Uh-Oh

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One of the exciting (and often frustrating) aspects of practicing law is that, occasionally, areas of the law that seemed well-settled and universally recognized may turn out not to be so. Right now, there is a case pending in the Michigan Court of Appeals involving a parallel public road running along the shore of Lake Charlevoix, which could turn a half century or more of precedent on its head. The outcome of the case could have far-reaching consequences for thousands (if not tens of thousands) of lakeside lots throughout Michigan.

As many riparians know, there are generally two types of public roads at lakes that cause problems. First are the so-called public road ends whereby a public road (whether improved or not) ends or terminates more or less perpendicular to a lake. Such road ends have been the subject of countless court cases throughout Michigan, and the Michigan appellate courts have weighed in regarding the scope of usage rights for road ends in many appellate decisions. Those decisions include *Jacobs v Lyon Twp* (after remand), 199 Mich App 667; 502 NW2d 382 (1993), and *Higgins Lake Property Owners Assn v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003).

The second type of public road at lakes is the so-called "parallel road." Parallel roads involve situations where a public road right-of-way runs along the shore of a lake, there was no intervening land between the road right-of-way and the lake when the road was created, and there exists a "first tier" of lots fronting on the public road (opposite from the lake). For many years, legal experts (as well as the real estate market) have believed that in parallel road situations, the first tier lots along the parallel road are deemed to be riparian or waterfront lots (with full rights of dockage, boat moorage, sunbathing, lounging, swimming, etc.), subject only to an easement (or something akin thereto) for public road purpose (i.e., travel). That belief was well founded based on the courts' decisions in *Croucher v Wooster*, 271 Mich 337; 260 NW 739 (1935) (involving a parallel road that was a mere easement created by the highway-by-user doctrine) and *McCardel v Smolen*, 71 Mich App 560, 562; 250 NW2d 496 (1976), partially reversed on other grounds, 404 Mich 89; 273 NW2d 3 (1978) (involving a platted road created by dedication under the Michigan Plat Act of 1887). Based on these and other Michigan appellate cases, many individuals, as well as county road commissions, cities, and villages (generally, Michigan townships can no longer own public roads), have long believed that the public could not install docks, boat hoists, etc., along those parallel public roads (although it is possible that members of the public could use those parallel public roads for limited access to the lake involved) and that the owners of the first tier lots held the riparian or lakefront rights.

These long-held reasonable beliefs regarding parallel roads (and many long-settled court cases pertaining thereto) have now been thrown into question by Charlevoix County Circuit Court Case Judge Richard M. Pajtas in the case of *2000 Baum Trust, et al v Babel, et al* (Charlevoix County Circuit Court Case No. 07-61121-CH; Michigan Court of Appeals Case No. 284547). Judge Pajtas held that the first tier lot owners along Beach Drive, a parallel road along Lake Charlevoix, are not riparian/lakefront property owners. The implication is that the Charlevoix County Road Commission (and hence, the public) holds the riparian/lakefront rights along that road. Judge Pajtas' decision has stunned people who are knowledgeable about lake issues throughout the state. The first tier lot owners have appealed the decision to the Michigan Court of Appeals. It could take up to a year or more for the Michigan Court of Appeals to issue a final decision in the 2000 Baum Trust case. In the interim, Judge Pajtas' decision is only binding within Charlevoix County.

The Michigan Waterfront Alliance ("MWA") authorized and helped fund a joint amicus curiae brief with the Higgins Lake Property Owners Association, which was filed in the Court of Appeals in support of the first tier lot owners and against the Charlevoix County Road Commission in the 2000 Baum Trust case. The Charlevoix County Road Commission and Charlevoix Township are being supported by a statewide road commission group called the County Road Association of Michigan or "CRAM." This case vividly demonstrates why it is so important to have statewide pro-riparian organizations such as the MWA and the Michigan Lake & Stream Associations, Inc. available to file amicus curiae briefs in support of the interests of riparians.

It is somewhat perplexing why the Charlevoix County Road Commission and the statewide road commission group are taking the position they are advocating in this case – that first tier lot owners do not own the riparian rights adjacent to a parallel road and that the riparian rights are held by the public and the local road commission. Most road commissions throughout the state have grown weary of the road end battles and do not desire to be drawn into additional controversies regarding public roads at lakes. If the Michigan Court of Appeals upholds the decision of the Charlevoix County Circuit Court and determines that first tier lot owners do not hold the riparian rights along parallel roads (and that such riparian rights belong to the public and/or the local road commission), road commissions throughout the state will be drawn into litigation battles, which will make the public road end controversies of the past seem tame by comparison.