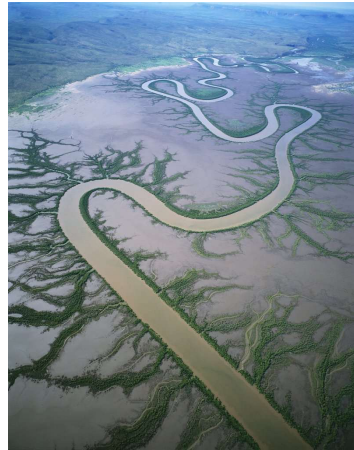


## Riparian Boundaries

Wisconsin Society of  
Land Surveyors  
72<sup>nd</sup> Annual Institute (2021)



Kory Allred, Ph.D., PLS

## Disclaimer

MANY COURT CASES ARE REVIEWED HERE BUT ONLY SOME OF THE PERTINENT FACTS ARE PRESENTED. MANY OTHER DETAILS ARE NOT INCLUDED HEREIN. YOU ARE ENCOURAGED TO READ AND UNDERSTAND THE ENTIRITY OF THESE AND/OR SIMILAR CASES OR LAWS WHEN CITING THEM.



WSLS 2021

## Wisconsin lake house

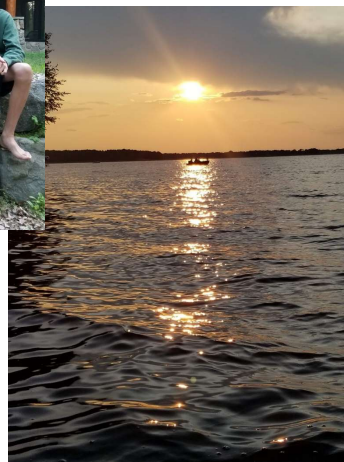
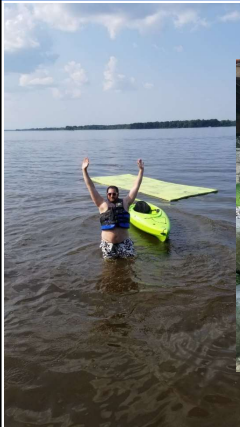


[https://www.realtor.com/realestateandhomes-detail/W4664-S-Shore-Rd\\_Mauktion\\_WI\\_53948\\_M75832-476129photoall](https://www.realtor.com/realestateandhomes-detail/W4664-S-Shore-Rd_Mauktion_WI_53948_M75832-476129photoall)



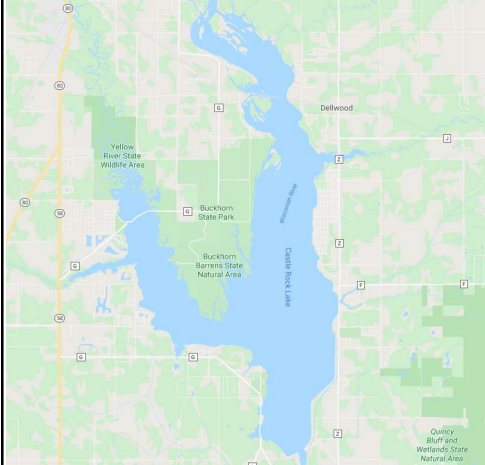
WSLS 2021

## Wisconsin lake house



WSLS 2021

## Wisconsin lake house



WSLS 2021

## Wisconsin lake house



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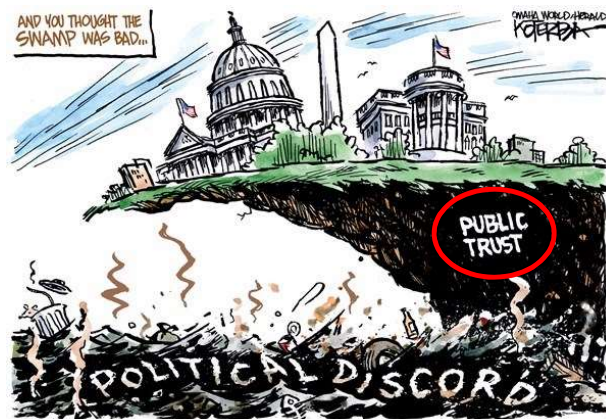


## Water boundaries



WSLS 2021

## Public Trust Doctrine



WSLS 2021

## Public Trust Doctrine

- English common law: title to the sea and rivers below the high-water mark belong to the king
- American colonists kept same rights and obtained title after the American Revolution



WSLS 2021

## Public Trust Doctrine

- Right to use the waterways for “commerce, navigation, and fisheries”; extended to shorelines and beaches
- Fluid and transient common law in that it is applied to satisfy the needs of the public



WSLS 2021

## Wisconsin Public Trust Doctrine

### Jurisdiction on rivers and lakes; navigable waters

“Section 1. The state shall have **concurrent jurisdiction** on all rivers and lakes bordering on this state so far as such rivers or lakes shall form a common boundary to the state and any other state or territory now or hereafter to be formed, and bounded by the same;...”

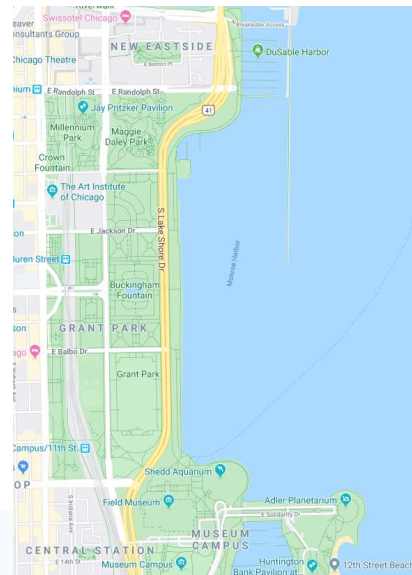
(Wisconsin Constitution, Article IX)



WSLS 2021

## Illinois Central Railroad Co. v. Illinois

- 1869: Illinois granted 1000+ acres to Illinois Central Railroad Co.
- Land extended nearly 1-mile into Lake Michigan
- 1883: state files to quiet title
- ICRR moves case to Federal court
- Supreme court rules that the submerged was held in trust for the people; state could not transfer it



