STATE OF MICHIGAN

IN THE SUPREME COURT

APPEAL FROM THE COURT OF APPEALS

(Fort Hood, P.J., 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 ANN EHINGER, husband and wife, DANIEL ENGSTROM and PENNY ENGSTROM, husband and wife, THOMAS HELZERMAN and PATSY HELZERMAN, husband and wife, SHAUN MacMILLAN and RACHEL MacMILLAN, 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,

Supreme Court No. 139617
Court of Appeals No. 284547

Charlevoix Circuit Court
Case No.: 07-611-21-CH

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BRIEF ON APPEAL

APPELLEE CHARLEVOIX COUNTY ROAD COMMISSION

****ORAL ARGUMENT REQUESTED****

and

AL GOOCH and ELIZABETH GOOCH, husband and wife, JESSE HALSTEAD and LINDA HALSTEAD, husband and wife, MICHAEL MacMILLAN and KAYE MacMILLAN, 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. SAPE, ELTON WILKERSON and JUDY WILKERSON, husband and wife, MARTY JENSEN, and DAVID NIEWICK 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

APPELLEE CHARLEVOIX COUNTY ROAD COMMISSION

ORAL ARGUMENT REQUESTED

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COUNTER STATEMENT OF BASIS OF APPELLATE JURISDICTION

Defendant-Appellee Charlevoix County Road Commission ("CCRC") agrees that this Court has jurisdiction pursuant to MCR 7.302 (G)(1), having granted on January 27, 2010, an application for leave to appeal the June 23, 2009, opinion and decision of the Michigan Court of Appeals in this case.

COUNTER STATEMENT OF QUESTIONS PRESENTED

This Court, in its January 27, 2010, order granting the application for leave to appeal in this case, indicated that "[t]he parties are to discuss (1) whether the fee title resulting from the dedication of land for public uses in a plat under the 1887 Plat Act in land that runs along the shore of a lake conveys the riparian rights to the lake to the County or whether the conveyance is limited to public uses of the road as a road; and (2) whether the deeds of the front tier lot owners have to have specific language granting riparian rights; and whether case law that states that front tier lots adjacent to a road running along a water way have riparian rights unless such rights are expressly excluded is still valid". Appellee CCRC's statements of these questions are included below:

I. Where there has been a statutory dedication to the public of property along a lakeshore for the use of the public, and that dedication has been formally and informally accepted by the public, does the public hold the fee to the subject property?

   Appellants answer "no."

   Appellee Charlevoix County Road Commission answers "yes."

   The Charlevoix County Circuit Court answered "yes."

   The Michigan Court of Appeals answered "yes."

II. Does the fee title resulting from the dedication of land for public uses in a plat under the 1887 Plat act in land that runs along the shore of a lake cut off appellants' claim of riparian rights and convey riparian rights to the lake to the public to the extent such rights are within the purposes designated by the dedication.

   Appellants answer "no".

   Appellee Charlevoix County Road Commission answers "yes".

   The Charlevoix Circuit Court answered "yes".

   The Michigan Court of Appeals answered "yes".

III. Is case law stating that front tier lots adjacent to a road running along a water way have riparian rights unless such rights are expressly excluded applicable with regard to a platted road?

   Appellants answer "yes".

   Appellee Charlevoix County Road Commission answers "no".

The Charlevoix Circuit Court has not addressed this question.

The Michigan Court of Appeals has not addressed this question.

IV. Do the deeds of front tier lot owners have to have specific language granting riparian rights if such lots do not touch the water or an easement touching the water.

Appellants answer "no".

Appellee Charlevoix County Road Commission answers "yes".

The Charlevoix Circuit Court has not addressed this question.

The Michigan Court of Appeals has not addressed this question.

COUNTER STATEMENT OF FACTS

This case involves the property indicated as "Beach Drive" on the Plat of North Charlevoix, dated July 15, 1911 (Appellants' Appendix, 4a). The plat contains a dedication of the streets shown on the plat, including Beach Drive, to the use of the public (Appellees' Appendix, p 1b).

According to the plat, the lakeward side of Beach Drive runs along the water's edge of Pine Lake, now Lake Charlevoix (Appellees' Appendix, p 2b). Plaintiffs are the owners of 8 out of 10 parcels of property located on the upland side of Beach Drive. The owners of the other two parcels have not participated in this action.

Plaintiff-appellants initiated their four-count complaint against the CCRC, as well as against all other defendants in this action. Plaintiff-appellants' complaint contains claims for "Injunctive Relief", "Trespass", "Nuisance in Fact", and "Quiet Title" against the CCRC and the other defendants (Appellees' Appendix, pp 3b-16b).

The CCRC answered the complaint by denying that it has engaged in any activity in connection with Beach Drive that would justify or require "Injunctive Relief" against it, or that would constitute a "Trespass" or a "Nuisance in Fact", or that would support a quieting of title to the Beach Drive property in favor of plaintiffs. Furthermore, the CCRC has disputed the legality of plaintiffs' evolving claim of riparian rights associated with Beach Drive.

The goal of plaintiffs' complaint is to exclude the public, including nearby property owners, from the platted area of Beach Drive or portions thereof (Appellees' Appendix, pp 10b, 11b, 12b,13b). However, plaintiffs have only sought summary disposition below with regard to the CCRC, by filing a motion that sought a declaratory ruling that plaintiff-appellants possess riparian rights to the subject property. After briefing and oral argument, plaintiffs' motions for

partial summary disposition and for reconsideration or rehearing were denied by the circuit court (Appellants' Appendix, 3a; Appellees' Appendix, pp 36b-37b).

The appellants thereafter sought and were granted leave to appeal by the Michigan Court of Appeals. After hearing the appeal, the court of appeals issued its opinion on June 23, 2009, affirming the trial court's decision (Appellants' Appendix, 1a). Appellants filed a motion for reconsideration with the court of appeals, which was denied on August 6, 2009 (Appellants' Appendix, 2a). The appellants are now appealing the decision of the court of appeals.

