

**FOCUS:  
MUNICIPAL LAW**

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The surface waters of New York State are held in the public trust, allowing the right of navigation and incidental rights of fishing, boating, swimming, and other recreational purposes; however, a riparian land owner has the right of access to navigable water, and the right to make this access a “practical reality by building a pier or wharfing out.”<sup>1</sup> On Long Island, the rights of the waterfront property owner to gain access to the water typically begin at the high water mark of a tidal water body.<sup>2</sup>

**What Are Riparian Rights?**

Riparian rights refer to a system of allocating water rights among

# An Overview of Riparian Rights and Access Disputes

waterfront landowners primarily providing access to the navigable portions of a waterway.<sup>3</sup> In New York, owners of land abutting navigable bodies of waters such as rivers, streams, oceans, seas or lakes, are commonly referred to as riparian landowners and have certain privileges known as riparian rights.<sup>4</sup> Technically, the term “riparian rights” refers to the interests of land owners whose property abuts a river or stream, and when the issue involves lands adjacent to tidal navigable waters, the proper term is “littoral rights.” This distinction, however, is vestigial and so often blurred by the courts this it is now more commonly referred to as “riparian rights.”<sup>5</sup>

Under New York common law, riparian rights of access traditionally attach to waterfront property by virtue of that property touching the shoreline. This right of access “follows the whole frontage of the property” and comprehends the “reasonable, safe, and convenient use” of the water for navigation, fishing, and such other purposes as commonly belong to the riparian

owner exercised in a reasonable manner.<sup>6</sup>

One of the most important rights of the riparian owner is that of access to and from the navigable water.<sup>7</sup> The riparian owner’s use of the surface area over the land under the water, or the land under water itself, has been characterized as an easement or servitude that extends beyond the property line with the underlying purpose to assure the upland owner’s rights of practical access to navigable waters.<sup>8</sup> These improvements may include piers, docks or other devices to permit the safe harbor of a vessel with access to the navigable waters. This is commonly referred to as “wharfing out.”<sup>9</sup>

The physical dimensions of such wharfage to create the riparian right of access is determined by the long standing principle of the right of direct access from a landowner’s entire frontage to line of navigability; however, the riparian right ends at the navigable part of the waterway.<sup>10</sup>

**Riparian Rights—The Reasonableness Factor**

Riparian owners are subject to the reasonable use doctrine such that a riparian owner’s use must be reasonable. However, this private right of access, must not to interfere with neighboring riparian landowners or the public’s right of navigation.<sup>11</sup> Additionally, the riparian owner’s right of access must also yield to the municipal exercise of police power.<sup>12</sup>

The term “reasonable” is a relative term, taking on significance from the circumstances and physical constraints of the riparian landowner frontage and surrounding waterfront area. As with many things, reasonableness of a dock is often in the eye of the beholder. Simply saying that the rule restricts one to a “reasonable” use is hard to quantify, therefore, the scope of what is reasonable use of a riparian rights by a waterfront landowner is defined on a case by case basis.

**Riparian Rights Dispute Resolution—State Methods—Court Approved**

Waterfront owners seeking to gain access to navigable water from their property often obtain permits from the various governmental agencies that regulate the location of waterfront structures, such as docks and piers. Typically, when

these agencies issue their respective permit for a dock or pier, they make no determination as to the riparian rights of the waterfront owner, and often issue these permits subject to the riparian rights of others. The issuance of a permit from a regulatory authority can create an illusion or a false sense of security from these governmental agencies such as the New York State of Department of Environmental Conservation (DEC), the US Army Corps. of Engineers (ACOE) or other municipal authority have properly allocated riparian rights. The DEC permit states that it does not convey any right to “interfere with the riparian right of other” and that the permittee is responsible for obtaining “any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.” Similarly, the ACOE permit states that this permit does not “obviate the need to obtain other Federal, state, or local authorizations required by law.” Because these agencies granted permission subject to the riparian rights of others, the courts have to decide riparian zones and how and where these boundaries are drawn.<sup>13</sup>

In the case of a riparian owner encroaching on the riparian rights of another, the enforcement mechanism is usually a trespass, or a nuisance suit sometimes coupled with a Real Property Actions and Proceeding Law (“RPAPL”) proceeding. For example, a typical fact pattern on the waterfront may include plaintiffs suing defendants for denying or unreasonably interfering with their riparian rights. Usually, the parties own adjoining parcels of waterfront with one owner who built or is building a dock. The plaintiffs may claim that the defendant’s dock is on their property, or that its existence violates their riparian right of access to navigable waters, and the ability to launch their boats. The defendants may allege that the plaintiffs, or their predecessor-in-interest acquiesced or consented to the dock’s location.

