

MLSA and the Michigan Waterfront Alliance are working for you

The Michigan Lake & Stream Associations, Inc. (ML&SA) and the Michigan Waterfront Alliance have teamed up on a number of occasions to file amicus curiae briefs with various Michigan appellate courts in support of the rights of riparian property owners.

What is an amicus curiae brief? Literally translated, amicus curiae means "friend of the court" and refers to someone who volunteers to offer information on a point of law or some other aspect of a case to assist the court in deciding the case.

An amicus curiae brief urges an appellate court to adopt (or not adopt) a particular legal position or theory. Amicus curiae briefs are filed by a person or organization who is not a party to a lawsuit, but who has a strong interest in the subject matter of the case and believes that the court's decision may affect its interest.

ML&SA and/or the Michigan Waterfront Alliance have filed amicus curiae briefs in the following cases:

- *Little v Kin*, 486 Mich 699 (2003)
- The Nestlé/Ice Mountain litigation
- *Tomecek v Bavas* (Michigan Supreme Court)
- *Dyball v Lennox*, 260 Mich App 698 (2003)

The appellate court decisions in these cases have all been very important regarding their impact on riparian rights throughout Michigan. In three of the four above-mentioned cases, the appellate courts ultimately adopted the legal position advocated by ML&SA and/or the Michigan Waterfront Alliance.

Just shortly before this issue of *The Michigan Riparian* went to print, the Michigan Supreme Court issued its landmark decision in *Tomecek v Bavas*. In *Tomecek*, the Michigan Court of Appeals had held that the Michigan Land Division

Act could be utilized (through a county circuit court lawsuit) to alter substantive property rights. This case was discussed in more detail in the May 2008 issue of *The Michigan Riparian*. In December 2008, the Michigan Supreme Court reversed the Court of Appeals decision. The ML&SA and the Michigan Waterfront Alliance funded and filed an amicus curiae brief in that case in support of the legal position that the Michigan Supreme Court ultimately adopted.

Had the Michigan Supreme Court not reversed the published decision of the Michigan Court of Appeals below, it would have unleashed a torrent of litigation throughout Michigan. Specifically, property owners in plats (particularly, off-lake or backlot property owners) would have had an incentive to file plat revision or alteration lawsuits to expand the scope of usage rights to dedicated lake access devices such as public or private road ends, parks, promenades, alleys, and walkways.

In other words, even though off-lake or backlot property owners have almost universally lost their court cases seeking to expand the scope of usage rights to such dedicated properties (to allow such things as private

and permanent boat dockage, lounging, sunbathing, floating marinas, etc.), they would have attempted to alter the dedication rights via a plat revision lawsuit under the Michigan Land Division Act. Happily, the December decision of the Michigan Supreme Court prevents such shenanigans. This case demonstrates why it is so important for leading riparian or water rights organizations such as ML&SA and the Michigan Waterfront Alliance to file amicus curiae briefs in important appellate cases that may have broad implications for riparian property owners throughout Michigan.




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