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Land Gaps at the Lake

Not infrequently, there is a small "land gap" located between the waters of a Michigan lake and the first tier of lots or parcels near the shore. This article applies to those strips of "no person's land." These areas do not involve a platted road, walkway, park strip, or other easement or dedicated area along the shore, but rather constitute true land gaps which are seemingly not owned by anyone. In those situations, who generally owns the land strip - the owners of the adjoining first tier lots, the original creators of the plat (if a plat or subdivision is involved), or someone else?

Throughout Michigan, situations arise where a "waterfront" lot or property does not actually extend to the water's edge. There is a land gap between the lot and the water. If the land gap is relatively large, the nearby lot or parcel that does not touch the water is normally not truly riparian or technically "waterfront." That is true regardless of whether the land gap is owned by someone else (due to a reservation in an earlier deed) or even if it is unclear who owns the land gap. In general, to be considered a riparian property, the parcel must touch a body of water. However, there is a limited exception to that general rule. In some cases, where the land gap is relatively small, there is no other recorded owner, no other party has claimed the property comprising the land gap for many years, and the first tier lot or parcel owners have treated the land gap as their own for years, the Michigan appellate courts have indicated that they will disregard an insignificant land strip and will treat the first tier lots or parcels as being riparian. See *Sands v Gambs*, 106 Mich 62 (1895) and *Kranz v Terrill* (unpublished decision by the Michigan Court of Appeals dated September 20, 2012; Case No. 305198; 2012 WL 4214894).

I did address the land gap issue generally in two earlier articles entitled "Land Gaps at Lakes" and "What is Riparian?" in the Winter 2013 and Fall 2014 issues of the *Michigan Riparian Magazine*, respectively. In those articles, I pointed out that courts generally hold that first tier lot owners usually own the narrow land strips along a lake, absent unusual circumstances.

In *Kranz v Terrill*, there was a narrow land gap between the plaintiff's platted lot and the waters of Round Lake as shown on the original plat. The trial court held that the platted lot was not riparian, as it was not shown on the original plat as extending to or touching the waters of Round Lake. On appeal, the Michigan Court of Appeals reversed that part of the trial court's decision and held that the platted lot is riparian or waterfront notwithstanding the narrow land gap. The Court of Appeals noted:

> While it is generally true that riparian rights are property rights that arise when land actually touches or includes a body of water, it appears here that plaintiff's property is riparian. See *Thies v Howland*, 424 Mich 282, 287-288, 380 NW2d 463 (1985). The plat map includes a relatively small strip of land that varies in width, existing between a straight-edge line and a wavy line. Defendants purport the straight-edge line to be the actual boundary line of the front lot owners' properties, including plaintiff's property. The back lots are not included on the plat map, only the front lots. There is no reference or designation on the plat map with regard to this strip of land. The same strip of land exists throughout the length of the platted front lot properties, but the strip of land is not uniform in width. Although the plat map indicates that "the streets and alleys as shown on said plat are thereby dedicated to the use of the public," this variably-sized strip of land does not appear to be neither a street nor an alley. And there is no indication of an intention to reserve ownership of the strip of land.
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> There is likewise no indication that this strip of land was intended to be a walkway. But even if it could be construed as a walkway of some sort, plaintiff's riparian rights would not necessarily be destroyed. In *Croucher v Wooster*, 271 Mich 337, 345; 260 NW 739 (1935), our Supreme Court held that a lot separated from the water by a highway that is contiguous to the water remains riparian land. And in *Thies*, 424 Mich at 290-293, the Court held that the owner of a lot separated from the water by a walkway along the edge of a body of water remained the owner of the land and, thus, had riparian rights. The Court held: "Unless a contrary intention appears, owners of land abutting any right of way which is contiguous to the water are presumed to own the fee in the entire way,

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subject to the easement. Since the owner's property is deemed to run to the water, it is riparian property." *Id.* at 293. Accordingly, actual contact with the water is not necessarily required for riparian rights to exist.

