

Twixt the Water and the Land

SHALLOW WATER PARTY SPOTS ON INLAND LAKES.

One of the most difficult problems that riparians on inland lakes face is owning a lakefront property with a shallow area or sandbar in the lake located close to the shore where numerous boats and people congregate during the summer to sunbathe, party and recreate. Some of those situations become a public nuisance, complete with drunkenness, loud and boisterous behavior and even worse. Unfortunately, there does not seem to be any easy or even effective “fix” to the problem.

Apart from riparian rights issues, police officers can write tickets or arrest boaters for behavior that is illegal under state law. Illegal behavior can include reckless or careless boating, disturbing the peace, public drunkenness, nudity and assault. Of course, there are two problems that still arise. First, the police are not always around and often times, the violators are long gone by the time the police arrive. Second, if a police officer does not witness someone engaging in otherwise illegal behavior, simply mooring a boat on the lake bottomlands of a riparian without permission is considered only a civil issue (like a boundary line dispute), for which the police will usually not become involved. On occasion, some diligent police officers will order crowds of boats to disperse based on a general concern about public nuisance, safety and being a hazard to navigability.

Many riparians over the years have told me that they are simply mystified how they can own the bottomlands under an inland lake but that boaters can still moor on those private bottomlands without permission in large groups for hours on end. Unfortunately, the Michigan common or civil law in the area is not entirely clear. As a general proposition, a riparian property owner on a natural inland lake in Michigan almost always owns the bottomlands under the water to the center of the lake. Only that riparian can install and use a dock, engage in permanent or seasonal boat mooring, maintain a swim raft and engage in similar uses and activities on the bottomlands that they own. It is clearly illegal for another to engage in any of those activities on your lake bottomlands without your permission. However, long ago, the Michigan appellate courts also declared an exception to the rule that no one can use the lake bottomlands of a riparian property owner on an inland lake without permission. The courts have indicated that a boater can temporarily moor or anchor on the bottomlands of another without permission for

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navigability, which would include fishing and seeking refuge from a storm. See *Swartz v Sherston*, 299 Mich 423; 300 NW 148 (1941); *Hilt v Weber*, 252 Mich 198; 233 NW 159 (1930); *Hall v Wantz*, 336 Mich 112; 57 NW2d 462 (1953). However, the Michigan appellate courts have not specifically addressed whether the following can occur on the bottomlands of a riparian without permission:

- (1) Wading or walking on the bottomlands under the lake.
- (2) Anchoring for long periods of time for purposes of lounging on a boat, swimming, partying, etc.
- (3) Tying and anchoring a number of boats together for partying.

The only way for riparians to address these issues would be for one or more riparians to join together in a lawsuit against the boaters who engage in such activities without permission. Unfortunately, however, there are at least three obstacles to such a lawsuit. First, such lawsuits can be expensive and time-consuming. Second, that type of lawsuit has to be directed against a particular person or group of specific individuals; such a lawsuit cannot be directed against the general public. Typically, there are different groups of violators on different days and over time. Finally, even if the riparian or riparians win the lawsuit, police officers cannot issue tickets based on a civil court order. A riparian who successfully wins such a lawsuit would still have to file a motion to have any person who violates the court order be found to be in contempt of court.

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Theoretically, a local municipality (a township, city or village) could draft an ordinance to cover such problems. However, such an ordinance would be difficult to draft and enforce. For instance, what would the ordinance say? That three or more boats cannot be tied together for partying? That a boat cannot be moored or anchored on the bottomlands of another without permission for more than two hours for swimming, sunbathing and partying? That a boater cannot temporarily moor or anchor a boat on the bottomlands of another without permission except for purposes of fishing or seeking refuge in a storm? To date, I am not aware of any municipality that has enacted such an ordinance. About the only ordinance that might be practical would be an ordinance that prohibits anchoring or mooring on the bottomlands of another without permission for any purpose (except during an emergency) within X feet (for example, 300 feet) of the shore. Of course, such an ordinance would likely face severe public opposition, including from fishermen and many boaters.

This continues to be a frustrating matter for many riparians.

LEGAL DEVELOPMENTS REGARDING ADVERSE POSSESSION AND PRESCRIPTIVE EASEMENTS.

In the past, I have authored several articles on adverse possession and prescriptive easements for this magazine (including the summer 2011, summer 2013 and spring 2014 issues of the magazine). Given the significant public opposition to those common law doctrines, it is surprising that the Michigan Legislature has not either abolished adverse possession and prescriptive easements altogether or severely restricted them.

Few people would disagree with the application of adverse possession where an old farm house has been located a few feet onto the neighbor's property for over a century or where a property owner has used a private road to access their otherwise landlocked parcel for decades without a recorded easement and is protected by the doctrine of prescriptive easement. Unfortunately, however, many property owners in Michigan use adverse possession or the prescriptive easement doctrine to simply "grab" more land without having to pay for it.

What are some of the possible ways that the Michigan Legislature could reform the common law doctrines of adverse possession and prescriptive easement by legislation without abolishing them in needed situations? The following are some possible legislative reforms:

- A. Extend the limitation time period from 15 years to 20 or 25 years.
- B. If someone prevails on an adverse possession or prescriptive easement claim, require that the court involved determine the value of the property interest obtained and make the prevailing party pay for the land taken by adverse possession or permanently burdened by a prescriptive easement.
- C. Make it clear that someone cannot claim adverse possession or a prescriptive easement against a neighbor with whom they are friends. Too often, a friendly neighbor implicitly allows their friend to use their property for more than 15 years and then is betrayed by the supposed friend claiming some of the land by adverse possession or by prescription.
- D. Make it an element or requirement of proving adverse possession or a prescriptive easement that the property or easement involved is reasonably necessary.

The Michigan Supreme Court recently confirmed several legal issues regarding adverse possession and prescriptive easements in the case of *Marlette Auto Wash, LLC v VanDyke SC Properties, LLC*, ___ Mich ___ (2018). The Michigan Supreme Court clarified:

- (1) That a property owner can still prevail in an adverse possession or prescriptive easement lawsuit (as can their successors) even if they did not know they were accruing an adverse possession or prescriptive easement claim during the 15-year time period involved.
- (2.) Even if someone obtains property by adverse possession or a permanent easement via prescription, they can (under some circumstances) lose the land or easement obtained if it is not used by them for 15 years or more after they gained the right.

Lay people should be aware that the areas of adverse possession and prescriptive easements are fraught with factual and legal difficulties. *R.*