

BUYING AND SELLING WATERFRONT PROPERTY

Michigan Lake & Stream Associations
2016 Annual Convention

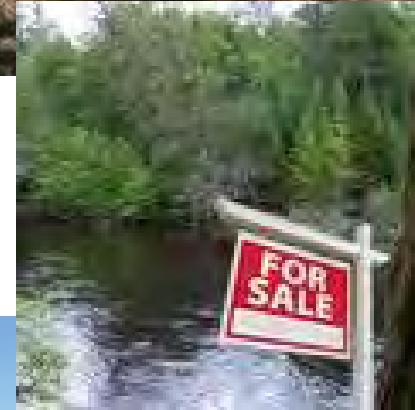
Clifford H. Bloom, Esq.
Bloom Sluggett Morgan, PC
(616) 965-9342
www.bsmlawpc.com



BASICS OF “RIPARIANISM”

▶ Definitions

- Riparian
- Littoral



BASICS OF “RIPARIANISM”

- ▶ When is Land Riparian?
 - Must touch the water
 - “Gaps”
 - Roads, easements, etc., located between the water and a lot

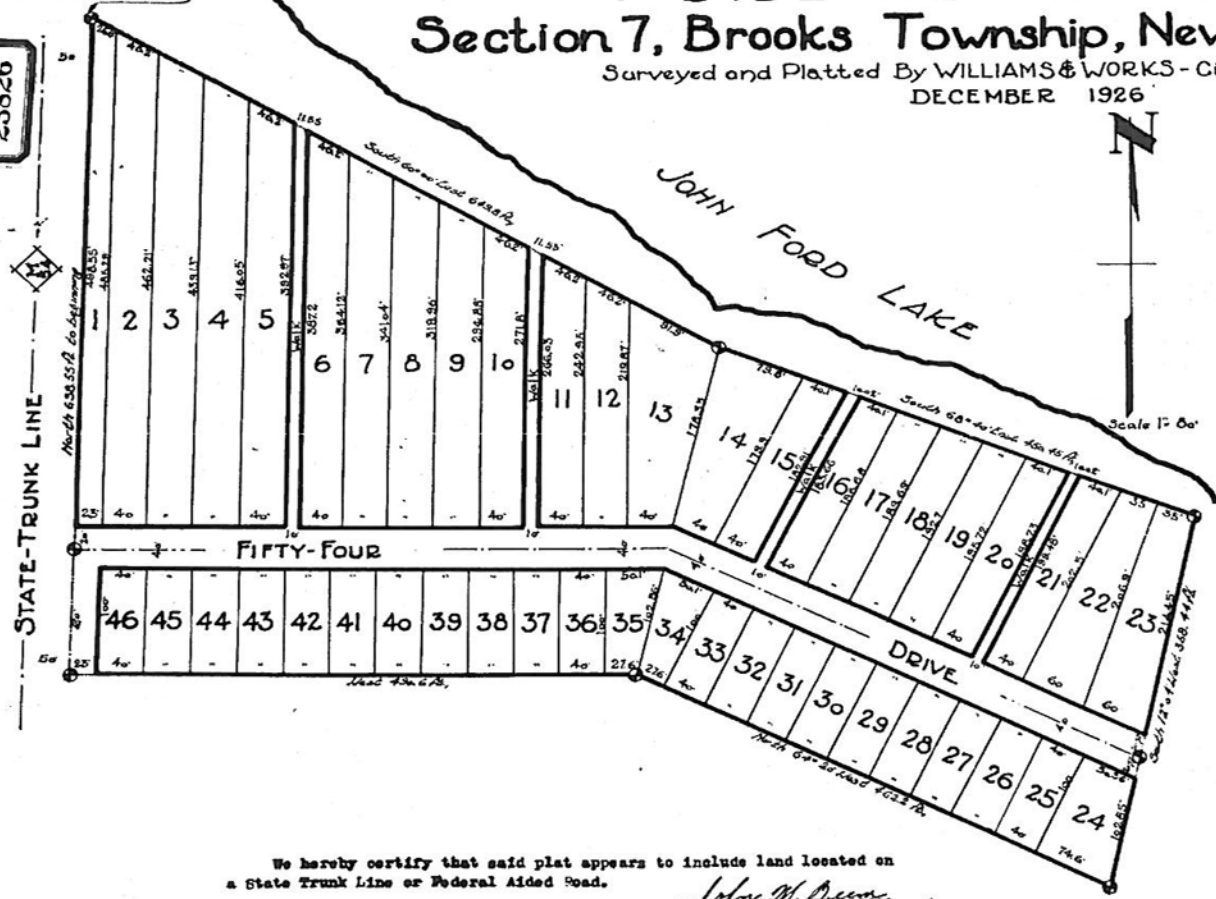
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23826

