General Overview of Riparian Rights in Florida – 2025 Update

Andrew J. Baumann*

Introduction

Florida boasts 2,000 miles of coastline, countless lakes, and 11,000 miles of rivers, streams, coasts and water ways. Despite such a wealth in waterfront property, (1) nothing is limitless, and (2) when it comes to waterfront property, "they aren't making any more of it." These two inescapable truths, coupled with Florida's non-stop development pace, fuel an increasing number of waterfront disputes.

Waterfront properties themselves are shrinking. Given their value, waterfront properties are often subdivided and re-developed into multiple, smaller lots. When the average lot was more than 100 feet wide, riparian disputes were easier to avoid. However, redeveloping two fifty-foot lots redeveloped on that very same land may be asking for trouble. The shifting trends in dock design compound the problem. Today's homeowners prefer to build their docks on one side of their property to maximize both dockage and water views. Thus, docks are now intentionally moved as close as possible to the boundary of a neighboring property. Boats have become larger and more maneuverable. They can operate in shallower water, and are frequently stored on large, elevated boat lifts, creating conflicts – especially regarding obstructions to neighboring views.

This paper's goal is to provide a general overview of the status of riparian rights in Florida with an emphasis on more recent developments in the law over the past decade. Chapter 1 explores the origin and general nature of riparian

* Andrew Baumann, abaumann@llw-law.com, is a Shareholder with the law firm of Lewis, Longman & Walker, P.A., practicing in the firm's West Palm Beach Office. Mr. Baumann is Board Certified by the Florida Bar in State and Federal Government and Administrative Practice. Mr. Baumann has practiced in the areas of sovereignty submerged lands, dock, marina, coastal construction and waterfront permitting and disputes and environmental law since 1995, previously serving as a Senior Assistant General Counsel for the Florida Department of Environmental Protection and an Assistant County Attorney for Palm Beach County.

rights under both the common law and Florida statutes. Chapter 1 also addresses when those rights may be present on any given property. Chapter 2 describes the scope of riparian rights and details the different rights that are included within the "bundle" of riparian rights. Chapter 3 discusses how non-waterfront owners may acquire riparian rights from waterfront property through contract, deed, easement and plat dedication or reservation. Chapter 4 addresses the legal principles used to locate and establish the boundaries of riparian rights (known as riparian lines) and the regulatory and surveying communities' respective efforts to provide guidance in applying riparian rights decisions of the Florida courts. The final chapter of this paper provides an overview of potential legal remedies available to waterfront owners seeking to enforce or protect their riparian rights and curing violations of riparian rights by a neighboring property owner.

Chapter 1. Origin and Nature of the Public Trust Doctrine and Riparian Rights

(a) The Public Trust Doctrine

Florida was granted statehood and admitted to the United States on March 3, 1845. Under the so-called "Equal Footing" Doctrine, each new state admitted to the Union does so on the same terms and "equal footing" with the original thirteen colonies-turned-states.[1] Upon admission into the Union, Florida was simultaneously granted title to all lands beneath the navigable waters by virtue of its sovereignty.[2] As later codified by the Florida Constitution, the State, through the Board of Trustees of the Internal Improvement Trust Fund ("Board of Trustees"), holds title to the so-called "sovereignty submerged lands" in a trust for the benefit of the general public – a concept known as the public trust doctrine:

> The title to lands under navigable waters, within the boundaries of the state, which have not been alienated, including beaches below the mean high-water lines, is held by the state, by virtue of its sovereignty, in trust for all the people. Sale of such lands may be authorized by law, but only when in the public interest. Private use of portions of such lands may be authorized by law, but only when not contrary to the public interest.[3].

Article X, Section 11 of the State's Constitution codifies the public trust doctrine principles, which are derived from the common law of England and were applied to the English Colonies in America. Under the public trust doctrine, the English crown in its sovereign capacity held title to the beds of navigable or tide waters in trust for the people for the free exercise of their rights

to navigation, commerce, fishing, bathing and other easements allowed by law.[4] Following the American Revolution, title to the beds of all water deemed "navigable in fact" became held by the newly formed states within their respective state boundaries.[5]

Riparian rights can be viewed as a counterweight to the public trust doctrine. The latter protects the general public's traditional common law right to freely use the publicly-owned navigable waters within the state's boundaries, while the former serves as balance to ensure guaranteed access from privately-owned shoreline to the very same navigable waters, so the shoreline owner may enjoy the same public trust uses of the water as the rest of the public. Thus, riparian rights are often characterized as a balancing of interests between private use of the shoreline and public use of the adjacent water.

(b) Defining "Navigable Waters" in Florida

Application of the public trust doctrine and the adjacent waterfront owner's riparian rights both turn on the question of whether the water body is "navigable." To be a "riparian" owner, one's property must physically meet or contact the navigable waters, into which the upland property's riparian rights will then extend. Contacting "navigable water" is a deceptive term and is not nearly as straightforward as it seems. Waters are not "navigable" simply because they are tidally influenced or temporarily inundated during the high tide.

Florida uses a "navigability in fact" test to judicially determine if a particular water body is considered a "navigable water" for purposes of determining sovereign state ownership of the water bottom. Since no separate test of "navigable waters" has been articulated to judicially determine the existence of an upland owner's riparian rights, the two appear governed by the same legal definition.

The current "navigability in fact" test was fashioned by the United States Supreme Court in the case of *The Daniel Ball*.[6] From *The Daniel Ball*, a standard emerged treating waters as "navigable-in-fact" if those waters "are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on the water."[7] To be "navigable in fact," the water body is evaluated as it existed at the time of statehood.[8] Florida has never explicitly adopted the federal "navigability-in-fact test", but uses a remarkably similar standard.[9] Florida's navigability test examines whether the water body "is used, or is susceptible of being used, in its natural and ordinary condition as a highway for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water."[10] Thus, "to

be navigable, a body of water must be permanent in character, of sufficient size and so situated that it may be used for purposes common or useful to the public in the locality before it will be regarded as navigable."[11]

The definition of navigable water has some important implications for riparian rights, since the latter do not exist without contacting the former. For one, the water body must be navigable in its ordinary character. Thus, a non-navigable water body failing this standard under its ordinary or natural conditions, cannot later become "a navigable water" due to a private owner's dredging of the private, non-navigable water body.[12] Moreover, the water body's navigability is evaluated upon the water body's ordinary condition at statehood in 1845.

(c) Effect of "Navigable Waters" Definition Upon Riparian Rights

As can be seen above, riparian rights turn on the character of the water abutting the riparian property – *not* on its ownership. "As a general proposition, it has been held that riparian rights do not ordinarily attach to artificial water bodies or streams…"[13] The Florida Supreme Court echoed this general sentiment in *Anderson v. Bell*: "We hold today that an owner of lands that lie contiguous to or beneath a portion of a man-made lake has no rights to the beneficial use of the entire lake merely by virtue of the fact of ownership of the land."[14]

By contrast, a series of recent Florida District Court of Appeal decisions highlight the distinction based on the water body's character over its ownership. In *5F, LLC v. Dresing,*[15] a waterfront owner sought to build a dock. The developer of the subdivision objected, pointing out that it had purchased the land, including former sovereign submerged lands, from the State of Florida. The developer asserted that an upland owner had no right to build a dock across the developer's privately owned submerged land.[16]

The *Dresing* Court disagreed. "We conclude there is a common law right to privilege to construct piers or wharves from the riparian owner's land onto the submerged land to the point of navigability but not beyond the low water line,[17] subject to the superior and concurrent rights of the public and to applicable regulations. This is true regardless of whether the submerged lands are held in trust by the state or privately held."[18]

Thus, after the *Dresing* decision, the closely related *5F, LLC v. Hawthorne*[19] decision, and the Fourth District Court of Appeal's similar decision in *BB Inlet Properties, LLC v. 920 N. Stanley Partners, LLC*,[20] the case law has

hardened into a clear legal principle: the existence of riparian rights in the upland property hinges on the nature and origin of the adjacent waterbody – not on its current ownership. Not surprisingly, this distinction has broad implications for waterfront owners who have riparian-type problems along their artificial canals or waterways, but who may not have actual common law riparian rights. These landowners may instead find themselves asserting rights derived from other sources such as restrictive covenants, land dedications or reservations, easements, and plats.

