BUYING AND SELLING WATERFRONT PROPERTY

Michigan Lake & Stream Associations
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BASICS OF “RIPARIANISM”

- Definitions
  - Riparian
  - Littoral
When is Land Riparian?

- Must touch the water
- “Gaps”
- Roads, easements, etc., located between the water and a lot
We hereby certify that the said plat appears to include land located on a State Trunk Line or Federal Aided Road.

Exhibit and approved: July 29, 1927.

County Plat Board
BASICS OF “RIPARIANISM”

Non-Riparian Parcels

- “Water view”
- “Deeded access”
BASICS OF “RIPARIANISM”

- Bottomlands Ownership
- Inland Lakes
  - Natural
BASICS OF “RIPARIANISM”

- Bottomlands Ownership
- Inland Lakes
  - Natural
BASICS OF “RIPARIANISM”

- Bottomlands Ownership (continued)
  - Inland Lakes
    - Artificial
  - Great Lakes
  - Rivers
BASICS OF “RIPARIANISM”

- Legal Descriptions
  - Almost never go into the water
  - Common language used
  - Meander lines
  - Traverse lines
BASICS OF “RIPARIANISM”

- Artificial Lakes
BASICS OF “RIPARIANISM”

- The Beachwalker Case
BASICS OF “RIPARIANISM”

- Legal Rights of a Riparian Owner
THERE ARE MANY “ISSUES” OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES
ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- Is the property truly waterfront (riparian)? Or is there a “land gap” between the parcel and the water?

- What are the property owner’s riparian rights (and the limits thereof)?

- Are there applicable deed restrictions or restrictive covenants?

- If vacant, is the property “buildable”?
ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- Are there any lake access devices on the property involved or adjacent to the property that may create problems (for example, lake access easements, road ends, parks, alleys, walkways, etc.)?

- Is there a lake or riverfront property owners association and, if so, is it mandatory? Are there dues or assessments?
ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- Are there any special assessments regarding the body of water (or otherwise) that bind the property? Is there a statutory lake board?

- Is the waterfront and body of water healthy and clean, or degraded and potentially polluted?

- Are the shoreline and bottomlands for the property desirable or problematic (muddy, erosion-prone, etc.)?
ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- Has a formal lake water level been established?

- Is the cottage or dwelling (or any other structures or improvements) located within a floodplain or flood zone? That may significantly affect the homeowner’s insurance premiums as well as implicate many other issues.

- Are there wetlands issues?

- How much waterfront does the parcel really have?
ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- Can the existing dwelling be replaced or added onto under the local zoning regulations?
- Was the property ever “filled,” such that settling might be a real problem if a dwelling is built or expanded?
- Are there any local municipal regulations regarding dock limitations, swim rafts, seawalls, the number of watercraft allowed, or similar matters?
- Who owns the adjacent bottomlands, at what angles, and where are the limits?
LAKE ACCESS DEVICES

- Types
  - Roads
    - Perpendicular
    - Public or Private
LAKE ACCESS DEVICES

- **Types**
  - Roads
    - Parallel
    - Public or Private
LAKE ACCESS DEVICES

- Types
  - Parks
Know all men by these presents: That we, William Johnston and Allen Johnston, do hereby give and convey to the said Bostwick Park, together with the right of ingress and egress thereunto, all that certain piece and parcel of land, being a portion of the southerly one quarter of the southwest quarter of Section 13, Township 5 South, Range 3 West, more particularly described as follows:

Being that portion of said southerly one quarter of the southwest quarter of Section 13, Township 5 South, Range 3 West, described as follows:

Bounded on the north by the line between said Bostwick Park and the southerly line of said Section 13, Township 5 South, Range 3 West;

On the east by the line between said Bostwick Park and the western line of said Section 13, Township 5 South, Range 3 West;

On the south by the line between said Bostwick Park and the line between the southerly line of said Section 13, Township 5 South, Range 3 West and the line between the southwestern corner of said Section 13, Township 5 South, Range 3 West and the northeasterly corner of the northerly half of the northwest quarter of Section 13, Township 5 South, Range 3 West;

And on the west by the line between said Bostwick Park and the line between the southwestern corner of said Section 13, Township 5 South, Range 3 West and the southerly line of said Section 13, Township 5 South, Range 3 West;

And containing the further area of said southerly one quarter of the southwest quarter of Section 13, Township 5 South, Range 3 West, as more particularly described in the above-mentioned deed of conveyance from the said John E. Johnson to the said Bostwick Park, recorded in the office of the Register of Deeds of the County of Cuyahoga, State of Ohio, in Volume 739, Page 192, and adjoining said Bostwick Park.