Further, there is no evidence that the strip of land or any portion of it was ever or could ever be conveyed to anyone else. See, e.g., *Hilt v Weber*, 252 Mich 198, 218; 233 NW 159 (1930). Defendants argued in the trial court that plaintiff's predecessors in title, the Kummerles, did not convey this strip of land to plaintiff and could not because the Kummerles' predecessors in title, the Roneys, did not convey to them this strip of land. The argument is misleading. The metes and bounds descriptions on all of these warranty deeds were the same. Defendants presented no evidence that this strip of land was ever or could ever be conveyed. Quoting *Hilt*, 252 Mich at 218: defendants argued in the trial court that the "interposition of a fee title between upland and water destroys riparian rights, or rather transfers them to the interposing owner;" however, defendants provided no evidence "of a fee title" or an "interposing owner."

In light of the evidence presented, we conclude that the strip of land in front of plaintiff's property was intended for the exclusive use of her property subject to the easement. It appears to us that the wavy lines likely represent the high water mark, essentially serving the purpose of meander lines and representing the border or edge of Round Lake at the time of the plat map. See *Id.* at 201. Such lines do not establish boundaries. See *Id.* at 204. Therefore, the trial court's conclusion that defendants proved plaintiff's property is not riparian was erroneous. (Footnotes omitted.) *Kranz* at p. 3-4 (Slip opinion).

The controlling precedent regarding land gaps at lakes was set by the Michigan Supreme Court in *Sands v Gambs* in 1895. The Supreme Court indicated that a trial court should consider several factors when determining whether a property is waterfront or riparian notwithstanding a narrow land gap. First, the Court noted "[t]he tendency of [earlier] decisions is to turn every doubt upon expressions which fix the boundary next [to] the river in favor of a contact with the water." *Sands* at 366. Second, "grants must be construed most strongly against the grantor." *Ibid.* Third, natural monuments, such as a lake or the water's edge, usually control courses and distances. *Id.* Fourth, the failure to reserve access to the strip of land indicates that there was no intention to reserve the strip of land for any other purpose. *Id.* at 366-367. Finally, a court should consider whether the adjacent landowners have treated the strip of land as part of the platted lot and whether there has been any protest regarding such treatment over the years. *Id.* at 366.

Recently, the Michigan Court of Appeals again addressed land strips at lakes in *Saunders v Rhodes* (unpublished decision dated June 18, 2020; Case No. 347524; 2020 WL 3399572). In that case, platted Lot 1 of the Pickerel

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Point plat was separated from the waters of Chippewa Lake by a narrow land strip. It was unclear who, if anyone, owned actual title to the land strip. The legal description for Lot 1 did not go all the way to the lake or even mention the lake. The owners of an adjoining off-lake adjacent property claimed that the land strip actually constituted a small "tail" that tied into their property and asserted that they own the narrow lakefront land strip and hence, are riparian property owners. Both the trial court and the Court of Appeals held in favor of the owners of the first tier platted lot (Lot 1) in decreeing that the narrow land strip passed with Lot 1 and therefore, Lot 1 is a waterfront or riparian property. The following factors were important to the Court of Appeals in its decision:

1. The original platter did not expressly reserve title to the land strip, and as such, it presumably passed with title to Lot 1.
2. In most cases, a legal description that goes close to a lake, river, or other body of water will be deemed to run all the way to the water (i.e., the body of water is deemed to be a boundary or property monument).
3. Meander lines are not boundary lines.
4. There is a common law presumption that such first tier platted lots run to the water's edge, unless a marking or designations on the plat clearly overcome and exclude that presumption.

Even if the owners of the backlot property in *Saunders* were found to actually have title to the land strip, it is possible that the ownership of that land strip eventually passed to the owners of Lot 1 by adverse possession or "squatter's rights," depending on whether the current and past owners of Lot 1 exclusively utilized the land strip since the time that the plat was created in 1927.

Before a purchaser buys a seemingly lake front parcel with a land gap between the property and the lake, the ownership or title issue involving the land strip should be fully resolved.