(d) Riparian Rights Under Common Law

Technically, "riparian" rights refer to water rights that attach to "land abutting non-tidal or navigable river waters," while "littoral" rights refer to rights attaching to "land abutting navigable ocean, sea, or lake waters."[21] However, in modern literature, the two terms are now used interchangeably to refer to any waterfront property owner.[22]

Common law riparian rights are "legal rights incident to lands bounded by the navigable waters and are derived from the common law, have also been modified by statute."[23] Riparian rights are recognized as legal property rights which cannot be taken by the government without payment of just compensation.[24] However, riparian rights are distinct from classic concept of real property ownership. The classic concept of real property ownership is often likened to a bundle of separate "sticks," (each representing an individual right) such as the owner's right to use, possess, occupy, buy, sell, rent, lease and exclude others from the property.[25] However, the underlying state ownership and public rights to the land beneath the navigable waters result in limitations on these riparian rights in the interests of lawful state regulation, the public's rights to also use the waterway, and the authority of Congress to regulate commerce and navigation.[26] This has led to riparian rights often being referred to as "qualified rights, as these rights do not include the complete bundle of property rights normally associated with property ownership, and remain subject to regulation."[27] "Qualified" or not, these common law rights are nevertheless considered private property rights which cannot be taken away without just compensation.[28]

While early Florida cases term riparian rights as "qualified" property belonging to the waterfront property owners, for some time the exact type of property comprising riparian rights was described with some degree of uncertainty or inexactitude.[29]

Simply put, riparian rights are legally considered *easements*.[30] Easements constitute an interest in real property. However, they are not synonymous with the ownership or possession of the property. Easements do not confer title to land and are legally distinct from land ownership.[31] Rather, easements are "incorporeal hereditaments" - "incorporeal" meaning without body or intangible, and "hereditament" meaning a property interest capable of being inherited.[32] As the Florida Supreme Court has observed, "[g]enerally speaking, 'an easement creates a nonpossessory right to enter and use land in the possession of another and obligates the possessor not to interfere with the uses authorized by the easement.'"[33] Most importantly, the nonpossessory and non-ownership nature of riparian rights bears importantly on how these rights may be established, located, and enforced, as discussed below.

While characterized as easements, riparian rights differ from traditional easements – primarily by means of their creation. Most easements are created and conveyed via a written instrument. A few easements, such as easements by prescription may be implied through the conduct of the parties. However, riparian rights are attached to the land without regard for the parties' conduct. The fact that the land in question comes into physical contact with the navigable waters, by itself and with nothing more, legally creates riparian rights in the subject land under common law.[34]

(e) Florida's Statutory Codification of Riparian Rights

Many of the aspects of riparian rights developed in the common law were ultimately codified by the Florida Legislature in 1985 in Section 253.141, Florida Statutes:

> Riparian rights are those incident to the land bordering upon navigable waters. Such rights are not of a proprietary nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. They are appurtenant to and are inseparable from the riparian land. The land to which the owner holds title must extend to the ordinary high-water mark of the navigable water in order that riparian rights may attach. Conveyance of title to or lease of the riparian land entitles the grantee to the riparian rights running therewith, whether or not mentioned in the deed or lease of the upland.[35]

The Florida Legislature largely adopted the long-held definition of riparian rights with a few notable additions. The statute indicates that riparian rights are not of a propriety nature and that such rights are "inseparable" from

riparian lands.[36] While this appears to contradict the common law articulation of riparian rights, in application by Florida courts, these variations have not been interpreted literally, and the common law interpretation still seems to hold.[37]

Chapter 2: Categories of Riparian Rights

The scope of a property's riparian rights is narrowly defined.[38] Overall, riparian rights include the property owner's right to: (1) the general use of the water adjacent to the property, (2) wharf out to navigability, (3) to have access from the property to navigable waters, and (4) the right to receive accretions to the property.[39]

(a) General Riparian Rights

Overall, Florida common law divides riparian rights into two types: general riparian rights and specific or exclusive riparian rights.[40] General riparian rights are riparian rights held by the waterfront owner that are exercised in common with the public. These include the traditional rights of swimming, fishing, bathing, boating and navigation. These are essentially the same rights ensured to everyone (including the riparian owner) under the public trust doctrine.[41] In describing the comparative rights of the public as well as private riparian owners, this Court previously held, "[t]he public's right to use navigable waters or the shore derives from the public trust doctrine."[42] Thus, private riparian rights are not superior to the rights of the public to make general uses of the adjacent waterway "in regard to bathing, fishing, and navigation."[43]

(b) Special or Exclusive Riparian Rights

Along with these general rights (shared with the public), the riparian owner also possesses a few "special" rights.[44] These rights are exclusive rights held solely by the riparian property owner. Special riparian rights include the right to wharf out to navigability, the right to receive title to additional land deposited on the shore through accretion, and the right to a direct and unobstructed view over the adjacent waterway.[45] The waterfront owner is given an exclusive ability in exercising these special riparian rights, even though the exercise of the same may, to some extent, limit or preempt the common, general rights to fish, swim, boat, bathe and navigate in certain areas where these special riparian rights have been exercised.

i. The Riparian Right of Ingress and Egress to Navigable Waters

Florida's Supreme Court has categorically stated that, "An upland owner must in all cases be permitted a direct, unobstructed view of the Channel and as well a direct, unobstructed means of ingress and egress over the foreshore and tidal waters to the Channel. If the exercise of these rights is prevented, the upland owner is entitled to relief."[46]

Access between the riparian waterfront property and the navigable waters lies at the heart of the owner's riparian rights. In manner, all other rights somehow relate to or facilitate this right of ingress and egress. In *Freed v. Miami Pier Corporation*, the Florida Supreme Court observed that a riparian owner's right to build docks, wharves and piers is merely an exercise of the right of ingress and egress, since these activities facility ingress and egress between the riparian property and the navigable water.[47]

The owner's exclusive right of access, however, is not unfettered. The riparian right of ingress and egress to the navigable waters is a broad concept developed back when people simply pulled their boats onto the beach. A riparian right to access to the navigable waters does not translate into any specific *quality* of access for the owner. Physical restraints such as the width, depth or irregular shape of the waterway in question can severely restrict the quality of access. Put another way, riparian rights do not give the owner a right to build any particularly sized dock, to reach any specific, water depth or to facilitate mooring of any specific type or sized of vessel behind their property.[48] Similarly, riparian rights do not grant an owner the right to build multiple docks on his or her property, so long as access is preserved.[49] Thus, the riparian right of unobstructed access to and from the channel is met even by what a property owner may consider to be a "lower quality" of access. However, this still constitutes unobstructed "access" to the navigable water.