WSLS 2021

## Equal Footing Doctrine

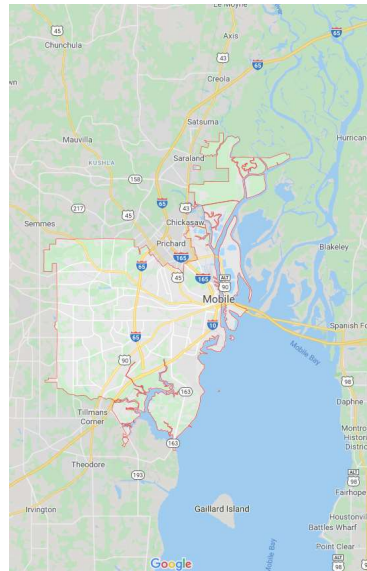
- Northwest ordinance of 1787  
*"...to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States..."*
- States entered into union after original 13 had EQUAL FOOTING title to underlying waters within their state



WSLS 2021

## Pollard v. Hagan (1845)

- Question of submerged lands under navigable waters
- Conclusions
  1. Shores of navigable waters granted to respective states
  2. **New states have same rights, sovereignty, and jurisdiction as original 13**
  3. Right of the US to public lands and sale thereof did not apply in this case
- Affirmed Equal Footing Doctrine



WSLS 2021

## Wisconsin Public Trust Doctrine

Jurisdiction on rivers and lakes; navigable waters (cont'd)

“and *the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free*, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.”

(Wisconsin Constitution, Article IX)



WSLS 2021

## Northwest Territory

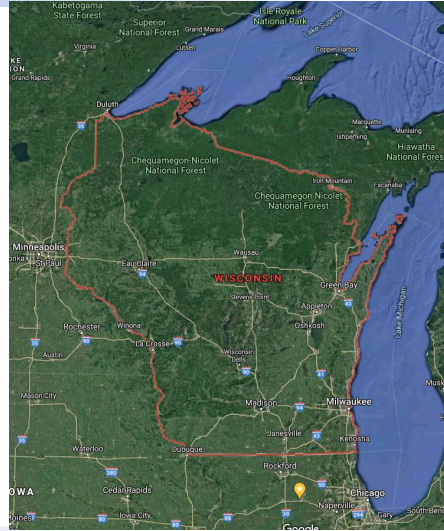


WSLS 2021



## Wisconsin State

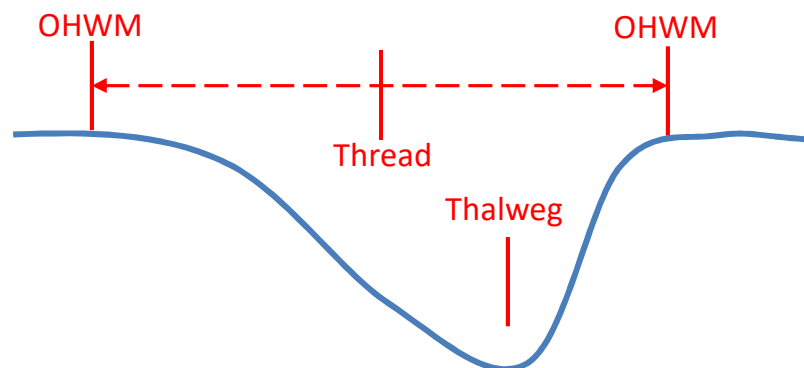
- River boundaries
  - Menominee
  - Brule
  - Montreal
  - St. Louis
  - St. Croix
  - Mississippi



WSLS 2021

## River boundaries

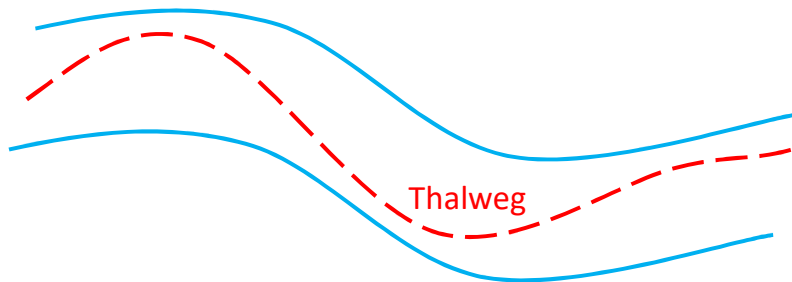
- Thread: Line equidistant between the OHWM
- Thalweg: Deepest line of stream



WSLS 2021

## River boundaries

- Thread: Line equidistant between the OHWM
- Thalweg: Deepest line of stream



WSLS 2021

## Wisconsin Riparian Law

- Natural stream: owners own to the thread, public has right to use water
- Natural lakes: owner own to OHWM; state owns bed
- Modified natural stream: same rules of natural stream – adjacent owners own to thread, public has right to edge of water

(Kent &amp; Dudiak, 2001)



WSLS 2021

## Wisconsin Riparian Law

### Wis. Stat. § 30.10 Declarations of navigability.

(1) **Lakes.** All lakes wholly or partly within this state which are **navigable in fact** are declared to be navigable and public waters, and all persons have the same rights therein and thereto as they have in and to any other navigable or public waters.



WSLS 2021

(Kent & Dudiak, 2001)

## Wisconsin Riparian Law

### Wis. Stat. § 30.10 Declarations of navigability.

(2) Streams.

(a) Subject to par. (b) and except as provided under sub.

(4) (c) and (d), **all streams, sloughs, bayous, and marsh outlets**, which are **navigable in fact** for any purpose whatsoever, are **declared navigable to the extent that no dam, bridge, or other obstruction shall be made** in or over the same without the permission of the state.



