

## **Important Riparian Appellate Cases**

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Two recent Michigan Court of Appeals decisions should be of interest to riparian property owners in Michigan. The first case decision is *City of Novi v Evers*, unpublished Michigan Court of Appeals decision, initially issued March 30, 2010, and reissued on May 6, 2010 (Docket No. 290079). An easement was created for backlot property owners on Walled Lake across platted Lot 12 of the Bentley Subdivision, a lakefront lot. The language creating the easement stated in relevant part:

... is to be used for pedestrians' right of way to the lake for all purchasers of lots on Poplar Street and Pine Street, each purchaser to pay his proportion for dock improvements and taxes ... If not paid in one year, this easement ceases.

There was evidence at the trial court level that a dock had been periodically installed along the easement at the water and that Lot 12 was used for swimming, sunbathing, and similar beach activities. There was no evidence indicating what the historical use was as of when the easement was created, although an affidavit was introduced indicating that over 20 different docks had been utilized at the easement over the years.

Both the trial court and the Michigan Court of Appeals in *City of Novi v Evers* held that the easement or right-of-way granted only a pedestrian (walking or access) right-of-way easement and nothing more. The courts disallowed dockage and permanent or overnight boat moorage at the easement. Both courts held that the language regarding paying for dock improvement and taxes did not change the limited scope of usage rights for the easement. The Court of Appeals did remand the case back to the trial court for a determination of whether or not some or all of the backlot property owners gained a prescriptive easement (*i.e.*, use for 15 years or more, plus proof of all of the other elements of a prescriptive easement) for dockage and permanent boat moorage.

In *Keiser v Feiser*, unpublished Michigan Court of Appeals decision issued March 2, 2010 (Docket No. 282531), the Court of Appeals grappled with the issue of whether numerous backlot property owners gained a prescriptive easement to maintain dockage and permanent boat moorage at a lakefront access property. Significantly, the Michigan Court of Appeals held that each individual backlot property owner had to establish their own prescriptive easement right for dockage and permanent boat moorage, which included meeting the burden of proof for each of the elements of establishing prescriptive easement rights (15 years' usage or more, hostile use, under color of right, etc.). The Court discussed the ability of particular backlot property owners to "tack"; that is, if a particular backlot property owner did not have 15 years or more of continuous usage of dock and permanent boat moorage, they could potentially add their years of usage to that of their predecessor in title, so long as there was a written or oral transfer of that right at the time the property was purchased. Very significantly, however, the Court held that each individual backlot property owner had to prove all of the elements for a prescriptive easement for himself/herself, and could not "piggyback" on the usage or prescriptive easement rights of any other backlot property owner. Michigan law has not authorized "collective tacking."