



Attorney Writes

By Clifford H. Bloom

Law, Weathers & Richardson, P.C.
Bridgewater Place
333 Bridge Street, N.W., Suite 800
Grand Rapids, Michigan 49504-5360

One of the perennial “hot” topics for riparians is how to determine property boundaries under inland lakes. Or put another way, where does your bottomlands end and your neighbor’s begin? Long-time readers of the *Riparian Magazine* know from past articles and this column that riparians generally own a portion of the bottomlands adjacent to their property to the center of the lake. See *Hall v Wantz*, 336 Mich 112 (1953). Very rarely do boundary lines along the bottomlands of lakes (hereinafter referred to as “riparian lines”) follow the angle of property lines on dry land. If a lake is more or less round, riparian lines generally radiate to the center of the lake in a pie-shaped fashion. Unfortunately, there are very few round lakes, and setting riparian lines for oblong or irregularly-shaped lakes is more difficult. In such situations, a “thread line” is normally designated along the rough center of the lake, with riparian lines radiating from shore to that line. Such thread lines can also have “fingers”, depending on the shape of the lake.

Why are setting riparian lines important? They are often necessary for deciding the placement of docks, shorestations and floating raft anchors on lake bottomlands. As lakes become more crowded and riparian values sky rocket, an increasing number of disputes arise around the state regarding the location of riparian lines.

Only courts can definitively determine and set riparian lines. If a surveyor or other expert purports to set, create or designate a riparian line, that constitutes only such expert’s opinion – such opinions are not binding. In some cases, such opinions can sometimes be persuasive or carry a certain amount of nonbinding weight, but ultimately, only the courts can set binding riparian lines, often with input from the experts.

What happens if two adjoining riparian lot owners disagree on their common riparian line? Normally, they would hire one or more surveyors who specialize in setting riparian lines to determine the appropriate riparian line boundary between the two properties. If the adjoining neighbors agree on hiring one expert and they also agree to abide by his or her decision, that is usually the quickest, cheapest and simplest way of resolving the issue. Unfortunately, that rarely occurs. If the neighbors each hire an expert and the experts

agree, they can enter into a binding agreement as to the riparian line. In such case, they should consult with legal counsel to draft such agreement and any executed agreement should be recorded with the county register of deeds records. Such agreement would be binding only as to the adjoining property owners, and would not bind or affect other riparians on the lake involved. If neighbors cannot agree or fail to reach a settlement regarding their common riparian line, the only definitive way of resolving the matter is to institute a lawsuit in the local county circuit court. Be forewarned, however, that such lawsuits can be expensive, time-consuming and frustrating. Each party will normally have to hire their own expert riparian surveyor. Absent unusual circumstances, each party usually has to pay their own attorney fees, win, lose or draw. Accordingly, it is almost always best to settle these matters short of litigation, if possible.

Very few surveyors are well-versed in the area of setting or giving expert opinions about riparian lines. If you become involved in a riparian controversy and you need to hire an expert, you should make sure that the expert you desire to retain is truly an expert regarding riparian lines.

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For those readers who are tired of hearing me preach about the wonders of local municipal anti-funneling regulations (i.e. lake access regulations), you may want to skip the next section. For those of you who are willing to revisit the issue one more time, keep reading!

Despite all of the publicity about lake access problems, the advocacy of anti-funneling regulations by ML&SA, the *Riparian Magazine*, myself and most planners and the constant worry by many riparians regarding funnel developments, it is amazing how few municipalities have anti-funneling regulations in place. Furthermore, the provisions of some existing municipal anti-funneling regulations are inadequate, poorly drafted and even downright confusing. For example, anti-funneling regulations which permit one new dwelling for every 20 or 30 feet of lake frontage are arguably worse than no regulations at all – they can actually promote funneling.

For those riparians who own property in municipalities without anti-funneling regulations, a high priority should be put on lobbying your local municipal officials to enact well-drafted anti-funneling regulations. I certainly realize that officials in some municipalities have no desire to enact these regulations, but some riparians in similar circumstances have been able to “wear down” such officials over time, or alternately, to elect new officials who are more pro-lake protection. For those riparians who own property in municipalities with anti-funneling regulations, you should periodically review the regulations to ensure that they are adequate.

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Unregulated road ends at lakes remain a major concern for many riparians. Legislation enacted in the mid-1990s makes it virtually impossible to close, vacate or abandon road ends at lakes. In rare cases, such road ends can be extinguished for public uses if it can be shown that the road was never properly created (i.e. failure to accept the dedication).

Despite the fact that public road ends at lakes can rarely be extinguished, municipalities (cities, villages and townships) do have the authority to regulate road ends by local ordinance. Pursuant to a local ordinance, a municipality can prevent dockage, shorestations and permanent boat moorage, as well as regulate hours of use and other activities. Unfortunately, few municipalities have adopted such regulations and road ends at lakes tend to become “free-for-alls.” A very good argument can be made that it is prudent and responsible for local municipalities to regulate these road ends for safety purposes and to minimize conflict. It is also easier to begin to regulate road ends at lakes where problems have not yet gotten out of hand. If a municipality waits until extensive uses of road ends create problems, it makes regulation much more difficult due to a whole constituency which has arisen and desires to keep using such road ends for private marinas. This has occurred at several areas around Higgins Lake and has made local municipal regulation exceedingly difficult politically. ♦