No grant of riparian rights is contained in plaintiffs' deeds of record, and the legal descriptions of their properties do not go to the water's edge (Appellants' Appendix, 3a, 1a, 8a-17a). Nothing in the record demonstrates that plaintiffs paid any consideration for riparian rights (Appellants' Appendix, 1a, p 10). Furthermore, none of appellants' lots are taxed as riparian parcels (Appellees' Appendix, p 39b).

As indicated in the record below, the plat and the dedication of streets were accepted by the public as indicated in meeting minutes of the Charlevoix County Board of Supervisors from August 7, 1911 (Appellants' Appendix, 3a, p 2). Further indications of the formal acceptance of Beach Drive by the public have been made at other times during the last century. For example, the CCRC has certified Beach Drive since at least 1970 as being in use and under the jurisdiction of the CCRC (Appellees' Appendix, p 41b). The CCRC has also reaffirmed this acceptance as part of a resolution adopted by it on April 14, 1969 (Appellants' Appendix, 5a). The CCRC has also informally accepted the dedication of Beach Drive by opening and maintaining a roadway on this property on a year-around basis (Appellees' Appendix, p 41b).

Appellants have included a photograph that was never authenticated, offered, or entered into the record of this matter at the trial court (Appellants' Appendix, 6a). In addition to not

being part of the trial court record, appellants' photograph is misleading. The shading of the photograph inaccurately depicts the property between the road as it is depicted on the photograph and the lake as being wooded and covered. Also, the text "Beach Dr" has been superimposed on the photograph in a manner that erroneously depicts the roadway as being confined to its paved portion, contrary to the depiction of the roadway on the plat (Appellants' Appendix, 4a).

The conditions of the subject property are more accurately depicted on the two aerial photographs that are included in Appellees' Appendix, pp 42b-43b. Also, any effort by appellants on appeal to confine Appellee CCRC to the paved portion of the subject roadway is contrary to the position that appellants took before the circuit court on the motion for partial summary disposition on which this appeal is based. In the circuit court, appellants' counsel conceded several times that the platted Beach Drive property goes to the water's edge. This is indicated in the following passages from the transcript:

> (By appellants' counsel Mr. Beatty) Then the Road Commission's argument in their brief talks about what frankly was troubling to me at first and until I looked at the cases, and the court has asked a question on it, saying well look, I mean, this – this is the funniest looking road I've ever seen. It doesn't matter how funny it is, the drafters of this plat had a right to lay out the roads however they chose. The Road Commission had the right to either accept that dedication or not and their attorney has told you that they have accepted the delineation being the front tier and the water's edge.
>
> And then the Road Commission brief goes on to say that look, the road isn't just restricted to the travel portion, all of that land is dedicated to us for use by the public for road purposes. And we'll get to the statute in a minute. The statute said and road purposes only and none – no other purpose whatsoever.
>
> But the Road Commission argues that all of that land has been dedicated and accepted and they point out, and I think accurately so, that you know, the travel point – you got to throw snow someplace, you've got to do other things so that the mere fact that the traveled portion doesn't occupy all of the dedicated width really is immaterial. The dedication, the acceptance of the dedication and the use and the improvement is what controls.
>
> **So, as startling as it was for me in preparing for today's argument, we do endorse attorney Wurster's argument that all of that is road property, because we believe it**

is. And the dedication is clear that it is (Appellees' Appendix, pp 28b-29b, emphasis added).

* * *

(By appellants' counsel Mr. Beatty) **Getting back to the width of the road issue and the fact that we endorse the Road Commission's view of that matter**, I would point the court to the *Kempf* (ph) case. In the *Kempf* case they talked about the fact that there – it's important and critical that there be no land intervening between the water and the highway. **Well, you go back to the plat to make that determination. And as the Road Commission has told you in opening statements and which I have argued that here (ph), there is no intervening land between the roadway and the water. The southern limit of the road is the water's edge and that was clearly the intent of the drafters at the time that they dedicated this subdivision** (Appellees' Appendix, p 30b, emphasis added).

Further admissions by plaintiffs' counsel that the platted Beach Drive property goes to the water's edge are contained in the transcript of the circuit court proceedings (Appellees' Appendix, pp 26b-27b, 34b).

In their Statement of Facts, appellants also assert facts that are wholly outside of the record below. In the first paragraph on page 2 of appellants' brief, they indicate that they have "...exercised exclusive riparian rights in the beachfront directly across the street from their respective properties." This assertion is not supported by the record in this case and is contrary to the indications in appellants' complaint through which they are seeking to establish exclusive rights to the beachfront against all other parties to this action (Appellees' Appendix, pp 7b-9b,¶ 12 A-N; p 10b,¶15, 19; p 11b,¶24).

The second paragraph on page 2 of appellants' brief contains assertions relating to the Army Corps of Engineers that are unsubstantiated and outside the record below. Appellants' also refer in the third paragraph on page 2 of their brief to threats by several "off lake" property owners to sue appellants herein. Apart from this lawsuit by appellants, the CCRC is unaware of any lawsuit threats being made by any party to this action or that have been established as part of

the record below. As noted by the Court of Appeals, there is no documentation in the lower court record reflecting these asserted facts (Appellants' Appendix, 1a, p 3, n 2, 3).

The appellants, in the last paragraph of page 2 and the first 2 paragraphs of page 3 of their Statement of Facts also seek to characterize the counterclaims of appellee CCRC and others in this case. However, none of these counterclaims have yet been heard or resolved by the trial court and are therefore not an appropriate subject for appellants' appeal of other decisions of the lower courts.

ARGUMENT

I. The lower courts correctly concluded that the fee of the platted property designated as "Beach Drive" is vested in the public.

Standard of review. Appellee CCRC agrees that the de novo standard of review is applicable to this appeal to the extent it involves an order on summary disposition, matters of statutory interpretation, or other questions of law.

A. A plat dedication to the public conveys the fee of the dedicated property.

Since the inception of platting in this state, the various plat acts have all indicated that a dedication on a plat is a sufficient conveyance to vest the fee of such parcels for public uses. This history is succinctly summarized by attorneys and authors James Riley and Stephanie Simon in an article they have published on the vacation of platted land in Michigan, in which they state:

> The various acts governing plats in Michigan from 1839 to the present have consistently provided that plats that conform with statutory requirements and are properly recorded are "deemed a sufficient conveyance to vest the fee of such parcels of land...dedicated for public uses" in the local unit of government [footnote citing statutory history of the plat act and the plat dedication language under the current Land Division Act is omitted; Riley & Simon, *Vacation of Platted Land Dedicated for Public Use*, Public Corporation Law Quarterly, No 5, p 4 (1999).]

