

From: **Cliff H. Bloom** <cliff@bloomsluggett.com>

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Subject: FW: Bois Blanc Township-opening roads in old plats-issues

To: Chris Viers <cjamesviers@gmail.com>

Cc: Supervisor Brent Sharpe (brentsharpe@hotmail.com) <brentsharpe@hotmail.com>, Diane Akright (bbiclerk@tds.net) <bbiclerk@tds.net>

Chris-

As you know, Bois Blanc Island has a number of old plats (also called “subdivisions”) with dedicated roads, streets, alleys, walkways, parks and other platted ways. In some of the old plats, the streets, roads and alleys were dedicated to the public, whereas in other plats, they were dedicated only to the use of the lot owners within the plat. In general, all of those platted roads, streets, alleys, walkways, parks, etc. are still valid and exist today, even if they have not been “opened,” re-surveyed or improved. Generally, the only way to vacate, abandon or extinguish any of those platted ways is by a formal Mackinac County Circuit Court vacation lawsuit, whereby every lot owner in the plat is joined.

How does a lot owner go about “opening” and improving a platted road, street or alley in order to access their lot? In general, Michigan law allows any lot owner within a plat to open and improve any platted road, alley or street necessary to gain access to the lot owner’s lot. That is consistent with the Michigan common law that allows the beneficiary of any easement to reasonably improve the easement, but only to the extent necessary to reasonably enjoy the lawful purposes of the easement.

If a lot owner seeks to improve a road, street or alley that was dedicated to the public, the lot owner would likely have to seek the approval of the Mackinac County Road Commission before a publicly dedicated road, alley or street can have trees removed, dozing occur, gravel applied, etc.

With regard to a platted street, road or alley dedicated to just the lot owners within the plat, a lot owner likely can improve such a private road, street or alley right-of-way or easement without the consent of the other lot owners, but only to the degree reasonably necessary for the lot owner to use the platted way for access. Of course, a platted private road, alley or street cannot be altered or improved by someone who does not own property in the plat involved if the way was dedicated only to the use of the lot owners in that plat.

Unfortunately for lot owners in plats on the Island, the Township generally has no jurisdiction or interest in regulating the openings of public or private roads, streets or alleys absent an ordinance to that effect. And, in general, very few townships throughout Michigan regulate public or private platted road, street or alley openings, improvements, etc. *per se*. Many Michigan townships do, however, have ordinance regulations requiring that private roads meet certain minimal standards before they can be used for dwellings.

In general, the opening, improvement, cutting of trees, dozing, etc. regarding public and private platted streets, roads or alleys is a private matter between the lot owners in the plat involved. If a lot owner believes that another lot owner (or even someone from outside the plat) is improperly cutting trees on a platted road, street or alley right-of-way or easement, improperly improving the same, etc., then the lot owner should have his or her attorney become involved.

A lack of modern surveying and trespassing is a frequent problem with regard to old plats throughout Bois Blanc Island. Although surveying today can be expensive, no one should ever open up a platted road, alley, street or other way, or build on any lot, without first having a modern survey done. Wrongfully removing trees from another's property or damaging someone else's property could cause the wrongdoer to have to pay the landowner triple damages pursuant to MCL 600. 2919 and other Michigan statutes. For example, an easement beneficiary was required to pay the landowner significant triple damages for wrongful removal of trees within the easement in the case of *Rudy v Lints*, decided by the Michigan Court of Appeals on February 22, 2011; Case No. 293501; 2011 WL 666143. Michigan courts often value improperly removed or damaged trees for purposes of the triple damages provisions based upon higher tree replacement costs, not just the value of the wood or logs. Triple damages for removal of any trees from another's property without permission could come to a substantial amount. In the *Rudy v Lints* case, the wrongdoer had to pay the landowner over \$30,000 for the removal of just a few trees.

Please do not hesitate to contact me should you or any other Township official have any further questions about these matters. Thank you. -Cliff

Bloom Sluggett, PC
Counselors & Attorneys

Our firm has moved! Effective August 1, 2020, our offices are now located in Suite 400 of the Waters Center Building in downtown Grand Rapids.

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