

ROAD END LAW

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PUBLIC ROADS

- There are 3 ways for a road to become public property:
 - A common law dedication and acceptance;
 - A statutory dedication and an acceptance on behalf of the public;
 - A finding of highway by user.

COMMON LAW DEDICATION

For a road to become a public road by common law dedication, there must be:

- Intent by the property owner to offer the land for public use;
- An acceptance by, and maintenance of the road by, public entity; and
- Use by the public generally.

STATUTORY DEDICATION

There are 2 requirements to create a public road by statutory dedication:

- A recorded plat designating the areas for public use, evidencing a clear intent by the plat proprietor to dedicate those areas to public use; and
- Acceptance by the proper public authority.

Acceptance of a common law or statutory dedication by a public entity may be formal, i.e. by resolution or an ordinance, or informal through user or expenditure of public money for the repair, improvement, and control of the road.

A dedication must be accepted within a reasonable amount of time or the offer will be considered as withdrawn.



Offers to dedicate are considered withdrawn when the owners of property use it in a way that is inconsistent with public ownership. What qualifies as an inconsistent use depends on the circumstances of each case.

SCOPE OF DEDICATION

If a dedication is made for a specific or defined purpose, neither the legislature, a municipality or its successor, nor the general public has any power to use the property for any other purpose than the one designated, whether such use be public or private, and whether the dedication is a common law or a statutory dedication.

A public entity's use of land dedicated to the public is limited to the purpose of the dedication.

LAND DIVISION ACT

Section 253 of the Land Division Act, being MCL 560.253 provides that when a plat is certified, signed, acknowledged, and recorded as prescribed by the Act, every dedication to the public marked or noted on the plat is deemed a **conveyance in fee simple** of all parcels of land dedicated to the public for their use **for the purposes expressed in the plat and no other.**

The land intended for the streets, alleys, commons, parks or other public uses as designated on the plat shall be held by the municipality in which the plat is situated **in trust to and for such uses and purposes.**

2000 Baum Family Trust v Babel

The main issue addressed by the Michigan Supreme Court addressed 2 main issues:

- Whether the fee title resulting from the dedication of land for public use as a road in a plat under the 1887 plat act that runs along the lake shore conveys riparian rights to the county or whether the conveyance is limited to public use as a road;
- Whether front-tier lots adjacent to a road running along a lake have riparian rights.

The Court held that through a conveyance by a platting statute, the county, i.e. the road commission, does not receive title in the nature of a private ownership, acquires no beneficial ownership of the land, does not possess the usual rights of a proprietor, is not conveyed any rights that are not necessary to the use and purpose for which the road was dedicated, and possesses only a nominal title.



The Court held that a dedication of a parallel road pursuant to the platting statute does not convey any riparian rights to the governmental entity.

The Court relied upon the following cases:

- *Croucher v Wooster*
- *Michigan Central Park Ass'n v Roscommon County Rd. Comm'n*
- *Sheridan Drive Ass'n v Woodlawn Backproperty Owners, Ass'n*
- *McCardel v Smolen*



McCardel v Smolen

- Involved Michigan Central Boulevard, a road running parallel to Higgins Lake
- Front-lot owners whose property abutted Boulevard commenced action to prevent backlot owners from using the Boulevard and adjoining waters for beach purposes
- Defendants argued that the riparian rights to the lake were vested in the public because the Roscommon County Road Commission had a fee simple title to the Boulevard under the 1887 plat act
- Plaintiffs contended that the dedication granted the public only the right to use the Boulevard for road purposes

The Court of Appeals addressed 2 issues:

- To whom do the riparian rights along Michigan Central Boulevard belong?
- Whether lounging, picnicking, bathing, swimming, launching and anchoring boats, and erecting or maintaining docks and boat hoists are all riparian rights?



With respect to the first issue, the Court of Appeals held that the front lot Plaintiffs own the riparian rights in the Boulevard frontage. The Michigan Supreme Court affirmed the decision of the Court of Appeals.

