

## **ATTORNEY WRITES**

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### **“Bottomlands Ownership”**

In Michigan, the land underneath a body of water is generally called “bottomlands”. Does a waterfront or riparian property owner own, control or possess the bottomlands adjacent to his or her waterfront property? It depends.

On the Great Lakes, most lakefront property owners own a “movable freehold”. That is, they own to the edge of the water, wherever that may be located on a given day. See *Glass v Goeckel*, 473 Mich 667 (2005), the so-called “beach walker case”. Given that the Great Lakes has a phenomenon similar to mini-tides, the exact location of the water’s edge can vary, even during a 24-hour period. With the Great Lakes, the public owns the bottomlands under the lake. Even though a waterfront property owner on the Great Lakes in Michigan typically owns and controls the waterfront property up to the water’s edge, the public is allowed to walk on the beach without permission up to the ordinary high water mark. See *Glass v Goeckel*. There is an invisible and unrecorded public navigation easement up to the ordinary high water mark. While members of the public can walk within that area, they cannot lounge, sunbathe or picnic without the permission or consent of the riparian land owner.

With inland lakes in Michigan, the overwhelming majority of riparian property owners also own a share of the bottomlands under the water to the center of the lake. That is true for

about 95% or more of the inlands in Michigan. In general, the riparian property owner has ownership, control and possession of his or her bottomlands under the lake and has the exclusive right to use the bottomlands for dockage, boat moorage, wading, installing and using a swim raft and similar uses and activities. One exception to such common law exclusive rights of riparianism is the ability of a boater to temporarily anchor or moor on the bottomlands of another without permission for navigability purposes, including fishing and taking refuge during storms. However, that right to temporarily anchor on the bottomlands of another without permission is limited. See *Hall v Wantz*, 336 Mich 112 (1953); *Gregory v LaFaive*, 172 Mich App 354 (1988) and *West Michigan Dock & Market Corp v Lakeland Investment*, 210 Mich App 505 (1995).

Even though most riparian property owners on inland lakes in Michigan own a share of the bottomlands under the water to the center of the lake, it is often quite difficult to ascertain the exact location and configuration of side lot lines of bottomlands ownership under the water. Almost never do the riparian boundary lines under the water radiate at the same angles as the side lot lines of the riparian property on dry land. See *Heeringa v Petroelje*, 279 Mich App 444 (2008) and *Weisenburger v Kirkwood*, 7 Mich App 283 (1979). Determining underwater riparian boundary lines on a fairly round lake is typically quite easy – the underwater riparian boundary lines resemble the pieces of a pie. Determining bottomlands ownership becomes more difficult with an irregularly shaped lake or a lake that has many bays and peninsulas. If adjoining riparian land owners cannot amicably resolve a dispute over their common riparian boundary line, the ultimate authority is a Michigan court. As more than one judge has put it, determining riparian boundary lines “is more of an art than a science”. Although experienced surveyors and engineers can give their opinion regarding the location of underwater riparian

boundary lines for inland lakes in Michigan, those are only opinions, subject to final determination by a court.

There are a few natural inland lakes in Michigan where riparian boundary lines do not radiate to the center of the lake. Those typically fall into one of two categories. First, in rare instances, one person or entity at one time owned the entire lake and kept title to the bottomlands as lots or properties around the lake were sold. Second, on occasion, when parcels on a lake were originally sold, the legal descriptions extended out into the lake in various areas.

In Michigan, the legal descriptions or deeds for properties on an inland lake almost never extend out to the center of the lake or even out into the lake. Instead, the courts interpret a property to be riparian or lakefront on an inland lake if the legal description or deed references the lake or body of water (for example, using language such as to the water's edge, to the shore, to the lake, ends at the water's edge, along the water's edge, etc.). See *Hilt v Weber*, 252 Mich 198 (1930); *Mumaugh v McCarley*, 219 Mich App 641 (1996) and *Bauman v Barendregt*, 251 Mich 67 (1930).

In order to be waterfront or riparian, a property must touch the body of water. If there is a significant gap in ownership between the water and the property involved, the property is generally not riparian or waterfront. See *Thompson v Enz*, 379 Mich 667, 473 (1967); *Little v Kin*, 249 Mich App 502 (2002); *aff'd in part and reversed in part*, 468 Mich 699 (2003) and *Sands v. Gambs*, 106 Mich 362 (1895).

What about artificial bodies of water? In the past, most artificial bodies of water were treated in a similar manner as inland lakes in Michigan for purposes of riparianism, bottomlands ownership, etc. Unfortunately, however, the Michigan Court of Appeals upended the law

regarding artificial lakes in *Persell v Wertz*, 287 Mich App 576 (2010) and *Holton v Ward*, 303 Mich App 718 (2014). While the Court of Appeals held in those cases that artificial lakes cannot have riparian rights and that normal rules of riparianism do not apply, the Court unfortunately did not indicate which rules do apply to artificial lakes. Accordingly, the law in Michigan is currently unclear regarding whether or not waterfront property owners on artificial lakes own the bottomlands to the center of the lake, can use the entire surface of the lake, can install and utilize docks, etc. For more information about the law of artificial lakes, please see my earlier articles in the *Michigan Riparian Magazine* in the Summer, 2010, Spring, 2014 and Summer, 2015 issues. Those issues can also be read online at [www.mi-riparian.org](http://www.mi-riparian.org).

Obviously, there is more to lake bottomlands ownership in Michigan than many people assume.