FORD LAKE PL

Section 7, Brooks Township, Newaygo

Surveyed and Platted By WILLIAMS & WORKS - Civil Eng
DECEMBER 1926



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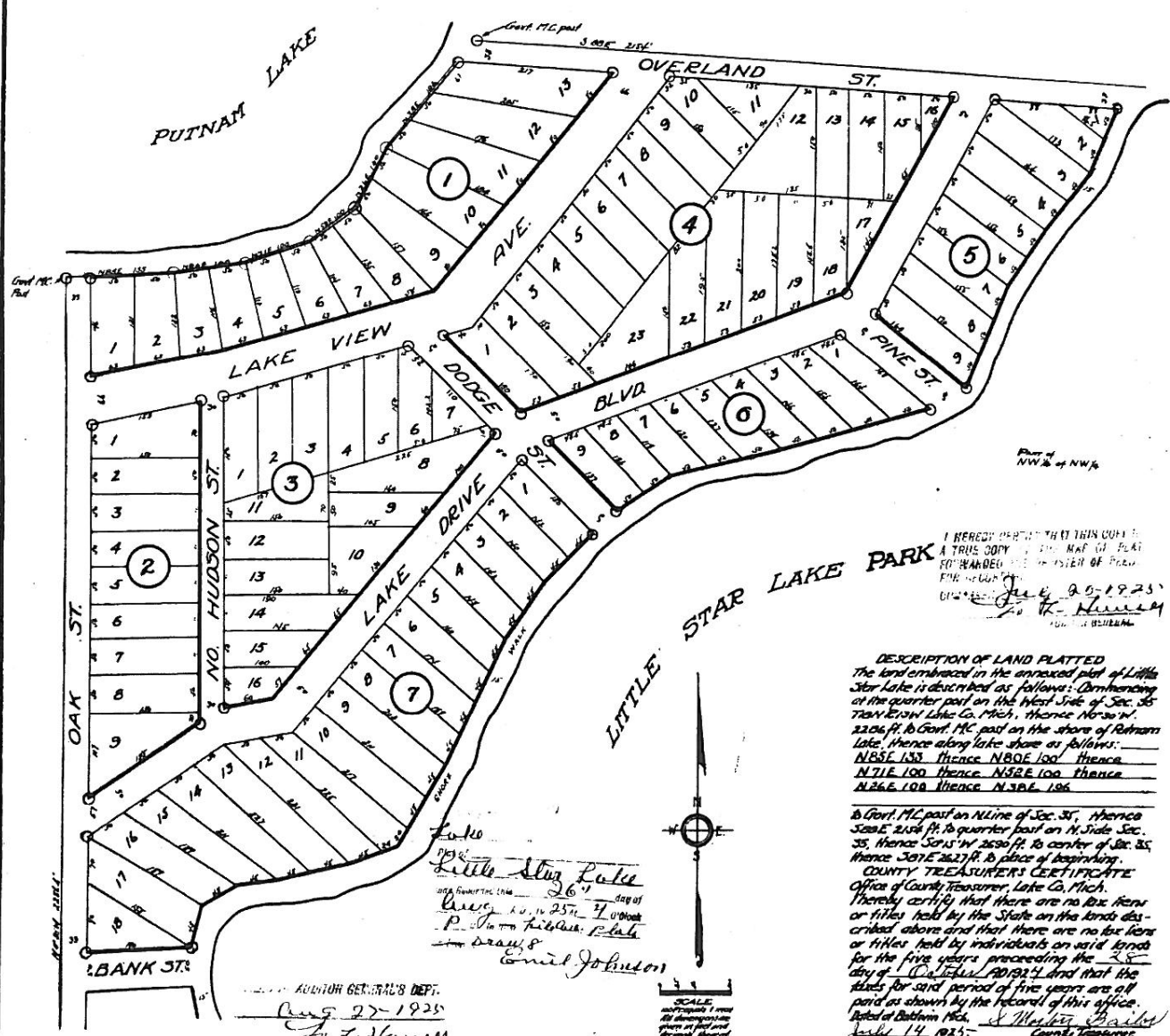
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We hereby certify that said plat appears to include land located on a State Trunk Line or Federal Aided Road.

Examined and approved: *July 22, 1927*
John M. Brown
W. George W. ...
...
County Plat Board





I HEREBY CERTIFY THAT THIS COPY IS A TRUE COPY OF THE MAP OF PLAT FORWARDED TO THE OFFICE OF RECORDS AND RETURNS OF THIS COUNTY.

July 20, 1925
J. F. Harney
 COUNTY CLERK

DESCRIPTION OF LAND PLATTED
 The land embraced in the annexed plat of Little Star Lake is described as follows: Commencing at the quarter post on the West Side of Sec. 35 T14N R15W L14E Co. Mich., thence North 22.06 ft. to Govt. M.C. post on the shore of Putnam Lake, thence along lake shore as follows: N85E 133 thence N80E 100 thence N71E 100 thence N38E 100 thence N26E 100 thence N38E 100 to Govt. M.C. post on N. line of Sec. 35, thence S28E 21.04 ft. to quarter post on N. Side Sec. 35, thence S31E 25.27 ft. to place of beginning.

COUNTY TREASURER'S CERTIFICATE
 Office of County Treasurer, Lake Co. Mich.
 I hereby certify that there are no tax liens or titles held by the State on the lands described above and that there are no tax liens or titles held by individuals on said lands for the five years preceding the 28 day of July 1925. And that the taxes for said period of five years are all paid as shown by the records of this office.

Dated at Bathurst Mich. July 14, 1925.
J. M. Bailey
 County Treasurer.

Little Star Lake
 26.7' long
 7.0' wide
 P. O. to be built on lake
 by owner,
Conrad Johnson

AUDITOR GENERAL'S DEPT.
 Aug 27-1925
J. F. Harney



BASICS OF “RIPARIANISM”

- ▶ Non-Riparian Parcels
 - “Water view”
 - “Deeded access”



BASICS OF “RIPARIANISM”

- ▶ Bottomlands Ownership
- ▶ Inland Lakes
 - Natural

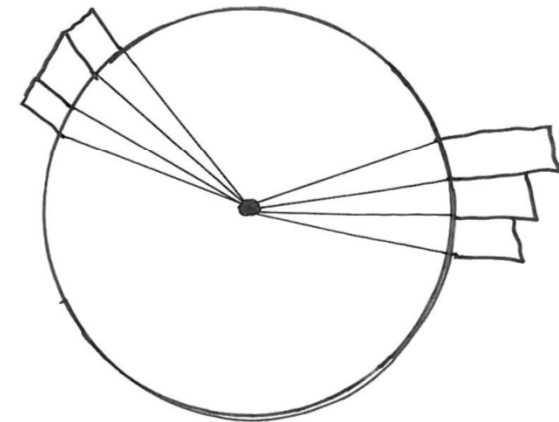
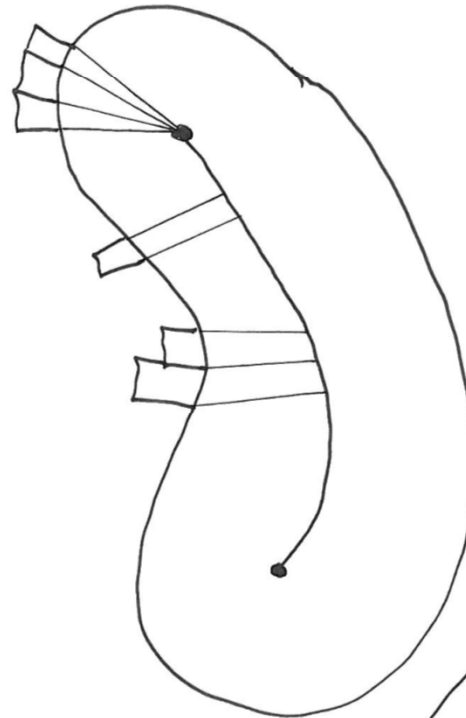