ii. The Right to an Unobstructed View

Florida is relatively unique among jurisdictions that recognize a riparian right to a "view of the water."[50] In *Lee County v. Kiesel*, the construction of a bridge across the Caloosahatchee River was found to constitute "an actual physical intrusion to an appurtenant right of the Kiesel's [waterfront] property ownership entitling the Kiesels to just compensation."[51] This was owed to the fact that the bridge was not aligned perpendicularly to the shoreline, but extended over the river at an angle reaching across the Keisels' entire view of the river.[52]

Impact on view is often the primary driver of disputes between neighboring riparian property owners. However, these disputes are often fueled by a mistaken belief that the right to a view somehow translates to a right to a postcard-quality view behind their riparian property. This is incorrect. For example, in *Hayes v. Bowman*, the Supreme Court recognized that the landowner held a right to an unobstructed view and access from his property to the channel. This right did not extend to the owner's asserted right to a view of the "bright, white tower of Stetson Law School which shines as a beacon of learning on the eastern horizon."[53] Indeed, the Supreme Court in *Hayes* applied the same test to the riparian right of view as it did to the riparian right of access, holding that "if the [allegedly obstructing] fill should be extended in a southerly direction so as to interrupt appellant's remaining view of or approach to the Channel, appellants might have substantial grounds for a complaint."[54]

Like the right to obstructed access, the riparian right to a view is also a broad concept that contains no guarantees of any specific *quality* of view. Like access, interference with the right to view must be more than a mere annoyance – it must substantially and materially obstruct the landowner's view to the channel.[55]

iii. The Right to Receive Title to Accretions and Relictions

The riparian owner also possesses the right to acquire title to any additional dry land that accumulates on their shoreline whether by the gradual deposition of sediment (accretion)[56] or by the gradual lowering or recession of the navigable waters, leaving new, dry land exposed (reliction).[57]

Riparian property owners hold a common law right to receive title to new accretions to their land, provided the deposit of sediment along the riparian shoreline was not a result of the riparian owner's own filling or other action.[58] It should be noted, however, that the change to the riparian's shoreline may still be treated as accretion where the additional sediment was deposited as a result of human-induced activity – provided the riparian owner was not the actor. Thus, the government's construction of a jetty may result in accretion of sediment on properties down-drift from the jetty. However, so long as the riparian actor is not the cause of the accumulation, he or she will gain title to that new land.[59]

Like other special, exclusive riparian rights, the right to receive accretions/relictions may again be traced back to the foundational right of access between the riparian holdings and the adjacent navigable waters. In *Board of Trustees of the Internal Improvement Trust Fund v. Madeira Beach*

Nominee, Inc., the Second District Court of Appeal emphasized the importance of holding the mean high-water line as the continuing boundary between riparian uplands and state-owned sovereignty submerged land – even though this boundary line may be in a constant state of flux due to shoreline changes. "Any other rule would leave riparian owners continually in danger of losing access to the water which is often the most valuable feature of their property, and continually vulnerable to harassing litigation challenging the location of the original water lines."[60] Thus, by recognizing that the riparian property will grow with the gradual creation of new shoreline, the riparian owner's exclusive right to accretions/relictions is yet another stick in the bundle of riparian rights, which are all tied back to the underlying fundamental riparian right: direct and unobstructed access between the riparian property and the adjacent navigable waters.

Chapter 3. Riparian Rights Held by Third Parties – Conveyance, Severance and Reservations

When considering whether riparian rights can be "severed" from the riparian land in favor of a third party who owns no waterfront property, it would, at first blush, seem to be an open-and-shut case. According to the Florida Legislature:

> Riparian rights are those incident to land bordering upon the navigable waters. They are rights of ingress, egress, boating, bathing and fishing and such others as may be or have been defined by law. Such rights are not proprietary in nature. They are rights inuring to the owner of the riparian land but are not owned by him or her. ***They are appurtenant to and inseparable from the riparian land***. The land to which the owner holds title must extend to the ordinary high-water mark of the navigable water in order that riparian rights may attach. ***Conveyance of title or to lease of the riparian land entitles the grantee to the riparian rights running therewith whether or not mentioned in the deed or lease of the uplands***.

§ 253.141(1), Fla. Stat. (2021) (emphasis added).

The foregoing statute would seemly settle the issue; however, case law applying this statute has proven otherwise. This remains one of the most difficult and poorly understood aspects of riparian rights through the present day.

Belvedere Development Corporation v. Department of Transportation,[61] recognized two instances where riparian rights can be severed from riparian property. First, "two parties to a real estate transaction might choose to sever the riparian rights to the riparian lands and also provide those necessary additional rights which would enable the riparian right holder to actually benefit from those rights – i.e an easement or right to enter the riparian lands."[62] This scenario requires an "express bilateral agreement" of parties to a real estate transaction.[63] The Supreme Court in *Belvedere* also recognized a second, somewhat related means of severance of riparian rights – by means of a reservation of riparian rights by the grantor of the riparian property at the time of transfer of the parcel. Thus, a conveyance of riparian land will include the riparian rights unless the grantor expresses a clear intent to reserve or withhold the riparian rights as part of the transaction.[64]

Florida real property law has long recognized the ability to legally separate nonpossessory property interests, such as incorporeal hereditaments and future interest from the associated real property.[65] However, as the Florida Supreme Court conceded in *Belvedere*, riparian rights are unique in character. The source of riparian rights is not found in the interest itself, but rather, the rights arise from their very connection to the upland by virtue of its connection to the water. This makes them different from other types of nonpossessory property rights.[66] While conceding that riparian rights may nevertheless be severed from the property that spawned them, the Supreme Court admonished that this is the exception rather than the rule. Given their unique character, the Court states that "in most cases" riparian rights are an inherent part of waterfront property and cannot be separated from that property.[67]

(a) Severance of Riparian Rights by Express Bilateral Agreement

Haynes v. Carbonell[68] represents a restatement of the black-letter law regarding conveyances of riparian rights following *Belvedere*. In *Haynes*, a 1953 deed conveyed waterfront land to the Strand Corporation, describing the property as being "300.43 feet in length to the Gulf of Mexico."[69] The legal description also included the term, "Together with all riparian rights pertaining thereto."[70] In 1967, the same property was conveyed from Strand to Carbonell, but the 1967 deed only described the land using the linear dimensions with no reference to the Gulf of Mexico or to riparian rights.[71] Carbonell deeded the property to Haynes in 1986 using the legal description from the 1967 deed, but Haynes later had trouble selling the property after it was discovered that the property measured in footage from the point of beginning in the legal description fell 50 feet short of the Gulf of Mexico.[72]

The Third District Court of Appeal in *Haynes* also held that lack of reference to riparian rights in the 1967 or 1986 deeds are immaterial, holding that when waterfront property is transferred, the riparian rights are presumed to travel with the property and a severance of riparian rights from the underlying uplands will not be inferred from silence regarding riparian rights in the deed or instrument of conveyance.[73]

Haynes and *Belvedere* both hold that such agreements must be both "express" and "bilateral," and both agree that severance of riparian rights from the riparian upland will not otherwise be inferred or implied. Moreover, as stated by the Florida Supreme Court in *Belvedere,* such an express, bilateral agreement may not, by itself, be enough unless accompanied by some additional right in the waterfront property such as an easement to otherwise make use of the conveyed riparian rights.[74] Given this caveat, it is unclear if an otherwise "naked" grant of riparian rights from the upland owner to a third party would be effective and enforceable without some sort of additional grant of a possessory right such as an easement to permit the third-party grantee to use the granted rights.

