned so-called "front lots," separated from Higgins Lake only by the boulevard. The trial judge ruled that the front lot owners were riparian. *This Court agreed*. The Court of Appeals specifically held:

#### Who owns the riparian rights?

The plaintiff front lot owners also own the riparian rights in the boulevard frontage. That issue was resolved in their favor by three previous decisions of this Court, all of which involved Higgins Lake property. *Michigan Central Park Association v Roscommon County Road Commission*, 2 Mich App 192; 139 NW2d 333 (1966), *Sheridan Drive Association v Woodlawn Backproperty Owners Association*, 29 Mich App 64; 185 NW2d 107 (1970), and *Kempf v Ellixson*, 69 Mich App 33; 224 NW2d 476 (1976). Each of those cases relied on *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935). The cited cases support the trial judge's ruling that only the plaintiffs have riparian rights in the boulevard frontage.

The defendants ask us to distinguish *Croucher* because the government in that case had only a highway easement, whereas Roscommon County is said to have a fee simple title to the boulevard property involved in this case under the terms of the plat act in effect when the

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<sup>4</sup> A boulevard is a type of road or street. See *Ballentine's Law Dictionary* (3rd Ed, 1969), p 151.

**Boulevard.** A street or highway more elaborate than the ordinary highway or street in respect both of width, style and manner of construction. 25 Am J Rev ed High § 6. It may be given a parklike appearance by reserving spaces at the sides or center or shade trees, flowers, seats, and the like, and be set apart for pleasure driving rather than the general purposes of traffic. *Haller Sign Works v Physical Culture Training School*, 248 Ill 436; 94 NE 920.

subdivision plat was recorded. 1887 PA 309. Actually, that statute provided that the government would take a fee ‘in trust to and for the uses and purposes therein [the plat] designated, and for no other use or purpose whatever.’ Even if a distinction is possible we will not adopt it. There are problems with the *Croucher* rule, but an exception vesting the riparian rights in the public would create problems of its own—including the need to precisely define the underlying title in every case. *Croucher* at least offers uniformity, a more attractive feature than any offered by the defendants’ proposed distinction. [71 Mich App 560, 565-565 (1976) .]

Much like Appellees herein, the appellees in *McCardel* asked the Court of Appeals to distinguish *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935), because the government there had only an easement, whereas the Roscommon County Road Commission in *McCardel* had fee title to the boulevard pursuant the plat act 1887 Plat Act. The Court of Appeals declined to distinguish *Croucher, supra*, stating, “Even if a distinction is possible we will not adopt it ....” *McCardel* at 564. The Court of Appeals was not concerned about holding that the front tier owners owned the riparian rights adjacent to the boulevard without “owning” the boulevard itself.

But here the plaintiffs own the riparian rights and nothing more. [*McCardel* at 565.]

The case at bar is not distinguishable from *McCardel*. The Appellants herein are exclusively riparian.<sup>5</sup>

As recently as seven years ago, the Court of Appeals again recognized that the lake parallel platted public road case law was well-settled, such that the owners of the first tier of lots are the riparian landowners. The Court stated:

In *McCardel v Smolen*, 71 Mich App 560, 562; 250 NW2d 496 (1976), aff’d in part and vacated in part, 404 Mich 89; 273 NW2d 3 (1978), this Court, addressing a dispute between the owners of front lots and back lots in a subdivision located on Higgins Lake, was presented with the following facts:

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<sup>5</sup> It must be pointed out that this Court’s opinion in *McCardel v Smolen* was partially overturned by this Court at 404 Mich 89, 94-95; 273 NW2d 3 (1978). However, this Court did not overturn the portion of this Court’s published opinion in *McCardel v Smolen* which dealt with the riparian status of the first tier lot owners along the public road. In fact, this Court expressly recognized that the portion of the Court of Appeals *McCardel v Smolen* opinion was not at issue before the Michigan Supreme Court. 404 Mich 89, 94-95.

