

STRAWBERRY HILL ESTATES
HOMEOWNER ASSOCIATION (SHEHA)
P. O. Box 833
Hamburg, Michigan 48139-0833

April 1, 2009

Dear Homeowners,

Following is a summary written by Attorney Jim Roach about the litigation surrounding the lots adjacent to our beach that are marketed and sold by the real estate firm Gold Krause. Jim describes the settlement of the lawsuit below. He represented the two Homeowner Associations in our subdivision.

Please note that if you have any further questions, we'll have a brief overview of the settlement at our Association Annual Meeting on April 14th at 7:30 at the Hamburg Township Senior Center. (The notice for that meeting was sent out last month.) See you there!

Yours truly,

Mary Eileen McLaughlin.
SHEHA Board Vice President

Re: Settlement of Lawsuit with Gold Krause

The Boards of Directors for the Strawberry Point Bluffs Subdivision Homeowners Association ("SPBSHA") and the Strawberry Hills Estates I, II, III & IV Home Owners Association ("SHEA") are pleased to announce that our lawsuit against Gold Krause, Et Al, LLC has been settled. While this resolution of the lawsuit did not obtain everything desired, it is a reasonable compromise that protects the interests of our members and limits the use of the Park Lots by persons who do not reside in the subdivisions. This lawsuit has been lengthy and has become complicated over the years, so a short summary of the dispute and the lawsuit is warranted so that the settlement and its value can be reasonably understood.

The Initial Dispute

In 1982, Gold Krause obtained title to property in and around the two subdivisions from the initial developers of the subdivisions. This property included twenty platted lots in the Strawberry Point Bluffs subdivision, Lots 95 through 114, on Strawberry Lake ("Gold Krause Lots"), just east of the Park Lots (Lots 117-121). The Gold Krause Lots can be accessed through the platted continuation of Gallagher Road past the Park Lots, but both the unimproved "road"

and the lots are swampy during most of the summer. There are two platted lots between the Park Lots and the Gold Krause Lots, Lots 115 and 116. The two associations jointly own Lot 115, and Lot 116 is jointly owned by the homeowners living at the south end of Indianola.

In 2005, Gold Krause started advertising the Gold Krause Lots for sale, representing that the owner of each lot would have the right to use the Park Lots, with access being obtained by traversing across the Park Lots and using an installed wood chip path next to the lake. After learning of these advertisements, the associations informed Gold Krause's real estate agent that the purchase of those lots would not provide a right to access the Park Lots, but Gold Krause was not deterred.

Thereafter, the associations heard word that the real estate agent was discussing a sale of one or more of the lots to the developers of Mystic Ridge, which might open up the Park Lots for numerous individuals. In addition, Gold Krause began actually selling the lots based on its representation that ownership would provide a right to use the Park Lots, as well as the owner becoming a member of the SPBSHA. Given these developments, the associations had little choice but to act to protect our neighborhood and the Park Lots.

The Lawsuit

On May 15, 2006, our associations took action by filing a lawsuit against Gold Krause, asking the Court to make a decision as to the scope of the written easement to the Park Lots, as well as asking the Court to enjoin Gold Krause and its purchasers from trespassing on the Park Lots and Lot 115. As required, the associations also named the then-current purchasers of the Gold Krause Lots as "necessary parties" to this action. Gold Krause joined the battle, filing counter claims seeking damages from the associations, which, in the associations' views, were frivolous. As a result, the insurer for the associations stepped up to the plate to help defray the cost of defending against Gold Krause's claims. The individual purchasers also filed claims against Gold Krause, asserting that if the associations are correct as to the scope of the easement to the Park Lots, then Gold Krause is liable for misrepresenting their rights to the Park Lots.

In May and June of 2007, the associations and Gold Krause both filed motions asking the Court, Judge David Reader presiding, to make a decision based on the written easement. Thereafter, the Court appointed a mediator to assist the parties to obtain an amicable settlement. Although the expectations of a successful settlement were low, a favorable settlement agreement was close at hand. Unfortunately, however, Gold Krause subsequently disclosed that it had sold yet another lot to an outsider (we understand that the purchaser is the ex-wife of the real estate agent) and refused to include one of the prior purchasers, which caused the settlement to become unraveled. In an apparent attempt to force the parties back to the bargaining table, the Court subsequently denied the pending motions filed by the parties, thus refusing to make a decision on the written easement. As a result, the additional purchaser was also brought into the lawsuit.

The lawsuit thereafter became more complicated and more expensive. In April, 2008, Gold Krause asked the Court to force the joint owners of Lot 116 to be joined into this lawsuit as defendants, a move that was adamantly opposed by the associations. Notably, Lot 116 was deeded to those owners, or, more precisely, their lots, as a result of a court case decided in 1980

that excluded those owners from the easement to the Park Lots. Accepting Gold Krause's argument that any decision on the written easement may affect the owners of Lot 116, since ownership of Lot 116 may allow rights to the Park Lots, the Court ordered the associations to bring these neighbors into this lawsuit.

