



Shorelines: A Shifting Legal Landscape

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Last summer, the *Glass v. Goeke* decision by the Michigan Supreme Court made headlines. In the *Glass* case, the Court approved an individual's right to stroll along the Great Lakes shoreline up to the ordinary high water mark, but also held the adjoining property owner has title to the water's edge of the Great Lakes. The Court explained this apparent overlap by indicating that the public rights doctrine preserves public rights that are not derived from the land owner's fee title and therefore, the boundary of the public trust area does not end where the landowner's fee title ownership begins. The Court then concluded that the ordinary high water mark was the boundary for the public's use right and the definition used by the state of Wisconsin for determining the "ordinary high water mark" was adopted. The ordinary high water mark was defined as the point on the bank or shore up to which the presence or action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristics. Finally the Court concluded that although the public trust is not unlimited and does not include every use, the public trust includes such uses as fishing and boating, and must also include a right of passage which would allow walking along the shoreline.

Other cases decided in the past few years with less fanfare may also have a significant affect on shoreline rights. In 2004, the validity of private dedications and plats, both before and after the 1967 Land Division Act, was addressed by the Michigan Supreme Court. Prior to that time, numerous Court of Appeals decisions had suggested that private dedications were invalid. In one of the cases, *Little v. Herschman*, the Supreme Court concluded that the owners of lots in the subdivision had a valid, enforceable and irrevocable right to use the dedicated land. This has important implications for subdivisions with dedicated waterfront areas. Recent unreported Court of Appeals decisions indicate it is very important to distinguish whether waterfront areas were dedicated as roads, streets or parks, with the Courts uniformly deciding that areas dedicated as roads afford the benefited property owners with rights of access only and not the right to loiter and sunbathe. Therefore, the distinction between dedicated waterfront areas as roads or parks becomes an important factor in how these areas are used. The recent cases also suggest that the underlying fee title to the property adjoining privately dedicated roads and waterfront areas belongs to the adjoining property owner subject to the irrevocable easements shown in the plats. This issue becomes important for those who hold easements not shown in the plats as they may be subject to the Marketable Title Act which may provide for the extinguishment of easement claims not referenced in a chain of title for a forty year period.

All of this suggests that shoreline rights, like the shorelines themselves, may be subject to erosion. The best defense against this erosion is to know your rights and, where necessary, record the appropriate documents to protect those rights.

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