The 1887 plat act that was in effect at the time of the subject plat provides as follows:

> 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 purpose whatever. [1887 PA 309, p 439.]

The current plat act, the Land Division Act, similarly provides as follows:

> (1) When a plat is certified, signed, acknowledged and recorded as prescribed in this act, every dedication, gift or grant to the public or any person, society or corporation

marked or noted as such on the plat shall be deemed sufficient conveyance to vest the fee simple of all parcels of land so marked and noted, and shall be considered a general warranty against the donors, their heirs and assigns to the donees for their use for the purposes therein expressed and no other.

(2) The land intended for the streets, alleys, commons, parks or other public uses as designated on the plat shall be held by the municipality in which the plat is situated in trust to and for such uses and purposes. [MCL 560.253(1), (2).]

In *Little v Hirschman*, 469 Mich 553, 677 NW2d 319 (2004), this Court also discussed the interest conveyed by a plat dedication to the public:

> As we explain in *Martin* [*v Beldean*, 469 Mich 541, 677 NW2d 312 (2004)], a dedication was traditionally understood to be "an appropriation of land to some public use, accepted for such use by or in behalf of the public. . . ." *Martin*, 469 Mich 543 n6, quoting Clark v Grand Rapids, 334 Mich 646, 656-657; 55 NW2d 137 (1952). The law recognized two types of dedications: statutory dedications and common-law dedications. *Alton v Meeuwenberg*, 108 Mich 629; 66 NW 571 (1896). "The effect of a dedication under the statute has been to vest the fee in the county, in trust for the municipality intended to be benefited, whereas, as common law, the act of dedication created only an easement in the public." *Grandville v Jenison*, 84 Mich 54, 65: 47 NW 600 (1890). [*Little*, p 557, n 4.]

Author John Cameron also reflects this analysis in his treatise on Michigan real estate law:

> An interesting question in these [dedication] cases is, What real property interest passes to the public or public authorities? The court in *People ex rel Dir of Dep't of Conservation v La Duc,* 329 Mich 716, 719, 46 NW2d 442 (1951), stated the old common-law principle, which seemingly still applies today: "By the common law, the fee in the soil remains in the original owner, where a public road is established over it; but the use of the road is in the public. The owner parts with this use only" (citations omitted). *Accord United States Gypsum Co v Christenson,* 226 Mich 347, 197 NW 497 (1924); *Badeaux; Gunn v Delphi Township,* 8 Mich App 278, 282, 154 NW2d 598, 601 (1967); *Granader v Beverly Hills,* 4 Mich App 697, 145 NW2d 359 (1966). This rule still applies to common-law dedications and other common-law creations of public roads. Statutory dedications of public highways at present, however, normally pass the fee to the appropriate public entity to hold in trust for the benefit of the public. MCL 560.253.[6]

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[6] Thus, a common-law dedication is presumed to be the dedication of an easement. A statutory dedication, pursuant to the Land Division Act, MCL

560.101 et seq., is presumed to be a dedication of the fee. [emphasis supplied; portion of footnote concerning unrelated issues concerning condemnation and minerals is omitted.]

[Cameron, Michigan Real Property Law (3rd ed), § 25.12, p 1467.]

This principle is also embodied in Michigan Land Title Standard 13.1; which provides:

> The recording of a plat in compliance with the plat act then in effect is a conveyance of a qualified fee title in the parcels of land designated for public use to the municipality in which the platted land is located, in trust only for the uses and purposes designated, unless the dedication is withdrawn before it is accepted by the municipality but after a reasonable time for acceptance has elapsed.

The plain language of the plat acts does not create a division of the fee – it merely qualifies the purposes for which the fee may be used and provides the potential for a reversion of the fee if it is not being used for the dedicated purpose.

B. A qualified or base fee is a fee.

Black's Law Dictionary (6th ed), defines a qualified fee as:

> In English law, a fee having a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end; otherwise termed a "base fee." An interest which may continue forever, but is liable to be determined, without the aid of a conveyance, by some act or event, circumscribing its continuance or extent. [p. 615.]

The concept of a "base fee" or a "qualified fee" was discussed in the case of the *Village of Kalkaska v Shell Oil Co*, 433 Mich 348, 446 NW2d 91 (1989). In referring to the trial court's decision, this Court stated:

> The 'statutory conveyance referred to is the conveyance of a single "base fee,"' [6] i.e., the fee was subject to the "qualification or a condition subsequent" that the "street or alley be continued to be used" as such, and, if it were not, "the fee in the municipality would terminate."

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[6]The judge cited *Kirchen v. Remenga,* 291 Mich. 94, 112, 288 N.W. 344 (1939), where this Court said:
"The term 'base fee,' which the court in [*Patrick v. Young Men's Christian Ass'n of Kalamazoo,* 120 Mich. 185, 79 N.W. 208 (1899)] said was probably meant by the statute, was used in the sense of a fee which has a qualification annexed to it. 1 Bouvier's Law Dictionary (Rawle's 3d rev), p 329."

Other definitions of "base fee" are
"An estate in real property which has the possibility of enduring forever but which may be determined and put to an end without the aid of a conveyance by some act or event circumscribing its continuance or extent." Ballentine's Law Dictionary (3d ed), p 125.

"One that may last forever if the contingency does not happen, but debased because its duration depends upon collateral circumstances which qualify it; sometimes called a conditional, determinable, or qualified fee.

"In old English law, an estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end." Black's Law Dictionary (5th ed), p 137. (Citations omitted.)

[*Village of Kalkaska,* p 92.]

The Michigan Court of Appeals has also considered such a fee in the context of an early plat dedication of property to Ottawa County for park purposes. In *West Mich Park Ass'n v Dep't of Conservation*, 2 Mich App 254; NW 2d 758 (1966), the court of appeals stated that:

> It appears settled law that the 1886 plat effected a transfer of the fee from the dedicator to the county of Ottawa which was a "base" fee. The qualifications attaching to the dedication of lands in question was for "park" purposes. [*West Michigan Park Ass'n*, p 264.]

