Debunking myths: Part II

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[The first half of this column, featuring myths 1-5, appeared in the August 2006 issue of The Michigan Riparian and can be read online at www.mlswa.org – this is a continuation of that column.]

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There are long-standing myths about inland lakes in Michigan. In the continuation of this column, we confront some of the remaining most common myths.

6. Myth: Absent local anti-funneling regulations, I can create new lake access easements across my property for backlots and I can allow backlot owners to moor their boats on my lakefront.
Even without an anti-funneling provision, if the local municipality has a zoning ordinance and the lakefront property at issue is zoned for single-family residential use, it is highly likely that new lake access easements could not be created and that the lakefront property owner cannot permit others to keep boats at his/her frontage, as that would be a violation of the single-family zoning restrictions (i.e., those uses would constitute prohibited multi-family uses). See *Soupal v Shady View, Inc, 469 Mich 458 (2003)* and *City of Au Gres v Walker* (an unpublished decision decided February 11, 1993, Michigan Court of Appeals Case No. 140101).

7. Myth: If I am a lakefront property owner, I can prevent fishermen and swimmers from congregating in the waters over my bottomlands.
Generally, that is not the case. Once a person gains access to a lake, they have the right to swim, fish, boat, and float anywhere on the surface of the lake, so long as they do not touch the bottomlands or dock of another without permission. One exception to this is temporary anchoring for swimming and fishing, so long as it occurs for limited periods of time and the anchoring does not involve an empty boat. Of course, under unusual circumstances, legal action by the riparian property owner could potentially be undertaken if the otherwise allowable activities get out of hand (for example, disturbing the peace, creating a nuisance, extreme cases, etc.).

8. Myth: I can fill a wetland next to the lake, put sand in the lake, and dig out the bottomlands without any governmental permit or approval, so long as I utilize a hand shovel.
Not true. Under the Michigan Wetlands Protection Act and the Inland Lakes and Streams Act (both of which are now combined under the Michigan Environmental Code), permits are required prior to any such activities occurring, even if the work involves a hand shovel.

9. Myth: For purposes of determining my bottomlands, my side yard property lines are extended at the same angle toward the center of the lake.
In fact, except in rare circumstances, that is almost never the case. Riparian bottomlands boundary lines almost never follow the same angle as side lot lines do on dry land.

10. Myth: My neighbor cannot install a fence or add on to her house in such a way that it would block my view of the lake.
In Michigan, there is no "right to a view," although there may be local zoning regulations which help preserve views.

11. Myth: I have the right to install a dock, permanently moor boats, and sunbathe at my lake access easement.
Actually, that is almost never the case, unless the lake access easement language expressly provides for such uses and activities. See *Dyball v Lennox, 260 Mich App 698 (2003).*

12. Myth: My surveyor has determined where the underwater boundaries are to my bottomlands, so that settles the matter.
Only a Michigan county circuit court can definitively determine lake bottomlands boundaries (i.e., how property lines radiate from a lakefront property to the center of the lake, and what constitutes the center of the lake). An opinion by a surveyor or engineer is just that—an opinion, even if the work is referred to as a riparian survey or a bottomlands survey. Although such opinions or surveys might be used in an attempt to persuade a neighbor or a court, they are not binding.

13. Myth: The private park [or road right-of-way, walkway, etc.] located next to my lakefront property which was created by the plat no longer exists and is now my property, since the township gave me a quit-claim deed to that property.
This one comes up a lot. The only way to extinguish or otherwise alter a road right-of-way, park, walkway, or other common area (whether public or private) created by a plat is by a formal lawsuit in the county circuit court where the property is located. Furthermore, it is up to the circuit court judge to decide whether or not to grant the relief requested.

These platted properties cannot be altered or title transferred by simply having the municipality give a quitclaim deed to the adjoining property owners or anyone else. Such a deed would be of no effect unless to carry out the decision of a circuit court plat vacation proceeding.