

MEMORANDUM RE ENTRANCE AREA ALONG C&O CLUB DRIVE

The entrance area along C&O Club Drive between Cherry Street and Unit 1 has a curious ownership and relationship to the C&O Club Association. This is a detailed analysis of the legal status of the area (including its history).

The diagram below shows the entire area currently titled in the name of Waterfront Partners, L.P. in the Charlevoix County Register of Deeds. It includes the blue shaded rectangle which is the former railroad right-of-way plus the yellow outlined narrow strip (known as Parcel 8), which Waterfront acquired from Charco (which had acquired it from the railroad). The rectangle immediately to the NNE of the blue area is Unit 1. The lakeshore to the ESE of the blue area belongs to the Wylers and the Gluecks.

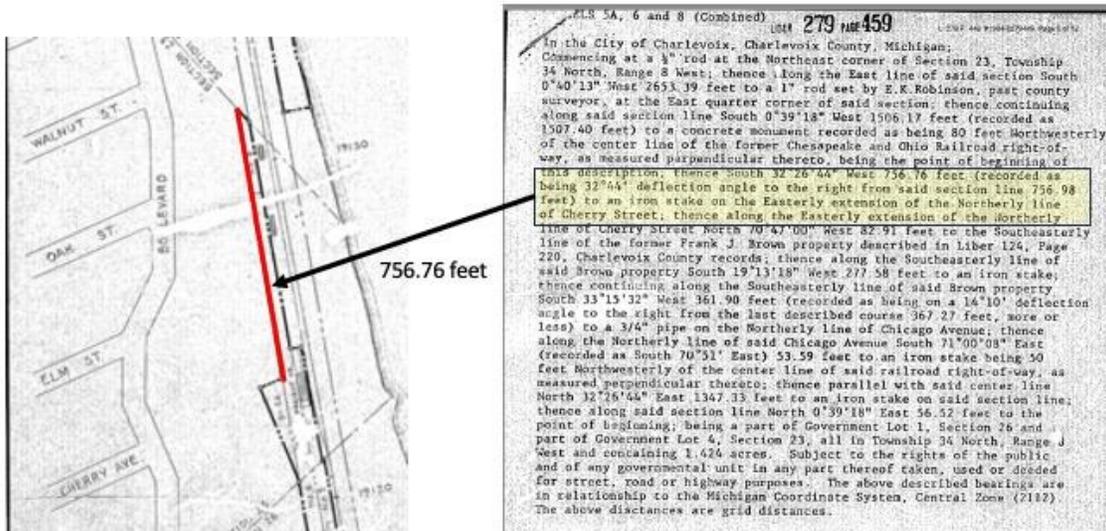
The shaded blue area is the former C&O Railroad right-of-way acquired by Waterfront Partners from Michigan DOT

The yellow bounded area is the parcel Waterfront Partners acquired from Charco per the legal description below. The length of the parcel on the berm side is 678.03 feet.