WSLS 2021

(Kent & Dudiak, 2001)

## Wisconsin Riparian Law

### Wis. Stat. § 30.10 Declarations of navigability.

#### (2) Streams.

(b) If the department makes a determination that a stream or portion of a **stream is not navigable** and a dam is constructed on the stream that modifies the flow of the stream or portion of the stream as compared to the natural flow of the stream or portion of the stream prior to its construction, ..., then the department may not change its determination of non-navigability with respect to the stream or portion of the stream unless all of the following conditions are met:

1. All structures that affect the flow of the stream or portion of the stream are removed.
2. All changes to the stream or land adjacent to the stream that could affect the flow of the stream or portion of the stream are substantially returned to their natural state.
3. A department evaluation of the navigability of the stream or portion of the stream conducted after the conditions in subds. 1. and 2. are met indicates that the department's determination of non-navigability should be changed.



WSLS 2021

(Kent & Dudiak, 2001)

## Illinois Riparian Law

### • (615 ILCS 5/) Rivers, Lakes, and Streams Act

**Sec. 18.** ...Wherever the **terms public waters** or public bodies of water are used or referred to in this Act, they mean **all open public streams and lakes capable of being navigated by water craft, in whole or in part, for commercial uses and purposes**, and all lakes, rivers, and streams which in their natural condition were capable of being improved and made navigable, **or that are connected with or discharged their waters into navigable lakes or rivers** within, or upon the borders of the State of Illinois, together with all bayous, sloughs, backwaters, and submerged lands that are open to the main channel or body of water and directly accessible thereto...



WSLS 2021

## Illinois Riparian Law

- (615 ILCS 5/) Rivers, Lakes, and Streams Act

**Sec. 24.** Title to the bed of Lake Michigan and all other meandered lakes in Illinois, set forth in the 1962 Report of the Department of Public Works and Buildings, Division of Waterways, entitled "Meandered Lakes in Illinois", with Map Appendix, regardless of the location, size or shape is held in trust for the benefit of the People of the State of Illinois and the Department of Natural Resources is the agency designated as the trustee authorized to exercise administrative jurisdiction and control thereover in the execution of the powers and duties under this Act...



WSLS 2021

## Illinois Riparian Law

- (615 ILCS 5/) Rivers, Lakes, and Streams Act

**Sec. 26.** The Department of Natural Resources shall, for the purpose of protecting the rights and interests of the State of Illinois, or the citizens of the State of Illinois, have full and complete jurisdiction of every public body of water in the State of Illinois...but nothing in this Act contained shall be construed or held to be any impairment whatsoever of the rights of the citizens of the State of Illinois to fully and in a proper manner, enjoy the use of any and all of the public waters of the State of Illinois, and the jurisdiction of the Department of Natural Resources shall be deemed to be for the purpose of protecting the rights of the people...



WSLS 2021



## Pier Access

**MICHAEL G. AND JIYOUNG C. DESOMBRE,  
Plaintiffs-Respondents,**

**v.**

**JAMES I. AND CHARITY A. BOLDEBUCK,  
Defendant-Appellants**

Appeal No. 2018AP2227

Court of Appeals of Wisconsin, District Three

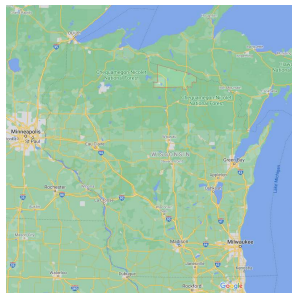
November 26, 2019, Decided.



WSLS 2021

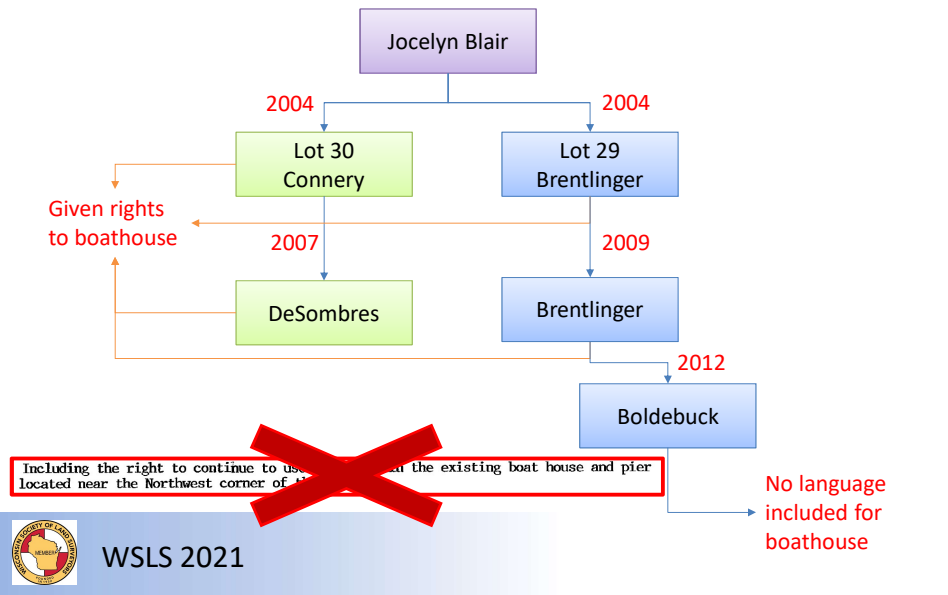
## DeSombre v. Boldebeck

- Background – Lake pier
  - DeSombre and Boldebeck own adjacent lots
    - Vilas County
    - Otter Lake



WSLS 2021

## DeSombre v. Boldebuck



## DeSombre v. Boldebuck

- Background – Lake pier
  - Undisputed that pier is attached to DeSombre's property
  - Boldebucks begin using pier when DeSombres are not present
  - Boldebucks claim they have a right to the pier since it is within their *riparian zone*.
  - DeSombres disagree and commence suit



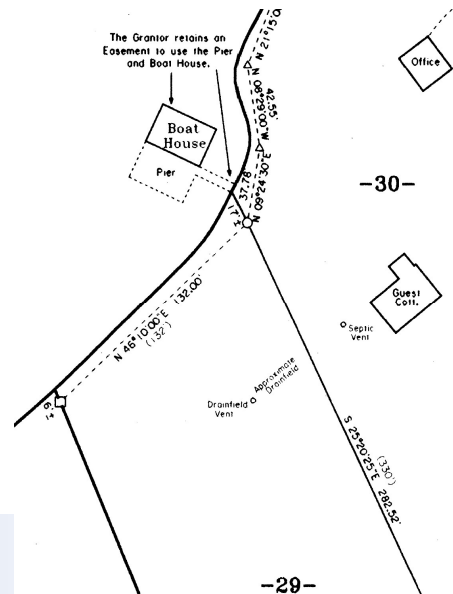
WSLS 2021

## DeSombre v. Boldebuck

- Background – Lake pier
  - Undisputed that pier is attached to DeSombre's property