The court then indicated that "[w]e conclude that the dedication of the 'park' areas in the 1886 plat under the statute effected a grant of the fee to the county of Ottawa in trust for the public." *West Michigan Park Ass'n,* p 267.

Accordingly, a landowner can dedicate the fee of land to the public upon the express qualification that the land only be used for certain purposes, such as road or park purposes. At

that point, the fee of the property is conveyed even though it has been qualified. The public can have and hold the fee to the property forever subject to the qualification of the grant. As long as the property is used for the dedicated purposes, the fee remains in the public.

However, the public cannot use the property for purposes beyond the scope of the dedication. Therefore, even though the public holds the fee, the qualification of the fee prevents the public from putting the land to other uses, such as removing minerals from the property, using it as an airport, or selling the property to others.

Just because the public's ownership and use of the fee has been qualified does not leave the original grantor with the right to do whatever else it wants to do with the property. The original grantor cannot use the property for its own purposes or for purposes outside the scope of the dedication. The only thing the grantor has retained with regard to the property is a potential future reversionary interest in the property if the fee to the property is later divested from the public as not being used for its qualified purpose.

C. There is only one fee.

It is clear under the law of this state that "[t]here can exist but one estate in fee simple to a particular parcel of land." *In re McBride's Estate,* 253 Mich 305, 306; 235 NW 166 (1931). However, appellants attempt to create some significance over the character or degree of the fee to Beach Drive that has been dedicated to the public.

Under Michigan law the terms "fee" and "fee simple" are the same, and "fee simple absolute" is only a further indication that there is the absence of a condition on which the fee can be can defeased by the potential future operation of a condition. Specifically, MCL 554.2 provides:

> Every estate of inheritance shall continue to be termed a fee simple, or fee; and every such estate, when not defeasible or conditional, shall be a fee simple absolute, or an absolute fee.

In further considering these various terms, this Court has stated:

> A tenant in fee simple is he that hath lands, tenements, hereditaments, to hold to him and his heirs forever; generally, absolutely, and simply, without mentioning what heirs, but referring that to his own pleasure, or to the disposition of the law. **'Fee simple' and 'fee' are generally used as convertible terms**, and it has been held that the several terms 'fee,' 'fee simple,' and 'fee simple absolute' are substantially synonymous, and that an absolute estate is a fee simple. But 'fee simple' does not necessarily mean a 'fee simple absolute' as the former term may be applied to a base or determinable fee or to a fee conditional, while the latter can be applied only to an estate which is limited absolutely to a man and his heirs and assigns forever without limitation or condition. **The material difference between a fee simple and other fees is that the former estate will, the latter may, continue forever.** The term 'fee simple' is not generally used to distinguish between legal and equitable estates, but is used to denote the quantity or duration of estates, whether the enjoyment is limited or unlimited in point of continuance or duration.
>
> *[Rathbun v State of Michigan,* 284 Mich 521, 535; 280 NW 35 (1938), quoting 21 CJ, p 918, emphasis added.]

At oral argument before the circuit court, plaintiff-appellants' counsel characterized the Michigan Legislature's use of the term "fee" in the plat act as an "unfortunate word" (Appellees' Appendix, p 31b-32b). However, if the legislature had meant to use a term associated with the conveyance of a lesser interest such as an "easement" or a "right of way" in connection with a dedication under the plat act, it surely would have amended its use of the term "fee" in connection with one of the six embodiments of the plat act since 1839. The only discernable change between the "fee" dedication provision that was in effect in 1911 and the current version of the statute is that the legislature now uses the synonymous term "fee simple" instead of "fee". 1887 PA 309, p 439; MCL 560.253(1).

D. The fee of Beach Drive as indicated on the Plat of North Charlevoix is vested in the public.

Because the public, through the CCRC and its predecessors, has accepted the statutory dedication of Beach Drive on the Plat of North Charlevoix, the fee of this property has been vested in the public. This is directly contrary to several allegations of plaintiff-appellant's complaint, where they claim fee ownership of the Beach Drive property.

For instance, in paragraph 5 of their complaint, plaintiff-appellants allege "[t]hat each of the Plaintiffs herein own the fee interest of land lying between their property and Lake Charlevoix" (Appellees' Appendix, p 5b).

In paragraph 10, appellants allege "[t]hat none of the Defendants herein own property adjacent to the waters of Lake Charlevoix within the Plat of North Charlevoix" (*Id.*, p 7b).

In paragraph 15, appellants allege "[t]hat on information and belief Defendants will not cease and desist from interfering with Plaintiffs' fee ownership or riparian rights without intervention of the Court" (*Id.*, p 10b).

In paragraph 19, appellants allege that "Defendants' unauthorized intrusion upon the Plaintiffs' land constitutes trespass" (*Id.*, p 10b).

In paragraph 24, appellants allege that "Defendants' intrusion on, use of, and construction on Plaintiffs' property constitutes a nuisance in fact, interfering with Plaintiffs' rights to use their land in quiet enjoyment" (*Id.*, p 11b).

When faced with the statutory authority indicating they are not fee owners of the property in the plat that is immediately adjacent to Lake Charlevoix, appellants diverged from the allegations of their complaint and now seek to have the significance of the fee disregarded or degraded on appeal.

Indeed, the lower courts have correctly determined that plaintiffs' allegations are untrue regarding fee ownership of any portion of Beach Drive as indicated on the plat. The dedication of the fee for the road property at issue included the entirety of the fee, subject only to the qualification that the fee be used for the dedicated purpose. The public, by virtue of the acceptance of the dedication under the plat act, holds the fee in the property delineated and dedicated on the plat as Beach Drive.

II. The fee title resulting from the dedication of land for public uses in a plat under the 1887 Plat Act in land that runs along the shore of a lake cuts off appellants' claim of riparian rights and conveys riparian rights to the public to the extent such rights are within the purposes designated by the dedication.

Standard of review. Appellee CCRC agrees that the de novo standard of review is applicable to this appeal to the extent it involves an order on summary disposition or other questions of law.