In Witness Whereof, we have hereunto set our hands and seals this 1st day of May, 1951.
DESCRIPTION

The land embraced in the annexed plot of Myer Lake Park, Courland Township, Kent County, Michigan, is described as follows:

Commencing 63.6 feet north and 283.1 feet west of the center of Section 29, Town 09 North, Range 10 West, thence west 279.86 feet, thence north 46.10 west 253.30 feet, thence north 63.06 east 643.60 feet, thence south 29.33 west 34.57 feet, thence south 53.71 to west 483.77 feet, thence south 67.45 west 54.35 feet, thence north 44.56 west 438.10 feet, thence north 71.29 east 467.85 feet, thence south 76.36 east 240.66 feet, thence north 27.58 east 39.03 feet, thence south 71.12 east 392.30 feet, thence north 60.43 east 44.09 feet, thence north 64.52 west 30.30 feet, thence south 42.52 east 704.37 feet, to the place of beginning.
LAKE ACCESS DEVICES

- Types
  - Walkways
LAKE ACCESS DEVICES

- **Types**
  - Easements
  - Other
LAKE ACCESS DEVICES

“Access” or “Ingress and Egress”

- Public Roads
- Private roads/easements
- Is access to the property insured?
LAKE ACCESS DEVICES

- Road Ends
  - The common law
  - MCL 324.30111b
- Easements
- Walks or walkways
- Parks
- Obstacles and Abandonment
PROPERTY OWNERS ASSOCIATIONS

- “Strong” associations
- “Weak” associations
Waterfront property can present significant challenges when it comes to purchase agreements.

- Is the legal description adequate?
- What fixtures or items are included in the sale?
- Are there encumbrances?
- Is it waterfront or not?
- Title insurance (is it insured as riparian?)
- Flood Insurance
- Inspections
- Surveys
- Private road issues
LOCAL ORDINANCES

- Zoning
  - Funneling
  - Docks
  - Setbacks
  - Private roads
  - Minimum lot size and width
Local Ordinances

- **Police Power**
  - Docks and boats
  - Dune protection
  - Wetlands

- **Land Divisions**
PRESCRIPTIVE EASEMENTS AND ADVERSE POSSESSION AT THE WATERFRONT

- Many old plats
- A significant problem
ENCROACHMENTS AND SURVEYS
INSPECTIONS

- Cottage, dwellings and structures
- Land or “buildability”
DUE DILIGENCE

- There are two types:
  - Before the purchase agreement
  - Between the purchase agreement and closing
OTHER ISSUES

- Septic Systems
- Deed Restrictions
- Private Roads
STATE STATUTES

- The Inland Lakes and Streams Act
- The Dune Protections Act
- The Wetlands Protection Act
- The Natural Rivers Act
VACANT LAND—BUILDABILITY
WHAT IS INCLUDED IN THE SALE?

- Docks
- Boats
- Rafts
- Other “toys”
- Furnishings
- Trailers
- Grills
TYPES OF LAKES

- Public versus private
- All-sports
- No-wake
- no motor (or electric motor only)
- Deed Restricted
- Natural versus artificial
- Spring fed
- The trophic status of a lake
COMMON MYTHS
Myth #1
Members of the public and other riparian property owners can walk around an inland lake without permission so long as they stay in the water or on the shore.

- **Fact**: Unless there is a public road right-of-way, easement, park, or other encumbrance between the lake and the riparian properties, members of the public and other riparians do not have the right to walk on the lakefront or bottomlands of another at an inland lake without permission. For Great Lakes shorelines, the rule is different. Pursuant to the “beachwalker” case (*Glass v Goeckel*, 473 Mich 667; 703 NW3d 58 (2005)), the public generally has an easement for walking lakeward of the ordinary high water mark.
Myth #2
Riparian boundary lines under an inland lake radiate out to the center of the lake in the same direction as the side lot lines of the riparian property on land.

- **Fact:** That is almost never the case. Riparian boundary lines under the water of an inland lake tend to radiate in a pie–like fashion toward the center of the lake.
Fact: That is false. While it is true that many lakes in Michigan have public access sites, including public roads which terminate at the lake and accord limited public access, not every lake in Michigan has such public access points nor is there any requirement that every lake have public access points nor is there any requirement that every lake have a public access point or site. It is amazing how often I hear people assert this myth. To date, however, no person reciting this myth has ever been able to show me a statute or any court case which supports this myth.
Myth #4
A local government’s jurisdiction ends at the water’s edge.

