

MICHIGAN SUPREME COURT AGREES TO REVIEW
THE DECISION IN *TOMECEK v BAVAS*

On July 3, 2007, the Michigan Court of Appeals issued a disturbing opinion in *Tomecek v Bavas*, 276 Mich App 252 (2007). A portion of the Michigan Land Division Act allows a Michigan circuit court to vacate, correct, or revise a plat or portion thereof. Traditionally, that provision has always been seen as a remedial or procedural power; that is, to allow a court to correct a plat error, vacate a road or other common area where everyone agrees, or order a similar noncontroversial “cleanup” matter. In a stunning decision, the Michigan Court of Appeals held that the statute allows a trial court to drastically revise plats, including forcefully imposing new easements on some objecting property owners and granting new property rights to others. In other words, the decision would allow courts to alter substantive (and oftentimes, very important) property rights, even over the objection of those property owners being adversely affected. This case has important implications for road ends at lakes in Michigan, since if the Court of Appeals decision is allowed to stand, it would permit local courts to alter road end dedications to allow extensive dockage, boat mooring, floating marinas, etc. If the decision stands, it could also allow courts to take additional property for public road rights-of-way away from adjoining property owners in plats and to expand roads without the need to exercise eminent domain.

The Michigan Lake & Stream Associations, Inc. (via an amicus brief) joined with others to ask that the Michigan Supreme Court agree to hear the *Tomecek v Bavas* case and urged the Court to reverse the erroneous decision of the Michigan Court of Appeals. The Michigan Supreme Court has now agreed to hear the appeal. ML&SA and many riparians hope that the Michigan Supreme Court will ultimately reverse the decision of the Michigan Court of Appeals.