A. The lower courts correctly concluded that the dedication and vesting of the fee of the Beach Drive property for the use of the public cuts off appellants' claim of riparian rights.

This Court, with the case of *Thies v Howland,* 424 Mich 282; 380 NW2d 463 (1985), has provided a practical, workable, and proper test to be applied to this issue as raised in this case. In the *Thies* case, this Court explicitly held:

> The relative inquiry is not who may use the way, but whether the abutting land owner owns the fee in the 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. 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 Urb L 41, 50 (1968). [*Thies,* p *290.*]
>
> Consistent with the plat act, this test uses the term "fee" and does not use the term "fee

simple absolute".

In the *Thies* case, the "first tier" lot owners were separated from the lake by an easement for other owners in the plat to walk along the lake. Because the fee title of the first tier owners extended to the water's edge beneath the easement, this Court found that these owners were riparian owners. However, applying the analysis and holding of the *Thies* case to the present circumstances, the opposite result is required. The fee ownership of the land that separates the appellants' property from the water is determinative. The public, pursuant to the dedication of the fee under the plat act, holds the fee to the Beach Drive property, which lies between the water's edge and appellants' lots. Appellants therefore are not waterfront property owners and do not have riparian rights.

As indicated by the court of appeals in its opinion in this case, "[g]enerally it is an 'indispensable requisite' that riparian land actually touch the water (Appellants' Appendix, 1a, p 5, citing *Hilt v Weber*, 252 Mich 198, 218; 233 NW2d 159 [1930]). "Normally, 'the interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner'" Appellants' Appendix, 1a, p 5, citing *Hilt, p 218).* Because appellants do not own a fee to property that touches the water in this case, they are not waterfront property owners and do not have riparian rights.

B. The fee title resulting from the dedication of land for public uses in a plat under the 1887 Plat Act in land that runs along the shore of a lake conveys riparian rights to the public to the extent such rights are within the purposes designated by the dedication.

The CCRC maintains a roadway on the platted property designated as Beach Drive. As with most roadways, the pavement of this roadway does not extend to every portion of the dedicated property. However, this does not mean that the acceptance of the dedication of this

property is anything less than complete.

It is well-established that "[i]t is not essential that every part of the highway, in length or width, should be worked and traveled in order to show the intention of the public to accept the entire highway." *Pulleybank v Mason County Rd Comm,* 350 Mich 223, 227; 86 NW2d 309 (1957); *Hooker v City of Grosse Pointe,* 328 Mich 621, 631; 44 NW2d 134 (1950).

This has been confirmed by statute, as MCL 247.190 provides that:

> All public highways for which the right of way has at any time been dedicated, given or purchased, shall be and remain a highway of the width so dedicated, given or purchased, and no encroachments by fences, buildings or otherwise which may have been made since the purchase, dedication or gift nor any encroachments which were within the limits of such right of way at the time of such purchase, dedication or gift, and no encroachments which may hereafter be made, shall give the party or parties, firm or corporation so encroaching, any title or right to the land so encroached upon.

This has also been conceded by the appellants in the circuit court record below (Appellees' Appendix, pp 26b-27b, 28b-29b, 30b, 34b).

The public has formally and informally accepted the dedication in fee of Beach Drive on the subject plat. The fact that only a portion of the width of that dedication is paved does not diminish the dedication to the public of the full width of that land, or the public's acceptance of that dedication. This is consistent with the right of the CCRC to use the land for purposes incidental to the roadway (e.g., to place snow removed from the roadway, to maintain drainage associated with the roadway, and to maintain the dedicated property for potential future widening or alteration of the existing course of the roadway).

The CCRC recognizes that the fee to the subject property is held in trust for use by the public and that Michigan law may presently limit the uses to which the public may make of a roadway property adjacent to a lake. The court of appeals, in its opinion in this case, construes the dedication of the "streets and alleys" to "the use of the public" as potentially unrestricted in

this instance. Although the CCRC welcomes a broad interpretation of the public's right to the use of the Beach Drive property, the CCRC has not used the subject property or advocated for the use of the subject property beyond that for road purposes. However, in addition to passage along the roadway property, the CCRC believes that permitted activities on roadway property contacting the water include, at a minimum, providing public access to the water and allowing the construction of a public dock for temporary mooring while coming to and from the lake. *See Jacobs v Lyon Township,* 199 Mich App 667; 502 NW2d 382 (1993); *Higgins Lake Prop Owners Ass'n v Gerrish Township,* 255 Mich App 83; 662 NW2d 387 (2003) [both addressing the rights of the public at roads ending at a lakeshore]. Indeed, the subject plat even depicts a communal dock into the lake off of Beach Drive at the end of Central Avenue.

In this case, the streets and alleys of the plat, including Beach Drive, have been dedicated for the use by the public. At a minimum, the purpose of a road contacting the water's edge is to provide passage and access to the water. Appellee CCRC has been using the platted Beach Drive property in a manner that is completely consistent with the scope of this dedication. There are no allegations otherwise against the CCRC.

The CCRC has not engaged in any activity beyond the scope of these potential limitations of the dedication to the public. Instead, the road commission has defended against the claims of appellants that are contrary to and that would conflict or interfere with the public's rights to use the platted Beach Drive property for access and passage.

A dedication of property to the public under the 1887 Plat Act is a dedication of the fee to the public to be used for the purposes designated. This grants the fee of the subject property to the public, which cuts off the riparian rights of parcels next to the fee. The public therefore has all riparian rights that are not inconsistent with the designated purposes of the fee dedication.

There may be claims against other individual defendants in this case as to whether certain persons are using Beach Drive outside of its dedicated scope. However, such claims have not yet been heard or adjudicated and therefore should not be a proper subject of appellants' appeal.

III. Case law that states that front tier lots adjacent to a road running along a water way have riparian rights unless such rights are expressly excluded is not valid with regard to a road dedicated to and accepted by the public as part of a plat.

Standard of review. Appellee CCRC agrees that the de novo standard of review is applicable to this appeal to the extent it involves an order on summary disposition or other questions of law.