**Fact:** While a local municipality’s jurisdiction beyond the water’s edge is questionable on the Great Lakes, with inland lakes, a municipality can have full zoning and other ordinance jurisdiction over all parts of an inland lake. Of course, if the inland lake straddles two or more municipalities, a particular municipality’s jurisdiction ends at the portion of the lake where the other municipality’s geographical jurisdiction begins.
Myth #5
It is lawful to place large piles of sand on the beach and to occasionally shovel some sand in the water or let the elements wash the sand into the lake, and there is no need for a permit for such sand.

- **Fact:** No sand or fill can occur on any body of water in Michigan lakeward or riverward of the ordinary high water mark without a permit. On inland lakes, the permit must be obtained from the Michigan Department of Natural Resources (the “DNR”). On the Great Lakes, a permit must be obtained from the U.S. Army Corps of Engineers (and sometimes also from the DNR). Where an inland lake has a direct navigable passage to one of the Great Lakes, it is possible that a permit will have to be obtained from both agencies. Placing a pile of sand landward of the ordinary high water mark and allowing it to “erode” or wash into a lake or river beyond the ordinary high water mark would likely be a violation of state or federal statute if no permit is obtained for in-water sanding.
Myth #6

If I have a lake access easement, I have the right to install a dock, moor a boat, lounge, sunbathe, and picnic.

- **Fact:** Lake access easements almost never accord the beneficiaries such rights.
Myth #7
I do not have to worry too much about the purchase/sales agreement that I will be signing regarding the purchase of a piece of property in Michigan, since many of the details can be worked out later even if not expressly mentioned in the agreement.

- **Fact:** In almost all cases, a signed purchase/sales agreement for real estate in Michigan is a fully binding contract that cannot be varied or supplemented without the express written consent of all parties to that contract.
Myth #8

With regard to any zoning, DNR permit, local ordinance, or other requirements, it is best to simply do the lake project you want to do without a permit and ask for forgiveness/permission later if anyone finds out.

- **Fact**: That is almost never a good move. The penalties for violating a state or federal law or local ordinance regarding the waterfront can be extreme. Furthermore, you might have to “undo” the project at great personal cost.
**Myth #9**

On an inland lake, riparians only own to the edge of the water, such that I can anchor my boat overnight out into the lake anywhere I want.

- **Fact:** With almost all inland lakes in Michigan, the adjoining riparian property owners own the bottomlands adjacent to their lot or parcel to the center of the lake. While boaters and fishermen can temporarily moor or anchor their boat on the bottomlands of another while fishing or recreating, only the riparian landowner has the right to anchor or moor a boat or watercraft on his/her bottomlands permanently or overnight.
**Myth #10**

Since the local municipality has no ordinance regulations regarding docks or swimming rafts, I can extend my dock as far as I want out into the lake or keep my raft in the middle of the lake, so long as it is on my bottomlands, and there is nothing anyone can do about it.

- **Fact:** Unreasonably long docks or raft locations that interfere with navigability are subject to two types of regulation absent a local municipal ordinance. First, pursuant to the Michigan Marine Safety Act, the DNR has the ability to require that a raft or dock be moved or removed if it interferes with navigability. See MCL.324.80101, *et seq.* Second and alternately, other riparians potentially have a civil remedy against you in court if your dock or raft unreasonably interferes with their riparian rights. See *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505; 534 NW2d 212 (1995).
Fact: A parcel or lot can be landlocked or inaccessible, legally or practically. Today, most municipalities will not allow a new parcel or lot to be created unless it has frontage on a public road or approved private road. Nevertheless, there are a number of parcels or lots throughout Michigan created years ago that are landlocked or inaccessible and that cannot be made accessible unless an adjoining property owner voluntarily sells or creates an easement. On occasion, the owner of a landlocked parcel or lot can go to court and obtain a permanent access easement via the common law doctrines of prescriptive easement, implied easement, or easement by necessity, but those remedies are not available in all cases.
LAWSUITS AND THE RISK OF LITIGATION
Questions?
Helpful Resources

- Visit the Michigan Townships Association at www.michigantownships.org

- View Cliff Bloom’s articles at www.bsmlawpc.com

- Visit the website for *The Michigan Riparian* magazine at www.mi-riparian.org or contact them at 300 North State Street, Stanton, MI 48888 or (989) 831–5100.
  - The annual subscription rate is currently $14.00 for four issues.
Helpful Resources (continued)

- The Michigan Lake & Stream Associations, Inc.’s website can be found at www.mymlsa.org.

- Also see John Cameron’s real property treatise entitled *Michigan Real Property Law*, published by the Michigan State Bar Association, Institute of Continuing Legal Education.
Thank you.

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