Figure 1

Figure 2

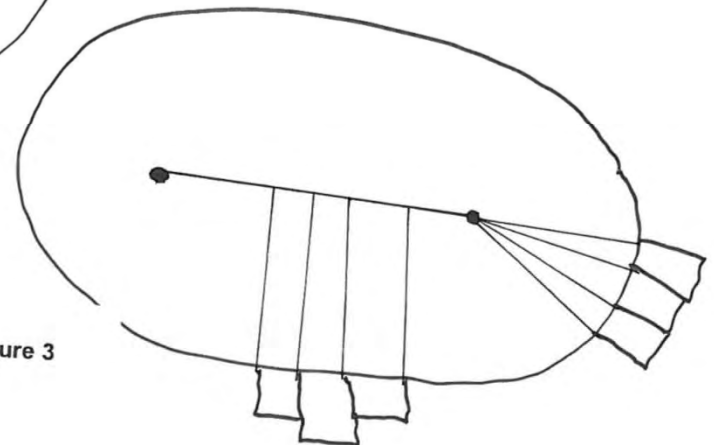
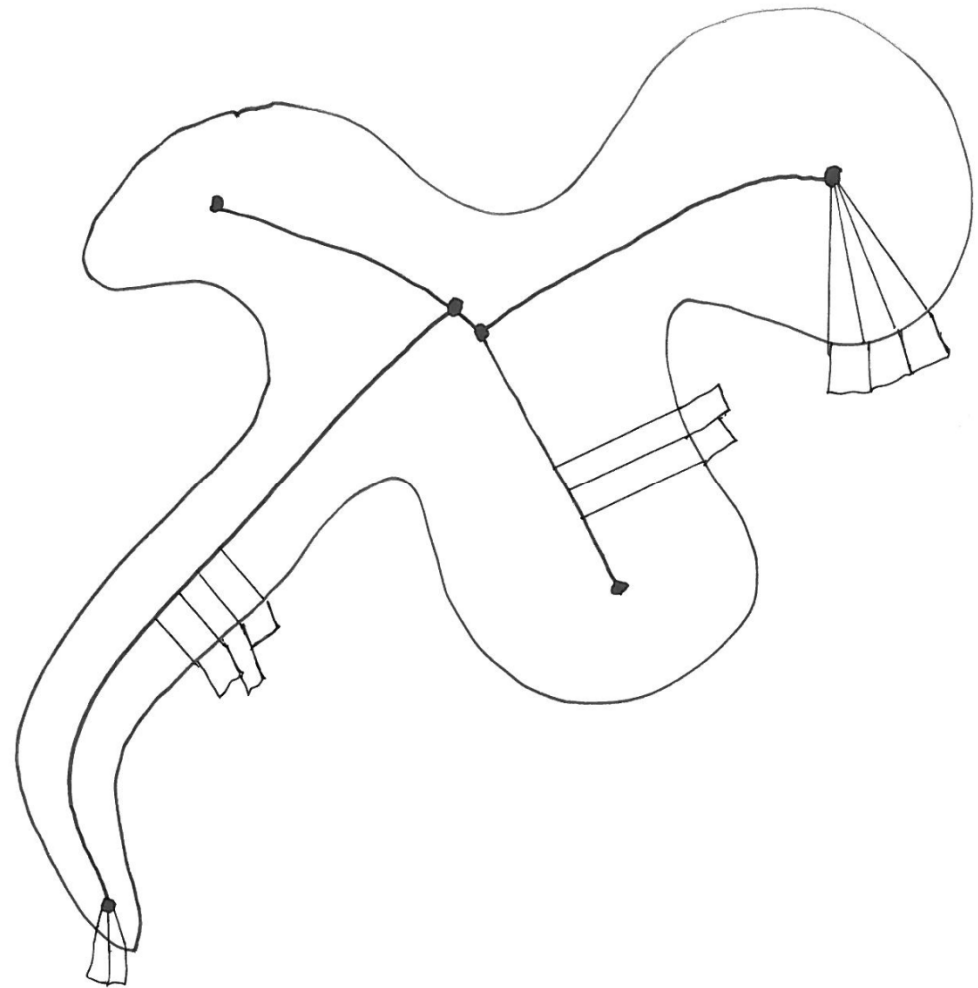


Figure 3

BASICS OF “RIPARIANISM”

- ▶ Bottomlands Ownership
- ▶ Inland Lakes
 - Natural



BASICS OF “RIPARIANISM”

- ▶ Bottomlands Ownership (continued)
- ▶ Inland Lakes
 - Artificial
- ▶ Great Lakes
- ▶ Rivers

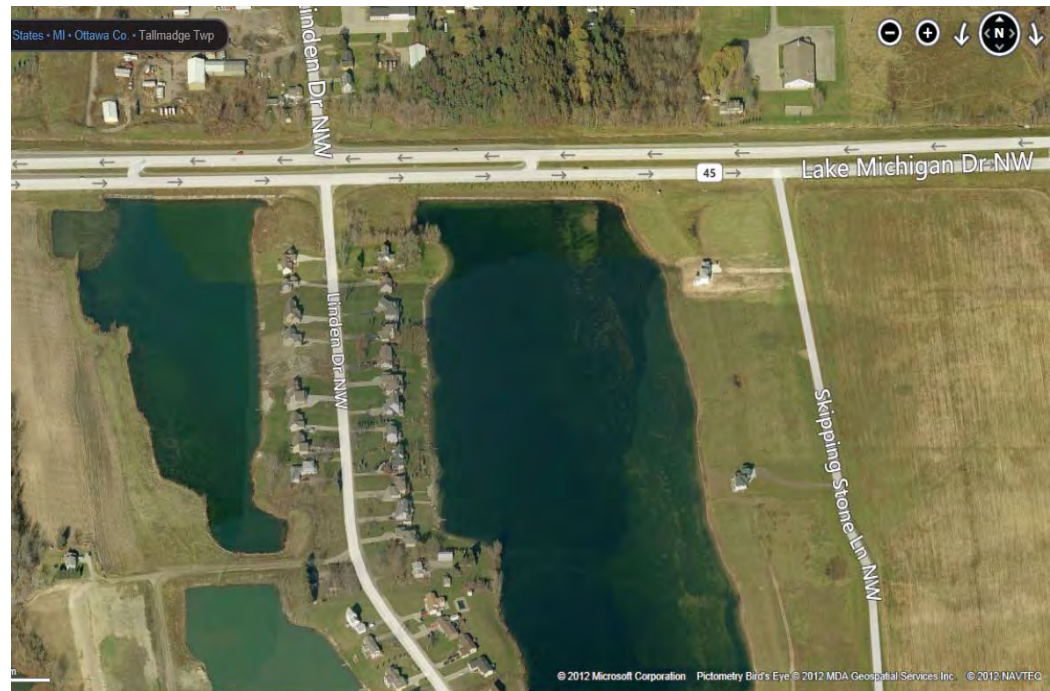
BASICS OF “RIPARIANISM”

▶ Legal Descriptions

- Almost never go into the water
- Common language used
- Meander lines
- Traverse lines