In September, 2008, the Court reassigned this case to a retired District Court Judge, John Pikkarainen, for trial. After meeting with all the parties, the Judge agreed to rehear and reconsider the motions for summary disposition. As a result of the increased number of parties, however, six pending motions were submitted to the Judge for consideration. In December, 2008, the pending motions and the case were once again reassigned to a different judge, District Court Judge Theresa Brennan.

In January, 2009, Judge Brennan heard arguments on the motions, and, although she had not made any final decisions, she described how she will likely rule on the motions. The Judge agreed with the associations that the Gold Krause Lots were not beneficiaries of the easement to the Park Lots. Unfortunately, she also agreed with the arguments made by Gold Krause and several of the individual defendants that the purchasers should be entitled to join the SPBSHA. More problematic, however, she interpreted some of the language in the SPBSHA's Building and Use Restrictions to allow the purchasers to use the improvements installed on the Park Lots, even though they could not use the Park Lots to access the lake. While her expected ruling vindicated the associations' position as to the easement, allowing access to the improvements on the Park Lots muddied the waters. After enunciating her potential rulings, she strongly encouraged settlement, and she delayed her final decision to allow time for settlement discussions.

The Settlement

After hard bargaining between all the parties, a final settlement agreement came to fruition on the proverbial courthouse steps. After resolving several complications, the parties have agreed to the following settlement:

1. The joint owners of Lot 116 – the owners of the seven building sites on the southern end of Indianola – will transfer the sole and exclusive use of that lot to the two associations, jointly, which is adjacent to the current Park Lots. In return, they will retain the legal title of Lot 116 (but not an independent right of use), and those owners will be allowed to use the Park Lots, with those rights being transferred to any subsequent purchasers of their houses. This resolution cures the prior preclusion of their ability to access the Park Lots, and the members of the associations will have the benefit of using Lot 116.
2. Gold Krause will transfer two of the Gold Krause Lots, Lots 114 and 95, to the associations, jointly.

3. Of the eleven Gold Krause Lots yet to be sold, seven of those Gold Krause Lots will only be sold to persons who reside in the subdivisions, and any future sales of those lots will be similarly limited to persons living in the subdivisions.
4. The remaining four Gold Krause Lots may be sold to the general public, with the purchasers having rights to the Park Lots, with the limitation that any such sales must be made to an individual or single nuclear family, which excludes companies, organizations, or associations.
5. As to the current purchasers of the Gold Krause Lots, they will pay \$9,000 to the associations. Four of those lots are currently owned by residents of the subdivisions, with the three remaining lots owned by outsiders.
6. The current purchasers of the Gold Krause Lots will have rights to the Park Lots, with those rights being transferred to any subsequent purchaser. Any future sales of those lots will again be limited to individuals or single nuclear families.
7. The purchasers of the Gold Krause Lots will have an easement across Lots 116 through 114 (that will also be owned or utilized by the associations) for purposes of accessing their Gold Krause Lots, but bars any use of a motorized vehicle on that easement.
8. The associations will have an easement across all of the Gold Krause Lots for purposes of accessing Lot 95, the most easterly Gold Krause Lot that will now be owned by the associations, but also bars any use of a motorized vehicle on that easement.
9. The owners of the Gold Krause Lots and their successors-in-interest will not be eligible to become members of the SPBSHA or be eligible to participate in the pontoon slip lottery, but this preclusion does not encompass persons who also live in the subdivisions. The Gold Krause Lot owners will not be liable for any SPBSHA dues or assessments arising from ownership of a Gold Krause lot.

Pursuant to this settlement, the associations have obtained its goal to reduce potential congestion and overuse of the Park Lots. Nine of the twenty Gold Krause Lots have been permanently taken out of the stream of commerce outside the subdivisions. Four of the remaining lots are currently owned by residents of the subdivisions. While all of the remaining eleven lots, including the four owned within the subdivisions, may eventually allow additional use of the Park Lots by outsiders, this is far better than the alternative as enunciated by the Judge, which would have granted a right to use the “improvements” on the Park Lots for all Gold Krause Lot purchasers. In addition, the settlement precludes membership in the SPBSHA, and thus precludes use of the common property owned by the SPBSHA or engaging in subdivision activities, such as the pontoon lottery. Finally, the associations have received reimbursement for some of their attorney fees as a result of the settlement.

Overall, the Boards of both associations believe that this resolution is in the best interest of the associations, and we have therefore approved the settlement.