

The Road End Legislation at Six Years Old

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For over half a century, the Michigan appellate courts have held that it is generally unlawful to maintain private dockage or to moor, store, anchor or keep a boat or watercraft overnight, permanently or seasonally at a public road or private road end that terminates at a lake. 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, prior to 2012, if the local municipality did not have an ordinance in place governing such dockage and boat moorage at public road ends and someone persisted in maintaining a private dock or boats unlawfully at a road end, nearby or adjacent riparian property owners had to pursue a private lawsuit. Such lawsuits often prove expensive, time-consuming and contentious.

Effective in 2012, Michigan adopted a new state law that prohibits private docks at public road ends at lakes, as well as the storage, docking, mooring or keeping of a boat or watercraft at a public road end during the hours from midnight through sunrise. That statute is MCL 324.30111b. Improperly maintaining dockage or boat moorage at a private road end still remains a matter subject to private litigation (unless a local municipality has an ordinance regulating private road ends at lakes).

How has MCL 324.30111b fared in the approximately six years that it has been in effect?¹ In general, quite well. Most citizens comply with the statute. Furthermore, most local municipalities (i.e. cities, villages and townships) and county road commissions with public road ends at lakes in their jurisdiction have generally respected the statute and attempted to comply with it. Unfortunately, however, there are a few municipalities and municipal officials who do not know about the statute or even attempt to undermine it.

What are some of the ways that some municipal officials or others have tried to thwart MCL 324.30111b? First, there is sometimes a question about whether a given piece of property is a public road end or, if it clearly is a public road, whether it is “open to the public” for purposes of the statute. In order

to address these issues, the plat itself or other documents creating the road or past highway-by-user activities will have to be examined closely. Second, the statute does allow one public dock for “day use only”; that is, a municipal dock can be maintained so long as no boats or watercraft are kept at the dock or public road end during the hours from midnight through 6 a.m. Some municipalities are allowing private individuals to install their own docks on public road ends. That is likely a violation of MCL 324.30111b. Furthermore, it is generally not sound municipal practice. Why? There are three general reasons, as follows:

- A. The Michigan appellate courts have implied that a public dock at a public road end must be installed, maintained and owned by the local municipality, not by private interests. That appears to be true even if a private dock is made available for use by members of the general public.
- B. Allowing a private dock on a public road end presents liability potential to the municipality. Although requiring the person who puts in the private dock to provide liability insurance to cover the municipality helps, the insurance may not be enough, the insurance policy might lapse and similar insurance issues may arise.
- C. Finally, allowing the placement of a dock at a public road end will implicitly invite the dockage of boats overnight, which would violate the statute. Policing of road ends is more difficult if private docks are allowed or ever encouraged.

It should always be kept in mind that a public road end is public property. Private individuals should not be allowed to monopolize such a public property or even have some type of “grandparent” or priority rights over other members of the public. For municipalities that allow the installation of a private dock on a public road end, ask a local municipal official whether it would be permissible to store your RV seasonally at the municipal offices or install your own holiday lights in front of city hall. Of course, the answer would be a resounding **NO!!!**. It is difficult to comprehend why the municipal official’s response should be any different for a private dock at a public road end at a lake.

¹ This article supplements a lake road end discussion by Paul J. Sniadecki in the Winter 2018 issue of *The Michigan Riparian* magazine. 