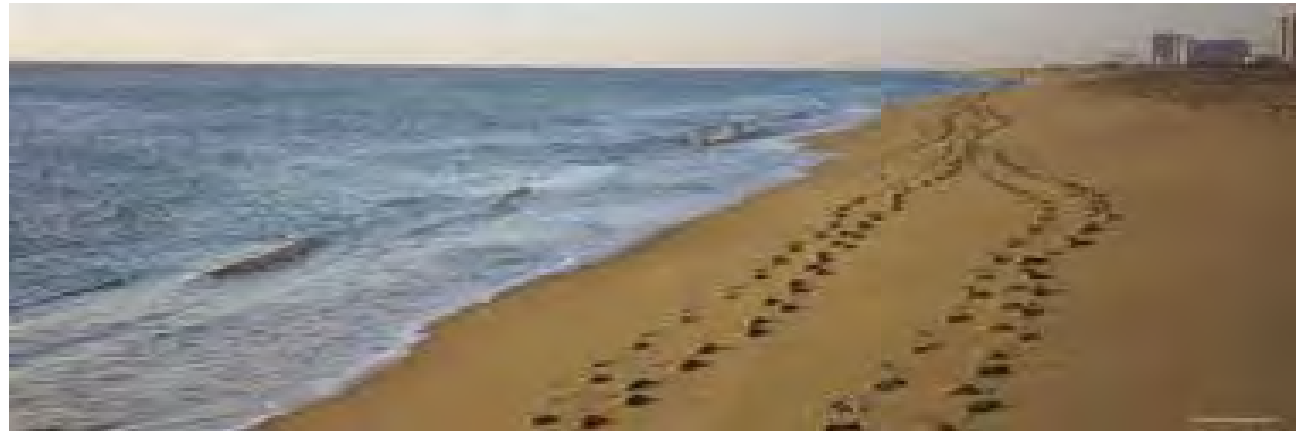
BASICS OF “RIPARIANISM”

- ▶ Artificial Lakes



BASICS OF “RIPARIANISM”

- ▶ The Beachwalker Case



BASICS OF “RIPARIANISM”

- ▶ Legal Rights of a Riparian Owner

**THERE ARE MANY “ISSUES”
OFTEN ASSOCIATED WITH
WATERFRONT PROPERTIES**

ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- ▶ Is the property truly waterfront (riparian)? Or is there a “land gap” between the parcel and the water?
- ▶ What are the property owner’s riparian rights (and the limits thereof)?
- ▶ Are there applicable deed restrictions or restrictive covenants?
- ▶ If vacant, is the property “buildable”?

ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- ▶ Are there any lake access devices on the property involved or adjacent to the property that may create problems (for example, lake access easements, road ends, parks, alleys, walkways, etc.)?
- ▶ Is there a lake or riverfront property owners association and, if so, is it mandatory? Are there dues or assessments?

ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- ▶ Are there any special assessments regarding the body of water (or otherwise) that bind the property? Is there a statutory lake board?
- ▶ Is the waterfront and body of water healthy and clean, or degraded and potentially polluted?
- ▶ Are the shoreline and bottomlands for the property desirable or problematic (muddy, erosion-prone, etc.)?

ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- ▶ Has a formal lake water level been established?
- ▶ Is the cottage or dwelling (or any other structures or improvements) located within a floodplain or flood zone? That may significantly affect the homeowner's insurance premiums as well as implicate many other issues.
- ▶ Are there wetlands issues?
- ▶ How much waterfront does the parcel really have?

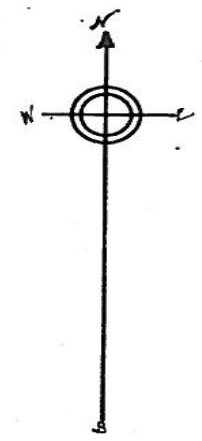
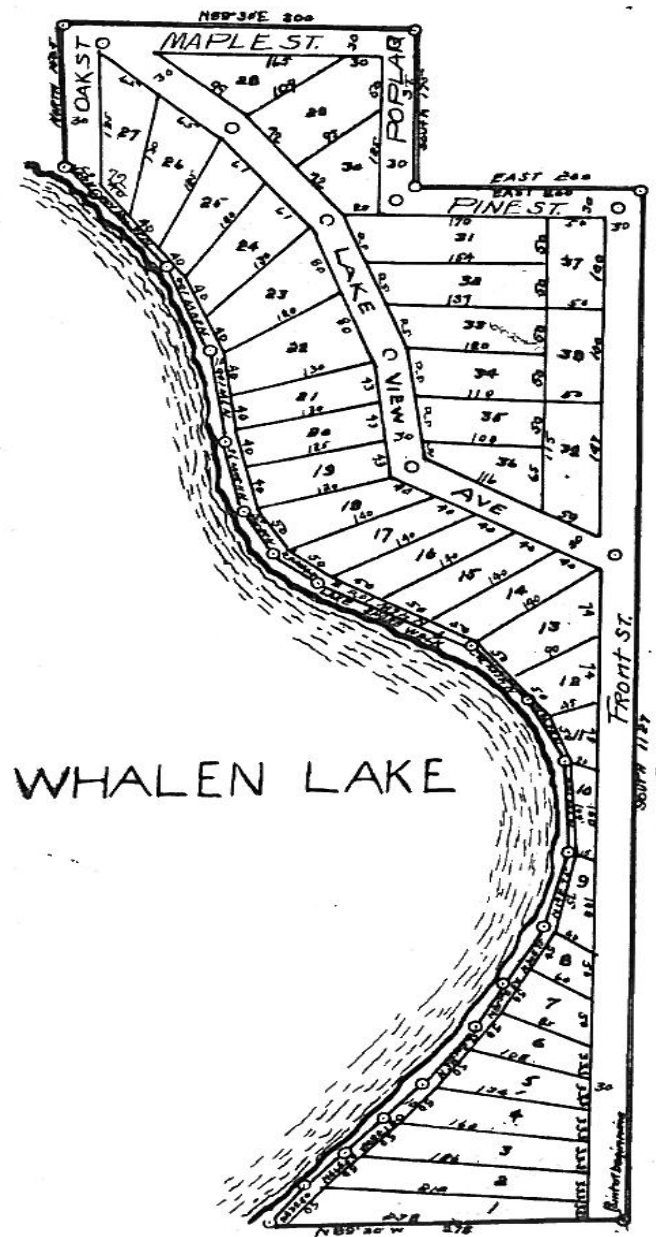
ISSUES OFTEN ASSOCIATED WITH WATERFRONT PROPERTIES

- ▶ Can the existing dwelling be replaced or added onto under the local zoning regulations?
- ▶ Was the property ever “filled,” such that settling might be a real problem if a dwelling is built or expanded?
- ▶ Are there any local municipal regulations regarding dock limitations, swim rafts, seawalls, the number of watercraft allowed, or similar matters?
- ▶ Who owns the adjacent bottomlands, at what angles, and where are the limits?