[2003 Blair survey](#)

[2007 Boldebuck survey](#)



WSLS 2021

## DeSombre v. Boldebuck

- Original court ruling
  - DeSombres bought property with the pier included
    - Have insured the boathouse
    - Have paid taxes on it
    - Maintenance
  - Boldebucks have no basis to claim ownership
  - In favor of DeSombres (with summary judgement)



WSLS 2021

## DeSombre v. Boldebuck

- Appeal arguments
  1. DeSombres did not prove that the pier and boathouse were real property
    - Boldebuck: structures attached to the bed of a waterway can not be owned by an individual since title is held by the state
    - Overruled
      - » Real property can be attached to land
      - » Desombres paid taxes on the boathouse



WSLS 2021

## DeSombre v. Boldebuck

- Appeal arguments
  2. Pier and boathouse fall in Boldebuck *riparian zone* and interfere with *riparian rights*
    - Affirmed
      - » Desombres did not give any evidence depicting the pier and boathouse relating to the Boldebuck's riparian zone



WSLS 2021

## DeSombre v. Boldebuck

- Riparian zone - Definition
  - “The **area** that extends **from riparian land** waterward **to the line of navigation** as determined by a method that establishes riparian zone lines between adjacent riparian owners in a manner that equitably apportions access to the line of navigation” (Wis. Stat. § 30.01 (5r))



WSLS 2021

## DeSombre v. Boldebuck

- Riparian zone - Usage
  - Riparian owner has exclusive rights to place structures (WIDNR Pub. FH1017 – Pier Planner)
  - Extension of private property to public waterway (?)
  - Boat shelter must be located entirely within owners riparian zone (Wis. Stat. § 30.01 (1c)(b)(3))

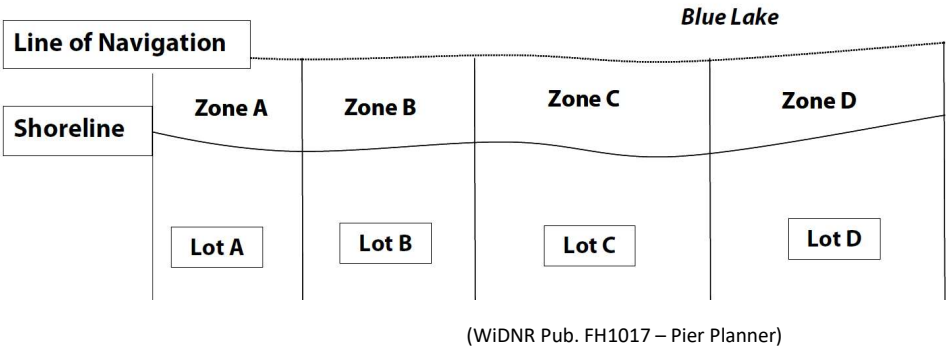


WSLS 2021



# DeSombre v. Boldebuck

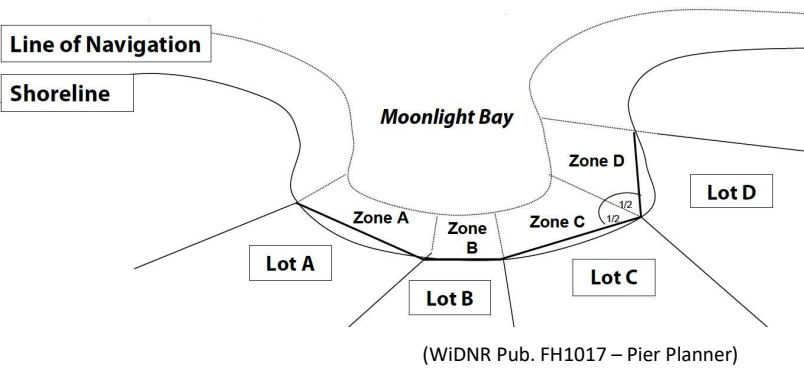
- Riparian zone - Determination
- 1. Lot line extension



WSLS 2021

# DeSombre v. Boldebuck

- Riparian zone - Determination
- 2. Right angle *or* Cotermminus



WSLS 2021

## DeSombre v. Boldebuck

- Riparian zone - Determination
  2. Right angle *or* Coterminus
    - Division lines drawn at right angles to shoreline

(Nosek v. Stryker, 103 Wis. 2d 636)



WSLS 2021

## DeSombre v. Boldebuck

- Riparian zone - Determination
  3. Proportional to waterfront
    - Where the shoreline is too irregular to draw right angles
    - Water front length should be proportional to actual shoreline of each owner

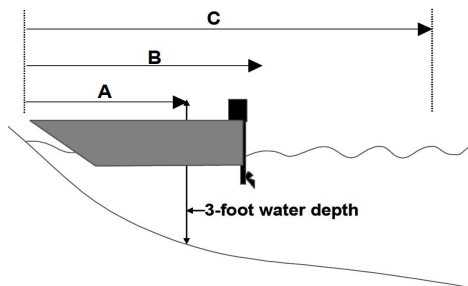
(DeSombre v. Boldebuck, 2019 Wisc. App. LEXIS 630)



WSLS 2021

## DeSombre v. Boldebuck

- Riparian zone - Determination
  - A. 3-foot water depth at summer low levels
  - B. Adequest depth for mooring or boat lift
  - C. Municipal pierhead line (if applicable)



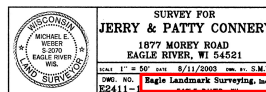
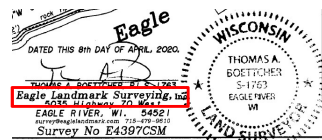
(WiDNR Pub. FH1017 – Pier Planner)



