Debunking myths

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Anyone associated with inland lakes in Michigan (or the laws related thereto) is often confronted with long-perpetuated myths about such lakes. Many times, the perpetrators of such myths are insistent upon their truth, even when confronted with clear evidence to the contrary. In both this month's and next month's column, we will confront some of the most common myths.

1. Myth: **There is no such thing as a private lake in Michigan.**
This myth is probably grounded in the lack of a universal definition of a "private lake." Although certain Michigan statutes and court cases have defined what constitutes a private lake for a very limited purpose in a particular context, there is no overarching definition. If what is meant in a given situation is a lake with no public access site and which is entirely surrounded by private property, it would be a private lake and members of the public have no rights of access to the lake. However, even with that definition of a private lake, the water is still owned by the people of the state of Michigan. Accordingly, if someone were to drop from a helicopter to swim, was later picked up by the helicopter and never touches land, technically, that would be permissible, even on an otherwise private lake. In short, there are many inland lakes in Michigan which have no public access rights.

2. Myth: **Every inland lake in Michigan has a public access point.**
This is one that I hear several times a year from adamant proponents. Some myth perpetuators insist that every inland lake in the state of Michigan has a 66-foot-wide easement or road for public use somewhere on the lake, and that such public access was imposed when Michigan became a state. Other variations of the myth include assertions that every section line in Michigan constitutes a public road right-of-way so that if a section line intersects an otherwise private lake, the public can access the lake through that section line public easement. None of that is true. Some lakes do, of course, have public road ends, public parks, or other formal public access devices which were expressly created at some point in the past via a deed, plat, or other real-estate transfer device. But, many lakes have no such public access devices. It is probably the proliferation of public road ends at many lakes which is the basis for this myth.

3. Myth: **Members of the public can walk along the shoreline of any inland lake in Michigan without the permission of the adjoining riparian property owner.**
This myth has gained new momentum based upon the Michigan Supreme Court's decision last summer in the beachwalker case involving the Great Lakes shoreline. See *Glass v Goeckel, 473 Mich 667 (2005)*. Of course, that case applies only to Great Lakes shorelines and not to inland lakes. Some lakes do have public road rights-of-way, walkways, or similar public access devices which parallel the shoreline and allow limited public access to the lake. However, such public lake access devices do not exist on most inland lakes in Michigan.

4. Myth: **The ownership rights for Michigan inland lake lots end at the water and anyone can permanently moor a boat offshore without permission of the adjacent lakefront landowner.** Absent highly unusual circumstances, title to the overwhelming majority of lakefront properties on inland lakes in Michigan extends to the center of the lake. See *Hall v Wantz, 336 Mich 112 (1953)*. Typically, even though the deeds to such properties contain statements such as "to the water's edge," "ending at the water," "along the shoreline," etc., the courts have interpreted such language to mean that the adjacent bottomlands under the lake also belongs to the lakefront lot involved. Only the owner of the bottomlands (which is almost always the adjoining lakefront property owner) can utilize dockage, a swim raft, overnight boat mooring, etc., on his/her bottomlands. See *Hilt v Webber, 252 Mich 198 (1930); Bauman v Barendregt, 251 Mich 67 (1930)*.

5. Myth: **Riparian water rights are not like normal property rights and cannot be regulated by zoning or other local ordinances.**
This common misperception was obliterated by the Michigan Supreme Court in *Hess v West Bloomfield Twp, 439 Mich 550 (1992)*, and *Square Lake Hills Condo Ass'n v Bloomfield Twp, 437 Mich 310 (1991)*, although the Michigan appellate courts prior to the early 1990s never did subscribe to this myth (except for the ill-fated Michigan Court of Appeals decision in *Fox & Associates, Inc v Hayes Twp, 162 Mich App 647 (1987)*, which was overturned by *Hess*). Water and riparian rights are simply another type of real property right, which are subject to reasonable regulation by the state and local governments.

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Warning
The perpetrators of these myths will almost never believe you when you point out the falsity of their assertions, no matter how much proof you present. Unfortunately, the only way to dispossess many of these myth perpetrators of their false notions is pursuant to a final court decision of the specific case involved.

Read the November issue of The Michigan Riparian for more riparian myths debunked.