(b) "Reservation" of Riparian Rights Through Plat Maps

When third parties assert riparian rights over an upland parcel, it is rarely the result of an express, bilateral agreement. More commonly, practitioners will encounter this arrangement as the result of a reservation, often found in a subdivision plat. Reservations *via* plat usually create a more complicated scenarios since plats – particularly older plats – are rarely a model of clarity. Often, as was the case in *Shore Village Property Owners' Association, Inc. v. Florida Department of Environmental Protection,*[75] the easement or right-of-way reserved by the plat is reserved for "road purposes" and says nothing at all about riparian rights.[76] Yet, the Fourth District Court of Appeal found that this easement, while expressly given for "road purposes," nevertheless conferred riparian rights upon the owners of landlocked properties along this roadway – including the right to erect a dock at the waterward terminus of the road.[77] This effectively severed the riparian rights from a portion of the riparian lot at the end of the road and conferred those riparian rights to the remaining, non-riparian homeowners, even though there was no "bilateral agreement," and the easement itself was anything but "express" regarding riparian rights.

In *Cartish v. Soper*, a forty-foot strip of land was identified as a "Private Parkway" within the 1925 recorded plat of the Jungle Shores subdivision in St. Petersburg. The property extended from the public road to the shore of Boca Ciega Bay.[78] The Private Parkway did not cross the adjacent residential lots,

but instead was identified on the plat as a separate parcel. The plat expressly reserved the Private Parkway as a "passageway for all purchasers of lots in said subdivision and the members of their respective families, each owner having an easement of passage for ingress to and egress from the waters of Boca Ciega Bay…"[79] The plat further stated that the easement granted across the Private Parkway property "shall under no circumstances or conditions be separated from the ownership of a lot or lots" within the subdivision.[80] While not a "bilateral agreement" within the *Belvedere* and *Haynes* viewpoint, the reservation of riparian rights on the face of the Jungle Shores Plat is quite express.

Beginning with the premise that easement rights can be created not only by express grant but also by clear implication, the District Court in *Cartish* concluded that the easement expressly given to each lot owner in the subdivision carried with it, by implication, those riparian rights as were "necessary and incidental to access and egress from the Bay."[81] Thus, to the extent that riparian rights are necessary to, or consistent with, the purpose of the easement expressly granted by the plat, they are impliedly granted to the holders of the easement unless the plat evidences a contrary intent. The court in *Cartish* surmised that these implied riparian rights even included the right by lot owners to build a neighborhood dock waterward of the Private Parkway lot.[82]

The difficulties created by *Cartish v. Soper* were revisited by the District Court of Appeal in 2007 in *Brannon v. Boldt,*[83] a case that arose in the same Jungle Shores subdivision. Unlike *Cartish*, no separate reservation of an access parcel was contained on the plat. Rather, the 1953 plat showed a twenty-two-foot-wide strip of land crossing the Brannon's property and terminating at the water. The District Court in *Brannon* was required to consider a broader question: if the easement creates riparian rights in favor of the landlocked neighbors, then what property rights does the fee owner of the riparian upland retain? Unlike *Cartish*, the neighbors in *Brannon* had no interest in building a dock. Rather, the neighbors asserted that they enjoyed the entire array of riparian rights and wished to use their easement to enter the Brannon's property and remain there to enjoy the sunset, fish, or view the occasional fireworks display across Boca Ciega Bay from the Brannon's backyard.[84] The District Court held that in the absence of a more elaborate written easement, the purpose of the easement was to provide lot owners with a means to cross the Brannon property for ingress and egress to the water, and thereafter, use of the water in common with all other members of the public.[85] By analogy, the Court noted that if the Brannon property bordered a public park, no one would suggest that the easement holders would have the right to linger on the Brannon

property, but could only use the easement to cross the property while coming and going from the park.[86] By the same token, the residents were entitled to cross the Brannon property to reach the Bay and to return from the Bay. They could not, however, linger and use the Brannon's backyard in the same manner that they could use the Bay itself. Thus, the purpose for which the easement was granted determines and limits the array of riparian rights included with such an easement.[87]

This legal construct can lead to questions over what riparian rights remain with the fee owner of the riparian land, and how those rights can co-exist with the riparian rights granted to third parties by the easement. The rights implied by, and limited to, the purpose of the easement accrue to the lot owners and the riparian lot owner alike. Moreover, the fee owner of the riparian upland also retains his or her riparian rights to the portion of the property not encumbered by the easement. A fine line often exists between the upland owner's exercise of his or her remaining riparian rights and the potential for conflict with third parties who gained some limited riparian rights by virtue of a dedicated or reserved easement across a portion of the riparian upland. In many cases, this conflict is resolved by resort to well settled principles of easement law – that the holder of an easement may not over burden the underlying property beyond that contemplated by the easement. In *Shore Village*, the District Court acknowledged that the third-party lot owners could build a community dock, but then held that the dock could not be of such a size, height, dimension or location that overburdened the limited easement rights by unreasonably interfering with the underlying fee owner's remaining riparian rights to use his or her property to build a private dock on the unencumbered portion of riparian property.[88]

The types of access easements addressed in *Cartish*, *Brannon* and *Shore Village* are exceedingly common in plats of waterfront communities throughout Florida. Developers, faced with the ability to create a limited number of water-front lots, frequently seek to increase the value of interior, landlocked parcels through such grants of water access. However, most dedicated or reserved easements or rights-of-way make no mention of riparian rights, and many are of such a narrow dimension that it is hard to imagine that the developer envisioned the construction of a dock on a strip of land as narrow as fifteen or twenty feet. Ownership, liability, and security concerns are also factors that are seldom, if ever, addressed in most of these plats.

Whether by bilateral agreement, accompanied by an easement or otherwise, or by reservation or dedication of an access point on a plat, questions of whether riparian rights have been partially or completely severed from the

upland, riparian parcel remain intensely fact-specific inquiries. If riparian rights have been severed and conveyed to a third-party, the scope and limits of those rights and how they co-exist with the riparian rights that remain in the underlying upland property are also complex and highly dependent on the facts of each given case.

Chapter 4. Locating and Establishing Riparian Lines – "Equitable Apportionment"

Assuming the property possesses riparian rights, the next task is to determine where those riparian rights are located relative to the upland, waterfront property. A waterfront property's riparian rights typically extend in what has sometimes been termed a "riparian corridor" from the waterfront property's boundary outward into the water until the owner has gained access to the channel or deeper portions of the waterway (if any). Thus, the boundary between each adjacent "riparian corridor" is the common riparian rights line, where one owner's exclusive (special) riparian rights end, and another landowner's exclusive (special) riparian rights begin. However, due to the development pressures noted in introductory paragraphs of this article, the angle or bearing of this common boundary line projected out into the waterway is usually the crux of the dispute between neighboring riparian owners. A good rule of thumb is to assume that your riparian area is NOT directly behind your property or located between two lines extending your upland side lot lines out into the water. This is a common misconception that leads to more riparian disputes than any other.

