



Michigan Inland Lake Law

Year in Review - 2012 Edition



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Dear Michigan Property Owners:

Property rights are valuable. Cases and laws affecting property rights on riparian property (lakes, streams, and rivers) should be closely monitored and scrutinized as these decisions can and do affect property rights and in turn property values and legal uses.

Five cases were decided and a new statute, Public Act 56, was enacted in Michigan in 2012. At least two court decisions appear to be in direct contradiction to each other. See *Banacki* (page 7) and *Kranz* (page 8). The new statute, MCL 324.30111b, has added local law enforcement and criminal penalties to neighborhood property disputes.

This publication is being offered as a free resource to assist the countless Michigan property owners with land on or near a beautiful in-land lake.¹

If you have questions or concerns about how these cases or how any Michigan law affects your property rights or are having issues with neighbors, community members, or the public with your public or private lake access or lake front property, contact my office to arrange for a confidential consultation.

Best regards,

Philip L. Ellison

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¹ The information in this publication is not to be considered legal advice applicable to your or every legal situation. It is intended for informational purposes and is not specific to any certain case or legal matter. If your matter requires legal representation, you should act quickly and contact a riparian attorney to ensure your rights are protected.

GENERAL RIPARIAN LAW PRINCIPLES

Riparian rights are property rights.

Bott v Natural Resources Comm, 415 Mich 45 (1982)

The riparian owner has the exclusive use of the bank and shore.

Hilt v Weber, 252 Mich 198 (1930)

Riparian rights are protected from a governmental taking by limits on the power of eminent domain.

Ryan v Brown, 18 Mich 196 (1869)

Riparian rights are not alienable, severable, divisible, or assignable apart from the land which includes therein, or is bounded by a natural water course.

Thompson v Enz, 379 Mich 667 (1967)

In other words, riparian ownership rights may not be transferred apart from riparian land.

Little v Kin, 249 Mich App 502 (2002)

The rights of riparian owners are subject to the right in other riparian owners to use the surface of the whole lake for boating and fishing in the case of private inland lakes or an easement of navigation in the public in navigable inland lakes, with inlets and outlets, where access may be had without trespass upon the fast land of riparian owners.

Hall v Wantz, 336 Mich 112 (1953)

Erecting and maintaining a dock at the water's edge is a riparian right.

McCardel v Smolen, 404 Mich 89 (1978)

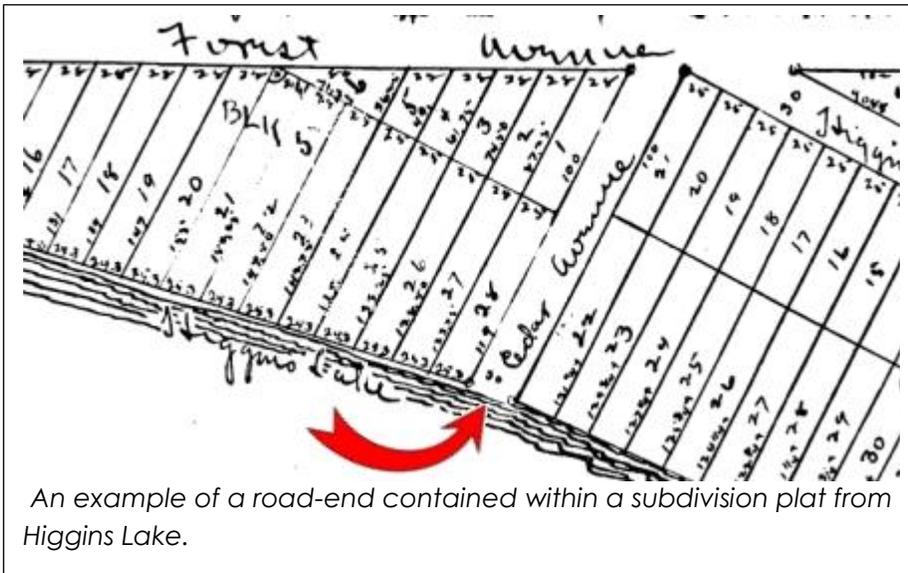
An easement for access to and from the water's edge grants only a right of way to the water and does not give rise to riparian rights, but the original owner of riparian property may grant an easement to backlot owners to enjoy certain rights that are traditionally regarded as exclusively riparian.