With respect to the second issue, the Michigan Supreme Court affirmed the decision of the Court of Appeals that lounging and picnicking are not riparian rights. However, the Michigan Supreme Court held that the question of whether the public has the right to enter and leave the water from the Boulevard, and whether they may lounge and picnic on the Boulevard, depends upon the scope of dedication. Since the issue of scope of dedication was not addressed by the trial court, the Supreme Court refused to address it.

CAUTION!

A front lot owner whose property abuts a road running parallel to a lake does not possess riparian rights to the lake IF there is land in private ownership lying between the parallel road and the lake. In that case, the riparian rights belong to the owner of such land and not to the owner of land on the opposite side of the road

ANALYSIS

2000 Baum Family Trust v Babel

- Front lot owners whose property is separated by a public road running parallel to the water are deemed to have riparian rights
- Dedication of a parallel road to public use under the platting statutes does not convey riparian rights to the governmental entity
- The rights of the public in a parallel road depend upon the scope of dedication

PERPENDICULAR ROADS

- Public ways which terminate at the edge of navigable waters are generally deemed to provide public access to the water
- The right of access includes the right to use the surface of the water for activities such as boating, fishing, swimming, and the right to anchor boats temporarily
- A municipality has the right to build a dock at the end of a public road terminating at the edge of navigable waters to provide access to the water

Jacobs v Lyon Township

At issue was the scope of dedication of platted roads running perpendicular to Higgins Lake that were dedicated “to the use of the Public”.

Whether erection of boat hoists, seasonal boat storage, lounging, picnicking, and sunbathing at the ends of roads running perpendicular to the lake were within the scope of dedication.

The Court of Appeals ruled:

- Scope of dedication permitted installation of one nonexclusive dock at the end of each perpendicular road
- Public was entitled to reasonable use of the water for bathing, swimming, and fishing
- Scope of dedication did not permit erection of boat hoists, seasonal storage of boats, sunbathing, lounging, and picnicking, at the ends of the perpendicular roads

Higgins Lake Property Owners Association v Gerrish Township, et al

The extent to which the right of public access includes the right to build a dock or erect a boat hoist or the right to sunbathe, lounge, or picnic at a road end depends on the scope of dedication.

Rejected the argument that the interpretation of all dedications of streets and alleys “to the use of the public” compels the same result as in *Jacobs*.

Use of the terms “streets” and “alleys” implies passage, and public roads that terminate at the water’s edge are presumed to provide public access to the water.

Burden rests with Defendants to establish that anything other than mere access to the lake was intended.

In the absence of evidence that the historical uses of the road ends were contemporaneous with the dedication, the road end activity after the dedication are not helpful in determining the dedicator’s intent.

PUBLIC ACT 56

Codified the rulings in *Jacobs* and its progeny.

MCL 324.30111b states:

(1) A public road end shall not be used for any of the following unless a recorded deed, recorded easement, or other recorded dedication expressly provides otherwise:

(a) Construction, installation, maintenance, or use of boat hoists or boat anchorage devices.

(b) Mooring or docking of a vessel between 12 midnight and sunrise.

(c) Any activity that obstructs ingress to or egress from the inland lake or stream.

(2) A public road end shall not be used for the construction, installation, maintenance, or use of a dock or wharf other than a single seasonal public dock or wharf that is authorized by the local unit of government, subject to any permit required under this part. This subsection does not prohibit any use that is expressly authorized by a recorded deed, recorded easement, or other recorded dedication. This subsection does not permit any use that exceeds the uses authorized by a recorded deed, recorded easement, other recorded dedication, or a court order.

(3) The local unit of government may prohibit a use of a public road end that violates this section.

(4) A person who violates subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$500.00. Each 24-hour period in which a violation exists constitutes a separate violation of this section. A peace officer may issue an appearance ticket as authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates subsection (1) or (2).

(5) This section does not prohibit a person or agency from commencing a civil action for conduct that violates this section.

(6) As used in this section:

(a) “Local unit of government” means the county, township, city, or village with jurisdiction over a public road.

(b) “Public road” means a county road or a township, city, or village street that is open for use by the public.

(c) “Public road end” means the terminus of a public road at an inland lake or stream.