What is "Riparian"?

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The words "riparian" and "riparianism" are used frequently, not only by this magazine, me and the courts, but also by many lay people. This month's column is a basic primer of what the word "riparian" really means.

Technically, in Michigan, a property that touches or has frontage on a lake (whether an inland lake or one of the Great Lakes) is "littoral." Properties touching or having frontage on a flowing body of water, such as a river, creek, or stream, are "riparian." Nevertheless, the word "riparian" has been commonly used for many years to refer to any property fronting on or touching any body of water (whether a lake, stream, river, or creek, but not a wetland or pond), such that even the Michigan courts typically refer to all such properties as "riparian."[1] See *Glass v Goeckel*, 473 Mich 667; 703 NW2d 58 (2005); *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985); *Thompson v Enz*, 379 Mich 667; 154 NW2d 473 (1967). "Riparian" is sometimes also used to refer to the owner of a riparian or waterfront property.

In Michigan, property that touches or fronts on a body of water is riparian. See *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985); *Rice v Naimish*, 8 Mich App 698; 155 NW2d 370 (1967); *Hall v Wantz*, 336 Mich 112; 57 NW2d 462 (1953); *Hess v West Bloomfield Twp*, 439 Mich 550; 486 NW2d 628 (1992). Conversely, property that does not touch or front on a body of water is usually not riparian. See *Thompson v Enz*, 379 Mich 667; 154 NW2d 473 (1967), and *Little v Kin*, 249 Mich App 502; 644 NW2d 375 (2002); aff'd in part and reversed in part, 468 Mich 699; 664 NW2d 749 (2003). Unfortunately, that simple concept is often misunderstood. Non-riparian properties (often referred to as off water properties or "backlots") can have access to a body of water pursuant to a number of lake access devices such as private easements across riparian properties, road ends, parks, outlots, walks, alleys, and community beaches. Sometimes, those lake access devices are "public" (whereby any member of the public can utilize the lake access device, not just nearby backlot property owners), while other lake access devices are "private" (limited to the use of certain or all backlot property owners). In either case, those backlots are not "riparian" simply because they have access to a nearby lake, river, or stream. Even in those cases where an easement accords a backlot express written enumerated rights almost equal to those of a riparian property owner, the backlot property owner still is not a riparian. See *Little v Kin*, 249 Mich App 502; 644 NW2d 375 (2002); aff'd in part and reversed in part, 468 Mich 699; 664 NW2d 749 (2003); *Dyball v Lennox*, 260 Mich App 698; 680 NW2d 522 (2004); *Thies v Howland*, 424 Mich 282; 380 NW2d 463 (1985).

For properties adjacent to the waterfront, isn't it easy to ascertain whether or not a particular property is "riparian" simply by reviewing the legal description, the original plat (if it is a platted lot), or a survey? Unfortunately, it is not always that simple. In some cases, the property appears to be waterfront (or at least an apparently unencumbered waterfront), only to have it turn out later that there is a property "gap" between the parcel or lot involved and the water that is owned by someone else. Or, situations arise where there is a platted road, walk, park, or land strip located between the body of water and the lot or parcel involved. It is not uncommon for a person who purchased what they believed to be an unencumbered waterfront property to have a rude awakening later when a shoreline "gap" is discovered or members of the public or backlot owners in the plat involved start utilizing the shoreline of the property with the full support of Michigan law due to the presence of a previously-forgotten dedicated easement, road right-of-way, walk, park, or alley located between the purchaser's new lot and the water.

Such waterfront problems tend to fall into one of two categories. First, situations arise where the lot or property involved does not actually extend to the water's edge (and, as such, is usually not riparian). There is a "land gap" between the lot and the water. If the land gap is relatively large, the nearby lot or parcel that does not touch the water is normally not riparian or waterfront. That is true regardless of whether the land gap is owned by someone else (due to a reservation in an earlier deed) or even if it is unclear who owns the land gap.

However, there is a limited exception to the rule that all riparian property must touch a body of water. In some cases where the land gap is relatively small, no other party has claimed the property comprising the land gap for many years, and the first tier lot or parcel owners have treated the land gap as their own, the Michigan appellate courts have indicated that they will disregard an insignificant land strip and will treat the first tier lots or parcels as being riparian. See *Sands v Gambs*, 106 Mich 62 (1895) and *Kranz v Terrill* (unpublished decision by the Michigan Court of Appeals dated September 20, 2012; Case No. 305198).

The second situation involves the above-mentioned so-called "parallel" easements or lake access devices benefitting the public or other lot owners within the plat such as an easement, road right-of-way, park, walkway, or alley. These items often run along the waterfront. The parcel or lot may still be riparian or waterfront, but subject to the usage rights of others.

In Michigan, legal descriptions for waterfront properties almost never expressly extend beyond the water's edge or shoreline and rarely describe the bottomlands of a body of water.[2] In fact, legal descriptions for waterfront property

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in Michigan almost never expressly state that the property involved is riparian. In almost all cases, however, where a *bona fide* legal description in the chain of title for a particular property describes the property as "extending to the water's edge," "ending at the water's edge," "going to the water's edge," "extending along the water's edge," "running along the shore," "going to the lake (or river)," or similar language, it means that the property is riparian. Furthermore, Michigan courts generally interpret that language on inland lakes as meaning that the bottomlands adjacent to that property are also included within the legal description, even though the legal description indicates or implies that the property "ends" at the water's edge. See *Hilt v Weber*, 252 Mich 198; 233 NW 159 (1930); *Mumaugh v McCarley*, 219 Mich App 641; 558 NW2d 433 (1996); *Bauman v Barendregt*, 251 Mich 67; 231 NW 70 (1930). Of course, such language does not rule out the presence of an easement, road right-of-way, etc., along the waterfront that must be ferreted out by the due diligence of a prospective purchaser.

What is a "meander line"? Despite popular misconceptions, it is generally not a boundary line or an indication of specifically where a lakefront lot ends or the water was located when the lot or parcel was created. A meander line is often defined as a traverse of the margin of a permanent natural body of water. The original government surveys for properties in Michigan (from 150 years ago or even earlier) often used meander lines to ascertain the amount of dry land remaining after separating out the water area. Normally, the lake, river, or stream itself determines boundary lines, not meander lines.

What is a "traverse line"? A traverse line is a technique used by surveyors to describe an area along a lake or shoreline, without having to actually survey every nook and cranny along an irregular shoreline. Typically, a surveyor will legally describe a traverse line that is slightly landward of the body of water, and then indicate that the legal description for the lot or parcel also includes all property located between the traverse line and the body of water.

These are some of the basics of riparianism.

[1] Ponds and some artificial lakes may not have riparian rights. See *Holton v Ward*, 303 Mich App 718 (2014), *Persell v Wertz*, 287 Mich App 576 (2010); In Re Martiny Lakes Project, 381 Mich 180; 160 NW2d 909 (1968); *Thompson v Enz*, 379 Mich 667; 154 NW2d 473 (1967).

[2] And, in fact, this can create a real problem regarding the apportionment of bottomlands — that is, which waterfront property owner owns which bottomlands.