

## **ATTORNEY WRITES**

By Clifford H. Bloom, Esq.  
Law, Weathers & Richardson, P.C.  
800 Bridgewater Place  
333 Bridge Street, N.W.  
Grand Rapids, Michigan 49504-5320

### **“Buyer and Builder Beware!”**

Perhaps you are considering purchasing a lakefront lot. If so, what matters should you investigate before signing a binding purchase agreement to buy the lot? Or, if you already own a lakefront lot, perhaps you are considering building a new house or cottage (or adding on to an existing dwelling). How should you plan ahead?

While there are many joys associated with owning lakefront property, there are also potential pitfalls, a number of which are unique to lakefront property. Therefore, before entering into a binding purchase agreement for a lakefront lot, the prospective purchaser should always perform adequate “due diligence.” This article examines some of the key issues that should be included on a due diligence checklist for lakefront property.

Before addressing particular issues, however, it is useful to note that if you can afford to have a real estate lawyer assist with your due diligence investigations (including inquiries regarding “buildability,” deed restrictions, environmental constraints, compliance with zoning and other ordinances, suitability for a septic system where applicable, etc.), hiring such an attorney to perform due diligence prior to entering into a purchase agreement (as well as negotiating the terms of any such agreement) is usually money well spent. If you cannot afford an attorney, you should be prepared to do extensive due diligence inquiries yourself.

So, what types of issues should be investigated? First, you should ensure that the lot is “buildable.” Second, you should satisfy yourself that the lot has an adequate, lawful access and fully complies with local zoning requirements, the Michigan Land Division Act, and other applicable ordinances and statutes. Third, you should investigate what type and size dwelling you can build (as well as its permissible location) pursuant to the local zoning ordinance and building codes. For these first three areas of inquiry, consult with the local municipality (which is a township, city, or village). Fourth, you should determine what type of sewage disposal system is available (whether a municipal system is involved or a new private septic system will have to be installed). For a municipal system, one issue that will have to be dealt with is the buy-in cost (which can include extending a municipal sewer from its current location and all applicable fees). If a private septic system needs to be installed, you should make sure that the lot can sustain such a system and that a proper permit will be granted. Fifth, you should determine whether or not there are any lake access easements, lake road ends, private parks, walkways, or similar items located either on the property you are considering purchasing or adjacent thereto. Such items can potentially allow public or private lake access for others, and the noise and commotion associated with such accesses can sometimes be so onerous that you may very well desire not to purchase the property involved. Sixth, you should make sure that the lot does not have any environmental contamination, settling/shifting, flooding problems, or drainage issues. Seventh, you should determine whether there is any use located close or nearby the property which would detract from its desirability or resale value such as an airport, landfill, or intensive livestock operation. Finally, look around at nearby lands to

see what development potential is there. A farmer's field which is located across the street may look idyllic today, but if a shopping center is built there two years after you build your dream house on the lake, it could become a nightmare!

While this is not intended to be an all-inclusive checklist of the issues that you should investigate before signing a binding purchase agreement for a lakefront lot, a diligent inquiry into these areas should help you to uncover some of the most common traps for the unwary.

What if you already own a lakefront lot which is vacant and you desire to build a new dwelling or add on to an existing dwelling? The best advice I can give anyone contemplating a building project is that either you, your architect or your builder should see municipal officials very early on in the building design and planning process to determine what is feasible and allowable. If you wait until the last minute to consult with municipal officials (for example, waiting until your builder applies for a building permit), you could be sorely disappointed. If a problem arises, your building plans may need to be redrawn to comply with local ordinance requirements and that could increase project costs and delay the commencement of construction. In a worst case scenario, you could find that you are precluded from building any dwelling at all, or you will have to downsize or relocate the home.

In most municipalities, there are a myriad of zoning and building code regulations that govern new home and accessory building construction, as well as additions to existing buildings. These include front, rear, and side yard setback requirements, maximum building heights, access requirements, isolation areas for septic systems, distance

requirements between wells and septic systems, driveway requirements, deck and accessory building regulations, and many other potentially adverse regulations and requirements. If you do not meet all municipal requirements, you may have to seek a variance from the municipality's board of appeals. That can often be a one or two-month process (and potentially even longer). Furthermore, variances can often be hard to obtain. There may be drainage or wetlands issues that will have to be resolved prior to the commencement of construction. If the lot has ever been altered with fill, that should be investigated and will have to be dealt with structurally.

Once all permits have been acquired and construction is commenced, make sure that your builder complies with all municipal regulations, inspections, etc. If your builder does not do so, you, as the owner of the property, are ultimately responsible. There are a number of cases in Michigan where the courts have actually ordered property owners to tear down homes, buildings, and parts of buildings that violate ordinance requirements. Be proactive!

While there are many issues to consider in planning a lakefront home, the problems are usually not insurmountable provided that you plan ahead and fully investigate before committing. If you do, you will likely find that the benefits are rewarding and well worth the effort.

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On March 20, 2007, the Michigan Court of Appeals issued an interesting unpublished opinion in the case of *DGM Land Co v Downey* (Case No. 265815). The opinion gives a very good overview of determining riparian/bottomlands boundary lines

(under the water), ownership issues if a lake recedes (and leaves dry land), and similar matters. You can review the written opinions of the Michigan Court of Appeals (both published and unpublished) and the Michigan Supreme Court on the internet by going to [courts.mi.gov](http://courts.mi.gov), clicking on “Michigan Court of Appeals,” click on “Resources,” click “Court Opinions,” and then to the right, click on “Search Opinions.” You can then search court opinions by case number (if you have it) or by key words and phrases (a text search).