



# Lake Road End Basics, 2016

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Presented by:

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## Road Ends: Where Competing Interests Collide

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- Michigan has over 11,000 inland lakes, nearly all of which have some sort of access by road.
- Increasing pressure from those without private access to water seeking to enjoy recreational opportunities lakes and streams provide.
- Growing awareness of public rights to recreational uses on road ends.
- Growing assertion of private property rights by those with adversely affected interests.

## Statutes Addressing Road Ends

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- County Road Law, MCL 224.18
  - Sets statutory process for “absolutely abandoning and discontinuing” public roads.
  - Also establishes ability to “transfer jurisdiction” of a public road to a local unit of government (LUG)
  - Establishes right of LUG or DNR to retain abandoned road ending at or crossing a lake or stream as a “public access site”
  - County Road Law abandonment or relinquishment of jurisdiction procedures apply to both platted and unplatted roads.
    - Does not result in plat amendment, however

## Statutes Addressing Road Ends

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- Land Division Act, MCL 560.226
  - Provides procedures for amending or revising plats, including “vacation” of platted roads.
  - Applies to all platted roads, including those ending at a Great Lake.
  - Roads ending at or crossing lake or stream may be retained by DNR or LUGs as public access sites.
    - Same terms and conditions as County Road Law.

## Statutes Addressing Road Ends

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- Inland Lakes and Streams Act (NREPA), MCL 324.30111b (2012)
  - Restrictions on use of road ends, except as otherwise authorized by LUG in the case of a single seasonal public dock.
  - Applies only to inland lakes, not Great Lakes

## Private Claims to Recreational Use of Road Ends

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### *O'Brien v. Hicks (2012)*

- Front-lottery holders seek to vacate road end to Otsego Lake due to excessive use by neighbors and others (docks, moorings, hoists, etc.)
- Trial Court limits uses to *Jacobs v Lyon Twp*, but grants “riparian rights” to five, named individuals, including rights to overnight mooring of boats, sunbathing, picnicking, lounging, etc.

## Private Claims to Recreational Use of Road Ends

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- On appeal, court held no prescriptive easement beyond that afforded by the plat dedication can be established by permissive uses, no matter the length of the use.
  - “One may not acquire a prescriptive easement to property already subject to an easement. . . simply because an owner ‘overuses’ the easement.”

## Private Claims to Recreational Use of Road Ends

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- Pine Bluff Area POA v. DeWitt Landing & Dock Ass'n, 287 Mich App 690 (2010)
  - In dispute over road ends, all three methods of establishing a public road must be considered: statutory dedication, common law dedication, and highway by user
  - Vacation of plat constitutes withdrawal of offer of dedication, which may not thereafter be accepted by public authorities



## Public Rights to Recreational Use of Road Ends: Lessons from 121st Avenue

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### ■ Benninghoff v Tilton (2009)

- Ganges Twp and Allegan County Road Commission on opposing sides
- Informative, exhaustively analyzed, but unpublished opinion
- Several important lessons relating to unplatted road ends formed at the ends of highways established by user, under the statute, MCL 221.20
- General Public may acquire prescriptive right to use road ends as public recreational beaches, and not just for access to the water.

## Lessons from 121st Avenue (cont.)

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- General Public can acquire no beach rights under Highway by User statute. MCL 221.20. Scope of implied dedication resulting from highway by user is that of a highway right of way only.
  - Right of way purposes do not generally include riparian uses or rights, such as sunbathing
  - Use of road established by user, accompanied by other uses does not necessarily convey a prescriptive easement to the extra uses and statute cannot be used to do so
  - On whole, consistent with uses allowed under Jacobs

## Lessons from 121st Avenue (cont.)

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- General Public may acquire prescriptive recreational rights in a road end established by user under certain circumstances
  - Recreational use or road end alone not sufficient to create general public rights, no matter how long it occurs
  - Must also be “governmental actions to control and facilitate the recreational use”

## Lessons from 121st Avenue (cont.)

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- Owners of underlying property (typically, the adjacent owners) have 15 years from commencement of “governmental actions involving control and facilitation of recreational use” to eject or sue for inverse condemnation.
- NOTE: Suit by neighboring owners would only be to enjoin or seek compensation for “extra” recreational use rights being asserted. Cannot sue to eliminate road itself.

