

Are All Easements and Roads at or Near Lakes Forever?

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Many riparians on inland lakes throughout Michigan, as well as the Great Lakes, have unused or dormant road rights-of-way, easements, parks and other common areas located on their lakefront property, adjoining their land or nearby. And, quite often, those common areas have long been unused and are dormant. In fact, in many cases, people in the neighborhood are unaware of the existence of such road rights-of-way, easements, parks and similar joint use properties. Riparian landowners frequently ask me how such roads, parks, easements, etc. can be permanently extinguished. Unfortunately, such extinguishment can often be expensive and time-consuming, if not impossible. Furthermore, the method of extinguishment depends upon the type of common property involved.

In almost all cases, road rights-of-way, dedicated parks, dedicated walkways and similar ways are simply easements. Typically, riparian land owners adjoining those joint-use properties own to the center of (or all the way through) the easements. Accordingly, if the road right-of-way, park, walkway or other joint use property is extinguished or vacated, the owners of one or more adjoining riparian properties typically have their title cleared and thereafter own their properties free and clear of the easement involved.

Unfortunately, there is typically a great deal of disinformation spread by laypeople about how to extinguish or vacate road rights-of-way, dedicated parks, easements and similar joint-use properties. Almost never can those easements be extinguished or vacated by the local municipality (the city, village or township) or the county road commission simply passing a resolution or granting a quitclaim deed to the adjoining riparian property owners. That is almost never effective to vacate or extinguish the joint-use easements involved.

In most cases, a road, park, walkway, alley or easement in a plat can only be fully extinguished or vacated pursuant to a county circuit court lawsuit under MCL 560.221 *et seq.* However, such lawsuits tend to be complex, time-consuming and expensive. The property owner who desires to vacate a dedicated joint-use easement must file a formal lawsuit and join many parties as defendants (including, but not limited to, either the owners of all properties within the plat or within 300 feet of the joint-use property, the county road commission, the Michigan Department of Natural Resources, the local municipality, all utility companies and

potentially others). If anyone raises a reasonable objection to the proposed plat revision or vacation, the court normally will deny the vacation request. Furthermore, even if there are no reasonable objections, the county circuit court judge still has the discretion to deny a vacation. Anyone who tells you that a dedicated joint-use property can simply be extinguished via a quitclaim deed or resolution from the local municipality is just plain wrong. If a plat vacation or revision lawsuit is successful, the plaintiffs in the lawsuit will have to do a replat of the area affected by utilizing a professional surveyor, which can be pricey.

If a road is created via a deed or other recorded document or pursuant to the highway-by-user statute (MCL 221.20), the vacation can only occur via action of the county road commission involved. If a public road in a township is adjacent to or touches a body of water, the vacation cannot occur unless and until the road is first offered to the local township and then to the State of Michigan.

There is one other potential way that a road, park, walkway, alley or other common or joint-use easement can be extinguished – via adverse possession. That can be effectuated without a formal plat vacation or revision lawsuit. However, it can only potentially work for private roads, easements, parks, walkways or other joint-use easements. Under Michigan law, adverse possession cannot be used against a government property such as a public road, park, walkway or alley. See MCL 600.5821. However, with a private road, park, walkway, alley or other joint-use easement, those easements can potentially be extinguished if an adjoining riparian blocks and takes exclusive possession and control of such easement area for 15 years or longer. In order to extinguish a private easement by adverse possession, the blockage, use and control must be absolute, such as a building or structure on an easement, fully blocking an easement by a substantial fence or other obstacle that makes it clear that the adjoining riparian property owners are asserting dominion and control over the entire easement.

Interestingly, there are a number of riparian property owners throughout Michigan who believe that a joint-use easement on or adjacent to their property was extinguished long ago by a quitclaim deed or other means which was ineffective. In many of those cases, the joint-use easement remains valid even though it is dormant. 