LAKE ACCESS DEVICES

▶ Types

- Roads
 - Perpendicular
 - Public or Private

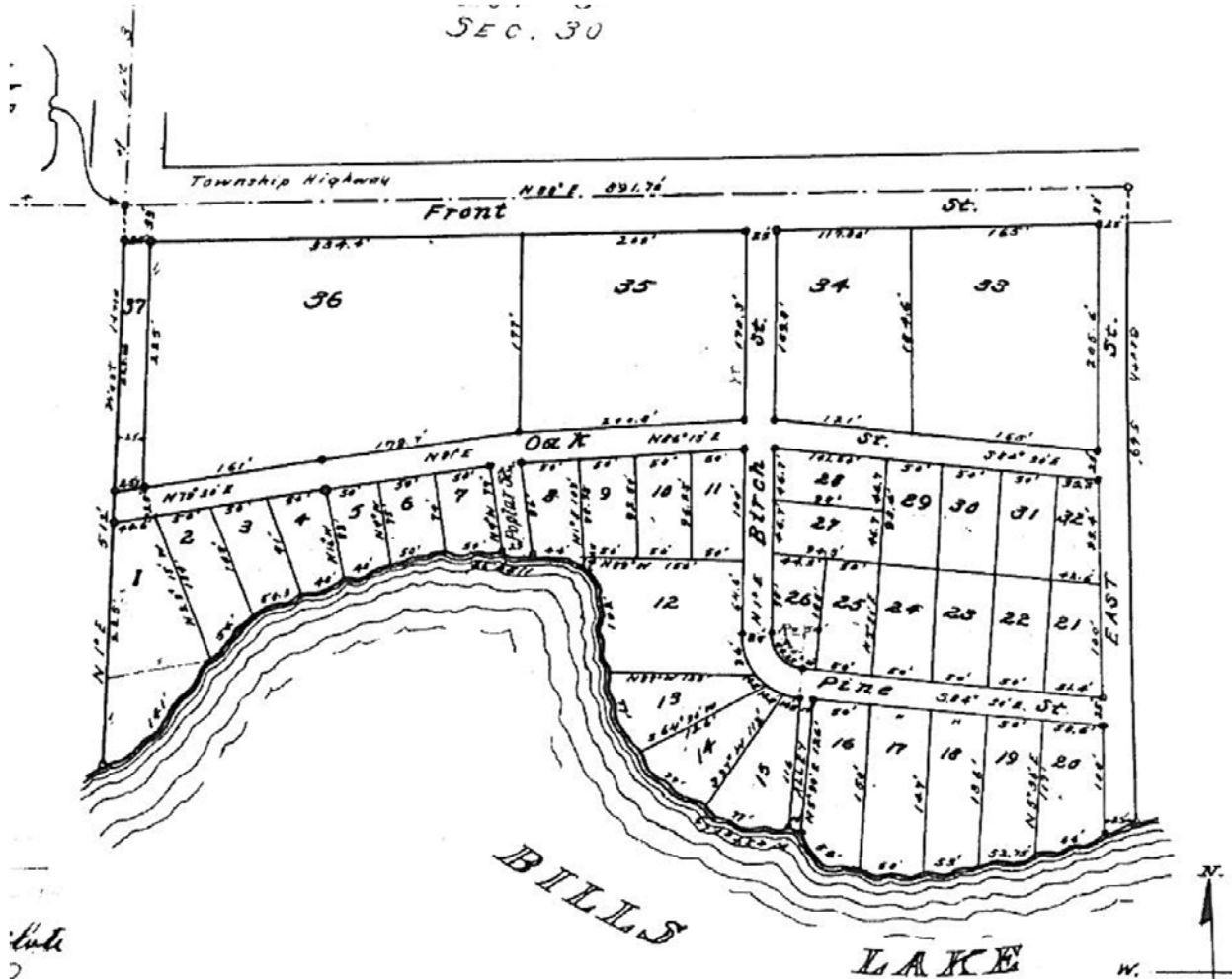


Scale
1 IN = 100 FT
all dimensions are in
ft and decimals thereof



BSM

SEC. 30



late
relief

1922
Crosby

SURVEYOR'S CERTIFICATE

I hereby certify that the plat herein delineated is a correct one, and that permanent monuments consisting of iron bars (1 1/2" x 1/2" x 2 1/2") have been planted at points marked thus o as thereon shown at all angles in the boundaries of the land platted and at all intersections of streets or streets and alleys