To compound the uncertainty, there is no hard and fast rule in Florida on how riparian lines (essentially the boundaries of private easements) are to be established or in what orientation. Moreover, they can only be determined in court absent a written binding agreement or title instrument setting the boundary lines. As easements, riparian rights remain estates in real property which, in the event of a dispute, can only be established by Florida's circuit courts, which have exclusive jurisdiction over "all actions involving the titles or boundaries or rights of possession of real property."[89] While a riparian owner may apply to the State of Florida for a dock permit and depict a riparian line on his or her plans, the Department has no jurisdiction to actually establish the riparian line, essentially only issuing the dock permit based on the "reasonableness" of the proposed line. However, if the line itself is contested, only a circuit court can resolve that dispute.[90]

In Florida, riparian rights are granted by applying a highly fact-dependent analysis set forth in the Florida Supreme Court's landmark case of *Hayes v. Bowman*. Decided in 1957, *Hayes* condenses and firmly establishes several bedrock principles regarding riparian rights: (1) every riparian owner possesses a riparian right to an unobstructed view and access to the "channel;" (2) no

single mathematical or geometric formula or rule is possible; (3) riparian rights of a riparian owner "must be preserved" as near as practical in the direction of the channel to equitably distribute the submerged lands between the shoreline and the channel among the landowners; and (5) this equitable distribution must give "due consideration" to the shape of the shoreline, the location of the channel and the co-relative riparian rights of the neighboring owners.[91] Thus, for more than seventy years, Florida's courts have followed *Hayes* with respect to one or more of the above-listed principles.

(a) No One-Size-Fits-All Rule

In *Hayes*, the Florida Supreme Court was faced with two competing arguments/theories regarding the projection of the party's riparian rights lines into Boca Ciega Bay. The land in question was purchased from the State and filled by Bowman to create waterfront lots, including the waterfront lot purchased by Hayes.[92] When Bowman desired to fill additional submerged lands and enlarge the subdivision, Hayes argued that Bowman's activities would violate Haye's riparian rights.[93] Hayes asserted that, as an upland owner, Hayes enjoyed certain riparian rights in an area over the waters of the bay determined by extending Hayes' side property lines out into the water.[94] Bowman asserted that when the channel is roughly parallel to the shoreline, each property's riparian area should extend in a direction perpendicular to the channel.[95]

The Florida Supreme Court declined to adopt either approach as a "test," conceding that there are simply too many variables involved to develop a geometric rule to use in all cases:

> It is absolutely impossible to formulate a mathematical or geometric rule that can be applied to all situations of this nature. The angles (direction) of side lines of lots bordering navigable waters are limited only by the numbers of points on a compass rose. Seldom, if ever, is the thread of a channel exactly or even approximately parallel to the shoreline of the mainland. These two conditions make the mathematical or geometric certainty implicit in the rules recommended by the contesting parties literally impossible.[96]

The Florida Supreme court explained that "[t]his rule means that each case must necessarily turn on the factual circumstances there presented, and no geometric theorem can be formulated to govern all cases."[97]

The Florida Supreme Court was also careful to provide what guidance it could to the circuit courts, explaining how the "factual circumstances" of each case should be considered:

> We therefore prescribe the *rule* that *in any given case* the riparian rights of an upland owner must be preserved over an area 'as near

> as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such 'equitable distribution' the Court necessarily must give due consideration to the lay of the upland shoreline, the direction of the Channel and the co-relative rights of the neighboring upland owners.[98]

Careful analysis reveals that the equitable instructions in *Hayes* contain two parts. First, that an owner's riparian rights "must be preserved over an area 'as near as practicable' in the direction of the [c]hannel so as to distribute equitably the submerged lands between the upland and the [c]hannel. Second, in making this "equitable distribution" over the area as 'near as practicable' in the direction of the [c]hannel, the circuit court must give "due consideration" to: (1) the "lay of the upland shoreline;" (2) the direction of the channel; and (3) the co-relative rights of the neighboring riparian owners.[99]

(b) <u>"As Near as Practicable" in the Direction of the Channel</u>

In *Hayes v. Bowman*, Hayes's extension of the property line theory was rejected, and Bowman's riparian lines were set at an angle perpendicular to the channel.[100] This particular outcome was expressly deemed fact-specific, and the Supreme Court noted that neither theory would be appropriate in all circumstances. The Court noted that, "[r]iparian rights do not necessarily extend into the waters according to upland boundaries nor do such rights under all conditions extend at right angles to the shoreline."[101]

Notwithstanding the lack of a hard-and-fast rule, the *Hayes* Court's test begins with the generalized direction of the riparian lines extending "as near as practicable" in the direction of the channel. Thus, the Court's task is to fairly apportion the waters between the shoreline and the channel "as near as practicable" toward the channel. However, the channel is just the beginning, serving only as an initial default consideration. The riparian rights might not be located at right angles to the channel, but they should extend "as near as practicable" toward the channel. How does one determine what is "as near as practicable"? The Supreme Court lists three minimum factors that must be given due consideration in all cases: the shape or "lay" of the shoreline, the location and orientation of the channel to that shoreline, and the co-relative rights of the neighboring owners. These considerations may result in an equitable distribution of the waterfront varying from the channel to accommodate one or more of these three essential considerations. It should be noted that *Hayes* does not indicate that these three considerations are exclusive. However, while other site-specific considerations may play a role in the inquiry, these three considerations remain essential (and likely central) to any riparian inquiry.

Taken as a whole, *Hayes* indicates that the circuit court's default should always be to at least "aim" the riparian lines as near as possible toward the channel, but Hayes accepts that such a trajectory may have to be adjusted based on these site-specific considerations to achieve an equitable result that accounts for bends and irregularities in any given shoreline as well as the corresponding channel location. Moreover, this analysis must be performed while considering the equal rights of the neighbors.

(c) The Lay of the Upland Shoreline

In apportioning riparian rights in a direction "as near as practicable" toward the channel, the Court must first consider the "lay of the upland shoreline." This is clearly a geographic consideration. In practice, the shoreline's geometry frequently plays the predominant role in applying the *Hayes* test. The shoreline's shape typically has the most obvious and drastic impact on the ability of riparian owners to maintain unobstructed access and view from the shore to the channel. It's no coincidence that following *Hayes*, Florida's surveying community has spent years focused on studying the impact of shoreline geometry upon riparian rights. In some cases, the shoreline geometry of sharp curves, coves and bays may play a critical role in setting riparian lines.

(d) The Direction of the Channel or "Arm of the Sea"

The second *Hayes* factor requires the court give due consideration to the direction of the channel. This is another purely geographic consideration that is unique to the facts presented in a particular case. However, unlike the first factor, the *Hayes* Court left a bit of uncertainty here. Curiously, the 1957 *Hayes* decision repeatedly capitalizes the word "Channel" in an apparent proper noun reference to what appears to be an officially marked navigation channel. This leaves some uncertainty in cases where the waterway lacks an official, marked channel, possesses more than one channel, or simply features open, deep water in front of the disputed lots with no apparent channel.

(e) The Co-Relative Rights of Neighboring Riparian Owners

The third *Hayes* factor is, perhaps, the most far-reaching. *Hayes* requires the trial court to consider the "co-relative" rights of the neighboring upland owners. This factor does not focus on geography like the other two. However, when placed in context, the third factor makes sense. The key to the third factor is the use of the term "co-relative." This means that riparian owners must be treated equally in any allocation of riparian rights. No riparian owner enjoys preferential treatment over another neighboring owner based on who first exercised their rights and built something.[102] Thus, while each riparian owner may have the same exclusive rights in front of the shore line of his own lands, no one may have, by virtue of that same grant of exclusive rights, the riparian

rights in submerged lands in front of the shore of other riparian owners.[103] Following the principle set forth by the Florida Supreme Court more than a century ago, riparian owners are treated equally, with the rights of one property not being permitted to destroy the rights of another.

