

LAND GAPS AT LAKES
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Some lakefront properties in Michigan appear to be waterfront or lakefront, but actually have a small land gap located between the property and the body of water. Typically, this occurs when the plat (and the first tier of lots) do not quite extend to an adjacent body of water, thus leaving a “land gap.”

Generally, in Michigan, in order for a property to be waterfront or riparian, it must actually touch or extend to the body of water involved. See *Thies v Howland*, 424 Mich 282 (1985); *Hess v West Bloomfield Township*, 439 Mich 550 (1992); *Thompson v Enz*, 379 Mich 667 (1967). However, the Michigan appellate courts have carved out an exception to that rule and have held in some cases that a narrow gap of land between a body of water and a platted lot does not necessarily prevent the lot from being deemed waterfront or riparian. See *Sands v Gambs*, 106 Mich 362 (1895). Another exception is where a platted road, walk or relatively narrow park is shown running along the water on the original plat, in which case the first tier of lots are also usually deemed to be riparian or waterfront. However, in those situations, it is not a true land gap; rather, the courts have typically held that the parallel road, walk or park is simply an easement and the side lot lines of the first tier platted lots run under or “through” the easement and to the waters of the lake or river involved. See *Thies v Howland*; *Dobie v Morrison*, 227 Mich App 536, 540 (1998); *2000 Baum Family Trust v Babel*, 488 Mich 136 (2010); and *Bedford v Rogers* (unpublished decision by the Michigan Court of Appeals; Case No. 299783; 2012 WL 1314165).

In *Kranz v Terrill* (unpublished decision by the Michigan Court of Appeals dated September 20, 2012; Case No. 305198; 2012 WL 4214894), there was a narrow land gap between the plaintiff's platted lot and the waters of Round Lake as shown on the original plat. The trial court held that the platted lot was not riparian, as it was not shown on the original plat as extending to or touching the waters of Round Lake. On appeal, the Michigan Court of Appeals reversed that part of the trial court's decision and held that the platted lot is riparian or waterfront notwithstanding the narrow land gap. The Court of Appeals noted:

While it is generally true that riparian rights are property rights that arise when land actually touches or includes a body of water, it appears here that plaintiff's property is riparian. See *Thies v Howland*, 424 Mich 282, 287-288, 380 NW2d 463 (1985). The plat map includes a relatively small strip of land that varies in width, existing between a straight-edge line and a wavy line. Defendants purport the straight-edge line to be the actual boundary line of the front lot owners' properties, including plaintiff's property. The back lots are not included on the plat map, only the front lots. There is no reference or designation on the plat map with regard to this strip of land. The same strip of land exists throughout the length of the platted front lot properties, but the strip of land is not uniform in width. Although the plat map indicates that "the streets and alleys as shown on said plat are thereby dedicated to the use of the public," this variably-sized strip of land does not appear to be either a street or an alley. And there is no indication of an intention to reserve ownership of the strip of land.

There is likewise no indication that this strip of land was intended to be a walkway. But even if it could be construed as a walkway of some sort, plaintiff's riparian rights would not necessarily be destroyed. In *Croucher v Wooster*, 271 Mich 337, 345; 260 NW 739 (1935), our Supreme Court held that a lot separated from the water by a highway that is contiguous to the water remains riparian land. And in *Thies*, 424 Mich at 290-293, the Court held that the owner of a lot separated from the water by a walkway along the edge of a body of water remained the owner of the land and, thus, had riparian rights. The Court held: "Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way, subject to the easement. Since the owner's property is deemed to run to the water, it is riparian property." *Id.* at 293. Accordingly, actual contact with the water is not necessarily required for riparian rights to exist.

Further, there is no evidence that the strip of land or any portion of it was ever or could ever be conveyed to anyone else. See, e.g., *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). Defendants argued in the trial court that plaintiff's predecessors in title, the Kummerles, did not convey this strip of land to plaintiff

and could not because the Kummerles' predecessors in title, the Roneys, did not convey to them this strip of land. The argument is misleading. The metes and bounds descriptions on all of these warranty deeds were the same. Defendants presented no evidence that this strip of land was ever or could ever be conveyed. Quoting *Hilt*, 252 Mich at 218: defendants argued in the trial court that the "interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner;" however, defendants provided no evidence "of a fee title" or an "interposing owner."

In light of the evidence presented, we conclude that the strip of land in front of plaintiff's property was intended for the exclusive use of her property subject to the easement. It appears to us that the wavy lines likely represent 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 map. See *Id.* at 201. Such lines do not establish boundaries. See *Id.* at 204. Therefore, the trial court's conclusion that defendants proved plaintiff's property is not riparian was erroneous. (Footnotes omitted.)

The controlling precedent regarding land gaps at lakes was set by the Michigan Supreme Court in *Sands v Gambs* in 1895. The Supreme Court indicated that a trial court should consider several factors when determining whether a property is waterfront or riparian notwithstanding a narrow land gap. First, the Court noted "[t]he tendency of [earlier] decisions is to turn every doubt upon expressions which fix the boundary next [to] the river in favor of a contact with the water." *Sands* at 366. Second, "grants must be construed most strongly against the grantor." *Ibid.* Third, monuments, such as the water's edge, usually control courses and distances. *Id.* Fourth, the failure to reserve access to the strip of land indicates that there was no intention to reserve the strip of land for any other purpose. *Id.* at 366-367. Finally, a court should consider whether the adjacent landowners have treated the strip of land as part of the platted lot and whether there has been any protest regarding such treatment over the years. *Id.* at 366.