

ASK THE EXPERTS

If you have a question about water related issues, riparian rights, and/or lakes and streams, etc., let us know by email or snail mail.

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Question — Many lakes in Michigan have artificial canals or channels (collectively “canals”) that open into the main body of the lake. Such keyholing has provided many canal property owners with boat access to the main lake. What, if any, riparian rights do these canal property owners have? Are they riparians?

Answer — Technically, riparian rights cannot be artificially created. In theory, property owners along an artificially created canal that was dug to access a lake are not riparian property owners and probably do not have rights to access and use the lake via the canal. See *Thompson v Enz*, 379 Mich 667 (1967), a fractured opinion. Interestingly, however, once the Michigan Supreme Court decided in that case that riparian rights cannot be artificially created by new canals, the Court later refused to order the canals filled or to bar the property owners along those ways from utilizing Gun Lake because the parties who were opposed supposedly waited too long to take legal action. See *Thompson v Enz*, 385 Mich 103 (1971). Frankly, it appears that the members of the Michigan Supreme Court in 1971 were simply looking for an excuse not to bar lake access to the canal property owners. These two related Michigan Supreme Court cases stand for the proposition that if someone is about to dig a new or expanded canal, any opposing parties had better file a lawsuit immediately. Also, municipalities can adopt local ordinances to prohibit new or expanded canals.

What happens with regard to a canal that has already been created? Technically, the owners along those ways are probably not riparian. However, the Michigan appellate case law does not answer the question of whether or not they have the right to have docks and boats and to also access the lake involved by boat, and if so, what rights of usage they have to such lake.

Based on the general real estate statute of limitations in Michigan of 15 years, it is also possible that if a property owner along a canal uses the canal for dockage, boat moorage and access to the lake involved continuously for 15 years or more, thereafter, they might potentially be deemed to be a “riparian” property owner by the courts. However, the law in this area is very unclear.

An increasing number of municipalities have so-called anti-funneling or anti-keyholing regulations that would prevent the creation of new canals, as well as potentially any land divisions or lot splits along an existing canal.

With an existing canal, in most cases, the adjoining lot or parcel owners would usually own the bottomlands of the canal to the center thereof if the opposite side is owned by someone else.

—Cliff Bloom, Esq.
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