SCALE
100' to one inch

LAKE ACCESS DEVICES

▶ Types

- Roads
 - Parallel
 - Public or Private

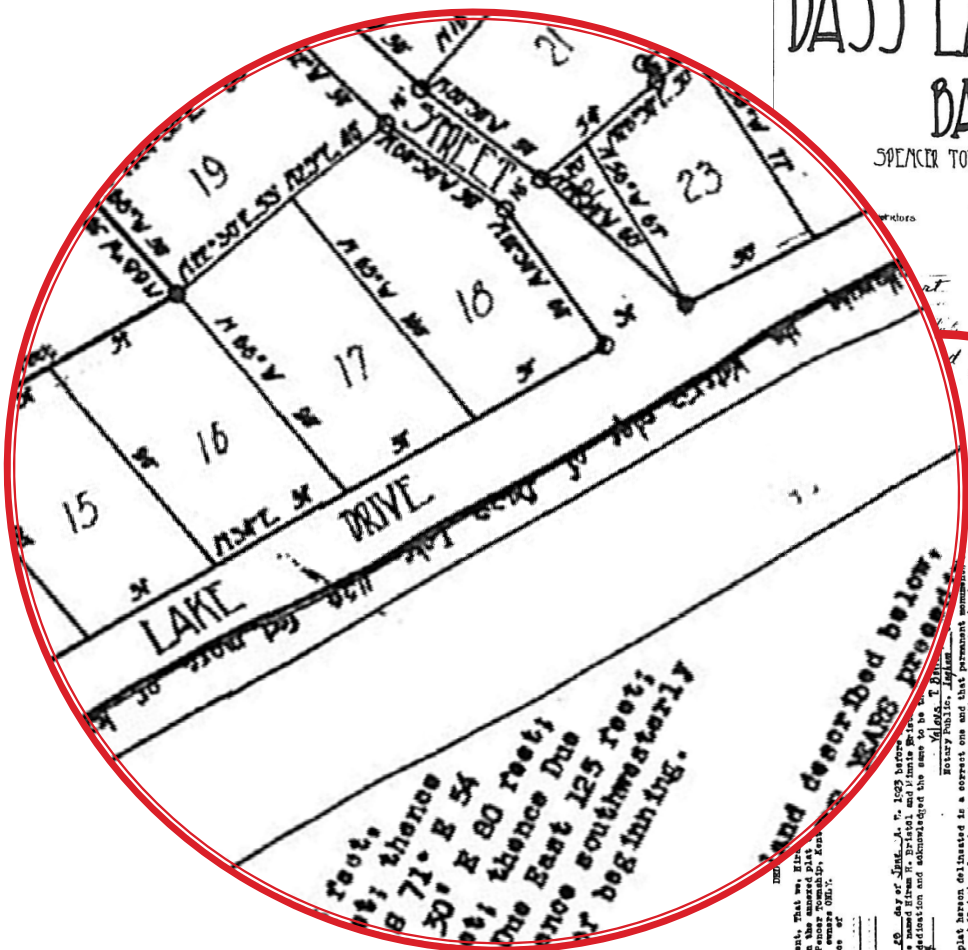
BASS LAKE RESORT BASS LAKE

SPENCER TOWNSHIP, KENT COUNTY, MICHIGAN
SEC. 12, T10N R9W

Scale: One Inch = Fifty Feet

R. S. McKeef
Registered Civil Engineer

July 17-1923
Chas. R. Wainwright



feet, thence S 71° E 54 feet, thence Due East 125 feet, by beginning.

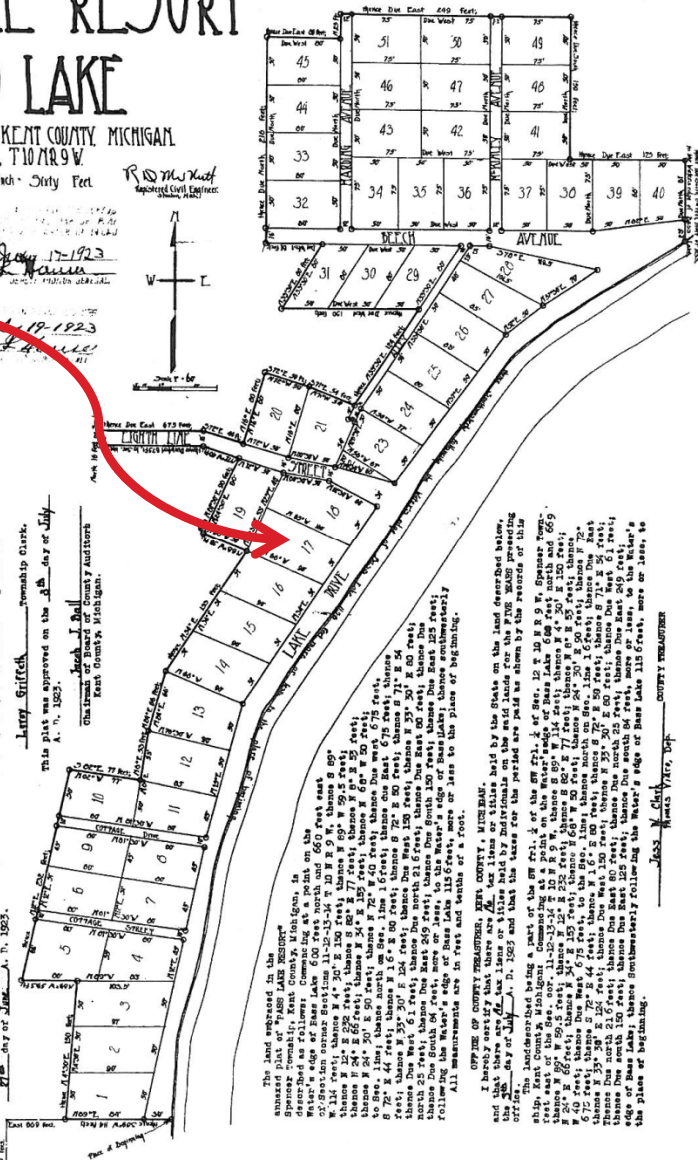
land described below, BEARS PRESENT.

Know All Men by these Presents, that we, Sirs, **WALTER J. BARKER** and **CHARLES R. WAINWRIGHT**, of the County of Kent, State of Michigan, do hereby certify that the plat hereon delineated is a correct one and that permanent monuments have been placed at all points marked () thus as shown hereon at all angles in the boundaries of the lots platting and at all intersections of streets.

I, **WALTER J. BARKER**, registered Civil Engineer, do hereby certify that there are 50 feet lines or widths held by the State on the land described below on the 17th day of July, A. D. 1923.

This plat was approved by the Township Board of the Township of Spencer, at a meeting held the 17th day of July, A. D. 1923.

Chas. R. Wainwright
Chairman of Board of County Auditors
Kent Township, Michigan.



The land hereon delineated is the land of **WALTER J. BARKER**, of the County of Kent, State of Michigan, as shown on the plat of **WALTER J. BARKER** and **CHARLES R. WAINWRIGHT**, of the County of Kent, State of Michigan, dated July 17, 1923, and filed for record in the office of the County Clerk of the County of Kent, Michigan, on the 17th day of July, A. D. 1923.

All measurements are in feet and tenths of a foot.

OFFICE OF COUNTY ENGINEER, KENT COUNTY, MICHIGAN.

I hereby certify that there are 50 feet lines or widths held by the State on the land described below on the 17th day of July, A. D. 1923, and that there are no other persons claiming an interest in the land hereon delineated for the period as shown by the records of this office.

This land described being a part of the plat of **WALTER J. BARKER** and **CHARLES R. WAINWRIGHT**, of the County of Kent, State of Michigan, dated July 17, 1923, and filed for record in the office of the County Clerk of the County of Kent, Michigan, on the 17th day of July, A. D. 1923.

thence S 71° E 54 feet, thence Due East 125 feet, by beginning.