(f) Apportioning Accreted or Relicted Land

As previously noted, additional land added to the shoreline through the process of accretion or reliction becomes the property of the adjacent riparian owner. Thus, new land must be apportioned between owners just as the riparian rights are apportioned out into the water. Generally, newly accreted or relicted land is apportioned under the same principles espoused in *Hayes*, but with one additional consideration:

> The general rules by which alluvion is apportioned between different littoral proprietors is, when practical, allot each proprietor a frontage of the same width on the new shoreline as on the old shore.[104]

Thus, changes to the shoreline resulting from the accretion or reliction of new land are accounted for by attempting to retain each owner's original linear frontage. In practice, this is often accomplished by assigning percentages of new and old shoreline to each owner such that all owners gain or lose frontage in an equal ratio to fairly distribute the effect of the change in the shape of the shore.

(g) Application of *Hayes* by Regulatory Agencies and the Surveying Community

Given the *Hayes* test's reliance on site-specific, geographic features, conflicts still arise in how to apply *Hayes* to a given situation. When the channel is not even close to parallel to the shoreline, where the shoreline is irregular and curves or forms a cove or point, or where the water body in question lacks any defined channel, competing methods to equitably apportion riparian rights may significantly differ between competing surveys, each of which purports to apply the same *Hayes* considerations.

Florida Statutes are silent on a method to locate riparian lines. Thus, in an effort to provide additional guidance to the surveying community, particularly in the context of permit applications, the Florida Department of Environmental Protection ("DEP") commissioned a study regarding the effects of shoreline and channel geometry upon the allocation of riparian rights under a variety of site-specific scenarios. Colloquially known as the "Gibson White Paper,"[105] the most current version of this document is included within DEP's Official Guidance Document SLER 950, "Survey Requirements," which is a non-

binding guidance document publishing recommendations for riparian allocations for surveyors and practitioners based on the *Hayes* standard.[106] SLER 950 represents an excellent source of information and includes numerous illustrations of methods for drawing riparian lines under a variety of shoreline and channel configurations.

DEP has also adopted a series of regulations in the Florida Administrative Code recognizing and protecting riparian rights when issuing permits for docks and other activities below the mean high-water line. DEP regulations require a permit application to demonstrate "satisfactory evidence of sufficient upland interest" adjacent to the submerged lands where the permitted activity is proposed.[107] Thus, one must provide proof of riparian ownership to even apply for a permit to build a dock or other activity over sovereignty submerged lands. DEP also requires docks and other activities to be set back a minimum distance from the riparian line with the neighboring property. Ironically, as discussed below, DEP is unable to legally establish the riparian line, yet DEP requires permit applicants to demonstrate that their docks and activities are set back a sufficient distance from that very same line. In cases of a dispute, this can often result in two or more separate proceedings: an administrative proceeding challenging the permit and a circuit court proceeding establishing the location of the riparian line, as discussed further in Chapter 5 below.

Chapter 5. Remedies to Protect and Enforce Your Riparian Rights

Generally, enforcement of riparian rights must be had by resort to the circuit courts. This is largely owed to the characterization of riparian rights as "property." In Florida, the circuit courts have the exclusive jurisdiction over all actions involving the title or boundaries or rights of possession of real property. This is significant, since riparian disputes frequently arise in the context of challenges to the permitting of a dock or similar waterfront improvement. State regulations prohibit the issuance of permits for docks or structures that "would unreasonably infringe upon the traditional, common law riparian rights, as defined in section 253.141, Fla. Stat.…"[108] Yet, the same agency enforcing these permit restrictions remains powerless to establish a disputed riparian line as noted by the District Court in *Board of Trustees of Internal Improvement Trust Fund of the State of Florida v. Board of Professional Surveyors*, "[t]he determination of rights of parties to a riparian boundary dispute is instead a matter subject ultimately to judicial resolution under all applicable law."[109] Accordingly, actions to establish, determine, or enforce riparian rights must be brought in the circuit court.

(a) Quiet Title Versus Declaratory Judgment Action

Generally, actions to quiet title are not appropriate to establish a disputed riparian line. Quiet title actions require the claimant to prove that they hold legal or equitable "title" to the property.[110] However, as affirmative easements, riparian rights are incorporeal herediments which are nonpossessory in nature.[111] Easements such as riparian rights grant a right to use property – not to a right to possess it.[112] As such, easements are not "title" to real property that may be determined in a quiet title action.[113] Rather, riparian rights are best established under an action for declaratory judgment, which may be used to both locate the riparian boundary between properties and declare whether one party is interfering with the riparian rights of the other.

By contrast, actions to quiet title are appropriate if accreted or relicted land is in dispute. As discussed above, such lands become the title of the riparian upland owner by operation of Florida law. Thus, unlike riparian rights extending into the water, those "easements" solidify into "title" when an owner's riparian area accretes and becomes dry land. Thus, the owner comes into title to the new, accreted land, and may quiet title over such land in the traditional manner.

(b) Trespass, Ejectment and Injunctions

As explained in Chapter 1, riparian rights are affirmative easements. As such, riparian rights are non-possessory in character.[114] Easement holders may not enforce or validate their rights through trespass actions. A trespass action does not lie where it only asserts an easement interest since easements are distinct from the rights of ownership and possession to property.[115] It should be noted, however, that the title holder to the land does have the right to bring a trespass action against an easement holder who exceeds the scope of the easement and increases the burden of the easement upon the underlying fee owner.[116] The same holds true for actions seeking ejectment. Ejectment is commonly brought to ask a court to order the removal of something from a claimant's riparian area. For the same reason, riparian rights cannot be enforced through ejectment (an action to recover possession of property from another) due to the non-possessory nature of their easement right.[117]

Thus, once the extent of the owner's riparian rights is established, the removal of an offending structure from the owner's riparian rights is typically accomplished by the issuance of an injunction not through trespass or ejectment.

Conclusion

Conflicts between neighboring riparian owners continue to rise. Fueled by ceaseless demand, the redevelopment of properties into smaller and smaller

waterfront lots, and the desire to place larger docks, boats, and boat lifts on the margins of the owner's riparian area, all ignite conflicts. Moreover, technological advancements in surveying, the use of drones and three-dimensional photogrammetry, and precision instruments frequently transform a riparian dispute into a "battle of the surveyors." Some circuit court judges even express the view that these disputes are nothing more than disputes between surveyors and should be resolved in favor of the surveyor supported by the best science. However, this approach loses sight that surveying is but one tool used to apportion riparian rights, and that the ultimate decision by the circuit court should come down to fairness and equity, using surveys as a guide.

Moreover, riparian disputes have increased in connection with landlocked owners who are attempting to make greater use of narrow waterfront easements reserved or dedicated on plats (whether for express riparian purposes or simply for "road purposes"). Efforts to build large "community docks" on a mere twenty-foot road or access easement raise a host of new problems that have yet to reach the courts. Thus such disputes appear likely to recur at even greater rates as available waterfront land is consumed.