Dyball v Lennox, 260 Mich App 698 (2004)

MICHIGAN'S NEW ROAD-ENDS LAW

Public Act 56 of 2012 - MCL 324.30111b

Public Act 56 of 2012 is a newly enacted law regarding the use of public road-ends terminating at the edge of a Michigan inland lake or stream. Public Act 56 makes it a misdemeanor to use public road-ends for placing boat hoists or boat anchorage systems, mooring or docking boats between midnight and sunrise as well as installing a dock or wharf. The penalty is a \$500 fine, with each 24-hour period constituting a separate and new violation, thus allowing for subsequent and repeated citations. The Road-Ends Law also creates an implied cause of action in the civil courts as well. Expect local police and sheriff departments to start being injected into neighborhood disputes over water rights.



Additionally, only single-season docks authorized by the local government body and approved by the Dept of Environmental Quality will be permitted via DEQ regulations and standards known as "the Minor Permit category."

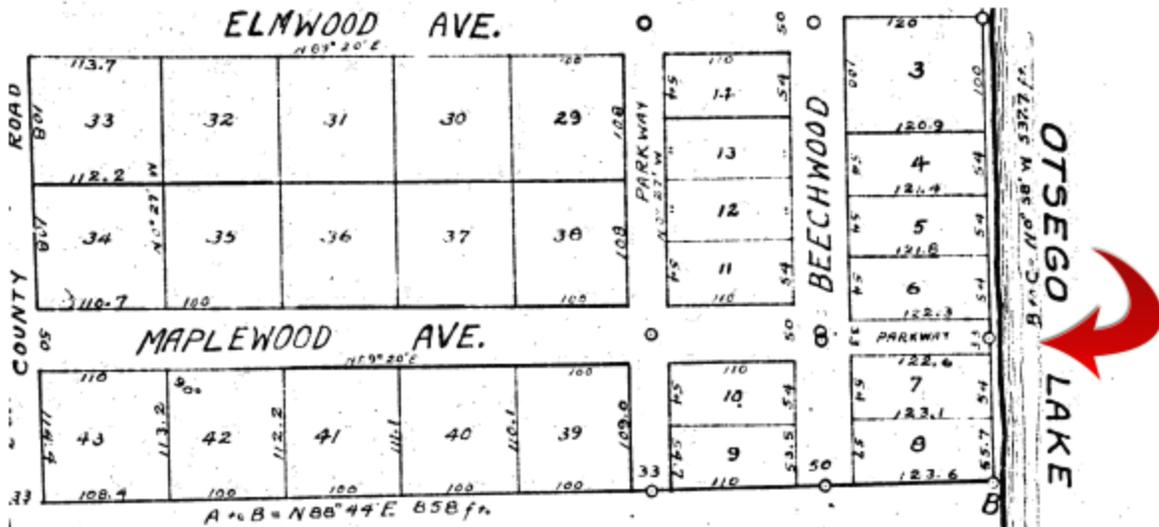
One important aspect under the Road-Ends Law is that the new law does not apply to privately-owned road-ends or access easements owned by those (i.e. lake and homeowner associations) who possess a private right via a recorded deed, recorded easement, or other recorded dedication. The law also does not appear to apply to roads ending at any of Michigan's Great Lakes. The law is unclear if other equity-based claims, like adverse possession or prescriptive easements, will still apply or act as a defense to this new criminal statute.

A copy of the statute may be downloaded at www.olcplc.com/public/riparian-pa56

O'BRIEN v HICKS

Michigan Court of Appeals No. 307332 (Nov 20, 2012)

This case involves one of two parkways located beside Otsego Lake in the Hazel Banks Plat, named "Parkway 6-7."



