_____, 2018

Mr. _____
Law Office of _____
Street Address
City, State, Zip

Dear Attorney _____:

I am in receipt of your letter dated _____ written on behalf of your client _____ ("your client"). Your client owns a single family residence situated on a lot at _____(street address, city and state) and I also own a single family residence situated on a lot at _____(street address, city and state). Our respective lots have street frontage on _____ Avenue and are separated by a privately-owned right-of-way. The right-of-way (referred to as a paper street in your letter) is depicted on various plans recorded at the County Registry of Deeds. It is improved by a gravel road that provides access to other residential lots to the rear. The gravel road does not precisely correspond to the right-of-way – part of it encroaches on your client's property and a portion of the right-of-way forms a landscaped side yard to my property. Your letter asserts that abutters are permitted to utilize the paper street for all purposes for which streets are commonly used, including installation and maintenance of utility lines, notwithstanding any improvements to the paper street

At least since 2003, when we purchased the property, the landscaped side yard strip has not been used for vehicular travel. I have marked off a parking space with small rocks on the landscaped strip and from time to time I and my guests have parked cars on it for convenience. Your client now objects to this arrangement and states that "physical encroachments, such as parking cars or placing stones or landscape, do not diminish a paper street's status and don't eventually 'mature' into altering rights of adjacent parcel owners to the paper street.

Your letter prompted me to review the owner's title documents in connection with rights concerning the land situated between our two properties. M.G.L. Ch. 183, §58, the "derelict fee" statute is relevant here. As you know, the statute provides that "[e]very instrument passing title to real estate abutting a way…shall be construed to include any fee interest of the grantor in such way…unless (a) the grantor retains other real estate abutting such way…in which case, (i) if the retained real estate is on the same side, the division line between the land granted and the land retained shall be continued into such way…as far as the grantor owns, or (ii) if the retained real estate is on the other side of such way…, the title conveyed shall be to the center line of such way…as far as the grantor owns, or (b) the instrument evidences a different intent by an express exception or reservation and not alone by bounding a side line."

Your client's deed references a plan recorded in 1915. The plan depicts a driveway straddling your client's lot line and land of the Estate of _____ is called out on the other side of the driveway. In accordance with the statute it appears that your client owns that part of the driveway to the center line, which is more or less within the bounds of his lot. However, the 1915 root deed from which your client's rights are derived, a conveyance from the trustees of the estate of _____ to _____ includes an express reservation of rights: "…the grantors reserve for themselves and their heirs and assigns…the right to lay out and construct for the benefit of their remaining lands, a way over said driveway, not less than forty (40) feet in width,…and if and when said way shall be laid out and constructed [emphasis ours] the grantee and her heirs and assigns shall have rights of way in and over the way so laid out and constructed for access to and egress from the within granted premises to _____ Avenue, and thereupon the rights of way herein reserved over so much of the present driveway…shall cease and determine" [sic]. It is clear from conditions on the ground and various surveys and plans that the 40' wide road was never constructed.

By contrast, our deed and the 1928 root deed from the same grantor as your client's root deed describes our lot abutting the proposed 40' wide proposed street on the plan recorded with the deed. Accordingly, our deed conveys with it the entire fee in the proposed street. The plain reading of the statute clearly applies here because the estate did not retain land: "[e]very instrument passing title to real estate abutting a way…shall be construed to include any fee interest of the grantor in such way."

Notwithstanding the 1928 plan which depicts your client's lot abutting the 40' way, your client does not own any part of the way. Here, the grantors' intent to reserve rights in the proposed street operates to nullify any real property interest in your client that might retroactively apply: "…the instrument evidences a different intent by an express exception or reservation and not alone by bounding by a side line." In any event, your client's deed does not convey title to real estate abutting the 40' way, so the statute would not apply anyway.

We have no interest in "altering the respective legal rights of adjacent parcels" as you have expressed. In sum, your client has no legal ownership in the proposed street or access rights, except to approximately the middle of the gravel driveway as it now exists. Accordingly, because your client has no ownership or access rights in the 40' street, he has no grounds to protest our use of it. Please feel free to contact me if you would like to discuss further.