



# ATTORNEY WRITES

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Welcome to the *Attorney Writes* column, which hopefully will become a regular feature in *The Riparian*. In future issues, I will address current legal topics of interest to riparian property owners. If there are any legal issues pertaining to lakes or streams which you would like to see discussed in future columns, please send a letter request to me at the above-mentioned address or *The Riparian*.

This month's topic is road ends at lakes – definitely a subject of great interest to many riparian property owners. There are several types of public lake access sites in Michigan, including formal public parks and DNR access sites, public walkways, and public road rights-of-way that end at lakes. Each type of access has different legal implications. There are two types of public road ends at lakes. The first type is located outside of a plat and was created by express deed or document in favor of the local road commission or is a "highway by user" (i.e., if no formal creation document can be found, a public road can be created by law if utilized as a public road for many years). The second type of road end involves a public right-of-way which was created by means of dedication when a plat was created.

Until recently, the first type of road right-of-way could normally be extinguished without court action by abandonment/vacation procedures by the local road commission or equivalent agency. Vacating dedicated roads has always been more difficult. Pursuant to the Michigan Subdivision Control Act of 1967 (MCLA 560.101 *et seq.*), any public road right-of-way in a plat located within 25 meters of a lake can only be vacated (i.e., extinguished) through court action. Until approximately a decade ago, the Michigan courts were often quite willing to grant area riparians' requests to vacate platted private road ends at lakes, particularly if they were unused or lightly used. As public access to lakes became popular political goal, an increasing number of judges refused to vacate road ends at lakes. Recently, backlot owners and other members of the public desiring to use such road ends began to lobby the Michigan Legislature for legislation making it more difficult to vacate road ends at lakes or streams. The bad news for riparians who own property near such road ends is that Governor Engler signed Public Acts 217-219 of 1996 on May 23, 1996, which makes it much more difficult to get all lake-ends roads vacated or abandoned. The good news is that the legislation is much less onerous than

some of the earlier proposals and it will probably make very little difference in the real world.

In a nutshell, a road end cannot be vacated (or abandoned) and the property turned over to adjoining property owners unless it is offered first to the local municipality and then to the State of Michigan. A road can be vacated by court action if and only if the court directs vacation and both the local municipality and the State of Michigan decline to accept title to the road. In many cases over the last decade, circuit courts have declined to vacate road ends such that the new legislation would not have had much impact anyway.

It is important to note that the new legislation applies only to roads which are in fact *public* road rights-of-way. That is, if a public road dedication was never formally accepted by governmental authorities by improvement of the road, a formal acceptance resolution or similar measures, the dedication may have "lapsed" and the road never was or no longer would be a public road. In such cases, it may still be possible for riparian property owners to have such roads extinguished in court and the new legislation would not apply because they are not "public roads."

The new legislation does require that wherever a public road end at a lake or stream is relinquished to a local unit of government or the State of Michigan, the local government or the state, as applicable, "**shall operate and maintain the property so as to prevent and eliminate garbage and litter accumulation, unsanitary conditions, undue noise, and congestion as necessary.**" Under the legislation, if the governmental unit in control of the road end fails to comply with the preceding, the circuit court can ultimately order the governmental unit to relinquish control over the road end to adjacent land owners. Unfortunately, that can only occur as a last resort and after the circuit court has already ordered closure of the road for numerous trial periods and the governmental unit still does not properly control the road end. The legislation also fails to specifically address the issue of what happens when actual public use exceeds the scope of the dedication or purpose of the road end – that is, courts in the past have generally held that most road ends can only be used as access sites to lakes, and cannot be used for lounging, long-term private boat storage, private dockage, etc. Presumably, lawsuits to determine the permissible scope of usage would still be permitted.