

**Michigan Lake & Stream Associations, Inc. and the
Michigan Waterfront Alliance Work for You—Amicus Briefs**

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The Michigan Lake & Stream Associations, Inc. (“ML&SA”) and the Michigan Waterfront Alliance (“MWA”) have recently filed pro-riparian rights amicus curiae briefs in two important Michigan appellate court cases. ML&SA filed an amicus curiae brief in *Benninghoff v Tilton* (unpublished decision, Case No. 284637, 2009 WL 3789981), a case that the Michigan Court of Appeals decided on November 12, 2009. That case had both convoluted fact and legal issues situations. The main two issues in the case were whether *Jacobs v Lyon Twp* applied to road ends at the Great Lakes as well as inland lakes. Under the *Jacobs* decision, road ends at inland lakes cannot be used for nontravel purposes such as lounging, sunbathing, picnicking, private boat moorage, overnight boat moorage, overnight boat docking, etc. The second issue in the case was whether members of the public and the local municipality can thwart the *Jacobs* rules if the general public has misused a road end for a significant period of time and the municipality assists with such wrongful action. Or put another way, if nearby riparian property owners do not challenge in court unlawful road end activities occurring at a lake for a certain period of time, does the running of the statute of limitations preclude a later lawsuit to stop the unlawful activities at the road end? In its unpublished decision in *Benninghoff v Tilton*, the Court of Appeals issued two general holdings of interest. First, the Court essentially held that *Jacobs v Lyon Twp* does generally apply to road ends at the Great Lakes. Second, it held that the applicable statute of limitations for stopping wrongful activities at road ends is 15 years. The Court of Appeals indicated that theoretically, the general public could obtain permanent rights to use road ends at lakes in violation of the *Jacobs* rule if such activity occurs for in excess of 15 years and the local municipality actively facilitated such unlawful use. However, the Court of

Appeals remanded the case back to the local trial court to determine whether 15 years had passed and whether the activities by the local township rose to the level of actively facilitating the unlawful use.

The MWA (together with the Higgins Lake Property Owners Association) also filed an amicus curiae brief asking the Michigan Supreme Court to review the disastrous decision by the Michigan Court of Appeals in *2000 Baum Family Trust v Babel*, 284 Mich App 544; 733 NW2d 44 (2009). That was the case where the Court of Appeals held that the first tier lot owners along platted parallel roads at lakes are not riparian, despite 100 years of Michigan appellate case law to the contrary. A few months ago, the Michigan Supreme Court agreed to hear the *2000 Baum Family Trust* appeal. A new, updated amicus brief will urge the Supreme Court to reverse the disastrous decision of the Michigan Court of Appeals. The final decision by the Michigan Supreme Court could take anywhere from six to eighteen months to be released.

For more information about the *2000 Baum Family Trust v Babel* case, please visit the Michigan Lake & Stream Associations, Inc. website at www.mlswa.org.