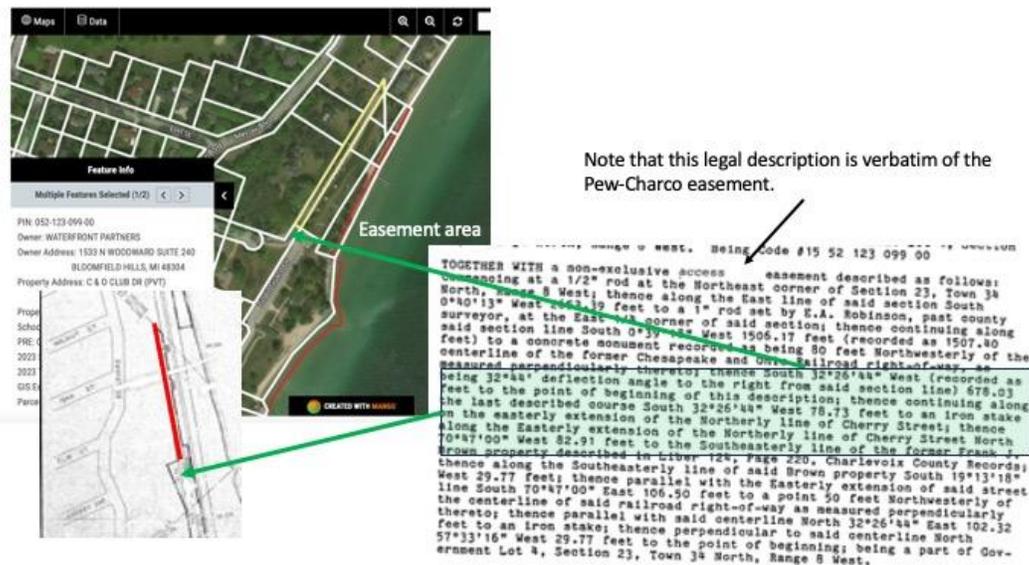
LEGAL DESCRIPTION

Parcel 8: Commencing at a 1/2" rod at the Northeast corner of Section 23, Town 34 North, Range 8 West; thence along the East line of said Section South 0°40'13" West 268.39 feet to a 1" rod set by E. K. Robinson (past county surveyor) at the East 1/4 corner of said section; thence continuing along said section line South 0°39'18" West 1506.17 feet (recorded as 1507.40 feet) to a concrete monument recorded as being 80 feet Northwest of the centerline of the former Chesapeake and Ohio Railroad right-of-way, as measured perpendicular thereto, being the point of beginning of this description; thence South 32°25'44" West (recorded as being a 32°44' South 57°33'16" East 29.77 feet to a point which is 50 feet northwesterly right-of-way; thence North parallel with the centerline of said railroad right-of-way North 32°25'44" East 630.00 feet to the East line of Section 23, T34N, R8W; thence North 0°39'18" East along said section line 56.52 feet to the point of beginning; being a part of Government Lot 4, Section 23, Town 34 North, Range 8 West. Being Code #15 52 123 099 00

Below is a portion of the survey attached to the 1986 deed by which Charco acquired Parcel 8 from the C&O Railroad. The red line is what is described in the highlighted portion of the legal description. (What follows in the legal description is that zig-zag creating the triangular area just to the south of the line.) The 756.76 line currently runs from a spot on the berm across from Unit 1 to a spot in the curve of C&O Club Drive near the Cherry Street entrance.

