

PUBLIC ACCESSES - RIGHTS AND LIMITATIONS

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Over the years, various readers of The Michigan Riparian have asked me to do an article on the rights and limitations for those who use public accesses to inland lakes. I have been reluctant to do so since a detailed examination of the topic would require the writing of a book! Nevertheless, due to the demand, I have attempted to distill this topic down to a one page article. Therefore, please keep in mind that this month's column deals only in terms of generalities - these "rules of thumb" apply to most, but not all cases. There are generally five types of lake access sites in Michigan as follows:

- 1 DNR or municipal improved access sites.
- 2 Road ends or rights of way.
- 3 Walkways.
- 4 Dedicated parks.
- 5 Private easements or joint properties.

For purposes of this article, I will ignore DNR and municipal access sites or improved government parks - what can be done on such properties is normally within the discretion of the DNR or the municipality involved, subject to some limited statutory common law constraints. Instead, I will concentrate on "narrow" lake accesses such as road rights of way, walkways, easements, and dedicated parks.

Roads, walkways and dedicated parks can be public, or for a more limited group of people (such as the owners of lots within a plat), depending upon the document which created the access at issue. The overwhelming majority of such access sites were created pursuant to the platting process. Under platting, the developer normally dedicates a road, walkway or park, either for the benefit of the public, or for the owners of lots within the plot. On occasion, a property owner or developer creates a road, walkway or park outside the platting process by means of a deed or other document.

The manner in which a road, walk or dedicated park, can be used depends upon the wording of the plat or other document which created the access site at issue. If an access site was dedicated to the public, the property can be used by any member of the public. Conversely, where a lake access was dedicated to the owners of lots within a plat, normally only those people (or their families or attended invitees) can use the lake access site. The original plan or dedication document governs not only who can use an access site, but it also governs what activities can occur on the access property. Unfortunately, such documents rarely state in detail what can and cannot be done on an access site. Accordingly, it is often left to the courts to determine what is and what is not permitted on such access sites.

Regretfully the law is not self-executing or self-enforcing regarding what can and cannot be done on such access sites. While the Michigan Court of Appeals in *Jacobs v Lyon Township*, 199 Mich App 667 (1993) seemed to make it clear that townships can regulate and restrain what

occurs on lake access sites, few townships have enacted such regulations. With township regulations in place, township enforcement officials can write tickets or prosecute offenders. Absent such local regulation, sheriff deputies and state police officers will normally not become involved with usage issues. Given such a vacuum, adjoining property owners normally must file a civil lawsuit in the county circuit court for a judicial determination of what is permissible on a given lake access site.

Courts normally look to the document which created the lake access site to determine what activities are permitted. On occasion, due to the often ambiguous nature of these documents the courts must seek to determine what the original intent of the developer was. That can often be difficult, since many of these lake access sites were created half a century ago or earlier and most of the developers are long gone. With regard to the different types of lake access sites, the Michigan courts have generally held as follows:

ROAD ENDS

- No overnight storage or mooring.
- No private docks. Any docks placed there become "fair game" for everyone..
- No sunbathing or picnicking..
- Access Only.
- See Jacobs v Lyon Township

WALKWAYS .

- No docks.
- No overnight storage or mooring..
- Access only.
- See Thies v. Howland, 424 Mich 282 (1985)

DEDICATED PARKS.

- Usage depends on dedication language..
- Cannot use in such a way as to unreasonably interfere with other's usage..
- See Delaney v. Pond, 350 Mich 685 (1957) and Fricke v. Gull Lake bible Conference.
(unpublished - Court of Appeals, 1982).

Again, this represents only general rules and courts could reach different conclusions in a given case.

The initial reaction by many riparian property owners when they find out about the limited scope of the permissible uses for such access sites will probably be a rather indignant statement that violations are occurring all the time. When such violations occur, court action by riparian property owners adjoining or in the vicinity of such lake access sites is usually the only way to

limit the scope of usage of such properties. Unfortunately, such lawsuits can be expensive and each side normally pays their own attorney fees, win or lose.

The final category of lake access sites are easements or private joint access sites (sometimes referred to as private common areas or joint properties). What activities can be done on such private access properties varies widely depending upon the language of the original easement or joint usage document. With this type of lake access property, normally only the owner of the underlying property or the persons entitled to use the easement or joint property can file suit for a determination of the permissible scope of usage. One exception to this would be the ability of local municipalities to enforce local ordinances (if any) governing such properties.

Regardless of the type of access utilized, people cannot lawfully trespass on the bottomlands of adjoining riparian properties absent permission to do so. Here again, however, probably only a civil lawsuit will remedy chronic trespassing.