## Lessons from 121st Avenue (cont.)

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- Governmental actions potentially leading to prescriptive recreational uses of road ends include:
  - Constructing parking spaces
  - Erection of barriers to control traffic
  - Tree removal
  - Gate installation
  - Regulation of user activities
  - Use of public funds and employees to pick up trash
  - Actions by both Township and Road Commission can contribute to General Public's acquisition of recreational rights

## Lessons from 121st Avenue (cont.)

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- Recreational Trespass Act
  - Applies to recreational users of road ends
  - Once general public attains recreational use rights in the road end under principles of adverse possession or prescriptive easement, RTA no longer applies, as users will have easement rights in the road end
  - Does not apply to LUGs, as RTA has no exception for governmental immunity

## Lessons from 121st Avenue (cont.)

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- Effective Use of County Road Law and LDA to abandon or relinquish jurisdiction of road ends to LUGs or DNR that have been burdened by recreational use rights
  - Allegan County's ultimate "parachute" in this case
  - Facilitates LUG ability to improve and control for recreational uses
  - Headache relief for road commissions
  - Possible LUG push back who do not want the burden or expense of maintaining additional recreational facilities

## Lessons from 121st Avenue (cont.)

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- Still not a lot of clarity whether “public access sites” that are created under MCL 224.18 and MCL 560.226 when a highway is abandoned, include any rights (such as recreational use rights) not encompassed by the road commission’s interest in the road. It would seem not, but.
  - Anticipated nuisance conditions with progressive restrictions and court supervision built into the statutes suggest that recreational uses should be expected to occur.
- For now, General Public has to establish recreational uses by prescription under principles analyzed in the 121st Avenue case and independently of jurisdictional actions taken by road commissions to abandon or relinquish jurisdiction of a road end.



## Other Recent Cases Affecting Road Ends

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- Duck Lake Riparian Owners Ass'n v Fruitland Twp, unpublished (2014)
  - Property owners abutting a platted park do not have *per se* standing to challenge a change in use of the park (back-lotters using it to launch boats); must show some particularized injury different from the “citizenry at large.”
  - Standing: Prerequisite to filing a lawsuit. Must be specially conferred by statute (e.g., MEPA) or arise from “special injury not suffered by citizenry as a whole”

## Other Recent Cases Affecting Road Ends

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- Duck Lake Riparian Owners Ass'n v Fruitland Twp, unpublished (2014)
- Query: Does an abutting land owner have standing to object to LUG's efforts to establish recreational activities at road ends, as suggested by Benninghoff v Tilton?
  - Unger v Forest Home Twp, 65 Mich App 614 (1975) (“mere increase in traffic” and “general economic and aesthetic losses” are not *per se* special damages sufficient to confer standing.)
  - Probably “Yes” at least as to platted streets, in light of 2000 Baum Family Trust v Babel, 488 Mich 136 (2010), as acquisition of additional recreational use rights are in derogation of the abutting owner's reserved rights under the plat, i.e., all rights except the public use rights described in the plat dedication

## Other Recent Cases Affecting Road Ends

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- Huron Mountain Club v Marquette Co. Rd  
Comm 303 Mich App 312 (2013)
  - Petitions to absolutely abandon or discontinue a public road must *a/ways* contain the signatures of 7 or more freeholders. Cf: Thompson-McCully Quarry Co. v Berlin Charter Twp, 259 Mich App 483 (2003) (suggesting that if *all abutting owners* signed the petition to absolutely abandon or discontinue, petition could proceed without additional signatures by freeholders)

## Other Recent Cases Affecting Road End

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- Huron Mountain Club (cont'd)
  - If all abutting owners are among the 7 freeholders signing the petition, Road Commission may proceed with expedited procedure in MCL 224.18(5) by granting or denying request “without further proceedings.”
  - Otherwise, must hold a public hearing, give notice to all abutting owners and local township who will have first priority to retain the road or portion of road.

## Other Recent Cases Affecting Road Ends

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- Waisanen v Superior Twp, 305 Mich\_App 719 (2014)
  - Quiet title action for a portion of “First Street, [platted] lake access roadway “dedicated to public use” on the basis of adverse possession or acquiescence arising from seawall and building encroachments for more than 15 years. Twp counterclaims for possession based on MCL 600.5821(2).
  - Issue: Does MCL 600.5821(2) bar this action?

## Other Recent Cases Affecting Road Ends

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- Waisanen v Superior Twp (cont'd)
  - MCL 600.5821(2): “Actions brought by any municipal corporation for the recovery of the possession of any public highway, street, alley, or any other public ground are not subject to the periods of limitations.”
    - Adverse possession and acquiescence claims both based on “periods of limitation”, that is, the relevant statute of limitations.

## Other Recent Cases Affecting Road Ends

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- Waisanen v Superior Twp (cont'd)
  - Court holds MCL 600.5821(2) does not apply here because the action was not “brought by” the Twp. A counterclaim in a lawsuit is not “bringing an action”.
  - Had Twp sued first, it would be the party “bringing an action” and would have won the case.
  - Lesson: If you have boundary issues (encroachments, overlaps, etc.) be the first to the courthouse.
  - Legislative fix?

## Other Recent Cases Affecting Road Ends

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- *Haynes v Village of Beulah*, 308 Mich App 465 (2014)
  - *The term “highway” as used in 1925 PA 368 is to be construed broadly to include virtually any public way.*
  - *Village streets are “highways” and therefore encroachments on public highways or highway boundaries acquiesced in for many years do not give private rights in the road. MCL 247.190.*
  - *Conflicts with Waisanan which also involved a platted street.*
  - *Lesson: Assert MCL 247.190 as defense, not MCL 600.5821(2) if you get sued first.*



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- Questions?