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[1] *State ex rel. Ellis v. Gerbing*, 47 So. 353, 356-57 (Fla. 1908).
[2] *Broward v. Mabry*, 50 So. 826, 830 (Fla. 1909).
[3] Art. X, § 11, Fla. Const.
[4] *Broward v. Maybry*, 50 So. at 829.
[5] *Id.*
[6] *The Daniel Ball*, 77 U.S. 557 (1870)
[7] *Id.*
[8] *Id.*
[9] *Odum v. Deltona Corp.*, 341 So. 2d 997, 988 (Fla. 1977).
[10] *Baker v. State ex rel. Jones*, 87 So. 2d 497 (Fla. 1956).
[11] *Id.*
[12] *Clement v. Watson*, 50 So. 25, 26 (Fla. 1912).
[13] *Publix Supermarkets, Inc. v. Pearson*, 315 So.2d 98, 100 (Fla. 2d DCA 1975); *see also United States v. 1,629.6 Acres of Land, et al.*, 503 F.3d 764, 767 (3d Cir. 1974);
[14] *Anderson v. Bell*, 4332 So.2d 1202, 1207 (Fla. 1983); *see also Picciolo v. Jones*, 534 So. 2d 875, 878 (Fla. 3d DCA 1988).
[15] *5F, LLC v. Dresing*, 142 So. 3d 936 (Fla. 2d DCA 2014).
[16] *Id.* at 938-39.
[17] The *Dresing* Court's limitation of the riparian right to wharf out to the "low water line" was subsequently corrected and withdrawn in the Court's opinion in *5F, LLC v. Hawthorne*,in 2021, which involved a different riparian property within the same development. *5F, LLC v. Hawthorne*, 317 So. 3d 220 (Fla. 2d DCA 2021).
[18] *5F, LLC v. Hawthorne*, 317 So. 3d at 220.
[19] *Id.*
[20] *BB Inlet Properties, Inc. v. 920 Stanley Partners, LLC*, 293 So. 3d 538 (Fla. 4th DCA 2020).
[21] *Kester v. Tewksbury*, 701 So. 2d 443, 444 n. 2 (Fla. 4th DCA 2010).
[22] *Brannon v. Boldt*, 958 So. 2d 367, 375 (2d DCA 2007).
[23] *Haynes v. Carbonell*, 532 So.2d 746, 748 (Fla. 3d DCA 1988); *City of Eustis v Firster*, 113 So. 2d 260 (Fla. 2d DCA 1959).
[24] *TLC Properties, Inc. v. Dep't of Transp.*, 292 So. 3d 10, 16 (Fla. 1st DCA 2020); *Lee Cnty. v. Kiesel*, 705 So. 2d 1013, 1015 (Fla. 2d DCA 1998).

[25] Levite, Robert, *Estate Planning for Private Landowners: The "Bundle of Sticks",* available at http://umass.edu/nrec/pdf-files/bundle-of-sticks.pdf
[26] *Freed v. Miami Beach Pier Corp.*, 112 So. 841, 844 (Fla. 1927).
[27] *Id.*
[28] *Id.* quoting *Walton County v. Stop the Beach Renourishment, Inc.*, 998 So. 2d 1102, 1111 (Fla. 2008) *aff'd sub nom. Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Prot.*, 560 U.S. 702 (2010).
[29] *Webb v. Giddens*, 82 So. 2d 743, 745 (Fla. 1955).
[30] *BB Inlet Property, LLC v. 920 N. Stanley Partners, LLC*, 293 So. 3d 538, 543 (Fla. 4th DCA 2020).
[31] *Dianne v. Wingate*, 84 So. 3d 427, 429 (Fla. 1st DCA 2012).
[32] *Downing v. Bird*, 100 So. 2d 57, 64 (Fla. 1958); *Gantt v. Riverbend Estates, Inc.*, 755 So. 2d 817, 818 (Fla. 2d DCA 2000); 73 C.J.S. Property § 27; *Incorporeal*, The Law Dictionary, https://thelawdictionary.org/incorporeal/; 63C Am. Jur. 2d Property § 16; *see also Gantt*, 755 So. 2d at 818.
[33] *Walton County v. Stop the Beach Renourishment, Inc.*, 998 So. 2d at 1112.
[34] *Fla. Dept. of Trans. v. Lauderdale Boat Yard, LLC,* 336 So. 3d 28, 34 (Fla. 4th DCA 2022) (Holding that "[s]imply owning property abutting navigable waters is insufficient; property ownership must extend to the mean high-water line" to have riparian rights of access along the shore).
[35] § 253.141(1), Fla. Stat. (2025).
[36] *Id.*
[37] In *Florida Department of Transportation v. Belvedere Development Corporation*, the Florida Supreme Court noted that literally interpreting the statutory scope of riparian rights would be inconsistent with generally accepted doctrines of property law and would run contrary to established case law in Florida. *Fla. Dept. of Trans. v. Belvedere Dev. Corp.*, 476 So. 2d 649,652-53 (Fla. 1985).
[38] *Tewksbury v. City of Deerfield Beach*, 763 So. 2d 1071, 1072 (Fla. 4th DCA 1999) (holding that the operation of a floating restaurant dining area "falls outside the scope of Florida's narrowly defined riparian rights").
[39] *Id.; citing Fla. Dept. of Trans. v. Belvedere Dev. Corp.*, 476 So. 2d at 651. Notably, the recognized riparian right to a "direct and unobstructed view of the channel" is omitted from this list. *See, e.g. Hayes v. Bowman*, 91 So. 2d 795, 801 (Fla. 1957).
[40] *Brannon v. Boldt,* 958 So. 2d at 372-73 *citing Broward v. Mabry*, 50 So. At 830.
[41] *Id.*
[42] *Id.*
[43] *Walton Cnty. v. Stop Beach Renourishment, Inc.*, 998 So. 2d at 1111.
[44] *Id.*
[45] *Shore Village Prop. Owners' Ass'n. v State of Fla. Dept. of Envtl. Prot.*, 824 So. 2d 208, 211 (Fla. 4th DCA 2002).
[46] *Hayes v. Bowman*, 91 So. 2d at 801.
[47] *Freed v. Miami Pier Corp.*, 112 So. 841, 848 (Fla. 1927).
[48] *Pedicini v. Stuart Yacht Corp. & Dep't of Envt'l Prot.,* 2008 WL 451639, *4 (Fla. Div. Admin. Hrgs. Feb. 10, 2008).
[49] Id. relying on
[50] *Theisen v. Gulf Fla. & Ala. Ry. Co.*, 78 So. 2d 491 (Fla. 1917); *see also Brannon v. Boldt*, 958 So. 2d at 373.
[51] *Lee Cnty. v. Kiesel*, 705 So. 2d at 1015.
[52] *Id.* At 1014.
[53] *Hayes v. Bowman*, 91 So. 2d at 801.
[54] *Id.* at 802; *see also Lee Cnty. v. Kiesel*, 705 So. 2d at 1015.
[55] *Lee Cnty. v. Kiesel*, 705 So. 2d at 1015-16.
[56] 78 AM. JUR. 2d *Waters* § 311 (2007).