In 2009, the O'Briens filed a complaint seeking to vacate Parkway 6-7 to prevent access to Otsego Lake. They also sought an injunction to prohibit use of and to require removal of a dock at Parkway 6-7, and seeking to prevent defendants and members of the general public from mooring boats, erecting docks, erecting boat hoists and wet anchorage devices, and storing personal property in the riparian extension of Parkway 6-7.

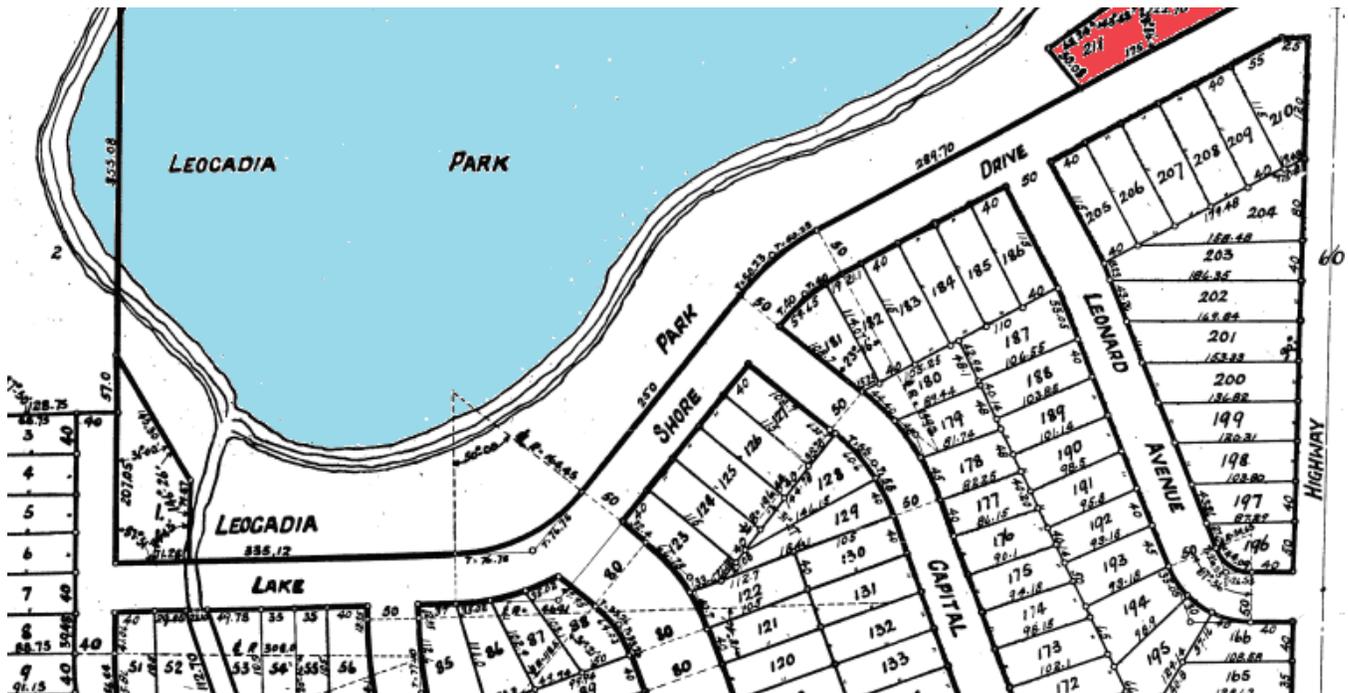
Issue: Whether Defendants had acquired riparian rights through a prescriptive easement?

Held: No. Because an easement *already existed* on Parkway 6-7, individuals may not acquire a prescriptive easement to property already subject to an easement for the benefit of an entire subdivision and created through a private dedication simply because an owner "overuses" the easement, citing the very recent *Banacki v Howe* decision (see page 7).