A. This case involves a public dedication, not a private dedication.

As indicated is Section II (A) of the argument above, the analysis provided by the *Thies* case is relevant and applicable to the present case. However, there is a key distinction between the type of dedication at issue in *Thies* and the type of dedication involved in this case. The dedication in the *Thies* case was a *private* dedication to other owners in the plat, not a dedication to the public. Furthermore, it involved a pre-1967 private dedication. This is significant in light of this Court's decisions in the cases of *Martin v Beldean*, 469 Mich 541, 677 NW2d 312 (2004) and *Little v Hirschman*, 469 Mich 553, 677 NW2d 319 (2004). In *Little*, this Court held that a dedication of platted land for private use before the 1967 plat act conveyed "at least an irrevocable easement in the dedicated land." *Little*, p 564. In *Martin*, this Court held that a dedication of platted land for private use after the 1967 plat act was a conveyance of the fee to the dedicated property. *Martin*, pp 548, 549.

As indicated in Section I (A) of this brief, the public dedication provisions of the various plat acts since statehood have always provided for the conveyance of the fee of the dedicated property. As detailed in the *Martin* and *Little* cases, this has not always been so with regard to

private dedications. The pre-1967 plat acts did not specifically reference or authorize private plat dedications, although this Court held in *Little* that such dedications were implicitly permitted and constituted the conveyance of at least an irrevocable easement to the donees.

In the 1967 plat act, the legislature expanded the statutory plat dedication provision to add and include private dedications along with the provisions concerning public dedications. With the 1967 amendments, both private and public dedications constituted conveyances of the fee of the dedicated property. Prior to 1967, private dedications were not even referenced in the various plat acts, although public dedications of the fee have always been a part of the plat acts. The difference in this regard between pre-1967 and post-1967 plat acts is plainly seen in the portions of the 1887 plat act and the current plat act that are indicated on pages 6 and 7 of this brief. This is why this Court concluded in *Martin* that post-1967 private dedications constitute a conveyance of the fee to the donees, just as had always previously been the case with regard to public dedications.

In *Thies*, the Court was addressing a pre-1967 private dedication. In light of this, the Court extensively looked to the intent of the plattor in first determining whether the fee or an easement was privately dedicated to certain backlot owners. *Thies,* pp 289-294. Upon concluding that the dedicated interest was an easement and not a fee, the Court looked further at the scope of the dedication to see if certain uses of the easement by the backlot owners were within the scope of the dedication, before concluding that they were not. *Thies,* pp 294-295.

The Michigan Court of Appeals case of *Pentz v Schlimgen*, No. 258130 (December 19, 2006), also involved the analysis of a pre-1967 private dedication concerning riparian rights. Although unpublished, the court in *Pentz* provides a concise summary of the analysis of *Thies* in light of the holdings of this court in *Little, supra,* and *Martin, supra,* concerning private

dedications. In the *Pentz* case, the court of appeals, in referring to backlot owners to which a private plat dedication had been made, stated that:

> Defendants [back lot owners] are not riparian owners because they do not own land adjacent to Pleasant Lake. The land dedication presently at issue occurred before the enactment of the Land Division Act, MCL 560.101 *et seq.* Our Supreme Court has held that "dedications of land for private use in plats before 1967 PA 288 took effect convey at least an irrevocable easement in the dedicated land." *Little v Hirschman,* 469 Mich 553, 564; 677 NW2d 319 (2004). This date distinction is important because the Land Division Act [1967 PA 288], provides that a private dedication in a plat transfers a fee simple to the donees. *Martin v Beldean,* 469 Mich 541, 548; 677 NW 2d 312 (2004).
>
> Defendants rely on several cases, including *Thies,* to support their position. In *Thies, supra* at 510, a notation on the plat map designated driveways, walks, and alleys "to the joint use of all the owners in the plat, "to provide lake access to the backlot owners. The frontlot, or riparian, owners filed suit to enjoin the defendant backlot owners from building and maintaining a dock at the end of one of the easements. *Id.* at 287. The trial court ruled that the defendants could only use the lake for boating, fishing, and sunbathing, and could anchor their boats, and granted the injunction. *Id.* This Court affirmed, but modified the injunction to prohibit the anchoring of boats. *Id.* In determining whether the backlot owners were riparian owners, our Supreme Court noted that the "ownership of the walk and alleys and the scope of the dedication of these lands are interrelated, but distinct inquiries." *Id.* at 289.
>
> The Court stated that the plaintiffs were presumed to own a fee interest in the walkway located between the plaintiffs' lots and the lake, unless the plattors intended otherwise. *Id.* at 293. The Court ruled that the trial court's finding that the walk was an easement was not clearly erroneous, because "[t]he phrase 'joint use' standing alone does not ordinarily denote the passing of a fee interest in land," and the record did not support a different conclusion. *Id.* at 293-294. The Court also ruled that the plat dedication did not evidence an intent to permit the owners to construct docks along the walkway, because the phrase "joint use" did not "evidence an intent to grant a right to construct docks, a right which normally is reserved to riparian owners." *Id.* at 294. [*Pentz*, p 3.]

The court in *Pentz* then further followed the holding of this Court in *Thies*:

> We find *Thies* instructive to the present case. The plattor's intent controls the scope of the dedication in terms of its ownership and use, *Thies, supra* at 289, 293, notwithstanding defendants' assertions why they have a fee interest and riparian rights in the lake access area (including its definition as an "area," that defendants are financially responsible for its maintenance, and that their property assessment includes their rights to the lake access area). This remains true regardless of whether the dedication at issue runs parallel to the waterway and lies between the water and the frontlot owners' lots, or whether it lies where a roadway of walkway terminates at the water, or lies between such a terminus and the water's edge. *Id.* at 289, 293-294; *Little v. Hirschman, supra,* 469

> Mich at 555-556, 563-564. Regarding ownership, it is clear from *Thies* that the language used in the dedication affected was an important factor in the determination that the defendants had an easement rather than a fee interest in land. *Id.* at 293-294. [*Pentz,* pp 3-4.]

