

Important Michigan Court of Appeals Decisions

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ANOTHER MICHIGAN COURT OF APPEALS ROAD END CASE

On January 16, 2018, the Michigan Court of Appeals issued its unpublished opinion in the case of *In re Joseph M. Drago Revocable Trust/Drago v Savage* (Case No. 335472; 2018 WL 442219). The properties involved were at Eight Point Lake in Clare County, Michigan. The subdivision in which the properties are located dedicated a private road that terminated at the lake “to the use of The Lot Owners.” Consistent with long-standing Michigan appellate case law, the Court of Appeals held that the road could be used by the backlot or off-lake property owners for access to the lake only – the road could not be used for overnight or seasonal boat mooring, docking or storage. The Court also confirmed that one dock could be installed at the road end at the lake for day use only, but that boats and watercraft could not be moored or docked at the common dock overnight or seasonally. The adjoining riparian property owners had objected to the presence of a dock, even for strictly day use. However, past Michigan appellate cases have also clearly indicated that one common dock is typically allowed at a private or public road end at a lake if the road is wide enough to accommodate it reasonably and it is used for day use only.

For past articles regarding road ends at lakes and riparian issues, please visit

either the Michigan Lake & Stream Associations, Inc. website at www.mymlsa.org or *The Michigan Riparian* website at www.mi-riparian.org.

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AN IMPORTANT SHORT-TERM RENTAL DECISION

My earlier article on short-term rentals in Michigan appeared in the Summer, 2017 issue of *The Michigan Riparian* magazine. Recently, the Michigan Court of Appeals issued a published decision which could have significant impacts upon short-term rentals throughout Michigan.

The phrase “short-term rental” typically means the renting or leasing of a single-family cottage or house to one family for relatively short periods of time. Unfortunately, neither state law nor most municipal zoning ordinances define when a short-term rental ends and a long-term rental begins. However, for purposes of discussing the topic, a short-term rental is generally any rental that occurs for less than a week or two.

Most municipal zoning ordinances in Michigan do not expressly regulate or prohibit short-term rentals, although a handful of municipalities do have regulations that do. Most municipalities have taken the position that a short-term rental does not violate the local municipal zoning ordinance so long as the dwelling is occupied by only

one family at a time. There has been legislation introduced in the Michigan Legislature to prohibit municipalities from banning or regulating short-term rentals, but as of the date of this article, none of that legislation had been enacted.

In a few cases, property owners in a deed-restricted community or neighborhood have argued that short-term rentals violate a regulation in the area’s deed restrictions, restrictive covenants or equivalent restrictions (hereinafter, “deed restrictions”) allowing only single-family residential uses or prohibiting commercial uses. The Michigan courts have reached mixed results in the past in those deed restrictions cases. However, on November 30, 2017, the Michigan Court of Appeals in *Eager v Peasley*, ____ Mich App ____ (2017) (2017 WL 5907310) held that a short-term rental did violate the deed restrictions applicable in an Alcona County deed-restricted community. The deed restrictions at issue only allow “private occupancy” of dwellings and also prohibit “commercial use.” The Court held that the phrase “private occupancy” means the same as “private residence.” The Court also found that even renting a dwelling part-time for short-term rentals (with the owner occupying the dwelling the rest of the year) can still constitute a prohibited

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“commercial use.” There was, however, a vigorous dissent in the case decision by Judge William B. Murphy.

Several months earlier, the Michigan Court of Appeals held in a similar case that short-term rentals violated the “residential use only” and “non-commercial use” requirements in deed restrictions in a neighborhood. That case was *Baukham Trust v Petter* (unpublished decision by the Michigan Court of Appeals dated September 19, 2017; Case No. 332643; 2017 WL 4158025). That decision is technically not binding precedent since it was “unpublished.”

It is not clear whether the Michigan courts hereafter will extend the decision in *Eager v Peasley* and hold that conventional municipal zoning ordinances allowing only single-family residential use or prohibiting the commercial use of dwellings will prohibit short-term rentals. However, the language of the deed restrictions in *Eager v Peasley* likely varies significantly from the wording in most single-family zoning districts and municipal zoning ordinances throughout Michigan. 