

ATTORNEY WRITES

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YOU CANNOT GIVE IT AWAY...

Riparians are often troubled by lake access easements on their property or adjacent waterfront dedicated road ends, parks, walks, and alleys (whether dedicated to the public or just the owners of lots within the plat involved). Naturally, many riparians would like to rid themselves of those pesky lake access properties, as they often cause huge headaches for adjoining and nearby riparian landowners.

I have often heard riparians say that they can get rid of an easement or dedicated lake access site by simply obtaining a quit-claim deed from the local municipality (either a city, village or township), the county or the local county road commission. And, in almost all cases, that is incorrect.

Some lakefront riparian properties are bound by lake access easements that allow either members of the public, the owners of backlots within the plat or the owners of other properties to use the riparian land to access the lake. Unfortunately, in almost all cases, it is not possible to extinguish or terminate such easements. Such easements are almost never extinguished or abandoned due to mere nonuse. See *Feldman v Monroe Twp Bd*, 51 Mich App 752 (1974) and *Choals v Plummer*, 353 Mich 64 (1958). And, in general, courts will not extinguish such easements. In a few cases, the riparian property owner can extinguish an easement by adverse possession if it is a private easement and the easement has been fully blocked by fencing, a

building or other obstruction for more than fifteen years. However, if the easement benefits a governmental unit or the public, adverse possession does not apply, so blocking the easement cannot extinguish it, even after fifteen years. If the riparian landowner believes that the easement is being misused, court action can definitively determine what uses the easement beneficiary or beneficiaries can make of the easement, but the court will not terminate the easement absent highly unusual circumstances.

Many lots on or adjacent to lakes in Michigan are located in plats. A plat is a formal process for the creation of lots and development of property. Please see my earlier article that discusses plats in detail in the Winter 2013 issue of *The Michigan Riparian Magazine*. Quite often, plats contain road ends, parks, alleys or walkways at or along the lakefront that are either dedicated to the use of all lot owners within the plat or the public. As with non-plat easements, such lake access sites almost never go away due to nonuse. As with private easements, a lot owner can potentially extinguish some or all of a dedicated lake access site by blockage under adverse possession, but not if the site was dedicated to the public.

Governmental units cannot extinguish dedicated properties (and transfer title thereto to adjoining property owners) simply via quit-claim deeds to adjoining landowners. The only way in Michigan to extinguish a dedicated property (and have the title thereto go unencumbered to the adjoining lot owners) is pursuant to a formal circuit court plat vacation lawsuit under MCL 560.221 *et seq.* Such lawsuits tend to be expensive and complex as the requesting party must join in the lawsuit not only the local unit of government, but also the State of Michigan, the local road commission or authority, the country drain commissioner, and every property owner within the plat. Finally, the court has the discretion of whether to vacate (i.e., extinguish) the plat-dedicated item. Even if the property owner who brought the lawsuit to extinguish the dedicated

site is successful, that landowner must then pay for a sometimes expensive replat of the area at issue.

As with so many myths associated with riparian rights or the waterfront, the old canard that easements and platted sites can be extinguished simply by a local government deeding the property to an adjoining property owner or owners is a falsehood.