As in *Thies,* the court in *Pentz* concluded that the language used in the pre-1967 private dedication at issue did not grant a fee interest or the corresponding riparian rights. *Pentz,* p 4. However, the *Pentz* court, again following *Thies,* stated that :

> Even if we conclude that defendants merely have an easement interest in the walk and alleys, they may still prevail. Plaintiffs cannot prevent defendants from erecting a dock or permanently anchoring their boats if these activities are within the scope of the plat's dedication, *McCardel v Smolen,* 404 Mich 89, 97, 103; 273 NW2d 3 (1978), and do not unreasonably interfere with plaintiff's use and enjoyment of their property. [Footnote omitted.] [*Pentz,* pp 4-5, quoting *Thies, p* 289.]

The court in *Pentz* went on to conclude that the right sought by defendants in the privately dedicated lake access area did not include rights to erect a dock or permanently moor a boat as these activities were not within the scope of the dedicated easement. *Pentz,* p 5.

The analysis used in *Thies* and *Pentz* has a different result in the present case because this case involves a public dedication of the fee to the subject property rather than a private dedication of an easement. Under the plat act in effect at the time of the subject public dedication, the conveyance was explicitly that of a fee interest, not an easement. The plattor was subject to the provisions of the plat act concerning public dedications, which specifically indicated that such a dedication to the public was a dedication of the fee. Accordingly, there is no need to further analyze whether the plattor intended for the conveyance to be that of a fee or an easement. When proceeding under the plat statute, it was not possible for the plattor to intend that the public dedication would be a conveyance of anything other or less than the fee.

With the explicit conveyance in this case of the fee under the public dedication provisions of the plat act, the second portion of the Court's analysis in *Thies* regarding the scope of the

easement becomes unnecessary at this stage of the present case, as the interest held by the public is that of a fee and not an easement. The only role that the scope of the dedication might have in the analysis of the present case would be if there was a claim that a party was using the dedicated fee outside of the scope of its designated purpose. However, such a claim has not been made with regard to the CCRC and has not yet been adjudicated as to any other defendant.

B. *Croucher v Wooster* and its progeny are inapplicable to the present case

The appellants substantially rely upon the case of *Croucher v Wooster,* 271 Mich 337, 260 NW 739 (1935), and its progeny in support of their position in this case. However, as determined by the circuit court below, that case is fundamentally distinguishable from the present case, and appellants' reliance upon it is therefore misplaced.

In *Croucher,* the roadway that ran between the lake and the "first tier" lot owners was not platted land. The road in that case was "one established by user." *Croucher,* p 339. The road in the present case is part of the plat and the fee of this property was therefore statutorily dedicated to the public.

The *Croucher* court itself acknowledges this distinction and the limitation it provides when the court indicates that a seemingly contradictory Illinois case "was determined by the law of Illinois by which the fee of the land under a dedicated street is held to be in the municipal corporation. Confessedly that would not be true in the instant case." *Croucher, supra,* p 344; citing *Canal v Haven,* 11 Ill 554 (1850). [1]

Appellants also rely upon the case of *Kempf v Ellixson,* 69 Mich App 339; 244 NW2d

[1] An enlightening review of this Illinois case is contained in an Amicus Curie brief filed in the Court of Appeals in the present case (Amicus Curiae Brief of Higgins Lake Civic Association, May 9, 2009, pp 13-15). Amicus provides the applicable Illinois platting statute that was at issue in the Illinois case. That statute provided for the dedication of the fee to the public for the uses indicated, and is substantially similar to the Michigan platting statute at issue in the present case.

476 (1976). On several occasions throughout the *Kempf* case, the court refers to the roadway in question as a "right of way". *Kempf, supra,* pp 341-342. Black's Law Dictionary (6th ed) defines a "right of way" as:

> ...used with reference to right to pass over another's land, it is only an easement; and grantee acquires only right to a reasonable and usual enjoyment thereof with the owner of soil retaining rights and benefits of ownership consistent with the easement. (citations omitted). *See also* Easement. (p 1326)

The court in *Kempf* therefore did not apply the later test and distinction established in *Thies, supra*, between a fee and an easement in intervening land as determining whether a "first tier", off-lake parcel has riparian rights.

The case of *McCardel v Smolen,* 404 Mich 89, 273 NW2d 3 (1978), relied upon by appellants is also distinguishable. In *McCardel*, the boulevard at issue had "not been developed or maintained as a roadway or 'opened' to vehicular traffic. *McCardel, supra,* p 93. Furthermore, the court in that case avoids the issue of the ownership of riparian rights of the "first tier" lot owners, and narrowly holds that such owners, even if they have riparian rights, did not have the right to exclude the general public from lounging and picnicking on the boulevard and entering and leaving the water. *McCardel, supra,* p 103. The court concluded by remanding the case to the circuit court for further proceedings.

Plaintiffs' also rely upon the case of *Michigan Central Park Ass'n of Higgins Lake v. Roscommon Co Rd Comm*, 2 Mich App 192, 139 NW2d 333 (1966). However, this is another case that was decided before this Court's decision in *Thies v Howland, supra.* Therefore, the Michigan Court of Appeals, when it decided the *Michigan Central Park* case in 1966, did not have the indication provided by the *Thies* case as to the analysis to be used in determining whether property separated from water by a street or other way in which others have rights is riparian land.

Appellants also cite the case of *Jonkers v Summit Twp*, 278 Mich App 263, 747 NW2d 901 (2008), in support of their position. That case is also distinguishable from the present case. The *Jonkers* case involved a discrepancy between surveys. In connection with the court's resolution of the survey discrepancy, it found that the Jonkers' property description extended to the lake. *Jonkers,* p 277. That is different than this case, where the lower courts correctly found that the property description did not extend to the lake (Appellants' Appendix, 3a, 1a).

There is also some indication that the Jonkers were paying taxes on at least a portion of waterfront property. *Jonkers*, pp 276-277. This is contrary to this case, where appellants have not been taxed for any waterfront property (Appellees' Appendix, p 39b). Furthermore, the *Jonkers* case involved a boat launch running perpendicularly from a road along the shoreline to the lakeshore. *Jonkers*, p 271. This indicates that there was some land intervening between the road and the lakeshore that the Jonkers' were claiming. This is contrary to the present case, where the plaintiff-appellants' have conceded that the property dedicated to and accepted by the public for Beach Drive extends to the water's edge of the lake (Appellees' Appendix, pp 2b, 26b-27b, 28b-29b, 30b, 34b; Appellants' Appendix, 4a).

