

# "Riparian Rights in Michigan"

Riparian rights are property rights which run with the land. Only land which abuts a natural body of water has riparian rights. A riparian property owner has the following property rights:

1. Access to water.
2. Install a dock anchored to his bottomland.
3. Anchor a boat on his bottomland or secure it to his dock.
4. Use water from the lake or stream for domestic purposes.
5. Controls any temporarily or periodically exposed bottomland from the water's edge to the high water mark against trespass

## OWNERSHIP OF BOTTOMLAND OF LAKES AND STREAMS - A BASIC RIPARIAN RIGHT

"Bottomland", as defined in Act 346, P.A. of 1972, "means the land area of an inland lake or stream which lies below the ordinary high-water mark which may or may not be covered by water".

Court cases which have established and confirmed the ownership of the bottomland by the adjacent property owner include the following:

Patterson vs. Dost (1916),  
Johnson vs. Bughorn (1920),  
Hilt vs. Weber (1930),  
Croucher vs. Wooster (1935),  
Burt vs. Monger (1946),  
Hall vs Wantz (1953)  
Thompson vs Enz (1967)  
Sheridan Drive Association vs. Woodlawn Back Property  
Owners Assoc. (1970),  
Theis vs. Howland (1985).

These cases also affirmed that the use of bottomland of lakes by other persons without their permission of the property owner was an act of trespass, and, therefore, an infraction of riparian property rights.

## MICHIGAN SUPREME COURT AFFIRMS COMMON LAW PRINCIPLE OF RIPARIAN OWNERSHIP OF BOTTOMLAND 1860

The Michigan Supreme Court, in the **Lorman vs. Benson** case, held that:

***"The common law principle, that the soil under such tideless public rivers to the thread of the stream is in the owner of the adjacent bank, prevails in this State, and is applicable to the Detroit River." Also, "The right of navigation, to which all others are subservient, is in no way injured or abridged by this holding (that the owner of the adjacent bank holds title to the bottom of the river to the middle thread of the river)."***

## UPLAND PROPERTY OWNERS MAINTAIN RIPARIAN RIGHTS OPPOSITE A SHORELINE HIGHWAY

Upland property which is separated from a lake by a highway which runs along the shoreline of a lake "carries with it the same riparian rights on the opposite side of the highway as it would have had the lot itself been touching the lake, unless there is an express limitation in the deed". This was the decision reached by the State Supreme Court in **Croucher vs. Wooster** in 1935.

## **RIPARIAN RIGHTS ARE NEITHER SEVERABLE NOR TRANSFERABLE**

The Michigan Supreme Court in **Thompson vs Enz** (1967) declared the following:

1. Riparian rights are common to all riparian owners on the same body of water, and rest entirely upon the fact of title in the fee to the shore land.
2. Riparian rights are not alienable, severable, divisible, or assignable part from the land which includes, or is bounded by, a natural watercourse.
3. Non riparian owners may not acquire riparian rights by conveyance or reservation, but may acquire easements, licenses, or the like for a right-of-way for access to a water course.

### **IN ADDITION TO NATURAL RIGHTS A RIPARIAN HAS *CORRELATIVE RIGHTS*:**

A riparian property owner may use his waterfront property to increase his comfort or prosperity for commercial and recreational pursuits, but they must be reasonable at all times and cannot encroach or infringe unreasonably upon the use of the surface of the lake or stream by other riparian's or members of the public.

### **A PERMIT FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY IS REQUIRED FOR ANY OF THE FOLLOWING:**

1. Dedicate any portion of the surface of a lake or stream for commercial use, such as a marina.
2. Build a seawall closer to the water's edge than the high-water mark.
3. Dredge or place fill in a lake or stream.
4. Increase or decrease the size of a lake or stream.
5. Dig a channel to connect a pond to a lake or stream.

### **A RIPARIAN MAY NOT:**

1. Permanently anchor a raft or moor a boat on bottomland that belongs to another riparian property owner.
2. Install a pier an unreasonable length out into a lake or stream.
3. Cannot transfer his riparian rights to another person.
4. Cannot unreasonably restrict the use of the surface of a lake or stream by members of the public.

### **A RIPARIAN PROPERTY OWNER CANNOT DENY OTHERS FULL USE OF ENTIRE LAKE**

In **Burt vs. Monger**, Mr. Burt wanted to build a seawall which would shrink the size of St. Mary's lake and, thereby, deny other riparian property owners the full use of the entire lake. This holding does not deny riparian property owners the right to "protect his dock for purpose of facilitating his use and enjoyment of the waters of the lake. The Court also reiterates the Michigan rule that riparian owners own to the middle of the lake."

### **COUNTY ROAD COMMISSIONS CAN NOT CONVERT SHORELINE HIGHWAY INTO PUBLIC BEACH**

Can the public use the shore of a lake for a public beach when access is gained by a public road which borders the lake? This question is answered by the Supreme Court in **Michigan Central Park vs. Roscommon County Road Commission** in 1966. The Court stated that, "the plaintiff association and other abutting property owners have riparian rights on Higgins lake opposite their lots and across the highway. The public beach is enjoined as an improper interference with the plaintiff's riparian rights."

