

## **Two More Interesting Lake Access Easement Cases**

**By Clifford H. Bloom  
Law Weathers**

Recently, the Michigan Court of Appeals decided two important lake access site cases, wherein both decisions favored the riparian property owners.

On February 22, 2011, the Michigan Court of Appeals issued its unpublished decision in *Lints v Rudy* (Case No. 293501; 2011 WL 666143). This was not a conventional lake access easement case.

In *Lints v Rudy*, a nine and one half-foot-wide lake access easement burdened a lakefront lot on Eagle Lake in southern Michigan. In 1970, the local court held that a backlot owner had the right to maintain a dock and boat at the end of the easement, but did not address whether the backlot property owner could pave or gravel the easement or use vehicles on it. Nearly 40 years later, the current owners of the backlot threatened to do significant modifications to the surface of the easement (which constitutes the lawn of the riparian lot owner) and cut down large trees located within the easement so that their vehicles could utilize the easement. The owners of the backlot were warned not to engage in those activities, and in particular, not to cut any of the trees in the easement. Nevertheless, they destroyed two trees in the easement anyways.

Both the trial court and the Court of Appeals noted that had the proper lakefront uses of the easement arisen today, the backlot owners could not engage in dockage and boat mooring at the end of the easement as the trial court had ruled earlier in 1970. The case law over the last 40 years makes it clear that a conventional lake access easement cannot be used for dockage or permanent boat moorage. Since that portion of the 1970 decision was never appealed, that ruling stands. The 1970 court decision did not, however, address the issues of whether the backlot

owners could use vehicles on the easement, improve the easement, or cut down trees within the easement.

In *Lints v Rudy*, the trial court held in favor of the riparian lot owner. First, the court held that the narrow nine and one half-foot-wide easement could not be used for vehicle travel. Second, the trial court found that the backlot owners improperly cut down trees within the easement. Finally, the riparian lot owner was awarded treble damages against the backlot property owners for removal of the trees within the easement pursuant to MCL 600.2919.

In its February 22, 2011 decision, the Court of Appeals upheld the decisions of the trial court. In the end, the backlot owners had to pay the riparian lot owners the sum of \$30,300 plus interest for wrongfully removing one tree and damaging another within the easement. Also, the backlot owners cannot use vehicles on the easement.

The second Court of Appeals case is *Wojcik v Ficaj* (Case No. 295850; 2011 WL 1436289), decided on April 14, 2011. This case involves Houghton Lake. As shown on the original plat from 1928, there existed a narrow strip of land (approximately 20 feet wide) entitled “beach” located between the lake and the first tier of lots. The plat dedication indicated that the beach as shown on the plat was “dedicated to the use of the public.” Over the years, the first tier lot owners utilized the lake frontage adjacent to their respective lots as if they were riparian property owners. Over the years, those first tier lot owners installed docks, utilized permanent boat moorings and engaged in similar riparian activities. In 2008, one of the backlot property owners installed a boat hoist directly in front of one of the first tier lots. The first tier lot owners filed a lawsuit claiming that they are riparian property owners and that the backlot property owners cannot utilize docks, permanently moor boats or engage in similar riparian activities along the platted beach.

The trial court found that the plaintiffs, as first tier lot owners, enjoy the exclusive riparian rights to the beach adjacent to their respective lots. Accordingly, only the first tier lot owners may install dockage and permanently moor boats at the waterfront. However, the trial court also found that the beach was dedicated for the use of the public and that the general public had the right to access and make general use of the beach. Nevertheless, members of the general public cannot not leave items on the beach when they are not present. The Court of Appeals agreed that the first tier lot owners are riparian and cited *2000 Baum Family Trust v Babel*, 488 Mich 136 (2010). The Court of Appeals rejected the claim by the backlot property owners that the beach is “owned” by the county or another governmental unit.