HORSEHOE LAKE CORP v CARLSON

Michigan Court of Appeals No. 304695 (Aug 2, 2012)

This case involves a park on Horseshoe Lake as part of the Leocadia Park subdivision. Leocadia Park, a private park, is south of Horseshoe Lake. Immediately south of Leocadia Park is Lake Shore Drive, a private road dedicated in the plat that substantively spans the southern length of Leocadia Park.



Lot 211 (denoted in red) does not border Horseshoe Lake, being separated by Leocadia Park. The owners of Lot 211 refused to remove their installed dock and a lawsuit ensued on a trespass theory. In response, defendants filed a counter-complaint seeking a declaration that they have riparian rights to Horseshoe Lake.

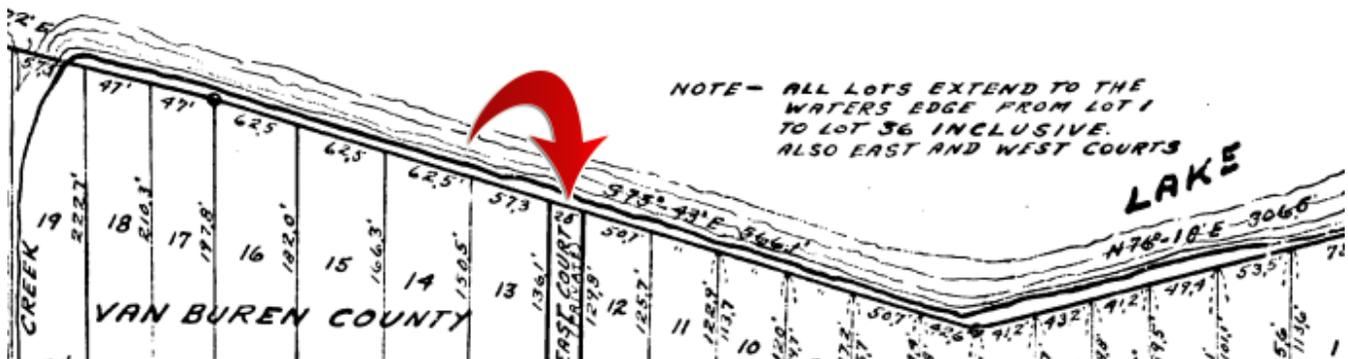
Issue: Whether Lot 211 had riparian rights?

Held: No riparian rights exist. Lot 211 is separated from Horseshoe Lake by Leocadia Park. Thus, the lands of Leocadia Park are riparian and not Lot 211. Further, because Leocadia Park was dedicated prior to 1968, defendants are not the fee owners of the park under the Land Division Act, and as a result, do not have riparian rights by virtue of the dedication either.

BANACKI v HOWE

Michigan Court of Appeals No. 302778 (March 20, 2012)

This case concerns the extent of backlotter's right to use East Court, a 25-foot wide strip of waterfront land that lies between lots 12 and 13 in the Gilmore Lake Subdivision extending to Magician Lake.



A frontlotter brought suit to stop the backlotter from using East Court. Yet, the vague private dedications provided that "The park, street, and courts, as shown on said plat are hereby dedicated to the use of persons owning land adjacent to said park, street, or courts." The plat also notes Lots 1 to 36 and East and West Courts all extend to the water's edge.

Issues: First, whether the private dedication of use of East Court provide subdivision backlotter with full riparian rights. Second, whether the subdivision backlotter had full riparian rights via a prescriptive easement.

Held: The Court of Appeals panel found East Court to be "short street" by using a dictionary definition and surmised the plattor's intent was to treat East Court like a public road (despite being a private dedication). The panel further held the scope of the easement intended nothing more than mere lake access because public ways that terminate at the waters' edge are generally deemed to imply passage and to provide public access to the water.

Defendants alternatively argued that they had gained riparian rights via a prescriptive easement. The Court denied defendants' claim on the basis that a prescriptive easement cannot arise with respect to property already subject to an easement for the benefit of an entire subdivision. A prescriptive easement cannot be had via a private dedication simply because a lot owner "overuses" the easement.

