The Beachwalker Case—Some Seven Years Hence

By Clifford H. Bloom, Esq.
Grand Rapids, Michigan

The Michigan Supreme Court decided the so-called "Beachwalker Case" in 2005. See Glass v Goeckel, 473 Mich 667; 703 NW2d 58 (2005). That case held that with regard to any shoreline of the Great Lakes in Michigan, a public trust easement exists between the lake waters and the ordinary high water mark on the shore, within which any member of the public can walk freely. Prior to 2005, it was not clear under Michigan law whether members of the public could walk on the dry lands of a Great Lakes riparian property owner without permission, or could only stroll while in the water or wet sand. The Michigan Supreme Court held that any member of the public (even without the permission of the owner of the riparian property) can freely walk anywhere lakeward of the ordinary high water mark on the Great Lakes.

The Beachwalker Case has created some confusion, however, primarily in two areas. First, many laypeople believe that the case also applies to inland lakes in Michigan. That is incorrect. The public trust easement for public walking exists only along the shoreline of the Great Lakes touching Michigan. For most inland lakes, one cannot walk along the shore of the lake (or even on the bottomlands) without the permission of the riparian property owner involved. In a few cases, a member of the public can stroll along the shoreline of an inland lake due to the presence of a public walkway easement, public road right-of-way, or other dedicated area, but not based on the public trust easement doctrine.

The second general area of major confusion regarding the Beachwalker Case involves what activities (if any)—other than walking—members of the public can engage in along the shore of private Great Lakes riparian properties. The Beachwalker Case applied only to walking. Left unanswered are such questions as whether a person can bring their dog along while walking, ride a horse along the shoreline, sit down awhile if one tires of walking, or play games along the shore. Today, none of those issues have reached the level of a Michigan appellate court.

On a broader scale, the Beachwalker Case decision seems to stand for the proposition that members of the public can only engage in navigable activities along the shoreline of the Great Lakes, lakeward of the ordinary high water mark. Travel is one aspect of navigability. Activities such as lounging, sunbathing, picnicking, or playing beach volleyball do not involve travel or navigability, and as such, are probably not protected by the public trust easement doctrine. However, uses associated with travel such as walking one's dog, riding a horse, or temporarily resting while walking present more difficult questions.

Although only anecdotal evidence exists, the decision by the Michigan Supreme Court in the Beachwalker Case does not seem to have caused significant problems for riparian property owners over the past nearly seven years. At the time that the Beachwalker Case was decided in 2005, many riparians and riparian experts (including me) believe that the case would usher in an era of conflict between Great Lakes riparians and public pedestrians. There were concerns that significant numbers of people would misunderstand the case and engage in lounging, sunbathing, and picnicking on private Great Lakes beaches. There was also a concern that pedestrians would "flaunt" their newfound walking rights and would harass riparians by walking far upland, walking behind sunbathing landowners, and engaging in recreational activities all beyond the scope of the Court's

decision. Happily, based on most reports to date, public pedestrians have generally behaved responsibly. One can only hope that such responsible behavior will continue.

Practically, several important matters must be kept in mind regarding the Beachwalker Case. First, pedestrians cannot walk on Great Lakes beaches "above" or landward of the ordinary high water mark without permission, or it constitutes a trespass. Unfortunately, the Michigan Supreme Court has defined "ordinary high water mark" in such a vague fashion that is it often difficult to determine where that line is on a given beach. Second, until and unless further refined, the Beachwalker Case rule only allows members of the public to walk on Great Lakes shoreline—there can be no lounging, sunbathing, picnicking, playing games, or similar nontravel activities, absent the permission of the riparian landowner involved. Finally, Great Lakes riparian landowners should not wrongfully attempt to prohibit members of the public from walking along the beach lakeside of the ordinary high water mark. Such interference, in and of itself, could constitute illegal activity.