



# Road End Blues!

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Civily, it has been unlawful for decades to maintain private dockage and overnight, seasonal, or permanent boat mooring, anchoring, or dockage on a public road at a lake in Michigan. See *Jacobs v Lyon Twp* (after remand), 199 Mich App 667; 502 NW2d 382 (1993); *Higgins Lake Property Owners Assn v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003); *Delaney v Pond*, 350 Mich 685 (1957) and *Dyball v Lennox*, 260 Mich App 698 (2003). Unfortunately, however, until 2012, it typically took a lawsuit by riparian property owners to force members of the public or back-lotters from unlawfully keeping their docks, boats, boat hoists etc., at public road ends.

In 2012, the following Michigan statute (MCL 324.30111b) became effective for public road ends:

Sec. 30111b. (1) A public road end shall not be used for any of the following unless a recorded deed, recorded easement, or other recorded dedication expressly provides otherwise:

- (a) Construction, installation, maintenance, or use of boat hoists or boat anchorage devices.
- (b) Mooring or docking of a vessel between 12 midnight and sunrise.
- (c) Any activity that obstructs ingress to or egress from the inland lake or stream.

(2) A public road end shall not be used for the construction, installation, maintenance, or use of a dock or wharf other than a single seasonal public dock or wharf that is authorized by the local unit of government, subject to any permit required under this part. This subsection does not prohibit any use that is expressly authorized by a recorded deed, recorded easement, or other recorded dedication. This subsection does not permit any use that exceeds the uses authorized by a recorded deed, recorded easement, other recorded dedication, or a court order.

(3) A local unit of government may prohibit a use of a public road end if that use violates this section.

(4) A person who violates subsection (1) or (2) is guilty of a misdemeanor punishable by a fine of not more than \$500.00. Each 24-hour period in which a violation exists represents a separate violation of this section. A peace officer may issue an appearance ticket as authorized by sections 9c to 9g of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.9c to 764.9g, to a person who violates subsection (1) or (2).

(5) This section does not prohibit a person or agency from commencing a civil action for conduct that violates this section.

(6) As used in this section:

- (a) “Local unit of government” means a township, city, or village in which the public road end is located.
- (b) “Public road end” means the terminus at an inland lake or stream of a road that is lawfully open for use by the public.

This article will update my earlier one regarding the statute from the Spring 2018 issue of *The Michigan Riparian* magazine.

The 2012 statute can be enforced by any police agency in Michigan and can typically easily be done with appearance tickets. Unfortunately, however, some police agencies and prosecutors are refusing to enforce the statute. Why? There are multiple reasons as follows:

1. They do not view the statute as a high priority.
2. They claim that they do not have sufficient funds to be able to enforce statutes such as MCL 324.30111b.

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3. It is not politically expedient.
4. One of the violators is a friend of a local police officer, prosecutor, etc.
5. They claim that the situation involved is not covered by the statute.
6. They assert that they are exercising “prosecutorial discretion”.

It is always frustrating when police agencies or prosecutors will not enforce a clear statute for improper reasons. It is particularly aggravating when the reasons given (or the actual reasons that are unspoken) are illegitimate, as is often the case with the above excuses.

Some police officers or prosecutors have refused to prosecute unlawful public road end cases by claiming that the road end involved is not “lawfully open for use by the public”. Interestingly enough, however, the statute does not require that a public road end be paved, gravel, or even improved for the statute to apply. Even public road ends that are left wild and overgrown can be used by pedestrians to walk to the lake. Furthermore, any public road end is likely “lawfully open for use by the public” unless it is lawfully barricaded (with prohibition signage) and physically closed to the public by the governmental unit with jurisdiction over the road.

Even apart from MCL 324.30111b, cities, villages, townships (via ordinances), and counties have full jurisdiction over their public roads and can require that private docks, boats, boat hoists, and other items be removed from the public road end under their jurisdiction. Amazingly, some of those municipalities that have expressed constant liability fears in the past regarding misuse of public properties such as parks, sidewalks, normal roads, and other public ways are now perplexingly unconcerned about public road ends at lakes being misused under MCL 324.30111b and the liability potential associated with such misuse.

Cities, villages, and townships also have full legal authority to adopt their own public road end ordinances and to enforce those ordinances via civil infraction tickets.

Too often, people have little faith in government due to the perceived laziness of certain government officials, the “it is not *what* you know, but *who* you know” principle (favoritism) and the refusal of certain government officials to simply do their jobs. The refusal to prosecute a clear violation of MCL 324.30111b only further adds to public cynicism about state and local governments.

Based on all of the above, it is within the right of any riparian property owner to insist that local law enforcement officers and prosecutors “do their job” regarding MCL 324.30111b.