WSLS 2021

## DeSombre v. Boldebuck

- Appeal arguments
  - 2. Riparian zone/riparian rights
    - Desombres affidavits (summary judgement motion)
      - » Thomas Boettcher – Eagle Landmark Surveying
        - No location of riparian zones
      - » Brian Hug – Desombres property caretaker
        - Water is 3 feet deep 30 feet from shore



WSLS 2021

## DeSombre v. Boldebuck

- Appeal arguments
  - 2. Riparian zone/riparian rights
    - Boldebuck response sufficient to not grant summary judgement
      - » Gregory Maines– [June 2018 survey](#)
        - Riparian zone boundary lines
        - Shoreline 30 foot offset; no line of navigation



WSLS 2021

## DeSombre v. Boldebuck

- Appeal Conclusion
  - Circuit **erred** by granting *summary judgement*
  - Decision **reversed** and **remanded** for further proceedings
  - Boat house clause in deeds has no effect?



WSLS 2021

## Lake Pier Location

**Ralph L. BATH and Margaret J. Bath, Appellants  
(Defendants below),**

**v.**

**John R. COURTS and Nancy Courts, Appellees  
(Plaintiffs below).**

No. No. 3-483a112.

Court of Appeals of Indiana, Third District.

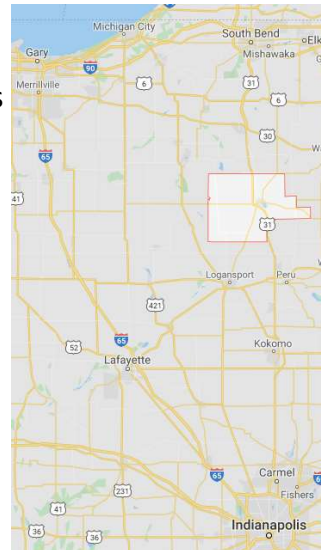
January 26, 1984



WSLS 2021

## BATH v. COURTS

- Background – Lake pier
  - Baths and Courts own adjacent parcels
  - Nyona Lake - Howard County, IN



WSLS 2021



## BATH v. COURTS

- Background – Lake pier
  - Courts want to add to their pier
  - Angle the pier to avoid public access
  - Pier crosses Bath property line (extended)
  - Baths install a pier
    - Parallels the boundary line
    - Lies within 2 feet of Court pier

[GIS](#)   [Google Map](#)



WSLS 2021

## BATH v. COURTS

- Background – Lake pier
  - **Original court** ruling allowed the Courts' pier to remain
  - Pier did not interfere with Bath's or public use
  - **Bath's appeal**
    - Parcel extends to the center of the lake
    - Courts should remove their pier



WSLS 2021

## BATH v. COURTS

- Analysis – Riparian statute

**IC 14-26-2-5(d)(1-2) Public rights:** The state has full power and control of freshwater lakes AND holds in trust for use by public for recreation.



WSLS 2021

## BATH v. COURTS

- Analysis – Riparian statute

**IC 14-29-1-4 Piers, wharves, or docks:** A riparian owner bordering a navigable stream may build and maintain a pier for **so long as it does not restrict navigation within the premises** bordering the stream and the submerged land



WSLS 2021

## BATH v. COURTS

- Conclusion – Lake pier
  - Original court **overturned**: Courts pier unlawfully encroaches on Bath property
    - Riparian builders may only build a pier if it doesn't interfere with the rights of the other users
    - Pier must be placed within extension of shore boundaries (**WI statute** and held up in IN court)



WSLS 2021

## BATH v. COURTS

- Conclusion – Lake pier
  - Original court **affirmed**: Baths ordered to move their pier
    - Evidence shows that Baths did not build pier for “commerce, navigation and the owner's enjoyment”
    - Pier was built for interference



WSLS 2021

## Flowage Rights

**JEROME AND GAIL MOVRIK,  
Plaintiffs-Respondents,  
v.  
DAVID AND DIANE LOBERMEIER,  
Defendants-Appellants-Petitioners**

No. 2015AP583.  
Supreme Court of Wisconsin.  
Opinion filed January 23, 2018.



WSLS 2021

## Movrich v. Lobermeier

- Background
  - Gail Movrich & David Lobermeier are sister and brother
  - Own land adjacent to or under Sailor Creek Flowage



WSLS 2021

## Movrich v. Lobermeier

- Background
  - Price County, Wisconsin

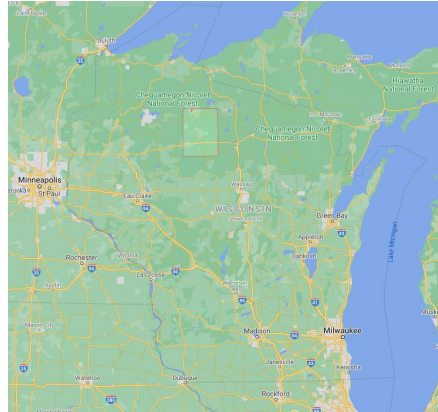
[GIS map](#) [GIS print](#)

[Google map](#)

[Sailor Creek Subdivision](#)

[Movrich Survey](#)

[Sailor Creek Flowage Bathymetric](#)



WSLS 2021

## Movrich v. Lobermeier

- Background
  - Sailor creek existed as a stream prior to 1941
  - Margaret Hussmann owned the land adjacent to Sailor Creek
    - Allowed property to be flooded by a dam created by Town of Fifield
    - Eventually property split off and Movrich/Lobermeier are current owners of portions



WSLS 2021



## Movrich v. Lobermeier

- Background
  - Dock existed when Movriches bought property in 2006
  - Prior to 2011-2012, Movrich & Lobermeier families got along well
    - Movrich used the dock and flowage recreationally
    - Movrich allowed Lobermeier and friends use



WSLS 2021

## Movrich v. Lobermeier

- Background
  - After to 2011-2012, Lobermeier asserted they alone had rights to the waterbed
    - Against Movrich & other riparian owners
    - Lobermeier demanded others to remove docks and cease use

[Docks 1999-2020: Google Earth](#)



