ATTORNEY WRITES

By Clifford H. Bloom, Esq.
Law, Weathers & Richardson, P.C.
800 Bridgewater Place
333 Bridge Street, N.W.
Grand Rapids, Michigan 49504-5320
CliffBloom@lwr.com

Am I a Lakefront Property Owner?

Doesn't someone asking whether they are a lakefront property owner seem like a bizarre inquiry? After all, shouldn't it be pretty obvious whether or not a person owns riparian property? No, not necessarily. There is sometime the matter of the "gap."

What might appear at first glance to be a lakefront property is, in some instances, a property actually separated from the waters of an inland lake in Michigan by a gap of land. That gap can be a strip of land owned by someone else, a road right-of-way which runs parallel to the shoreline, or a variety of dedicated properties that run parallel to the shoreline such as a walkway, alley, narrow park, beach, or outlot. So, if there is a lot or parcel located very close to a lake but it is separated from the lake by one of these "gaps," doesn't that prevent it from being a lakefront or riparian property? Not necessarily.

If a lot located near or immediately adjacent to a lake was truly separated from the waters of the lake when it was created by a strip of land owned by some other party, the nonwaterfront lot is not lakefront or riparian, and being close to the water does not make it riparian. In other words, ownership of a strip of land by someone else located between the waters of a lake and a lot prevents the lot from being a riparian property. Riparian property must physically touch the body of water involved, at least when the riparian parcel or lot was created.

However, there are some instances where a lot appears to be separated from a body of water by a gap which is something other than a normal strip of land does not prevent the lot from

being riparian. The Michigan appellate courts have held that in a platted subdivision where a lot is shown on the original plat as being separated from the waters of an inland lake by a dedicated parallel road, walkway, park or beach, the lot is normally deemed to be lakefront or riparian. See *Croucher v Wooster*, 271 Mich 337 (1935) (parallel public road); *Dobie v. Morrison*, 227 Mich App 536 (1998) (parallel narrow park); *Thies v. Howland*, 424 Mich 282 (1985) (parallel walkway); *McCardle v Smolen*, 404 Mich 89 (1978) (parallel road) and *Magician Lake Homeowners Assn v Keeler Twp* (unpublished decision of the Michigan Court of Appeals dated July 31, 2008; Case No. 278469) (parallel narrow beach). In most cases, the side lot lines of the lot are deemed to go "through" the platted road right-of-way, park, beach, or walkway and to the waterline which was applicable when the plat was created. Of course, the portion of the lot underlying the dedicated road, walkway, beach, park or other dedicated item is still subject to an easement for road, beach, park, etc., usage.

What are the usage rights for the owners of a "first tier" lot, as well as members of the general public or other property owners within the plat, where a dedicated road, park, beach or walkway runs parallel with the shoreline between the lake and the lot at issue? First, although a lot in that situation is normally deemed to be riparian, it is subject to what is in essence an easement for road, park, beach or walkway use. Accordingly, the owner of the riparian lot cannot do anything which would unreasonably interfere with such road, walkway, beach or park use. Generally, that would still permit the riparian property owner to install a dock, moor boats, swim, sunbathe, etc. Second, the usage rights of the public or backlotters as to the easement comprising the road, walkway, beach or park are normally quite limited. Courts have generally held that members of the public (or other property owners within the plat if the item was only dedicated to the use of lot owners within the plat) do not normally have the right to install a

dock, moor boats, or keep rafts. Depending upon what type of easement is involved, members of the public or other property owners within the plat might have the right to use the lake access device for sunbathing and lounging, but not in all cases. In most cases, members of the public (and in some cases, just lot owners in the plat) have the right to walk, swim, fish, hand launch small watercraft, and briefly moor a boat (for dropoff, pickup, or similar brief excursions).

What is a lot owner to do if there truly is a strip of land (not just a right-of-way or easement) located between the lake and the owner's lot, which is owned by someone else? If the ownership clearly remains in another person or entity, then the lot owner is not a riparian or lakefront property owner. What if the ownership of the strip of land is unknown or its title has not formally passed down through the years to the heirs of the original owner of the intervening strip of land? Those are exceedingly difficult cases. Sometimes, the owner of a first tier lot can claim ownership to the intervening strip of land (and hence, riparian status) by the doctrine of adverse possession. (That is, they and/or the predecessors have adversely possessed a strip of land and its bottomlands for 15 years or more.) But in many cases, the "first tier" lot is simply not riparian.