

Important appellate case decision

On July 31, 2008, the Michigan Court of Appeals released a very important decision in *Magician Lake Homeowners Assn, Inc v Keeler Twp Bd of Trustees* (unpublished decision; Case No. 278469), which confirms that the usage rights for off-lake property owners with regard to dedicated parks and beaches are quite limited.

The Magician Lake Homeowners Assn - an association comprised of backlot property owners - challenged the Keeler Township ordinance which requires township approval for docks at common access sites and prohibits the overnight mooring of boats at such docks. The backlot owners asserted that the ordinance constituted an unconstitutional "taking" of their property rights, as they claimed they had the right to maintain docks (with permanent boat moorings) at the dedicated areas within the plat labeled as parks and beaches. The Court of Appeals held that the backlot owners had no right to maintain docks or boats at the dedicated parks or beaches or along the bottomlands thereof. The Court of Appeals

noted that the users of those beaches and parks are not riparian property owners, and as such, do not have the full range of riparian rights such as the right to maintain a dock and moor a boat. Since the backlot property owners did not have the right to install docks or moor boats overnight at the parks or beaches, the ordinance was valid because it did not take away any of their rights.

This case is particularly important since it confirms that the "temporary" mooring or anchoring of a boat does not include overnight mooring or docking, which would constitute permanent boat mooring.

The Court also discussed what evidence and testimony a court can consider for ascertaining the intent of the developer who created the plat when the easement or dedication at issue is ambiguous. If, in fact, a court finds easement language or a dedication to be unambiguous, no evidence of the original intent can be introduced, whether it be testimony, past practice, promotional materials, or other

"extrinsic" evidence. The Court of Appeals confirmed that the only evidence which is relevant (and hence, admissible) to show the original intent of the plat creator to prove the scope of usage rights for the easement or dedication at issue involves evidence which occurred at the time the plat was created or shortly thereafter. In other words, if a plat was created in 1950, photographs or testimony about dockage or boat mooring occurring in the 1980s or 1990s would normally be inadmissible, even if the easement language or dedication were ambiguous. In order to be admissible, the party attempting to introduce a photograph or testimony would have to demonstrate that it was from the era of 1950 (when the plat was created) or shortly thereafter. Unfortunately, a significant number of judges throughout the state improperly consider evidence of customs or uses which occurred many years after the plat or easement was created.

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