WSLS 2021

## Movrich v. Lobermeier

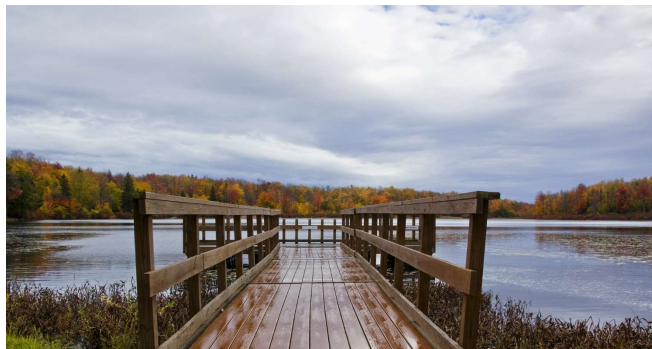
- Original trial
  - Movrich lawsuit
    - Install dock and access flowage
    - Prevent Lobermeier from entering property or interfering with riparian rights
  - Court Finds in **favor** of **Movrich**
    - Public trust doctrine allows access



WSLS 2021

## Movrich v. Lobermeier

- Appeal #1
  - Lobermeier challenges that the public trust doctrine allows access to a flowage



WSLS 2021

<http://hallingraves.com/tag/public-trust-doctrine/>

## Movrich v. Lobermeier

- Appeal #1

- A. Public trust review**

**Applies to flowages:** If volume of water is increased artificially, public right to water is increased



WSLS 2021

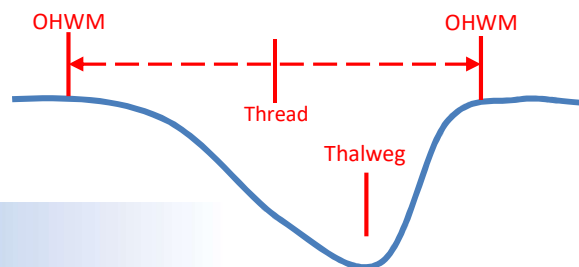
## Movrich v. Lobermeier

- Appeal #1

- A. Public trust review**

**Title to stream bed extends to thread**

- State holds navigable waters in trust
- Result: state controls land under the stream without owning it.



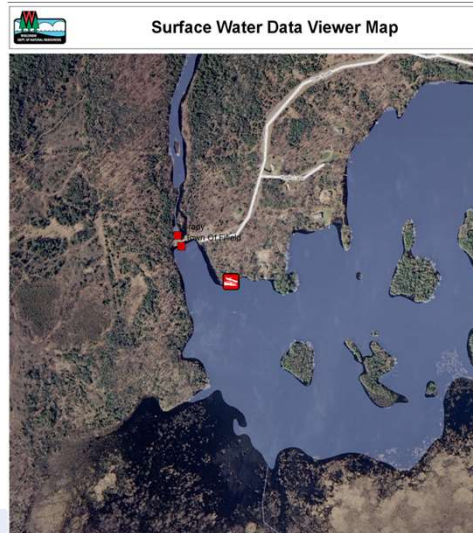
WSLS 2021

## Movrich v. Lobermeier

- Appeal #1

- B. Movrich access**

- Lobermeier concede public trust applies
    - Assert Movrich must access water from public launch



WSLS 2021

## Movrich v. Lobermeier

- Appeal #1

- B. Movrich access**

- Lobermeier can't assert water usage limitations because entirety of the lake isn't within their boundary limits
    - Public trust doctrine should always be interpreted most broadly so that public receives full benefit



WSLS 2021

## Movrich v. Lobermeier

- Appeal #2 (2018)

### Lobermeier contentions

1. Movrich riparian rights w/ public trust doctrine are subservient to Lobermeier private property rights
  - Flowage is separate from a natural lake
  - Private property rights superceded riparian rights on man-made lake
  - Lobermeier can prohibit anyone they want from their property (Zimmerman 2018)



WSLS 2021

## Movrich v. Lobermeier

- Appeal #2

### Lobermeier contentions

2. Public trust doctrine alone does not give Movrich right to install a pier on private property
  - Public trust doctrine does not convey rights, even when water is navigable
  - Public may only use the water, but not attach a pier



WSLS 2021

## Movrich v. Lobermeier

- Appeal #2

### Lobermeier contentions

3. Shoreline location on Movrich property restricts their access directly to water
  - As long as Movrichs are using flowage for purposes consistent with public trust doctrine, they may enter directly from their property



WSLS 2021

## River Boundary

**DARYLE J. ROWLAND et al., Plaintiffs-Appellees,**

**v.**

**SHORELINE BOAT & SKI CLUB, Defendant-Appellant  
and Counterplaintiff-Appellant (Hortense Pfaffman  
et al., Intervenor-Appellees; Daryle J. Rowland et  
al., Counterdefendants-Appellees)**

No. 3-88-0725.

Illinois Appellate Court — Third District.

Opinion filed August 2, 1989.



WSLS 2021

## Rowland v. Shoreline Boat & Ski

- Background
  - Daryle & Sandra Rowland own Lots 1, 2, & 3 of Block 2 of Green's Addition to the city of Ottawa
  - Shoreline Boat & Ski Club lies north of Lots 1, 2, 3

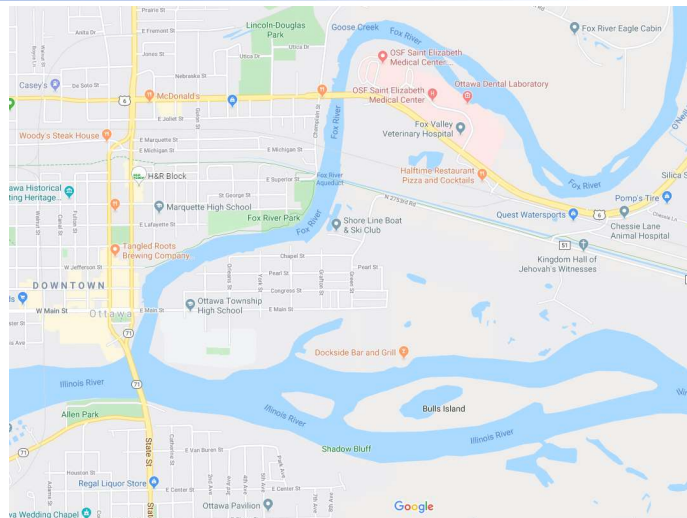


WSLS 2021

## Rowland v. Shoreline Boat & Ski

[LaSalle County](#)  
[GIS](#)