Lots in the subdivision are separated from the waters of Higgins Lake by a strip of land designated on the plat as Michigan Central Park Boulevard. The boulevard was dedicated to the county, ostensibly as a public street. But the 'boulevard' is actually nothing more than undeveloped beach property. We are asked to decide who owns the riparian rights in the boulevard frontage and to define those rights.

Roscommon County had a fee simple interest in the strip of land, and this Court held that the plaintiffs, owners of the lots directly abutting the 'boulevard,' held the riparian rights. *Id.* At 564; 250 NW2d 496. The determination that the plaintiffs held the riparian rights was not reviewed by our Supreme Court on leave granted. 404 Mich at 94-95; 273 NW2d 3. [*Dorothy A Oliver Revocable Trust v Denton Twp* (unpublished Michigan Court of Appeals No. 230765 decided August 13, 2002).

Interestingly, in the *Dorothy A Oliver Revocable Trust* case, the trial court below held that the riparian rights to the platted outlot at issue belonged to the county in fee simple and even that determination was reversed by this Court.

Finally, the authoritative Michigan Land Title Standards (Fifth Edition) published by the Land Title Standards Committee of the Real Property Law Section of the State Bar of Michigan states in Comment B in Standard No. 24.5 as follows:

A parcel of land separated from a natural watercourse by a highway or walkway, where the highway or walkway is contiguous to the watercourse, is riparian, unless a contrary intention appears in the chain of title. *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935); *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985); *Meridian Twp v Palmer*, 279 Mich 586; 273 NW 277 (1937). Where a dedicated highway or walkway parallels and is contiguous to a natural watercourse, the rights (if any) of the public for access to and use of the watercourse from the highway or walkway are determined by the scope of the dedication. *McCardel v Smolen*, 404 Mich 89; 273 NW2d 3 (1978); *Thies, supra*; *Meridian, supra*. [Michigan Land Title Standards (5th Ed), Standard 24.5, Comment B.]

**D. Does the Michigan Court of Appeals Distinguish Away Existing Controlling Case Law ?**

**1. Standard of review**

The case involves a matter of statutory interpretation. Statutory determinations are reviewed de novo.

**2. The Appellees Fail to Distinguish the Case At Bar From Existing Controlling Case Law**

Appellees attempt to distinguish away the mountain of Michigan appellate case law which indicates that the first tier lot owners in this case are riparian based on two main reasons. First, they assert that the Michigan Supreme Court opinion in *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985) indicates that this case should be decided in favor of the Charlevoix County Road Commission. Second, they claim that many of the appellate parallel road cases involved unimproved roads, whereas Beach Drive is improved. However, neither distinction is persuasive.

Apart from the abandonment or vacation of a road, there is nothing in Michigan appellate case law which indicates that the property rights associated with a road, the ownership of the underlying soil, the rights of abutting landowners, etc., is dependent upon or determined by whether or not the road is fully improved, partially improved, or physically nonexistent. Accordingly, whether Beach Drive in this case is currently paved, gravel, or has not been physically improved at all is irrelevant to the determination of whether or not the first tier lot owners have riparian property rights.

The reliance by Appellees on *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985), is very misplaced. In fact, *Thies v Howland* actually supports the position of the Appellants in this case. Of course, it should be noted that the Michigan Supreme Court itself in *Thies* cited both *Croucher v Wooster* and *McCardel v Smolen* approvingly. *Thies* at n 6 (p 288), 289, n 5 (p 289), 290-291, n 7 (p 293), 293, 295. In fact, in footnote 6, the *Thies* Court also even mentioned *Kempf*, *Sheridan Drive Assn*, *Michigan Central Park Assn*, and *McCardel*. *Thies* at 290 (n-6). It can hardly be argued that *Thies* implicitly overruled *Croucher*, or this Court's opinions in *McCardel*, *Kempf*, *Sheridan Drive Assn* or *Michigan Central Park Assn*.

