



ATTORNEY WRITES

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To those back-lot owners around the state who are attempting to lay claim to public road ends, alleys and walkways by lakes I say, be careful what you wish for, you might regret the practical outcome if your wish comes true!

A number of militant back-lotters around the state are asserting that they have some constitutional or basic American right to install private dockage and to permanently moor their own boats on public property such as road ends, alleys and walkways at lakes. I know, I know—you have heard this all before. Trust me and read on, however, because this month's column addresses a neglected area of this back-lot access controversy.

Back-lotters in various locations around the state keep asserting that road ends are more akin to parks, such that they have the right to sunbathe, picnic, play volleyball and lounge on road ends, as well as install private dockage and boat moorings. Unfortunately for them, they keep losing in the courts based on the time-honored legal precedent that—duh—public road ends are both public property and roads, and can be used only for access. At least one foolish township has even flirted with the idea of spending taxpayer monies to "condemn" by eminent domain such road ends in an attempt to essentially turn them over to back-lot owners. Some Back-lotters are even pushing ill-founded legislation (Michigan Senate Bill 232) which purports to permit Back-lotters to seize such public road ends for their own private uses.

Okay, let's assume for a second that the judges in Michigan suddenly flip their wigs, and overturn a century of property law and declare that public road ends can be used for park purposes, including permanent boat mooring and dockage. Back-lot owners will have gotten their wish, right? Not so fast! Such properties will remain public, even though they might effectively become parks. With public property, every person has equal access and usage rights as everyone else.

Here are some matters for Back-lotters to ponder. First, even if dockage and permanent boat moorage is ultimately allowed, no responsible municipality should permit the installation of private dockage, shore stations or other structures on a public property. Can you imagine what your local municipal officials would say if you indicated you wanted to install your own signage or other private structures in the front yard of the town hall? Besides, a municipality's insurance carrier would probably nix the idea of letting individuals install their own structures on a public

property due to liability concerns. Even if a municipality were to permit private individuals to install items on a public road end or bottomlands thereof, the law dictates that such items essentially become public and anyone can use them—the person who installs such items has no right to preclude other individuals from utilizing the items. For example, can you imagine a police officer in Cadillac, Michigan asking you or me to get off of a park bench in a city park by asserting that such park benches must be kept clear for use only by the residents of the city of Cadillac? Of course not! Second, Back-lot owners cannot be given exclusive rights to a public property or even be shown favoritism. Both Michigan law and federal constitutional law make it crystal clear that a municipality cannot give a particular group of people (for instance, area Back-lot owners) special privileges or usage rights to a public property greater than any other member of the public. To the extent that a local municipality permits dockage and permanent boat mooring, the limited spaces would have to be allocated on an equitable basis by means of a lottery, a day use only set up or similar allocation. Militant Back-lot owners had better learn to understand this simple notion—that is, I or any resident of the state of Michigan, or any citizen of the United States for that matter, have just as much right to use public road ends as the back-lotter who owns property 100 feet away. That simple fact is true today and would remain true even if dockage and permanent boat mooring were expressly allowed by law. In fact, Back-lotters might be shocked to know that adjoining riparian property owners have just as much right to use public road ends as any back-lotter or other member of the public. Third, as Michigan's population increases and the areas around lakes become more crowded, the few Back-lot owners who have attempted to appropriate road ends for their own personal use will have a great deal of competition. Even if dockage and permanent boat mooring are permitted at road ends, the limited space will have to be allocated somehow. It is likely that many municipalities will ban dockage and permanent boat moorage all together on road ends as a necessary component of maximizing public access to the waters. If the municipality chooses not to become involved, how will scarce space be allocated with an increasing number of Back-lotters and members of the public desiring to use road ends at lakes? Will brute force prevail? Will new users simply add additional sections of dock and boat moorings until there are hundreds of boat slips on a road end extending fully to the center of the lake? Won't these road ends become so overcrowded and unsafe that many back-lotters will simply give up in disgust?

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cinch belt for safety reasons when fishing the bigger streams.

There are two different schools of thought on the presentation of the fly, especially with the grasshopper fly. I have talked with several fly fisherman who subscribe to the "splat" type delivery. It is supposed to bear resemblance to a live grasshopper falling from a tree and hitting the water. It has been my experience that this will usually spook, rather than entice, a trout. You can get away with a bad cast in fast moving or deep water sometimes, but rarely in slow shallow water. I have caught some nice fish on some poor presentations. More often than not, however, the fish head for cover as soon as the fly slaps the water.

Although I can recall many fishing adventures I've had, one outing remains particularly clear in my mind. It was late grasshopper season, and I had just come upon a slow water stretch of the stream. I had been carried through this spot only a year or so earlier by my dad. At that point I had a few 10-12 Inch browns on my stringer. As I stood in the shallow fast water at the end of the hole, I spotted a "beauty" of a brown taking grasshoppers in the lower shallow (about 2 feet deep) area of the hole. As I watched that fish feed, I knew I only had one chance to fool him with my fly. The cast had to be long (about 40 feet, and it had to be placed the proper distance above him (4-5 inches). Most importantly, it had to come down to meet the water without a splash from the fly or the leader. I made the cast well and enough to get the strike. After several minutes of excitement I netted a nice 15 inch brown.

After more than a decade of fishing in various modes, I still hold the highest reverence for dry fly trout fishing. There is nothing better than the beauty, day or night, of the stream and its surroundings. And nothing is more pleasing than that distinctive "slurp" made by a big fish, and the heavy bend of your rod as you set the hook.

It saddens me to say that since the introduction of salmon to our "once great" trout stream, I have witnessed a steady decline in the trout population, to the point where I no longer fish the Pere Marquette Watershed. Instead, I fish other rivers that have dams to keep the salmon downstream. I attribute the decline of trout directly to the salmon. The salmon make their spawning run in the fall, at the same time the trout are trying to spawn. The larger salmon use the prime areas of the stream, thereby keeping the smaller browns out of these areas. They also eat any trout they can. After the salmon spawn and die, they change the ecology of the stream. Their carcasses cause moss to grow on rocks which in turn lowers the number of insects that hatch from the stones. These insects would have eventually been eaten by trout.

It would be very pleasing to see weirs constructed to keep salmon out of prime trout water such as the Pere Marquette. I believe the river would eventually become a great trout fishery again, as it was the first 35 years of my life. Unfortunately, the State of Michigan seems to value the tourism and salmon fishing revenue generated by the salmon more than they value the many beautiful trout streams that are being ruined by these fish. ■

It is curious how many backlot owners (as well as the few judges in the state who have supported their untenable position regarding road ends) have simply refused to address or even acknowledge these issues. For backlot owners and a handful of judges to assert that road ends at lakes can be used for private purposes such as dockage, boat moorage, picnicking, etc., particularly where no effective local municipal controls are in place, is totally irresponsible. Chaos would rule. Hopefully, we will never have to confront the issue of road ends becoming lawful marinas, since the entire concept is inherently irresponsible. Hopefully, municipalities, the Michigan Legislature and the courts will follow the example of public camp grounds and custodians of other types of public property who have prevented public land from being seized by a few individuals for private uses. The only way to ensure free public access to waters through road ends (and to ensure the safe use thereof) is to follow a "bright line" rule—that is, these public ways must be kept open and all dockage and permanent boat mooring must be prohibited. That is the only way to ensure maximum use and enjoyment of road ends at lakes in a responsible fashion by the largest number of people. ■

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