[Google Map](#)



WSLS 2021

## Rowland v. Shoreline Boat & Ski

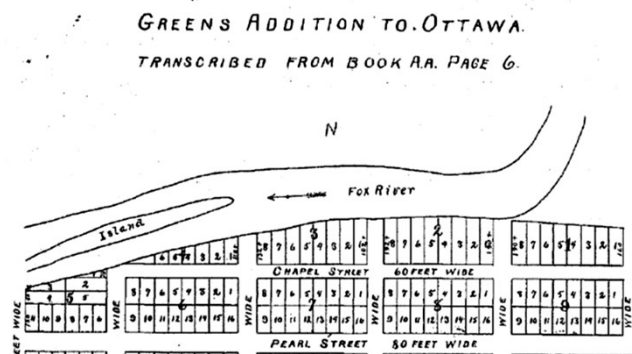
- Fox River: Navigable



WSLS 2021

## Rowland v. Shoreline Boat & Ski

- Background – Trial court
  - North boundary of Lots 1, 2, & 3 is thread of the Fox River based on [subplat](#)

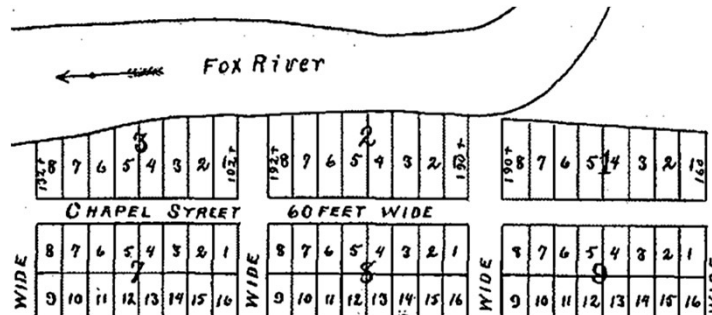


WSLS 2021



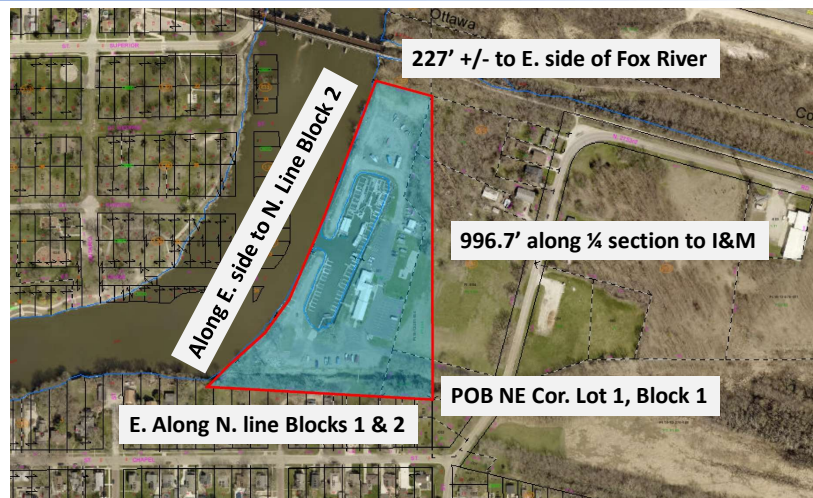
## Rowland v. Shoreline Boat & Ski

- Analysis– Plat
  - Lots 1, 2, & 3 abut river
  - Lot lengths include +
  - Lot 2 previously sold as “water lot”, later 1, 2, & 3 combined



IPLSA 2020

## Rowland v. Shoreline Boat & Ski



WSLS 2021

Shoreline legal (1939)

## Rowland v. Shoreline Boat & Ski

- Analysis– Plat
  - Shoreline maintains trial court erred in relying on plat
    - River is in different location than depicted
    - Provide 1932 Army COE topo map & affidavits of engineer & surveyor
  - Green’s intent of conveyance is only evidence of Block 2 location



WSLS 2021

## Rowland v. Shoreline Boat & Ski

- Analysis– Intent
  - Generally in Illinois land adjacent to a river extends to thread
  - Green’s Addition subplat
    - Fox River is north boundary of Block 2
    - Use of ‘+’ indicates extent of lot lines to the river
    - Green conveyed Lot 2 as “water lot”
  - **Conclusion:** No evidence to contradict Lots 1, 2, 3 being bounded by the river



WSLS 2021

## Lake Boundary Location

**Don H. GUNDERSON and Bobbie J. Gunderson, Co-Trustees of the Don H. Gunderson Living Trust, Appellants/Cross-Appellees (Plaintiffs below),**

**v.**

**STATE of Indiana, INDIANA DEPARTMENT OF NATURAL RESOURCES, Appellees (Defendants below), *Alliance for the Great Lakes and Save the Dunes*, Appellees/Cross-Appellants (Intervenors-Defendants below), *Long Beach Community Alliance*, Patrick Cannon, John Wall, Doria Lemay, Michael Salmon, and Thomas King, Appellees/Cross-Appellants (Intervenors-Defendants below).**

No. 46S03-1706-PL-423.  
Supreme Court of Indiana.  
FILED February 14, 2018.



WSLS 2021

## GUNDERSON v. INDIANA

- Background – Lake boundary
  - Don & Bobbie Gunderson own property in Long Beach, IN
  - 2010: Gundersons contend town's definition of the "administrative boundary" between state and private land
    1. Ordinary High Water Line – Physical characteristics
    2. 581.5 IGLD/582.25 NGVD 29



WSLS 2021

## GUNDERSON v. INDIANA

- Background – Lake boundary
  - 2014: Gunderson's sue Indiana once they couldn't get the rule changed
  - Gundersons: no public trust right in land abutting lake
- State: Indiana owns the beach for public use
- Intervenors: state owns below OHWM
  - Alliance for the Great Lakes and Save the Dunes
  - Long Beach Community Alliance



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## GUNDERSON v. INDIANA

LOTS NUMBERED 240, 242, 244 AND 245 IN LONG BEACH ADDITION AS PER PLAT THEREOF RECORDED IN PLAT BOOK 5, PAGES 34 AND 35 IN THE OFFICE OF THE RECORDER OF LA PORTE COUNTY, INDIANA.