### **HOUSE BOATS CANNOT DOCK INDEFINITELY ON BOTTOMLAND**

In **Patterson vs. Dost**, owners of house boats were enjoined from anchoring their houseboats indefinitely on the bottomland off shore of the Belle Isle bathing beach maintained by the city of Detroit. The Court also held that "a riparian owner has a right to the enjoyment of the waters that flow past his premises in an unpolluted state." The owners of the houseboats were dumping their garbage and sewage into the waters of the swimming area.

### **MEMBERS OF THE PUBLIC CANNOT ANCHOR INDEFINITELY ON THE RIPARIAN'S BOTTOMLAND**

Questions frequently asked by riparian property owners include: "Does the size and/or depth of the lake have any bearing upon riparian rights? These questions were answered by the State Supreme Court in **Hall vs. Wantz** in 1953. This case involved the use of a 25 by 40 foot raft used by the defendant for a fishing business on White Lake in Muskegon County. The defendant anchored the fishing vessel some 1500 feet from shore for the summer season. The court stated that the riparian property owners own to the middle of the Lake No matter how deep. The court also reaffirmed that "a riparian's rights are limited by the public right to navigation, but this does not include the right to anchor indefinitely off the riparian's shoreline.

### **BACK LOT OWNERS CAN NOT CONSTRUCT DOCKS OR MOOR BOATS ON LAKE BOTTOMLAND**

Other questions concerning riparian rights are often asked by back lot owners -- owners of lots within a subdivision but not on the shoreline. These questions were answered by the Supreme Court in **Thies vs. Howland** in 1985. The Court found that the back lot owners in the subdivision on the south shore of Gun Lake in Barry County were granted only the right of ingress and egress to the lake. The Court "found that the defendants could not permanently anchor their boats nor construct docks or other permanent anchorage in front of plaintiffs land... the court also determined that the easement, by its express terms did not grant back-lot owners the right to construct a dock or to permanently anchor boats off the terminus of the easement."

### **WHAT RIGHTS DO PROPERTY OWNERS HAVE WHOSE LAND ADJOINS THE SHORE OF THE GREAT LAKES?**

Michigan's Attorney General, Frank J. Kelley answered this question in his Opinion No. 5327 dated July 6, 1978.

Riparian rights include:

1. the use of the water for general purposes, as bathing, domestic use, etc.
2. To wharf out to navigability.
3. Access to navigable waters.
4. The right to accretions.

The Attorney General states the following:

In summary:

1. A riparian at all times owns the upland to the ordinary high water mark, and may exercise control thereto, by virtue of rights stemming from the Federal patent.
2. The ordinary high water mark is set for all the Great Lakes by 1955 PA 247, supra, and when the water recedes below the ordinary high water mark, the riparian owner has control over the exposed area, but may not place any permanent structures or do any dredging or filling on this land without a permit from the Department of Environmental Quality.
3. The public may not use the beach whether it extends to the ordinary high water mark or to the low water mark. The public, however, has the right to the riparian land covered by water.  
Right of passage in any area adjacent to the riparian land covered by water

### **LAKE MICHIGAN SHORELINE OWNERS OWN TO THE WATERS EDGE**

In **Hilt vs. Weber**, the Supreme Court overturned a decision of the lower courts which gave title to a strip of land between a meander line and the shore of Lake Michigan. The Court ruled that the Lake Michigan shoreline owner owned to the water's edge.

### **RIPARIAN RIGHTS MAY BE LIMITED**

Can local government regulate the launching and docking of boats on private shore line property? The State Supreme Court answered this question in its decision on June 11, 1991 in the Square Lake Hills Condominium Associations vs. Bloomfield Township. The Court held that, "the legislature (of Michigan) has placed with townships the power to adopt regulations, purely local in nature, to enhance the health and safety within its community by the regulation of boat docking and launching." This power was granted to townships by THE TOWNSHIP ORDINANCE ACT, Act # 246, P.A. of 1945. Also, under this Act, townships may establish a township police department, and/or may call upon the county sheriff "to provide special police protection for the township and enforce all local township ordinances...."

This question was answered by the Michigan Supreme Court in their decision on May 22, 1992 in the **Hess vs. West Bloomfield Township** case. The court declared that the regulatory authority possessed under the Township Rural Zoning Act, Act # 184, P.A. of 1943, encompassed more than "dry land". The Supreme Court argued that townships could not protect bodies of water from destruction or impairment without the ability to regulate riparian rights."

**TOWNSHIP BOAT AND DOCK REGULATION EXAMPLE** (Chester Township, Ottawa County Zoning Ordinance, No. 10-1-93 Sec. 4 and 5)

**Section Four - NUMBER OF BOATS MOORED AT A DOCK:** No more than three (3) registered water craft may be moored or tied to a dock at one time. A boat shall be considered to be moored or tied to a dock if it is attached to the dock by ropes or other devices (such as but not limited to "shore stations") for periods of time in excess of two hours, or it is anchored within fifty feet of a dock for periods in excess of eight hours. For the purpose of this Section, the term "Registered Water Craft" shall mean a boat, vessel, or other device for which a certificate of registration has been issued or is required under the Laws of the State of Michigan, or of the state in which the owner of the watercraft resides.

**Section Five - MAXIMUM LENGTH OF A DOCK:** No dock shall extend into Crockery Lake a distance greater than fifty feet (50'). However, all docks in existence and in location (as defined in Section Three)

and which exceed this length, are permitted to remain in place. When such docks are repaired or replaced, the dock shall then be brought into compliance with this Section.