EXTINGUISHING UNWANTED AND UNUSED ROADS, ALLEYS, AND PARKS

(AND OTHER ASSORTED LAKE ISSUES)

CLIFFORD H. BLOOM, ESQ.
BLOOM SLUGGETT, PC
GRAND RAPIDS, MICHIGAN
WWW.BLOOMSLUGGETT.COM

I often receive inquiries from riparians who wonder whether the platted road, alley, walkway, or park used for lake access next to their waterfront property can be extinguished. Contrary to popular myths, platted common-use areas within a plat or subdivision cannot simply be extinguished or clear title be transferred to adjoining property owners via deeds by the local municipality, road commission, or other parties, or generally be extinguished by adverse possession, nonuse, or blockage. There is a significant amount of misinformation out there regarding extinguishing such platted items. I did author an earlier article in the Fall 2018 issue of *The Michigan Riparian* regarding the plat vacation or revision process, but decided to address the issue again given the many inquiries I have received since that prior article appeared.

In general, the only way to extinguish a platted road, alley, park, walkway, or similar item is pursuant to what is often a time-consuming and expensive plat vacation or revision lawsuit in the local county circuit court according to MCL 560.221 *et seq.* (the "Act"). Under that statute, the party desiring to extinguish or revise a portion of a plat files a lawsuit as the plaintiff and must join many other parties as defendants (including generally, the local municipality, the State of Michigan, the county drain commissioner, sometimes the local county road commission, some or all of the lot owners within the plat, all public utilities, and potentially other parties as well). And, if any party raises a "reasonable objection" to the proposed plat revision or vacation, the court must deny the plaintiff's requested revision or vacation. If a plaintiff successfully pursues a plat vacation or revision lawsuit, then, after the final judgment, the plaintiff must pay for what can be a fairly expensive replat or "redoing" of the portion of the plat involved by a professional surveyor or engineer. Finally, if the platted item involved provides access to a lake, in almost all cases, the court will deny the requested plat vacation or revision.

Unfortunately, there is also significant legal confusion regarding whether only some or all lot owners within a plat must be joined as party defendants in a plat revision or vacation lawsuit. MCL 560.224a indicates that only the owners of all lots within 300 feet of the plat item to be revised or vacated need be joined as parties defendant in the lawsuit. However, in *Nelson v Roscommon County Road Commission*, 117 Mich App 125 (1982), the Michigan Court of Appeals held that simply joining only the owners of all lots within 300 feet extinguishes the public nature of the area to be revised or vacated (if publicly dedicated), but that a private easement for the item still remains for the other lot owners within the plat. Accordingly, if a plaintiff seeks to extinguish all interests (other than utility easements) within a platted area and to obtain free and clear title to the vacated area, that plaintiff must generally join all of the owners of all lots within the plat. In addition, the Michigan Supreme Court in *Beach v Lima Twp*, 489 Mich 99 (2011) seemed to indicate that not only must all lot owners within the plat be joined in the lawsuit, but that the plaintiff must also pursue additional legal theories in court other than simply asking for a plat revision or vacation.

Theoretically, a platted item can be extinguished via adverse possession if an adjoining property owner completely blocks and possesses the platted item at issue for 15 years or more, thus effectively excluding everyone else from using the platted area. However, the burden of proof in such cases is significant and it is not clear that adverse possession will effectively extinguish a platted item in some or all cases.

Short of a successful plat vacation or revision lawsuit, the next best alternative for riparians plagued by nearby platted road ends, alleys, parks, or walkways is likely for the local municipality (i.e. a city, village, or township) to pass a regulatory or police power ordinance regulating those commonly-used lake platted areas. Such ordinance

(CONTINUED ON PAGE 7)

(CONTINUED FROM PAGE 6)

provisions could include, but not necessarily be limited to, the banning of docks, boat hoists, and swim rafts at the shoreline or bottomlands of the lake; allowed hours of usage; banning the overnight, permanent, or seasonal storing, mooring, or docking of boats; prohibiting personal items from being left on the platted area overnight; and noise regulations. Why not simply amend a municipality's zoning ordinance and add those regulations rather than create an entirely new separate non-zoning ordinance? If the prohibited activities have been going on for some time before the zoning ordinance is amended, those uses and activities can continue at the same scope notwithstanding the new zoning ordinance provisions since the long-time activities are lawful nonconforming uses, or "grandparented". The same is generally not true with regard to police power or regulatory ordinances.

Another problem that arises frequently for riparians is the anchoring of boats on a nearby sand bar, bay area, or similar area for long periods of time, which sometimes constitutes a "floating party." Unfortunately, to date, there is probably little that riparians can do to alleviate the problem. Civil nuisance lawsuits are generally impractical given the time, cost, and changing violators. Although local municipalities could prevent or alleviate such problems via ordinance, virtually no municipalities in Michigan have done so. In most cases, the best short-term solution is to try to have a local police authority disperse boat crowds when matters become a nuisance or get out of hand. Please also see the Summer 2018 issue of this magazine for more information on this topic.

Another issue that has arisen quite frequently on various lakes throughout Michigan over the past few years is the attempt by some property owners to build new large boat houses on the shore of inland lakes, and in some cases, to also create canals, channels, or large artificial aquatic "boat wells" (collectively called "canals" herein) to access those new boat houses. Although I authored a recent article in the Fall 2021 issue of *The Michigan Riparian* magazine regarding canals and channels, I address the topic briefly again due to its apparent continuing strong interest to riparians. The best way to potentially "solve" the new boat house and canal situation is to prompt the local township, city, or village government to either amend the existing zoning ordinance or adopt a new standalone police power or regulatory ordinance that bans new boat houses along lakes (and for a certain distance from shore) and also any new or expanded canals, unless of course, the municipality already has such regulations in place. Sometimes, it is helpful for a municipality to enact an immediate emergency moratorium prohibiting new boat houses and canals until the municipality can draft and enact the proper zoning or regulatory ordinance provisions regarding new boat houses and canals. With such comprehensive local ordinance regulations regarding boat houses and canals in place, riparians generally do not have to rely upon inadequate existing ordinance provisions, questionable ordinance interpretations, appeals to the local municipal zoning board of appeals, rallying other riparians to oppose state permits, or similar less direct (and often frustrating) ways of fighting unreasonable new boat houses and canals. If the local municipality involved will not enact such comprehensive new ordinance regulations or is slow to do so, riparians can organize, attend municipal meetings, and lobby local municipal officials to protect the lakes involved via new ordinance provisions.