



BRIDGEWATER PLACE • POST OFFICE BOX 352
GRAND RAPIDS, MICHIGAN 49501-0352

TELEPHONE 616/336-6000 • FAX 616/336-7000 • WWW.VARNUMLAW.COM

NYAL D. DEEMS
Admitted in Michigan and Georgia
American College of Mortgage Attorneys
American College of Real Estate Lawyers

DIRECT DIAL 616/336-6712
E-mail nddeems@varnumlaw.com

May 22, 2007

TO: Boardman River Dams Committee

Re: Review of Riparian Rights
Parcel Nos. 28-05-027-013-00
28-05-027-033-00
28-05-027-036-00

Ladies and Gentlemen:

At the request of the Boardman River Dams Committee we have reviewed an abstract of title on a parcel of property surrounding Sabin Pond as set forth below.

1. **Premises**

Parcel Nos. 28-05-027-013-00
28-05-027-033-00
28-05-027-036-00

Property Address: Keystone Road North
Traverse City, Michigan 49686

Three irregular shaped parcels (together the "**Premises**") lying in the SE 1/4 of Section 27, adjacent to the northern boundary of Section 34 and occupying the land on all sides of Sabin Pond described as:

Parcel No. 28-02-027-013-00

Part Section 27 T27N R11W Described as E 1/2 SW 1/4 of NE 1/4 Also S 132' of W 1/2 SW 1/4 of NE 1/4 Also NW 1/4 SE 1/4 Except Commencing SW Corner thence N 925' thence E 250' thence S 100' thence E 247' thence S 822.82' thence W to point of beginning also E 1/2 of SW 1/4 of SE 1/4 also commencing S 1/4 corner thence E 589.21' thence N 672.09' thence W to N/S 1/4 Line thence S to point of beginning except road right-of-ways

Parcel No. 28-02-027-033-00

E 1/2 SE 1/4 Section 27 T27N R11W Except S 1122' & Except N 330' of E 330' & Except Commencing NE Corner Lot 5 Keystone Meadows thence N 87° 48' E 17.19' Thence N 6° E 110' Thence S 87° 48' W 200' Thence S 6° W 110' Thence N 87° 48'E 182.81' to point of beginning & Except Commencing SW Lot 1 Keystone Meadows Thence S 200' thence E 222.11' thence N 6° W 200' thence W to point of beginning & Except Plat of Keystone Meadows & Except commencing E 1/4 corner thence W 330.02' thence S 330.02' thence E 241.90' to westerly Line Keystone Road thence S 06° 19'W 48.37' to point of beginning thence S 06° 19' W 350' thence S 87° 54' W 199.49 thence S 06° 21' W 110.00' thence S 88° 6' W 202.62' thence N 06° 19' E 477.89' thence E 400' to point of beginning & Except road & railroad right-of-way & Except part Lying E of railroad right-of-way

Parcel No. 28-02-027-036-00

S 1122' SE 1/4 of SE 1/4 of Section 27 T27N R11W Lying W of Keystone Road & S 1237.5' Lying E of Keystone Road, Also SW 1/4 of SW 1/4 Section 26 T27N R11W, Also NE 1/4 of NW 1/4 Section 35 T27N R11W Except road right-of-way & Except Pennsylvania Railroad Except Life Estate Parcel 027-036-10 Described as part SE 1/4 of SE 1/4 Section 27 commencing SE Section Corner thence N 89° 5' W 282.47' thence northeasterly 125.49' along 3221.26' radius curve to left thence N 7° 16' E 312.93' to point of beginning thence N 89° 21' W 369.73' thence S 0° 19' E 87.3' T S 87° 38' W 39.67' thence N 20° 51' W 144.07' thence N 6° 43' W 80.74' thence N 68° 44' E 187.23' N 79° 15' E 102.58' thence S 56° 17' E 246' thence S 7° 16' W 81.26 to point of beginning.

2. Title Search

Our review of title to the Premises is based upon an abstract of title prepared by Petroleum Abstract & Title Service, Inc. of Traverse City, Michigan. It includes a search of title documents from December 1892 to April 10, 2006, but states that it does not include any mortgages, liens, minerals and leasehold matters or associated documents on file at the register of deeds office.

3. Map of the Premises

See attached map.

4. **Fee Title Owner of the Premises**

Grand Traverse County.

5. **Assessment Status per Township Records**

As all of the property is titled to Grand Traverse County, a public entity, we did not seek to review any tax records of the Premises.

6. **Title History**

The title history of the Premises which we received runs from 1892 through April 10, 2006. The title history shows the Premises to occupy all of the waterfront of Sabin Pond.

7. **Riparian Rights Appurtenant to the Premises**

The Premises is a riparian parcel of property in which title is held by Grand Traverse County. A further review of the riparian aspects of the title history is set forth below.

(a) **History of Title of Impounded Bottomlands**

The sequence of events which leads to the title of the Sabin Pond being held by Grand Traverse County is generally as follows:

1. The early maps we have of Boardman River from the late 1800's and the written entries show the river in Section 34 to be surrounded by wetlands on both sides of the river and a certificate filed in 1880 lists 320 acres of this property as "swamp lands."

2. It appears that the original Boardman Pond dam was constructed in 1893 and 1894 by the Boardman River Electric Light & Power Company. This is the dam that created Boardman Pond. It appears that a second dam was built in 1906 which created Sabin Pond. A series of affidavits were prepared by employees of the Boardman River Electric Light & Power Company referencing the early history of the dams on the Boardman River in 1928. They reference the history of the dams back to the 1890's. The affidavits were not recorded until 1952.

3. In 1925 Boardman River Electric Light & Power Company conveyed its interests in the dams, and the property interests associated with the dams, to Northern Michigan Public Service Company.

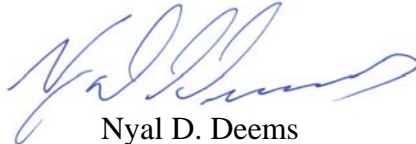
4. In 1928 the Northern Michigan Public Service Company conveyed the dams, and the property interests associated with the dams, to Michigan Public Service Company.
5. In 1950 Michigan Public Service Company conveyed its interest in the dams, and the property interests associated with the dams, to Consumers Power Company.
6. In 1969 Consumers Power Company conveyed its interest in the dams, and the real property interests associated with the dams, to the County of Grand Traverse. The recital in the quit claim deed which makes the conveyance states that the age of the dams no longer justify their operation. In addition, it states that the County ". . . has an interest in the maintenance of said Dams and the preservation of said Dams and Reservoir Property for public recreational purposes, and for such public recreational purposes it desires that First Party convey to it said Dam and Reservoir Property." The property interests were conveyed ". . . in consideration of the proposed use of said Dam and Reservoir Property for public recreational purposes . . ." for \$1.
7. On July 22, 1980, Grand Traverse County granted an easement for light and power purposes to the Light & Power Board in the name of the City of Traverse City. The interest terminates upon the abandonment of the generating use by the Light & Power Board. As of that date, all of the easement rights and title conveyed by Grand Traverse County will revert to the County.

(b) **Obligation to Maintain Dams and Recreations Use**

A question may arise from the conveyance by Consumers Power Company to Grand Traverse County for the purpose of maintaining the dams and reservoir property for public recreational purposes. There is no indication that the County does not intend to maintain the property which it received in the 1969 conveyance for recreational purposes. However, it is doubtful that the receipt of a deed in this fashion mandates that the County keep the dams in place longer than the County believes is economically justified. It is also doubtful that the County is obligated to maintain the dams on the property for recreational purposes.

Sincerely,

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP



Nyal D. Deems

ND/rak