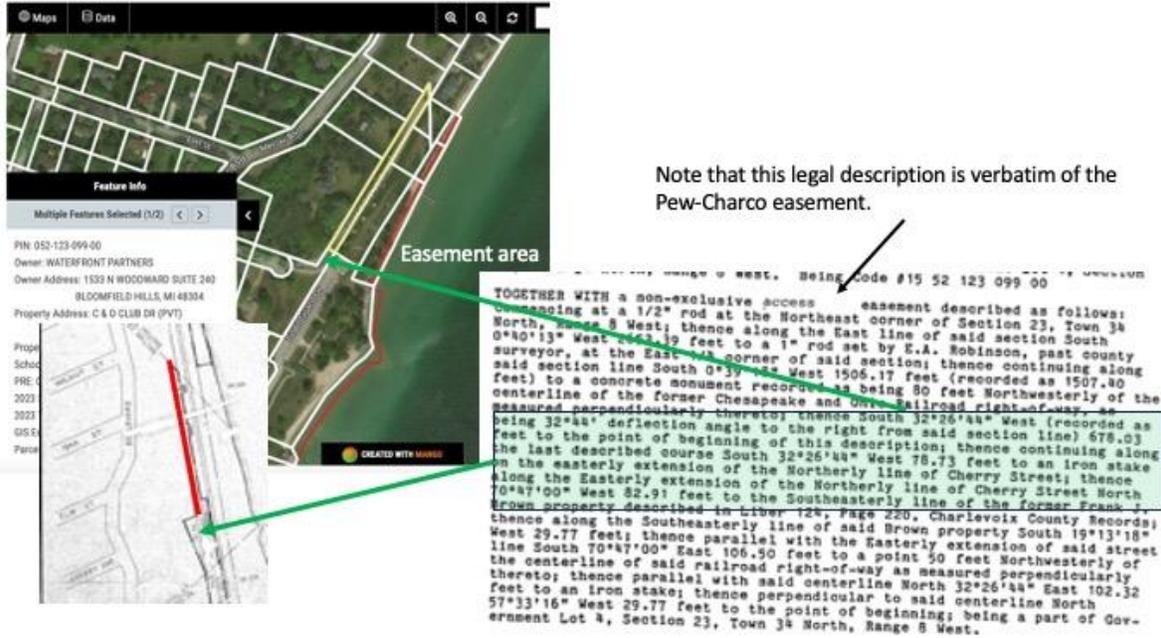


Now compare below Waterfront’s description of what it came to own by way of acquisition from Charco. We can be sure that the legal description matches the tax parcel map because the tax identification numbers match. The equivalent property that ran all the way to a line extending from the north edge of Cherry Street (756.76 feet) now only extends 678.03 feet.



The reason is that Charco conveyed the balance of its “Parcel 8” (namely the area in that triangular zig-zag) to the Pews. That is the source of the easement across the Pew property, because otherwise the remaining Charco property (that it sold to Waterfront) would have been landlocked. Note that the easement is “non-exclusive” for vehicular, pedestrian, utility, and all other purposes. Nevertheless, the Pews acknowledged that Charco and its successors (which

would include Waterfront) have the right “to engage in construction, maintenance, and repair in connection with such uses, and to otherwise enjoy the Easement” as long as Charco or its successors bore the sole expense and risk.



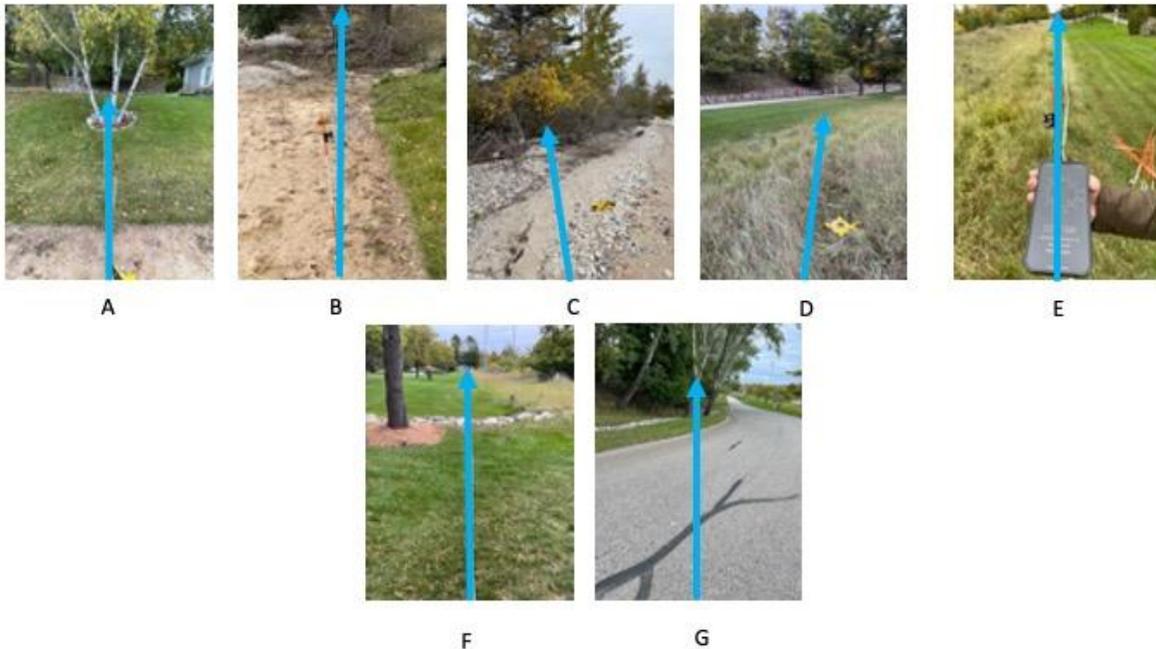
Note that the measurements add up. The point of beginning in the description of the easement is 678.03 feet down the property line acquired by Waterfront. The line extends along that panhandle another 78.73 feet to the Cherry Street line. Add them together and you get the 756.76 feet from the C&O Railroad-Charco deed.

