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March 4, 1994

Commodore Douglas Burkhardt
55 Canterbury Road
Rochester, NY 14617

Re: Parkview Terrace License Agreements

Dear Commodore Burkhardt:

→ This will summarize some of my investigation into the existence of various license agreements between Rochester Yacht Club and owners of property on Parkview Terrace that adjoin the Club's property. It will also provide certain documentary information in the event it is needed in the future.

→ The only records that I was able to find in the Monroe County Clerk's Office pertained to seven agreements with former adjoining property owners. I have copies of those seven agreements in the event they are needed in the future. The agreements permit the adjoining owners to use an area of RYC property lying between their southerly lot line and a fence on RYC property and between their side lot lines as extended to that fence.

→ Basically all agreements have the same provision with two exceptions. Those that pertain to street Nos. 159, 165, 171 and 195 grants the licensee the right to use RYC property for recreation and gardening only. However, the agreements for street Nos. 177, 183 and 189 grant the right to fence and erect temporary building or structure on the RYC property. These agreements have a provision for RYC to pay the licensees for any improvements made to the property within five years of the agreements. Fortunately, those five-year periods expired many years ago.

All of the agreements have provisions for either party to terminate them upon written notice by registered or certified mail.

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Attached hereto is a chart showing pertinent information regarding the agreements such as the Parkview Terrace street number; the Summerville Terraces tract lot number; the present owner; the deed reference to the present owner; in parenthesis the deed reference to the recording of the license agreement and the name of the owner at the time the agreement was signed; and the lot size referred to in the deeds to the present owners.

I have examined the recorded deeds to the present owners shown on that chart. The deeds to street Nos. 177, 183 and 159 specifically refer to the license agreement from RYC. The other four deeds do not specifically refer to the agreement but recite that the property is subject to "all covenants, easements and restrictions of record". While this quoted phrase may not be totally conclusive and binding upon the present owners, it clearly is the basis for the position that they were put upon notice of the license agreement and RYC's rights in the area adjoining their property. A further strengthening of this basis would be that a reference to the license agreement is contained in their abstract of title. I have not been able to obtain access to these abstracts, but my feeling is that the license agreement would be set out in them.

A further strengthening factor would be that any instrument survey that was made when they acquired the property would show the exact dimensions of their lot, according to filed tract maps. I have not made any attempts to obtain these surveys at this point.

From all of the information I have been able to obtain to date, I feel that RYC could terminate these license agreements. However, depending upon what use the various owners have made of the RYC property and how much they feel that they are the owners of that property, the termination of the license agreements may meet with some opposition. Whatever rights they may be able to claim to the disputed areas would be based on the legal concept of "adverse possession". While many times claims to property rights based upon this concept are enforced, the law does not look upon it with great favor and the burden of proof is placed upon those claiming rights under it. Considering all known factors I feel the termination would be upheld.

As I see it, the immediate question is what does RYC want to do about the agreements at this time. There appears to be three options: (1) terminate them; (2) make the neighbors aware of the agreements and continue them; and (3) make some effort to sell the areas involved to the present owners. There may be other options as well.

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Something that must be considered in any of the above options is exactly where is the boundary line of the RYC land. To determine this, would of course, require an instrument survey. Another factor to be considered is what use the neighbors have made of the RYC property and how termination would affect them. This may be able to be determined just by walking along the fence line, but even then it would be uncertain if the exact boundary line cannot be determined.

It is hoped that the above information and analysis will be helpful to you and the Long Range Planning Committee. I will be glad to discuss any of it in more detail or to pursue any additional research or investigation that is felt necessary. I will look forward to hearing from you.

Very truly yours,



Donald F. Potter

DFP:jj
Enc.

cc.: Vice Commodore Thomas J. Roth
Rear Commodore Paul Haas

RYC-PARKVIEW TERRACE

License Agreement Information
as of February 15, 1994

<u>Street No.</u>	Summerville Terraces Tract <u>Lot No.</u>	<u>Present Owner</u>	<u>Deed Reference to Current Owner (License Ref.)</u>	<u>Lot Size</u>
195	R145 105 Maps 6	Sabrina M. Lambrix	8372Ds 615 (3645Ds 72) (Abert)	50X100
189	R144 105 Maps 6	John E. Dempsey Zhi Dempsey	8342Ds 623 (3795Ds 496) (Stull)	50X100
183	R143 105 Maps 6	John P. Kelly Margaret G. Kelly	6178Ds 342 (3795Ds 490) (Falzone)	50X100
177	R141 105 Maps 6	Anthony J. and Lisa M. Gianforte	6178Ds 226 (3795 Ds490) (Vahl)	51X100
171	R140 105 Maps 6	Barbara J. Saucke Thomas F. O'Connor	8348Ds 681 (3699Ds 30) (Bamber)	51X100
165	139 A-11 Maps	James R. Francis Janet S. Francis	5638Ds 312 (3696Ds 179) (Cummings)	42X100
159	138 A-11 Maps	Thomas S. Painting Laura B. Painting	8343Ds 113 (3696Ds 179) (Kausch)	42X100