It is for the court to allocate riparian zones and boundaries.<sup>14</sup> Depending on the body of water that is under consideration, the state has enumerated several acceptable survey methods utilized by the courts to assist balancing the reasonable right of access to navigable waters between conflicting riparian owners.<sup>15</sup> These recognized surveying methods arising out of Navigation Law §32 are

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codified in regulations promulgated by the New York's Office of General Services in 9 NYCRR §§274.1, *et seq.* ["Interference with Riparian Rights"]. Such surveying principles are summarized as follows:

- **Perpendicular Method**—Establishing the outshore lateral lines between the riparian littoral zones by turning 90 degrees from a base line.
- **Long Lake Method**—Establishment of the riparian littoral zone for the elongated body of water

- **Round Lake (Pie) Method**—Establishment of the riparian littoral zone for a circular body of water

- **Colonial Method**—This method is used to apportion riparian littoral zones by drawing base line from one corner of each lot to the other, at the margin of the upland, and running a line from each of the corners, at right angles to the base line near to the thread of the water body.

- **Proportionate Thread of the Stream Method**—Apportionment is made among several riparian

owners in such a manner that each owner has the same percentage of footage in the thread of the stream as they have along the shoreline.<sup>16</sup>

In applying these accepted State methods, the question for the court to determine is: (1) which method or methods should be applied; (2) how the method should be applied; (3) whether the method(s) should be modified. Typically, court resolution of riparian rights turns to these methods and may be adapted or combined as necessitated by the shape of the shoreline or other factors.<sup>17</sup> Ultimately, the court must provide "clear riparian lines so that the construction of piers and wharfs and the movement of boats is accomplished in an orderly fashion, treating all parties equally," and applying the State's methods.<sup>18</sup> When determining which method to apply or whether and in what manner to modify either such rule, the court's paramount concern is to protect a landowner's right of direct access from their entire shoreline frontage to their equitable share of the line of navigability.<sup>19</sup>

#### Conclusion

Cases involving riparian rights are fact-specific. Because the court will typically decide a riparian rights dispute by using a factor of reasonableness, it is

vital to present your side of the dispute as the reasonable side. ⚖️

1. *Town of Oyster Bay v. Commander Oil Corp.*, 96 N.Y.2d 566, (2001).
2. *Town of Brookhaven v. Smith*, 188 N.Y.74 (1907).
3. *Tiffany v Town of Oyster Bay*, 234 NY 15 (1922).
4. *Town of Hempstead v. Oceanside Yacht Harbor*, 38 A.D.2d 263 (2d Dept 1972), *aff'd* 32 N.Y.2d 859 (1973).
5. *Commander Oil*, *supra* note 1.
6. *Oceanside Yacht Harbor*, *supra* note 4.
7. *White Gratwick & Mitchell v. Empire Engineering Co.*, 240 N.Y. 648 (1925).
8. *Trustees of Town of Brookhaven v. Smith*, 188 N.Y. 74 (1907).
9. *Commander Oil*, *supra* note 1.
10. *Freeport Bay Marina v. Grover*, 149 A.D.2d 660 (2d Dept. 1989).
11. *Oceanside Yacht Harbor*, *supra* note 1.
12. *Hahe's Sodus Point Bait v. Wigle*, 139 A.D.2d 950 (4th Dept 1988) (see also, Nav. § 46-a where the Legislature has delegated certain police powers over navigation to enumerated municipalities).
13. *Sodus Point*, *supra* note 12.
14. *Errico v. Weinstein*, 25 Misc.3d 1224(A) (Sup. Ct. Nassau Co. 2009).
15. *Freeport Bay Marina*, *supra* note 10.
16. 9 NYCRR §274.5.
17. See, *Muraca v Meyerwitz*, 13 Misc.3d 348 (Sup. Ct. Nassau Co. 2006).
18. *Errico*, *supra* note 14.
19. *Freeport Bay Marina*, *supra* note 10.



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