Which brings us to the C&O Club’s Access Easement with Waterfront as shown below.



Waterfront owns the property. The agreement defines a “Waterfront Parcel” over which the C&O Club Association gets “a non-exclusive easement over a road to be constructed on the Waterfront Parcel for the purposes of ingress and egress, both vehicular and pedestrian, to and from Cherry Street.” That is defined as the “Access Easement.” The document states “Waterfront reserves the right, from time to time, to record a legal description of the Access Easement in order to more clearly define the Access Easement.” Hence, we know that the Access Easement is something less than the entire area of the Waterfront Parcel as defined. Moreover, the C&O Club “shall be entirely responsible for repairing, replacing and maintaining the Access Easement, without limitation, the road to be constructed and all landscaping and fencing located adjacent to the road.” Finally, Waterfront has the right to grant other easements across the Waterfront Parcel and the Access Easement without the C&O Club’s consent, “including, without limitation, a public pedestrian and bicycle easement.”

What is the area of the Waterfront Parcel? It is not the entire area that Waterfront owns. The legal description of the Waterfront Parcel shows on the map as the blue line. It does not include the yellow shaded area between the centerline of the old right-of-way and the Glueck/Wyler lakeshore property. It does include the area of the old Pew-Charco-Waterfront easement, shown in the red shaded area. The pictures below (taken on October 17, 2023) correspond to the arrows on the map.



The pictures show that the current mowing ends roughly at the old right-of-way centerline, leaving the yellow shaded area on the map growing wild. Note that we still mow more than “adjacent to the road” but, as it turns out, currently we mow (roughly) only the Waterfront Parcel as defined in our agreement.

Finally, there is a knotty legal question as to the status of the ownership of the entire Waterfront area. It is titled in the name of Waterfront Partners, L.P., a Michigan limited partnership. The general partner was Waterfront Group Corporation, which was dissolved on July 15, 2002. The limited partnership agreement is a public record. The relevant portion states as follows:

(B) In the event of the death, incapacity, bankruptcy, resignation, dissolution, termination or withdrawal of a General Partner, (i) the Partnership shall not terminate so long as there is at least one remaining General Partner, (ii) in the event there are no remaining General Partner(s), the Partnership shall be dissolved and terminated unless the Limited Partners (by an affirmative vote of the majority in Ownership Percentage Interest of the Limited Partners) within ninety (90) days after the date of any such event, elect to continue the Partnership. If any such election is made, the Partnership shall continue and the interest of such deceased, incapacitated, bankrupt, resigned or withdrawn General Partner in the Partnership shall become that of a Limited Partner and he or his successor(s) (upon compliance with the provisions of Section 7.4 of the Partnership Agreement) shall thereupon have the same interest in the Partnership capital, Profits, Losses and distributions as such Partner had as a General Partner, but otherwise with all the rights, obligations and attributes of a Limited Partner. Upon such death, incapacity, bankruptcy, resignation or withdrawal of all General Partners and the election of the Limited Partners to continue the Partnership, the Partner, by an affirmative vote of a majority in Ownership Percentage Interest of the Partner, shall elect a new general partner or partners as successor general partner(s) and shall specify the compensation, if any, and other interest of the successor general partner(s).

This means that, upon the dissolution of the General Partner in 2003, there were no remaining General Partners. Thus, under this provision, the limited partnership was to be dissolved and terminated unless the limited partners, within 90 days of that event, voted to continue the

partnership. I have not found any evidence of such a vote. Note that, by its own terms, the limited partnership would dissolve automatically in 2025, so I don't know if the former limited partners could waive the 90 day provision and now, twenty years later, appoint a new general partner.

Notwithstanding the odd status of the ownership of the property, there is no guarantee it won't be used or sold. Moreover, as noted above, all of the easements are non-exclusive. For example, nothing (legally) would prohibit the owner of the yellow shaded area from transferring it to the City for additional Depot Beach usage (parking or otherwise), opening the area now bounded by the picket line next to the parking lot cul-de-sac, or permitting access to that area over C&O Club Drive.

J.M.L.

Oct. 21, 2023