THOSE WHO WAIT, LOSE...

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In Michigan, riparian or waterfront property owners have two general legal ways of protecting their property from others. First, riparians can pursue litigation for trespass or nuisance or when another property owner or members of the public violate their riparian rights. Unfortunately, those lawsuits tend to be expensive and time-consuming, and the riparian landowner does not always prevail. Second, and as importantly, local municipal ordinances enacted by cities, villages, and townships can also help protect riparian rights and the waterfront.

I am constantly amazed at how few riparian land owners, lake and river associations, and others who are interested in protecting waterfront properties in Michigan, lobby and become actively involved with their local government to enact and enforce ordinances to protect the waterfront. Although virtually every municipality in the state has zoning regulations, not all of those local ordinances adequately protect riparian rights and the waterfront. And, only a few municipalities have in place specialized non-zoning, or police power ordinances that regulate boats, docks, marinas, sensitive lake areas, and wetlands. If a major housing development proposal, commercial water withdrawal, new marina, or other use arises that will hurt the waterfront community, is presented to the municipality, then it is almost always too late to enact a regulatory ordinance or amend the local zoning ordinance to prohibit or regulate such adverse uses.

Some of the municipal ordinances that riparians should not only lobby their local municipality to enact or amend, but also to enforce once adopted, include the following:

A. A good and comprehensive zoning ordinance, which would also include strict regulations regarding funneling/keyholing, large minimum lot sizes for new lake lots (including significant lot width and water frontage requirements), strict lot width-to-depth ratio requirements, adequate setbacks for new buildings from lakes (for example, at least 60 feet), prohibitions on new or expanded canals or channels, and good private road regulations.

B. A regulatory or police power ordinance to regulate docks, boats, swim rafts, water skiing obstacle courses, bubblers, etc.

C. A local wetlands protection ordinance.

D. A marina regulatory ordinance (which would supplement the regulations in the local zoning ordinance regarding marinas).

E. A short term rental ordinance.

F. A fertilizer ordinance.

G. A septic system ordinance.

H. A blight and junk ordinance.

I. A private road ordinance.

Can riparian property owners or lake associations force their local municipality to enact or amend an important lake protection ordinance? For some cities and villages, the answer is "yes". Certain cities and villages have charter provisions that allow an ordinance (or ordinance amendment) to be instituted by a citizens' initiative petition and a vote of the municipality's electors. There is no right of ordinance initiative for townships, or for some cities and villages, or for zoning ordinance provisions. In those instances, the local municipality cannot be forced to enact or amend an ordinance.

What should riparian property owners do if their local municipality refuses to enact or amend a necessary ordinance for the protection of riparian rights and the waterfront? First, riparians can petition the local municipal government to enact a new ordinance or amend an existing ordinance, particularly if the citizens provide draft ordinance language for consideration. Second, if "light feather" suggestions or mild lobbying of local municipal officials does not do the trick, lake associations and riparian property owners can

try to prompt large turnouts of people in favor of a new ordinance or amended ordinance at the local city, village, or township board, council, or commission meetings. Finally, if all else fails, lake associations and riparians can seek out candidates for the next election of the local municipal offices who are pro-lake and river in an attempt to have them elected to the city, village, or township board, council, or commission involved.

Having well-drafted, reasonable, and comprehensive local municipal ordinances in place can be the single most effective matter that riparians and lake associations can do to protect the waterfront. The best time to enact or amend such ordinances is before a significant problem arises. That is why it is often referred to as "zoning and planning", not "zoning and reacting"!

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On February 4, 2021, the Michigan Court of Appeals issued an unpublished decision in *Devils Lake Ventures, LLC v Devils Lake Highway Acreage, LLC* (Case No. 349166; 2021 WL 408671). That case involved a dispute over the ownership of bottomlands underwater in Devils Lake in Lenawee County. The plaintiff owns five acres of land that abuts the lake. The defendants claim that title to the bottomlands was severed long ago and that they now own the bottomlands and riparian rights as to the properties involved. Following a non-jury trial, the trial court held in favor of the plaintiff and agreed that the plaintiff's purchase of the upland (i.e., dry land) property included littoral or riparian rights to the abutting bottomlands property. The Court of Appeals upheld the decision by the trial court and agreed that, generally, riparian rights and bottomlands cannot be "detached" or "severed" from the adjoining parcel or uplands. Both courts pointed out that, as a general rule, with some very limited exceptions, title to the riparian rights follows the shoreline and adjoining upland property. The courts confirmed that riparian rights generally cannot be severed from the riparian land, although a riparian landowner may grant a lake easement to non-riparian owners. The fact that an original federal land grant was involved did not matter, as state law will generally apply if the original grant from the federal government does not provide otherwise.