

Sandbar Abuses – Don't let the Cool Water Become Hot Water

An unusually hot summer and low lake levels have raised concerns on a number of Michigan lakes about the use of "sandbars." Sandy lake bottoms covered with shallow water often draw hordes of people who arrive by boat and spend the day in these shallow areas. Such areas are often referred to as "sandbars," though legally speaking they are nothing more than submerged bottomlands. If the sandbar is distant from the shore, there are typically no problems with those who own the bottomlands. In many instances, however, people congregate in these areas that are near a home or cottage, causing needless conflict.

Those contemplating the use of sandbars should understand the following:

1. Those who gain lawful access to a lake have the right to use the entire surface of the lake for navigation, fishing and other appropriate purposes. Those activities and public rights occur on the surface of the water. Stepping out of your boat involves not use of the water, but use of the bottomlands. It is important to understand this distinction because it appears lost on many who use these areas. Few of us would consider having a party in our neighbor's yard without her consent. The law treats privately owned bottomlands the same as your yard.
2. In Michigan, the beds or bottomlands of inland lakes are owned by the individual lakefront owners, not collectively, but individually based upon an equitable apportionment. Setting foot on another's riparian bottomlands without that person's consent is a trespass, with both civil and criminal ramifications.
3. Trespass is a civil cause of action, which permits an award of the greater of actual or nominal damages. Injunctive relief is also often awarded, which prohibits future trespass. If a trespass claim is pursued under the Recreational Trespass Act, the plaintiff is entitled to recover the greater of \$250 or actual damages plus attorneys fees. Having to pay your adversary's attorney is no fun.
4. Trespass is also a crime, under both the General Trespass Act (\$50 fine/90 days in jail) and the Recreational Trespass Act (\$500/90 days in jail). In each instance, a violation is a misdemeanor, not a civil infraction. Few welcome having a criminal record.
5. Riparian bottomlands adjacent to publicly owned land are likely suitable for sandbar activities. Those who want to use sandbars should consider public alternatives, to avoid potential civil and criminal liability.

Riparian owners who seek to curb abuses on their bottomlands are sometimes confronted with swearing, vandalism, and other aggressive behavior. Too often, law enforcement will prove ineffective, casting these off as civil matters. While trespass does give rise to civil claims, it is also a crime. There are a number of efforts that can be taken by a riparian landowner to deal with sandbar abuses, some legal and others practical. People often congregate at what they perceive to be the most convenient location for doing so. It becomes less convenient to do so when a riparian owner stands her ground and the transgressors face the risk of both civil and criminal liability. With a well conceived plan based on your individual circumstances you can likely once again enjoy the peace and tranquility which you likely sought when purchasing your waterfront home or cottage.