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Chas. R. Wainwright
County Engineer



LAKE ACCESS DEVICES

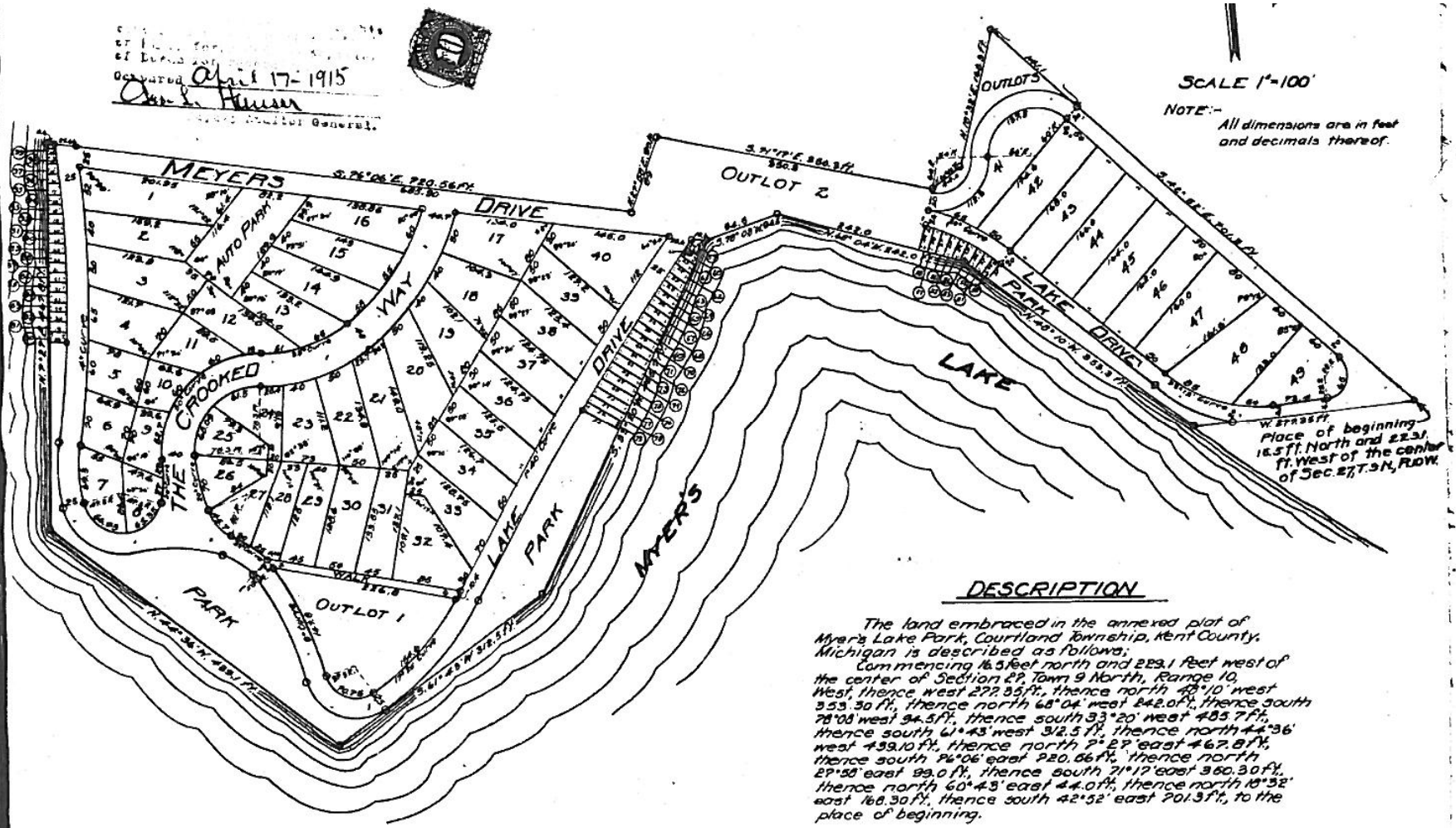
- ▶ Types
 - Parks

DEPARTMENT OF
 LAND AND WATER
 OF MICHIGAN
 Occupied April 17-1915
 A. L. HUNN
 Surveyor General.



SCALE 1"=100'

NOTE:-
All dimensions are in feet
and decimals thereof.



DESCRIPTION

The land embraced in the annexed plat of
 Myers Lake Park, Courtland Township, Kent County,
 Michigan is described as follows:
 Commencing 16.5 feet north and 229.1 feet west of
 the center of Section 22, Town 9 North, Range 10,
 West, thence west 222.55 ft., thence north 42°10' west
 355.30 ft., thence north 68°04' west 242.0 ft., thence south
 78°08' west 94.5 ft., thence south 33°20' west 485.7 ft.,
 thence south 61°43' west 312.5 ft., thence north 44°36'
 west 459.10 ft., thence north 2°22' east 467.8 ft.,
 thence south 76°06' east 220.66 ft., thence north
 27°58' east 89.0 ft., thence south 71°12' east 360.30 ft.,
 thence north 60°43' east 44.0 ft., thence north 10°32'
 east 168.30 ft., thence south 42°52' east 201.3 ft., to the
 place of beginning.

LAKE ACCESS DEVICES

- ▶ Types
 - Walkways

LAKE ACCESS DEVICES

- ▶ Types

- Easements
- Other

LAKE ACCESS DEVICES

- ▶ “Access” or “Ingress and Egress”
 - Public Roads
 - Private roads/easements
 - Is access to the property insured?

LAKE ACCESS DEVICES

- ▶ Road Ends
 - The common law
 - MCL 324.30111b
- ▶ Easements
- ▶ Walks or walkways
- ▶ Parks
- ▶ Obstacles and Abandonment

PROPERTY OWNERS ASSOCIATIONS

- ▶ “Strong” associations
- ▶ “Weak” associations



PURCHASE AGREEMENTS

- ▶ Waterfront property can present significant challenges when it comes to purchase agreements.
 - Is the legal description adequate?
 - What fixtures or items are included in the sale?
 - Are there encumbrances?
 - Is it waterfront or not?
 - Title insurance (is it insured as riparian?)
 - Flood Insurance
 - Inspections
 - Surveys
 - Private road issues

LOCAL ORDINANCES

▶ Zoning

- Funneling
- Docks
- Setbacks
- Private roads
- Minimum lot size and width

LOCAL ORDINANCES

- ▶ Police Power
 - Docks and boats
 - Dune protection
 - Wetlands
- ▶ Land Divisions

PRESCRIPTIVE EASEMENTS AND ADVERSE POSSESSION AT THE WATERFRONT

- ▶ Many old plats
- ▶ A significant problem

ENCROACHMENTS AND SURVEYS



INSPECTIONS

- ▶ Cottage, dwellings and structures
- ▶ Land or “buildability”

DUE DILIGENCE

- ▶ There are two types:
 - Before the purchase agreement
 - Between the purchase agreement and closing

OTHER ISSUES

- ▶ Septic Systems
- ▶ Deed Restrictions
- ▶ Private Roads

STATE STATUTES

- ▶ The Inland Lakes and Streams Act
- ▶ The Dune Protections Act
- ▶ The Wetlands Protection Act
- ▶ The Natural Rivers Act

VACANT LAND— BUILDABILITY



WHAT IS INCLUDED IN THE SALE?