A Michigan municipality that permits someone to improperly use a public road end by allowing private dockage, boat moorage, etc. could be facing potential liability issues. If someone is injured on a private dock at a public road end, drives a watercraft into a private dock (or a boat unlawfully on a public road end), or falls off a dock and drowns, not only will the owner of the private dock or moored boat be sued, but likely the municipality will be sued as well. Although municipalities generally have governmental immunity, it is not clear whether allowing private docks, boats, etc. at public road ends in violation of MCL 324.30111b would undercut such governmental immunity.

The requirement for MCL 324.0111b to apply that the road end be “lawfully open for use by the public” is but a truism. In general, if people are using the road end, even merely on foot (i.e. to walk to the lake), it must be open to the general public. Accordingly, a person who is suspected of violating the statute must be acting in one of two different situations. First, the person is using the road end for a dock, boats, etc., which violates MCL 324.30111b. Second and alternately, the public road end is not open to the public because it is barricaded or posted by the local governmental unit and it is not to be used. In that case, the person is a trespasser and should be prosecuted as such. There really are no scenarios other than those two.

Can a local municipality install its own dock at a public road end for “day use” only?

Clearly, the local unit of government may install and maintain a public dock under the statute at the public road end for day use only (i.e. boats and watercraft of the public may be docked or moored at such a government dock between sunrise and 12 o'clock midnight). Can a municipality authorize a private individual to install a private dock at a public road end? No. What about a private individual installing a public dock? The statute does allow “a single seasonal public dock or wharf that is authorized by the local unit of government”. Some local governments have interpreted that phrase to mean that the local government can authorize a public dock installed by a private individual. However, the statute clearly states that any day use seasonal

dock must be “public”. Furthermore, the Michigan common law indicates that private docks cannot be installed at public road ends – any dock must be a governmental dock. Finally, local governments should never authorize a private individual to install a private dock or even a dock for the public, due to the potential liability associated with that practice. Any day use dock should be government owned and installed. Otherwise, the local unit of government risks losing its governmental immunity in that situation.

In the last eight years since MCL 324.30111b was enacted, the Michigan appellate courts have addressed the statute in two different cases. In *Colthurst v Bryan* (an unpublished decision dated June 14, 2016; Case No. 323539; 2016 WL 3297644), the Michigan Court of Appeals rejected the backlot property owners’ assertion that MCL 324.0111b did not apply to a particular public road end. Elm Court was created via plat public dedication, was 20-foot wide, and ended at Wamplers Lake. The backlot property owners denied that Elm Court was a road end and also claimed that the adjoining riparian landowner lacked standing to assert the statute in court. The Court of Appeals found that Elm Court was a public road open for use by the public and that it ended at the lake. The Court of Appeals held that MCL 324.0111b applied even though “Elm Court is merely a grassy area of land, it is the use by the public which characterizes it as a public road end rather than the character of its terrain.” The Court also rejected the backlot residents’ claim that Elm Court was never accepted as a public road given MCL 560.255b(1), which provides that ten years after a plat is first recorded, land dedicated to the use of the public shall be presumed to have been accepted on behalf of the public by the municipality involved. In addition, the backlot residents argued that the statute retroactively deprived them of the vested right. The Court did not find any vested usage rights by the backlot property owners that were impaired by the 2012 statute. Finally, the Court found that the adjoining riparian property owner had standing to assert the statute in court.

The Court of Appeals’ decision in *Township of Grayling v Berry*, 329 Mich App 133 (2019) involved platted public road ends at Portage Lake. First, the backlot residents alleged that the public roads had never been accepted. After extensive analysis, the Court of Appeals agreed that the public roads were accepted as public roads in a timely fashion. Second, the backlot residents alleged that MCL 324.0111b did not apply because the public road ends at issue had never been improved or formally opened and were not available for vehicular travel. As such, the backlot residents claimed that the roads were not “lawfully open for public use”. Both the trial court and the Court of Appeals noted that “backlot

owners have used the area” where both roads exist to access the lake. Both courts also observed that “there is nothing that would prohibit the public from walking in that area or accessing the water there”. Therefore, the Court of Appeals held that the statute applies because the public roads were “open for the use of the public”. Finally, the Court of Appeals held that Grayling Township had standing to enforce MCL 324.0111b in court.

So, based on the above, when someone is violating MCL 324.0111b by installing a private dock on a public road end or keeping a boat, vessel, or other item on the public road end overnight, riparians should insist that the local police agency and prosecutor enforce the statute. That can be done by means of emails, letters, requested meetings, or appointments and even by giving the law enforcement officials a copy of this magazine article! Law enforcement officials are there to serve the public, not to grant special privileges to a select few by ignoring a clear statute and looking the other way. Would they do that with unlawful parking along a busy public highway? *R.*