[57] FLA. JUR. *Public Lands* § 72. Recession of the waters must be relatively permanent. Where water periodically rises over land and then recedes, for example, as a result of the seasons, there is no reliction. *Id.*
[58] *Bd. Of Tr. Of the Internal Improvement Fund v. Sand Key Assoc.*, 512 So. 2d 934, 939 (Fla. 1987.
[59] *Id.*
[60] *Bd. Of Tr. Of the Internal Improvement Fund v. Madeira Beach Nominee*, 272 So. 2d 209, 213 (Fla. 2d DCA 1973).
[61] 476 So. 2d 649 (Fla. 1985).
[62] *Id.*
[63] *Haynes v. Carbonell,* 532 So. 2d at 748.
[64] *Id.* at 651 *citing Fla. Dep't. of Trans. v. Belvedere Dev. Corp.*, 476 So. 2d at 653.
[65] *Id.*
[66] *Id.* at 652.
[67] *Id.*
[68] *Id.*
[69] *Id.* at 747.
[70] *Id.*
[71] *Id.*
[72] *Id.* at 747-48.
[73] *Id.*
[74] *Fla. Dep't. of Trans. v. Belvedere Dev. Corp.*,, 476 So. 2d at 652.
[75] *Shore Village Property Owners' Assn' v. Fla. Dept. of Envtl' Prot.*, 824 So. 2d at 209.
[76] The 1964 plat in *Shore Village* created a 20-foot wide "easement and right-of-way for road purposes" which extended from the right-of-way of State Road A1A westward to "the waters of the Indian River." 824 So. 2d at 209.
[77] *Id.* at 210-11.
[78] *Cartish v. Soper*, 157 So. 2d 150, 150-51 (Fla. 2d DCA 1963). The *Cartish* opinion includes a reproduction the Jungle Shores Plat to assist the reader.
[79] *Id.* at 152. By contrast, the easement in *Shore Village* was expressly granted for "road purposes." *Shore Village*, *supra.* at 209.
[80] *Id.*
[81] *Id.* at 153-54.
[82] *Id.* at 154. Riparian rights have long been recognized as attaching to property even when less than fee ownership is held. In *City of Tarpon Springs v. Smith*, 88 So. 613 (Fla. 1921), the Supreme Court recognized that riparian rights would attach to a roadway dedicated to the public by a plat. The Court recognized that in those locations where the dedicated roadway touches the shore, the riparian rights that appropriate to a street easement was also impliedly dedicated as incident to the road dedication unless the plat evidenced a contrary intent by the dedicator to reserve the riparian rights. *City of Tarpon Springs v. Smith*, 88 So. at 621.
[83] *Brannon v. Boldt*, 958 So. 2d at 369.
[84] *Id.* at 373.
[85] *Id.*
[86] *Id.*
[87] *Id.* at 374 *citing Feig v. Graves*, 100 So. 2d 192 (Fla. 2d DCA 1958).
[88] *Shore Village, supra.* at 211 *citing Avery Dev. Corp. v. Village by the Sea Condo Apartments, Inc.*, 567 So. 2d 447 (Fla. 4th DCA 1990).
[89] *Miller v. State Dept. of Envt'l. Reg.*, 504 So. 2d 1325, 13-27-28 (Fla. 1st DCA 1987) (Administrative permitting agency had no authority to address non-environmental impacts to property of others such as whether permitted bulkhead trespassed on adjacent property); *Hageman v. Dep't of Envt'l. Prot.*, 1995 WL 812077 at *7 (Fla. Div. Admin. Hrgs., Aug. 21, 1995) (holding that an administrative proceeding is not the proper forum to resolve dispute over the location of the riparian rights line for purposes of then determining the location of the 25-foot setback required by administrative rule).
[90] *Bd. of Comm'rs. Of Jupiter Inlet Dist. v. Thibadeau*, 2005 WL 2293491 at *6 (Fla. Dept. Envt'l.

Prot.).
[91] *Hayes v. Bowman*, 91 So. 2d at 798.
[92] *Id.*
[93] *Id.*
[94] *Id.* In *Hayes*, this orientation would project Hayes' riparian rights lines across the area Bowman planned to fill to expand the subdivision. *Id.*
[95] *Id.*
[96] *Id.* at 801.
[97] *Id.*
[98] *Id.* at 802 (emphasis added).
[99] *Id.*at 802.
[100] *Id.*
[101] *Id.* (Noting the Court's own inconsistent precedent on the subject of setting riparian lines prior to *Hayes*).
[102] *See Bay Shore v. Steckloff*, 107 So. 2d 171, 175 (Fla. 3d DCA 1958) ("Being equally entitled to fill, no such upland owner can be shut off, or have that right taken away from him by a neighbor first filling in that neighbor's own land.").
[103] *Merrill-Stevens Co. v. Durkee*, 57 So. 428, 432 (Fla. 1912) (Whitfield, C.J.) This general principle was already well established in the common law by the time of Justice Whitfield's writings. In *Tyler v. Wilkinson,* 24 F. Cas. 472 (C.C.D.R.I.1827), a fundamental case in defining the American rights doctrine, Mr. Justice Story summarized the doctrine:

> Prima facie every proprietor upon each bank of a river is entitled to the land, covered with water, in front of his bank, to the middle thread of the stream, or, as it is commonly expressed, *usque ad filum aquae.* In virtue of this ownership he has a right to the use of the water flowing over it in its natural current, without diminution or obstruction. But, strictly speaking, he has no property in the water itself; but a simple use of it, while it passes along. *The consequence of this principle is, that no proprietor has a right to use the water to the prejudice of another…* The true test of the principle and extent of the use is, whether it is to the injury of the other proprietors or not… Mere priority of appropriation of running water, without such consent or grant, confers no exclusive right.

Id. at 474. (emphasis added).

[104] *Johnson v. McCowen*, 348 So. 2d 357 (Fla. 1st DCA 1977).
[105] Dr. David Gibson was an Associate Profession at the University of Florida. Dr. Gibson's studies into the effects of shoreline and channel geometry on riparian rights were sponsored by the DEP in 1985 and 2009. (On file with the author). Dr. Gibson's study was updated by DEP in 2013 and 2014.
[106] Florida Department of Environmental Protection's SLER 950 (Jan. 28, 2014). SLER 950 can be accessed at http://www.dep.state.fl.us/lands/surv-map/ripright.htm.
[107] Fla. Admin. Code. R. 18-21.003(63), 18-21.004(1)(c).
[108] Fla. Admin. Code R. 18-21.004(3)(a).
[109] 566 So. 2d 1358, 1361 (1st DCA 1990).
[110] *D'Alessandro v. Fidelity Federal Bank & Trust*, 154 So. 3d 498, 499 (Fla. 4th DCA 2015).
[111] *Downing v. Bird*, 100 So. 2d at 64; *Gantt v. Riverbend Estates, Inc.*, 755 So. 2d 817, 818 (Fla. 2d DCA 2000).
[112] *St. Joe Paper Co. v. Florida Dept. of Nat. Res.*, 536 So. 2d 1119, 1124 (Fla. 1st DCA 1988).
[113] *Dianne v. Wingate*, 84 So. 3d at 429.
[114] *Downing v. Bird*, 100 So. 2d at 64.
[115] *Winselmann v. Reynolds*, 690 So. 2d 1325, 1327 (Fla. 3d DCA 1997).
[116] *Tice v. Herring*, 717 So. 2d 181 (Fla. 1st DCA 1998).

[117] *Florida Power Corp. v. McNeely*, 125 So. 2d 311, 316 (Fla. 2d DCA 1960) (stating that "generally, an action of ejectment will not lie to recover an incorporeal hereditament").