



STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON
ATTORNEY GENERAL

May 5, 2014

102 STATE CAPITOL
ST. PAUL, MN 55155
TELEPHONE: (651) 296-6196

Ms. Dawn Buck
3105 Minnesota Avenue
Duluth, MN 55802

Dear Ms. Buck:

I thank you for your correspondence received on April 24, 2014.

You live on Park Point in Duluth and serve as the President of the Park Point Community Club. You report members of your community have been unable to resolve conflicts with the City of Duluth ("City") regarding property owners' rights and public access to Lake Superior and Superior Bay (collectively "the water"). On Park Point, there are platted public right of ways leading to the water. On the bayside, the Duluth City Charter designates all right of ways abutting the water as public dockage. Many of the residents of Park Point keep their boats at anchorage off of the right of ways and the right of ways are often used for recreational activities. The City is proposing to eliminate the public dockage at the ends of the right of ways, improve the right of ways every four to six blocks, and vacate the remaining right of ways. The City indicates that once the public dockage is removed, no public access will be allowed unless the right of way has been improved. The City has called the undeveloped, platted, right of ways useless. You note that conflicts, including a lawsuit, have arisen when the property owners adjacent to the right of ways have blocked access to neighbors and visitors. You do not agree with the City's determination regarding the rights of the residents to use platted right of ways. You would like this Office to provide guidance to the Duluth City Planners in deciding who can legally use the platted right of ways on Park Point.

While I cannot give you legal advice and while this Office does not have any authority over municipalities, I can tell you the following, which I hope will be helpful:

First, Minn. Stat. § 505.01, subd. 1 (enclosed) provides that lands which are dedicated for public use in a plat, such as a roadway, are held by the municipality as an easement for the purposes set forth or intended. The dedication to the public of a street in a plat, however, does not instantly create an obligation to open and maintain the dedicated street. The case that you enclose, *Bolen v. Glass*, recognizes the "well-established rule of law in Minnesota that one purchasing a lot in a plat may rely upon the dedication of streets and alleys shown therein, and possesses the right to use the same." *Bolen v. Glass*, 755 N.W.2d 1, 5 (Minn. 2008). The Court in *Bolen* concluded that any purchaser of a lot within the subject plat is entitled to use the streets dedicated in the plat, including the undeveloped street at issue. I suggest that you obtain a copy of the plat(s) that are at issue and review the dedication clause to determine the nature and extent of the dedication of the right of ways in the plat. If you do not have a copy of the plat(s), you may obtain a copy from the St. Louis County Recorder, who may be reached at:

Mark A. Monacelli
St. Louis County Recorder/Registrar of Titles
100 N 5th Avenue W, #101
Duluth, MN 55802
(218) 726-2675

Second, Minn. Stat. § 505.14 (enclosed) provides the procedure for vacating a road that has been dedicated to the public use in a plat. Pursuant to this statute, if the road to be vacated is dedicated to the public and provides access to any public water, the petitioner must show that the property "is useless for the purpose for which it was laid out." I enclose the cases of *Schaller v. Town of Florence*, 259 N.W. 529 (Minn. 1935); *In Re Petition of Krebs*, 6 N.W.2d 803 (Minn. 1942); and *In Re Application of Baldwin*, 15 N.W.2d 184 (Minn. 1944), which provide guidance in this area of the law. I note that the *Baldwin* case determined that a platted street that is dedicated to the public and abuts a navigable water will be presumed to have been intended to enable the public to have access to the water for all proper public purposes.

Finally, you or other community members may wish to discuss this matter with a private attorney with expertise in real estate law. I recognize that retaining a private attorney is not cheap. In this case, however, I believe that a private attorney is in the best position to advise you as to your legal rights, and potential avenues of recourse. If you cannot identify an attorney to advise you, the Minnesota State Bar Association's Attorney Referral Service is available on the Internet at www.mnfindalawyer.com. I enclose our flyer, *Hiring an Attorney*, which has more information. If you select an attorney through the referral service, you should ask about any initial consultation fee since the fees vary.

I know that this is a concerning situation for you, and I hope you are able to get a fair resolution of the matter.

I thank you again for your correspondence.

Sincerely,



LAURA FLANDERS
Legal Assistant

Enclosures: Minn. Stat. §§ 505.01 and 505.14
Schaller v. Town of Florence
In Re Petition of Krebs
In Re Application of Baldwin
Hiring an Attorney