*Thies* involved private platted walks parallel along the shore and private alleys which ran perpendicular to the lake. Accordingly, the dedication in *Thies* was private and the dedication in the current case was public. *Thies* recognized that distinction, but also stated as follows:

The cases which have applied *Croucher* only involved ways dedicated to public use. Nevertheless, we believe that *Croucher* is equally applicable to ways dedicated to the private use of a finite number of persons. The relevant inquiry is not who may use the way, but whether the abutting land owner owns the fee in any way which separates his property from the water.

While there is some authority to the contrary, the majority of the courts have followed the rule that land which is separated from water by a highway or street the fee of which is in the public is not riparian land; but where the fee in the land covered by the highway or street is in the owner of the land, riparian rights remain in such owner. 78 Am Jur 2d, Waters, § 273, p 716. (Footnote omitted.)<sup>6</sup> See also 79 Am Jur 2d, Wharves, § 5, p 179; 1 Farnham, Water & Water Rights, § 144, pp 666-667; Plager & Maloney, *Multiple interests in riparian land, subdivision platting, and the allocation of riparian rights*, 46 U Det J Urb L 41, 50 (1968). [*Thies* at 291.]

The *Thies* Court went on to discuss *Croucher*:

Although there is conflicting authority in other jurisdictions, the issue was settled in this state by *Croucher*. There, the dedication of the plat described the platters' land as lying south of a public highway that paralleled the lakeshore. The two lots at issue abutted the highway which, at those points, was in direct contact with the water. All of the deeds described the lots only by the lot numbers noted on the plat. The platters conveyed each lot at issue twice. The question presented was whether the platters had parted with all of their interest in each lot, including their riparian rights, under the first conveyance. This Court concluded that a fee interest in each lot, which included the adjoining portion of the highway and the appurtenant riparian rights, passed to the first grantees, subject to the public's use of the highway:

'Since lot 26 fronted upon the highway at a place where there was no land intervening between the lake and the opposite side of the highway, the conveyance of the lot on the south side carried with it, subject to express limitations appearing therein, the same riparian

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<sup>6</sup> It is this quote which Appellees seize upon and quote out of context. It is obvious that this Am Jur 2d quote means "fee simple absolute" when it mentions "the fee."

rights on the opposite side of the highway as it would had the lot itself been contiguous to the shore line.

“Where a highway is laid off entirely on the owner’s land, running along the margin of his tract, and he afterwards conveys the land, the fee in the whole of the soil of the highway vests in his grantee. Likewise, where a street is laid out wholly on the owner’s land and on the margin of his tract, so that he owns nothing beyond, the whole of the street opposite a lot bounded on the street passes to the grantee of the lot.” 8 Consent Judgment p 203. See note citing numerous cases, including *Johnson v Grenell*, 118 NY 407 (81 NE 161, 13 LRA [NS] 551).

‘As bearing upon the acquisition of riparian rights on the opposite side of the highway, we quote from the syllabus of the *Grenell Case*:

“Where the owner of an island in a navigable river, which has been laid out into lots, with boulevards, streets and roads, according to a map upon which the lots were designated by numbers, sold a lot abutting upon a boulevard running along and extending to the waters of the river, the lot being conveyed as ‘Lot numbered 34 as laid out on the map.’ ... and the deed contains no language from which it can be inferred that the grantor intended to reserve any interest in the fee of the boulevard itself or in the appurtenant riparian rights, the legal title to the whole of the boulevard in front of the lot in question, together with the riparian rights, passed to the grantee of the lot, subject only to the public easement or right of passage over the boulevard.” *Johnson v Grenell, supra.* *Croucher*, 271 Mich 342-343; 260 NW 739. [*Thies* at 291-292.]

In footnote 7, the *Thies* Court noted:

The *Croucher* Court recognized that contrary conclusions had been reached in other jurisdictions. However, it distinguished many of these cases because there was land intervening between the highway and the shore. 271 Mich 344-345. Intervening land owned by another prevents the land on the opposite side of the highway from being deemed riparian. See also, *Fuller v Bilz*, 161 Mich 589; 126 NW 712 (1910); *Michigan Central Park Ass’n*, 2 Mich App 198; 139 NW2d 333. [*Thies* at 293.]

