Our Attorney Writes on Riparian Rights and Other Legal Matters of Concern

by: Clifford H. Bloom
Law, Weathers & Richardson, P.C.
Bridgewater Place
333 Bridge Street, N.W., Suite 800
Grand Rapids, Michigan 49504-5360

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Three Recent Court Decisions of Interest to Riparians

In this issue's column, I report on three court cases which will likely be of interest to riparians. They involve special watercraft rules, aircraft landing on lakes, and properties dedicated for the private use of lot owners in a plat.

Special Watercraft Rules

Many riparians are aware of the ability of the Michigan Department of Natural Resources ("DNR") to approve special watercraft rules for lakes in Michigan pursuant to a portion of the Michigan Environmental Code (formally known as the "Marine Safety Act"). Special watercraft rules can include speed limits, no wake areas, no wake lakes and hours for high speed boating activity. Getting a special watercraft rule adopted is not easy. First, the local municipality (city, village or township) must adopt a resolution requesting the DNR to consider the proposed rule. Second, the DNR holds a public hearing (with appropriate newspaper notice) and makes its determination. If the DNR decides not to proceed with the special watercraft rule, that is the end of the matter. If the DNR approves the rule, it is sent back to the local municipality for final approval. Finally, if the local municipality approves the DNR sanctioned special watercraft rule, it becomes law through adoption of a local ordinance. If the municipality declines, the rule will not go into effect.

In Andrews v Holly Twp, _____ F Supp 2d __ (Eastern District of Michigan 2002), a property owner challenged the adoption of a special watercraft rule on Marl Lake in Holly Township. The federal district court dismissed the case without reaching a decision on the merits—the federal court held that the case should have been brought in Michigan's state courts. Nevertheless, the federal court implied that the special watercraft rule in that case might not be valid since the strict statutory adoption requirements may not have been met.

If you or other riparians on your lake desire to initiate the special watercraft rule adoption procedure, make sure that your local municipality and the DNR follow all required statutory procedures precisely. Furthermore, the DNR generally refuses to approve any special watercraft rules absent significant safety issues—the DNR usually will not consider nonsafety issues such as lake overcrowding, inconvenience or environmental considerations. Also, unless a sizable majority of the property owners on a lake desire to have the special watercraft rule adopted, it is unlikely that the DNR will approve an unpopular rule proposal.

Aircraft Landing on Lakes

Although sea planes landing and taking off on crowded or small lakes in the lower peninsula of Michigan have generally not been a problem in the past, controversies involving them are increasing. Why anyone would be so selfish as to impose sea plane landings on their lake neighbors (to the point of sometimes even making them fear for their safety) on an urbanized or crowded lake is beyond me. Nevertheless, there appear to be an increasing number of incidents where sea planes are landing and taking off from lakes where such craft have no business being around. Under current Michigan law, local municipalities can regulate

and even ban sea planes on lakes. (I am using "sea plane" as a generic term to include float planes, flying boats, amphibians, and other aircraft capable of landing on and taking off from water.)

Local governmental regulation of sea planes has an interesting litigation history in Michigan. In 1996, the Sixth Circuit Federal Court of Appeals (i.e., the court just below the United States Supreme Court) held that Michigan municipalities have the authority to regulate and even ban sea planes on lakes within their jurisdictions. The Court rejected the notion that federal law and the Federal Aeronautics Administration have exclusive authority over sea plane on lakes. Despite this definitive decision in Gustafson v City of Lake Angelus, 76 F3d 778 (6th Cir 1996), advocates for sea planes simply would not take "no" for an answer. Rather, they lobbied the Michigan Aeronautics Commission ("MAC") to adopt administrative regulations which would preclude local governmental regulation of sea planes. Predictably, MAC adopted such special interest regulations. In the recent Oakland County Circuit Court case of City of Lake Angelus v Michigan Aeronautics Comm'n, (Oakland County Case No. 01-031671-CZ), MAC attempted to have the sea plane regulations of the City of Lake Angeles (the same municipality involved in the earlier federal lawsuit) thrown out. Happily, the trial court judge held that MAC exceeded its Michigan statutory authority in adopting such regulations, such that the city's sea plane ordinance
remains in effect. That case is on appeal. This is just one more example of narrow special interest groups attempting to take away local control.

Properties Dedicated For Private Use of Lot Owners in Plats

Approximately one year ago, the Michigan Court of Appeals handed down a decision which could dramatically affect properties in plats which were dedicated to the use of the property owners within the plat. Amazingly, this
case has received very little publicity. Martin v Redmond, 248 Mich App 59 (2001), involved an outlot in a plat. Under the plat, the property was dedicated "for the use of the lot owners." The Court of Appeals held that
while common properties in a plat such as parks, roads, walkways and similar items can be validly created for and dedicated to the public, there was no legal authorization to create such items by dedication for the private use
of property owners within a plat. In Martin, the Court held that the outlot effectively did not exist for use by property owners within the plat—the title went to owners of the adjoining property who could forbid other
property owners in the plat from using the land which everyone had assumed for years was available for common use. What does this case mean in practical terms? That is unclear. The case is complex. Furthermore, the
Court of Appeals handed down its decision in Little v Hirschman (unpublished Michigan Court of Appeals Case No. 227751) a few months after Martin, which did not clarify matters much. It is highly likely that private roads created by dedication in plats will continue to exist in favor of the property owners. This is true because the case of Nelson v Roscommon County Road Comm'n, 117 Mich App 125 (1982), long ago held that where a private road was improperly created or is vacated, it will still exist for the benefit of property owners within the plat. Even if that were not the case, it is difficult to believe that the courts would cut off a platted property's only means of access. Additionally, the theory of easement by necessity could also probably be used to protect access rights in most cases. What the Martin case means for nonessential property access devices in plats (such as parks, walkways, beaches, and other privately platted devices to access lakes) is unclear. Unless Martin is overturned on appeal, it is possible that these other privately dedicated, commonly used properties will be extinguished (with the title going to adjoining property owners) unless some other legal theory such as prescriptive easement can be utilized in a given case to preserve such properties for common private use.