[LaPorte GIS](#)

[Google map](#)

[Bing map](#)



WSLS 2021

## GUNDERSON v. INDIANA



## GUNDERSON v. INDIANA

- Background – 2014 Court ruling
  - Indiana holds trust to land below OHWM
  - Where state and private property intersect, private property owners can not impair rights of public
  - Indiana's public trust protects public right for commerce, navigation, recreation, etc



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## GUNDERSON v. INDIANA

- Background – 2016 Appellate decision
  - Public trust rights are controlled by public trust doctrine
  - Administrative boundary is invalid; OHWM defined by common law is correct
  - Gunderson's north boundary extends to Ordinary LOW Water Mark but public has rights to OHWM



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## GUNDERSON v. INDIANA

- Analysis – Boundary location
  - Gundersons misapply ordinances
    - Northwest ordinance 1787 mentioned “waters” only
    - Submerged Land Act (1953): “title to and ownership of the land beneath navigable waters...”



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## GUNDERSON v. INDIANA

- Analysis – Boundary location
  - Gundersons misapply ordinances
  - [Federal land patent \(1837\)](#): Federal gov't. did not survey land below OHWM and were not available for conveyance



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## GUNDERSON v. INDIANA

- Analysis – Indiana public trust
  - Gundersons claim Indiana gave up public trust rights
    - IN Lake Preservation Act excludes Lake Michigan
    - Bainbridge v. Sherlock: riparian owner title to low water mark



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## GUNDERSON v. INDIANA

- Analysis – OHWM location
  - Gundersons claim DNR has no authority to establish property boundaries
  - 2 OHWM definitions
    - Natural, common-law: physical characteristics
    - Administrative: 581.5 IGLD
  - Natural OHWM is movable, similar to accretion/erosion



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## GUNDERSON v. INDIANA

- Analysis – Recreational activities
  - Gundersons suggest public use be limited to water actions only
  - Some temporary, transitional movement must be allowed to access the waters
  - Fishing, commerce, navigation recognized as rights under common law at constitution's ratification



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## GUNDERSON v. INDIANA

- Conclusion – 2018 Appellate decision
  - Indiana acquired title to the bed to the OHWM at statehood
  - Indiana has exclusive title to the natural OHWM
  - Lake Michigan shore can be used for traditional public rights ***AT MINIMUM***



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## GUNDERSON v. INDIANA

- **BONUS** – 2019 Ordinance
  - Long Beach proposed ordinance revision
    - No permanent stairs built or replaced or repaired above OHWM
    - Temporary stairs are permitted
  - Under review
- [News report last week](#)
- [HB1031](#)



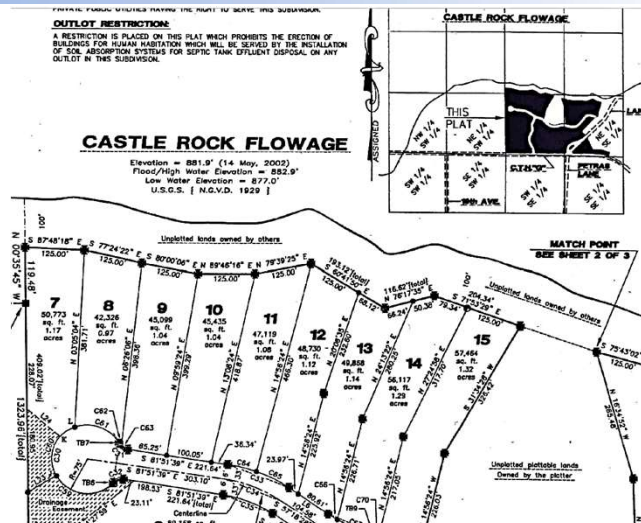
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# Wisconsin lake house



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# Wisconsin lake house



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## Wisconsin lake house

- Flowages created from navigable streams – Riparian land extends to center of the streambed (Kent & Dudiak, 2001)

**This Deed**, made between Wisconsin River Power Company, a Wisconsin corporation, Grantor, and Pavloski Corp., a Wisconsin corporation, Grantee.

Grantor, for a valuable consideration, conveys to Grantee the following described real estate in Juneau County, State of Wisconsin (The "Property"):

Parcel I: All out of water lands that lie within the N 1/2 of the SE 1/4 of Section 34, Township 17 North, Range 4 East, Town of Germantown, Juneau County, Wisconsin, excepting therefrom a strip of land running parallel to the shoreline and extending inland 100 feet from the ordinary high water mark, also excepting highways.

Parcel II: That part of the SE 1/4 of the SE 1/4 of Section 34, Township 17 North, Range 4 East, Town of Germantown, Juneau County, Wisconsin that lies Northeasterly of County Highway G.



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## Wisconsin lake house

- Wisconsin River Power Co (WRPCO)

### Land Use Policies and Rules

The following documentation intends to serve as a guide for administering public land use policies, and to clarify policy specifics regarding the usage of WRPCO lands.

- [Section 1: Hunting Stands/Blinds](#)
- [Section 2: Boat Parking/Storage](#)
- [Section 3: Snowmobiles/ATVs/Motorized Vehicles](#)
- [Section 4: Camping/Outdoors](#)

General: It is recognized that WRPCO land is open to the public unless posted otherwise. No person or persons shall designate WRPCO land as though it were their own. In addition to the following sections, land policies adopted by the State of Wisconsin will also be regarded as policies applicable to WRPCO land.

- **Conclusion: property line stops 100' from water but can access water across WRPCO land**



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# Thank You

**Kory Allred, Ph.D., P.L.S.**  
Professional Land Surveyor

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# Questions?

Legal summaries available upon request



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