KRANZ v TERRILL

Michigan Court of Appeals No. 305198 (Sept 20, 2012)

Defendants enjoyed an easement across plaintiff's property near but not to Round Lake. Plaintiff sued alleging defendants maintained a dock, and moored their two boats and a jet-ski on the easement contrary to the plain language of the easement. However, both plaintiff's property and defendants' easement did not touch the water's edge. The trial court concluded that defendants had established a prescriptive easement, which included the dock and mooring of boats.

Issue: Whether defendants have a prescriptive easement to Round Lake.

Held: The Court of Appeals panel initially dealt with what it described as “a relatively small strip of land that varies in width, existing between a straight-edge line and a wavy line, in which there was no indication of an intention to reserve ownership of the strip of land.” The Court found ‘no evidence’ that the strip of land or any portion was ever or could ever be conveyed to anyone else. As such, the wavy lines ‘likely’ represents the high-water mark, essentially serving the purpose of meander lines and representing the border or edge of Round Lake at the time of the plat's creation. As such, a new rule has emerged regarding riparian property—small strips of land between a meander line and the water's edge in a plat does not destroy riparian rights to the upland owner. Following this new rule, the Court also held that while an express grant of riparian rights did not occur, the Court affirmed trial court's declaration of a prescriptive easement. The Court held “Defendants established that their express easement was enlarged by prescription to include the riparian rights to install and maintain a dock, as well as to moor boats to that dock.” This conclusion is in seeming contradiction to the Court's *Banacki* decision made a mere one month earlier.²

² Attorney's Note: This new *Kranz* rule appears to be in direct contradiction to long-standing Michigan precedence. See, e.g., *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). This case has been appealed to the Michigan Supreme Court on an application for leave, which may result in a reversal, change, or modification of the new *Kranz* rule.

BEDFORD v ROGERS

Michigan Court of Appeals No. 299783 (April 17, 2012)

The individual lots in the Glen Eyrie subdivision do not extend to the shore of Crystal Lake. Rather, the plat depicts a 100-foot wide strip of land, running the entire length of the subdivision and designated as the "Lakeway," between the south border of the platted lots and Crystal Lake dedicated to the common use of property owners in the Glen Eyrie plat.

When defendant sought to rebuilt and slightly expand her boathouse, the township issued the appropriate permit. After completion of the boat house, plaintiffs brought an action on a trespass and nuisance theory arguing the new boat house was constructed on the Lakeway, being an irrevocable easement, and they were prevented from exclusively using the portion of the Lakeway in front of her lot by constructing a new structure that expanded the footprint of the old boathouse.

Defendant argued 1.) she owned the portion of the Lakeway between her lot and the lakeshore in fee simple subject to an easement in favor of plaintiffs, 2.) she had the right to make reasonable exclusive use of that portion of the Lakeway, and 3.) that the new structure, despite being bigger, still did not unreasonably interfere with plaintiffs' limited easement rights in the portion of the lakeway owned by defendant. The trial court found for defendant.

Issues: Whether the newly enlarged boathouse built on riparian property owned by defendant but subject to an easement via a private plat dedication was lawful.

Held: The COA panel determined that the Lakeway was a private right-of-way easement only. As such, defendant was still fee owner of the property existing between her property the edge of Crystal Lake. Defendant's fee ownership entitles her to make use of her property in any manner that does not infringe on the dedication. In reviewing the conclusion of the trial court that the new boathouse was a mere "de minimus" burden on plaintiffs' easement over the Lakeway, the new boathouse was not an infringement of plaintiffs' limited rights of right-of-way access.

Michigan Water Law Counsel

Riparian Issues

- walking along and using the lake shore
- right of direct access to lakes and streams
- trespass, noise, & nuisances
- docking and mooring
- shore stations or raft anchors
- keyholes and funneling
- beaches, private associations, and offshore bottomland

Previous Clients:

- Local Government
- Developers
- River Property Owner
- Lake Front Property Owners
- Back Lot Property Owners



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