The case of *Sheridan Drive Assn v Woodlawn Backproperty Owners Assn*, 29 Mich App 64; 185 NW2d 107 (1970), was cited by appellants for the first time in their motion for reconsideration to the court of appeals. As with the *Kempf, McCardel*, and *Michigan Central Park* cases, the *Sheridan Drive* case was decided several years before the decision of this Court in *Thies v Howland, supra*. Furthermore, the *Sheridan Drive* case relies significantly upon *Croucher v Wooster, supra,* which has previously been distinguished from the present case.

The appellants would prefer to view the case of *Croucher* and its progeny without regard to the issue of the plat dedication to the public of the fee interest in Beach Drive and the analysis

that was provided by this Court in the *Thies* case. However, when *Croucher* and its progeny are correctly viewed under the analysis adopted in *Thies*, then the result in the present case is clear – the appellants do not own the fee of the waterfront land and therefore do not have the riparian rights appurtenant to such waterfront land.

C. The case of *Village of Kalkaska v Shell Oil Co* is inapplicable to the issues in the present case.

The appellants also offer the case of *Village of Kalkaska v Shell Oil Co*, 433 Mich 348, 446 NW2d 91 (1989), in support of their appeal. In *Village of Kalkaska*, this Court narrowly held that the village did not have a proprietary interest in and therefore could not sell oil and gas rights beneath platted streets. However, as indicated by the circuit court in this case, the *Village of Kalkaska* case is distinguishable from and inapplicable to the issues in the present case.

First of all, the *Village of Kalkaska* case involved mineral rights, which are property rights that are ordinarily severable from the fee title to a property. In contrast, the present case involves riparian rights, which are not severable from the ownership. Michigan law does not allow severance or transfer of riparian ownership; such riparian rights must be enjoyed exclusively by riparian land owners. *Little v Kin,* 249 Mich App 502, 504; 644 NW 2d 375 (2002); 468 Mich 699, 700; 664 NW2d 749 (2003).

Another key distinction between the *Village of Kalkaska* case and the present case is that the mineral rights at issue in the *Village of Kalkaska* case were extractive in nature. Riparian rights are not extractive. The fact that mineral rights are extractive is significant in the context of land that is dedicated in fee for the purposes of public use and travel. This is because the fee that is conveyed may revert to the dedicating party in the event it is no longer used for purposes consistent with the dedication.

The extraction of mineral rights from property below a platted street would lead to the waste of the property that, by the nature of its dedication and conveyance, may be restored to the dedicator at some point in the future. However, this concern does not exist with regard to riparian rights such as those at issue in the present case.

Also, the *Village of Kalkaska* case involves the municipality attempting to use and sell the mineral rights beneath the platted streets. This is contrary to the present case, where there is no record of any attempt being made or contemplated by the CCRC to sell or otherwise convey the fee interests of the public in Beach Drive. Further, there is no record in this case that the CCRC is doing or seeking to do anything inconsistent with the dedication to the public of the fee title in Beach Drive for use by the public. Accordingly, the prior decision of this Court in the *Village of Kalkaska* case should be confined to the particular circumstance of mineral rights, which are not at issue in the present case.

IV. The deeds of front tier lot owners have to have specific language granting riparian rights if such lots do not touch the water or an easement touching the water.

Standard of review. Appellee CCRC agrees that the de novo standard of review is applicable to this appeal to the extent it involves an order on summary disposition, matters of statutory interpretation, or other questions of law.

When a plat shows a lot is bounded by the meander line of a lake, the grant of land is to the water's edge. *Mumaugh v McCarley*, 219 Mich App 641, 649; 558 NW2d 433 (1996); *Gregory v LaFaive*, 172 Mich App 354, 361; 431 NW2d 511 (1988), lv den 432 Mich 906 (1989). A lot described like this is riparian land. *Mumaugh*, p 649.

However, the lots at issue in this case are not described in this fashion. Instead, such lots are clearly shown on the plat as bordering on the upland side of the Beach Drive property.

(Appellants Appendix, 4a). "Where land is disposed of by reference to an official plat, the boundary lines in the plat control." *Gregory,* p 359; *Mumaugh*, p 649.

This is consistent with the state's current land division act, which provides that "[w]hen a subdivision plat has been recorded, the lots in that plat shall be described by the caption of the plat and the lot number for all purposes, including those of assessment, taxation, sale and conveyance." MCL 560.255. The act also indicates that "'[l]ot' means a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat." MCL 560.102(m).

As indicated by *Gregory* and *Mumaugh*, *supra,* a deed for a subdivision lot does not need to have specific language granting riparian rights if it touches the water's edge. Also, as demonstrated by the decision of this Court in *Thies*, *supra*, a deed for a subdivision lot does not need to have specific language granting riparian rights if it touches an easement that separates the lot from the water. However, appellees' properties in this case do not touch either the water's edge or an easement that touches the water's edge. Instead, the properties touch property in which the public holds the fee. Accordingly, there are no rights particular to any lot extending beyond the lot's boundaries that are indicated on the plat.

CONCLUSION AND RELIEF REQUESTED

Pursuant to the plat act in effect at the time the subject plat was made, the fee of the area designated for the streets within the plat, including Beach Drive, has been statutorily dedicated to the public for its use. There is no dispute that this dedication has been accepted by the public, both formally and informally. Furthermore, the intention of the plattor in proceeding with a public dedication under the plat act is clear – such a dedication is an explicit conveyance of the fee of the dedicated property to the public.

The conveyance of the fee for the Beach Drive property to the public is significant under the analysis previously indicated by this Court in the case of *Thies v Howland, supra.* The *Thies* case indicates that land separated from the water by property in which another has the fee is not riparian land. In applying the applicable plat act and the *Thies* case to the public dedication involved in present case, it is apparent that the decision of the circuit court that was affirmed by the Michigan Court of Appeals in this case remains proper.

Furthermore, there is nothing in the record to indicate any actions by the CCRC regarding Beach Drive that are outside the scope of the dedication of this property. The order and reasoning of the Charlevoix Circuit Court denying plaintiffs' motion for partial summary disposition and the decision of the Michigan Court of Appeals affirming the circuit court should therefore be affirmed.

Dated: June 17, 2010

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