

WOE IS CANALS

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Although an increasing number of Michigan municipalities (i.e. cities, villages, and townships) have zoning regulations covering the waterfront and even ordinance provisions governing docks, boats, swim rafts, and other aquatic items, very few local governments regulate or prohibit the creation of new canals or channels from lakes and rivers (or the expansion of existing canals or channels). Aquatic canals and channels can be regulated or even prohibited via either amendments to a municipal zoning ordinance or through a separate police power regulatory ordinance. Such ordinance provisions can be important to Michigan lake communities, as state regulatory authorities theoretically have the authority to permit under certain circumstances the creation of a new canal or channel (or the expansion of existing ones).

Why are new or expanded canals or channels generally undesirable? There are at least four reasons. First, they are almost always environmentally unsound and problematic. They are not a natural part of the lake or river involved. Second, where water levels are low, they often exacerbate low water level problems given that they take away a significant volume of water from the natural lake or stream involved. Third, in cases where they are dug or expanded to give additional lots or parcels waterfront property, they are artificially creating riparian rights. Under the *Thompson v Enz* decision cited below, riparian rights normally cannot lawfully be created artificially. Finally, to the extent that canals or channels are used to give additional lots or parcels access to a river or lake, it leads to further overcrowding of the body of water involved with personal watercraft, power boats, etc.

Those who are familiar with the Michigan Supreme Court's decisions in *Thompson v Enz*, 379 Mich 667 (1967) and 385 Mich 103 (1971) might be surprised to learn that state regulators would allow new canals or channels to be built or existing ones to be expanded. The Supreme Court did hold in *Thompson v Enz* that riparian rights cannot be artificially created via new or expanded canals or channels. However, in order to enforce that decision, a private civil lawsuit would have to be commenced by an adjoining riparian property owner or a lake association. Regulating or prohibiting new or expanded canals or channels via local ordinance is much more decisive, efficient, and likely cost effective. *R*