- Docks
- Boats
- Rafts
- Other “toys”
- Furnishings
- Trailers
- Grills

TYPES OF LAKES

- Public versus private
- All-sports
- No-wake
- no motor (or electric motor only)
- Deed Restricted
- Natural versus artificial
- Spring fed
- The trophic status of a lake

COMMON MYTHS

Myth #1

Members of the public and other riparian property owners can walk around an inland lake without permission so long as they stay in the water or on the shore.

- ▶ **Fact:** Unless there is a public road right-of-way, easement, park, or other encumbrance between the lake and the riparian properties, members of the public and other riparians do not have the right to walk on the lakefront or bottomlands of another at an inland lake without permission. For Great Lakes shorelines, the rule is different. Pursuant to the “beachwalker” case (*Glass v Goeckel*, 473 Mich 667; 703 NW3d 58 (2005)), the public generally has an easement for walking lakeward of the ordinary high water mark.

Myth #2

Riparian boundary lines under an inland lake radiate out to the center of the lake in the same direction as the side lot lines of the riparian property on land.

- ▶ **Fact:** That is almost never the case. Riparian boundary lines under the water of an inland lake tend to radiate in a pie-like fashion toward the center of the lake.

Myth #3

Every lake in Michigan has a public access site. Or, another variation of this myth is that every lake in the state of Michigan has a public road end (often called a “section line road”) that affords public access to the lake, even if it is not known or is well-hidden.

- ▶ **Fact:** That is false. While it is true that many lakes in Michigan have public access sites, including public roads which terminate at the lake and accord limited public access, not every lake in Michigan has such public access points nor is there any requirement that every lake have public access points nor is there any requirement that every lake have a public access point or site. It is amazing how often I hear people assert this myth. To date, however, no person reciting this myth has ever been able to show me a statute or any court case which supports this myth.

Myth #4

A local government's jurisdiction ends at the water's edge.

- ▶ **Fact:** While a local municipality's jurisdiction beyond the water's edge is questionable on the Great Lakes, with inland lakes, a municipality can have full zoning and other ordinance jurisdiction over all parts of an inland lake. Of course, if the inland lake straddles two or more municipalities, a particular municipality's jurisdiction ends at the portion of the lake where the other municipality's geographical jurisdiction begins.

Myth #5

It is lawful to place large piles of sand on the beach and to occasionally shovel some sand in the water or let the elements wash the sand into the lake, and there is no need for a permit for such sand.

- ▶ **Fact:** No sand or fill can occur on any body of water in Michigan lakeward or riverward of the ordinary high water mark without a permit. On inland lakes, the permit must be obtained from the Michigan Department of Natural Resources (the “DNR”). On the Great Lakes, a permit must be obtained from the U.S. Army Corps of Engineers (and sometimes also from the DNR). Where an inland lake has a direct navigable passage to one of the Great Lakes, it is possible that a permit will have to be obtained from both agencies. Placing a pile of sand landward of the ordinary high water mark and allowing it to “erode” or wash into a lake or river beyond the ordinary high water mark would likely be a violation of state or federal statute if no permit is obtained for in-water sanding.

Myth #6

If I have a lake access easement, I have the right to install a dock, moor a boat, lounge, sunbathe, and picnic.

- ▶ **Fact:** Lake access easements almost never accord the beneficiaries such rights.

Myth #7

I do not have to worry too much about the purchase/sales agreement that I will be signing regarding the purchase of a piece of property in Michigan, since many of the details can be worked out later even if not expressly mentioned in the agreement.

- ▶ **Fact:** In almost all cases, a signed purchase/sales agreement for real estate in Michigan is a fully binding contract that cannot be varied or supplemented without the express written consent of all parties to that contract.

Myth #8

With regard to any zoning, DNR permit, local ordinance, or other requirements, it is best to simply do the lake project you want to do without a permit and ask for forgiveness/permission later if anyone finds out.

- ▶ **Fact:** That is almost never a good move. The penalties for violating a state or federal law or local ordinance regarding the waterfront can be extreme. Furthermore, you might have to “undo” the project at great personal cost.

Myth #9

On an inland lake, riparians only own to the edge of the water, such that I can anchor my boat overnight out into the lake anywhere I want.

- ▶ **Fact:** With almost all inland lakes in Michigan, the adjoining riparian property owners own the bottomlands adjacent to their lot or parcel to the center of the lake. While boaters and fishermen can temporarily moor or anchor their boat on the bottomlands of another while fishing or recreating, only the riparian landowner has the right to anchor or moor a boat or watercraft on his/her bottomlands permanently or overnight.

Myth #10

Since the local municipality has no ordinance regulations regarding docks or swimming rafts, I can extend my dock as far as I want out into the lake or keep my raft in the middle of the lake, so long as it is on my bottomlands, and there is nothing anyone can do about it.

- ▶ **Fact:** Unreasonably long docks or raft locations that interfere with navigability are subject to two types of regulation absent a local municipal ordinance. First, pursuant to the Michigan Marine Safety Act, the DNR has the ability to require that a raft or dock be moved or removed if it interferes with navigability. *See* MCL.324.80101, *et seq.* Second and alternately, other riparians potentially have a civil remedy against you in court if your dock or raft unreasonably interferes with their riparian rights. *See West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505; 534 NW2d 212 (1995).

Myth #11

In Michigan, a parcel or lot cannot be landlocked or inaccessible.

- ▶ **Fact:** A parcel or lot can be landlocked or inaccessible, legally or practically. Today, most municipalities will not allow a new parcel or lot to be created unless it has frontage on a public road or approved private road. Nevertheless, there are a number of parcels or lots throughout Michigan created years ago that are landlocked or inaccessible and that cannot be made accessible unless an adjoining property owner voluntarily sells or creates an easement. On occasion, the owner of a landlocked parcel or lot can go to court and obtain a permanent access easement via the common law doctrines of prescriptive easement, implied easement, or easement by necessity, but those remedies are not available in all cases.

LAWSUITS AND THE RISK OF LITIGATION

Questions?



Helpful Resources

- ▶ Visit the Michigan Townships Association at www.michigantownships.org
- ▶ View Cliff Bloom's articles at www.bsmlawpc.com
- ▶ Visit the website for *The Michigan Riparian* magazine at www.mi-riparian.org or contact them at 300 North State Street, Stanton, MI 48888 or (989) 831-5100.
 - The annual subscription rate is currently \$14.00 for four issues.

Helpful Resources (continued)

- ▶ The Michigan Lake & Stream Associations, Inc.'s website can be found at www.mymlsa.org.
- ▶ Also see John Cameron's real property treatise entitled *Michigan Real Property Law*, published by the Michigan State Bar Association, Institute of Continuing Legal Education

Thank you.



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