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## Parkison v. McCue, 831 N.E.2.d 118 (Ind. Ct. App. 2005)

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state would later be required to submit information regarding its permit fees.

Unpersuaded by Valstad's arguments, the court affirmed the motion to dismiss.

*Kelly L. Snodgrass*

## INDIANA

**Parkison v. McCue, 831 N.E.2d 118 (Ind. Ct. App. 2005)** (affirming the trial court's grant of summary judgment on grounds that: (1) title to lands submerged under water reverted to the state; (2) easements over such lands were terminated; (3) accretion caused title of such land to revert to original riparian owner free of easements; and (4) constructing piers over beach easements severely limited the rights of riparian owners and rendered the easement appreciably less useful for other easement holders).

Lakefront lot owners filed an ejectment and trespass suit when back lot owners constructed a pier over an easement bordering Clear Lake. The lakefront lot owners argued that flooding extinguished the easement bordering lakefront properties and neighboring back lot owners must remove the pier built over that easement. In response, Andrew Parkison argued that the back lot owner's easement still existed and that the easement language unambiguously granted pier rights, or in the alternative, if the language was ambiguous, then evidence showed the grantor's intent to provide pier rights. On motions for summary judgment from both parties, the Steuben County Superior Court held flooding did not terminate the easement and the plain language of the easement prohibited construction of a pier. On appeal to the Indiana Court of Appeals, Parkison argued that the trial court erred in determining the scope of the easement because the language of the easement was ambiguous. On cross-appeal, the lakefront lot owners argued that the trial court erred in finding that flooding did not extinguish an easement.

The court began by noting that easements over lands with riparian rights do not necessarily entitle easement holders to use of those riparian rights. The court determined that it must interpret the language of the deed granting the easement to find which rights the grantor provided for the easement holders. The court addressed the lakefront property owners' argument to determine if an easement existed to interpret. The court viewed flooding as a temporary condition that subsides as water levels recede. However, because the lakefront lot owners provided evidence showing the easement in question had been under water since 2002, the court held that it was not a temporary condition of flooding. Parkison asserted that the easement over the land re-

mained, even though the land was under water. The court rejected this argument, adopting the opinion that title to submerged lands shifts from the riparian owners to the state while the lands are under water, extinguishing any easements on those lands. Because Indiana code provided access to public water for all citizens, there was still a public lakefront easement on these lands while they remained submerged. However, the state's entitlement to the land terminated the original easement over that land. If the water levels receded, title to the land would revert to the riparian owners without the burden of an easement. The court found the original easement still existed over any lands not submerged under water.

The court addressed the language of the easement to determine the rights granted. In interpreting the language, the court found that the grantor provided dominant easement holders a right to use "for recreation purposes." The court then considered the meaning of "recreation purposes." First, the court stated that easement holders could not severely limit the riparian rights of the servient owner. The court noted that if all easement holders placed piers on the easement, the midpoint of each pier would be closer than one foot apart. Therefore, the court found that allowing easement holders to place piers on the easement would severely limit the riparian rights of the servient owner. Next, the court noted that an owner of an easement may not render the easement appreciably less convenient and useful for other co-owners. The court noted that piers physically restrict co-owners from using the beach, a use expressly granted in the easement. Therefore, the court found that piers would render the easement appreciably less convenient and useful for other co-owners. Finally, the court held that placement of piers was not a "recreational purpose."

The court affirmed the trial court's holding that the easement did not grant the right to build piers over riparian waters.

*Jonathan P. Long*

## MASSACHUSETTS

**Moot v. Golledge, No. 04-2096, 2005 Mass. Super. LEXIS 220 (Mass. Super. May 4, 2005)** (holding the General Laws of Massachusetts do not require North Point Cambridge Land Company to obtain a license to build on the proposed site because the site was comprised of landlocked tidelands that are not subject to the Waterways Act).

John Moot, with officers, directors, and members of the Association of Cambridge Neighborhoods and Efekta Schools, Inc. (collectively "Moot") filed a Request for Determination of Applicability with the Department of Environmental Protection ("DEP") for a determination of whether North Point Cambridge Land Company ("NPCLC") had to