Finally, the *Thies* Court concluded the *Croucher* discussion:

Although *Croucher* and *Johnson v Grenell* discussed only land abutting public ways, the holding of these cases can be stated more broadly: Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to an easement. Since the

owner's property is deemed to run to the water, it is riparian property. *Id.*, p 345; 260 NW 738. See also, *Meridian Twp v Palmer*, 279 Mich 586; 273 NW 277 (1937); *Plager & Maloney*, 45 U Det J Urb L 59-61. Thus, plaintiffs are presumed to own the fee in the walk running along the front of their lots unless the platters intended otherwise. [*Thies* at 293.]

The proverbial "red herring" argument used in this case by Appellees is their assertion that the first tier lot owners (the owners of those lots which front on Beach Drive) cannot be riparian because the deeds for those lots do not mention riparian rights and the legal descriptions for the lots do not extend to the water's edge. Of course, that is the case with virtually every platted lot fronting on a parallel public road, and virtually every one of the Michigan appellate cases has deemed those lots to be riparian. See *McCardel*, *Michigan Central Park Assn*, and *Sheridan Drive Assn*. This Court can take judicial notice of the fact that the legal description for very few riparian properties in Michigan (whether a platted lot or unplatted parcel is involved) expressly mention riparian rights. Furthermore, the side lot lines of the first tier of platted lots along a platted parallel road at a lake are deemed to extend under the road (subject to the road right-of-way) to the waters of the lake by operation of law. *Ibid*. Therefore, it is of no consequence that the deeds to the first tier lots in this case do not mention riparian rights and that such lots' legal descriptions do not expressly extend beyond the road to the water's edge.

Appellees essentially argue that since the 1887 Plat Act gives the Charlevoix County Road Commission the base or determinable fee to Beach Drive, then that fact somehow precludes or crowds out the ability of the first tier lot owners to hold the underlying riparian rights. Of course, Michigan appellate case law does not support that conclusion and in fact indicates that the two rights can and do exist simultaneously. See *McCardel*, *Thies*, and *Jonkers*.

The statutory base or determinable fee held by the Charlevoix County Road Commission pursuant to the 1887 Plat Act is very limited. Pursuant to the case law, such right is more than a

mere easement but less than fee simple ownership. It does not contain the full “bundle of sticks” associated with full land ownership rights. Given that the interest held by the Charlevoix County Road Commission to Beach Drive is less than fee simple absolute ownership (and particularly given that the base or determinable fee was created by statute and not by the common law), it is entirely logical that the adjoining platted lot owners can own certain rights of the soil underlying the road (particularly, those soil-based rights not having to do with the road), including the riparian rights. The two ownership interests (that of the Charlevoix County Road Commission and the first tier lot owners) are not mutually exclusive or preclusive.

A base or determinable fee can coexist quite comfortably with a different fee simple title. The holder of the base or determinable fee has the superior right to control the dedicated property “for the uses and purposes therein designated, [but] for no other use or purpose whatever.” See the 1887 Plat Act. Note that the limitation is not merely temporal, in that the base or determinable fee ends if the road is vacated. It is also limited in its “use and purposes” while it exists.

The situation that applies when a road is vacated demonstrates the relationship between the base or determinable fee and the adjoining landowner. “[W]hen there is an absolute abandonment of a road or right of way, under common law a street or alley that is vacated reverts to the abutting landowner.” *Twp of Dalton v Muskegon County Bd of Road Comm’rs*, 223 Mich App 53, 57; 565 NW2d 692 (1997). The vacated area does not become separate but instead accrues to the adjacent parcel.

### III. CONCLUSION

Appellants respectfully request that this Court determine that the first tier of lots along Beach Drive exclusively hold the adjacent riparian privileges, and that the decision of the Michigan Court of Appeals and the decision of the Charlevoix County Circuit Court at issue in this appeal are reversed.

Respectfully submitted,

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