



ATTORNEY WRITES

By Clifford H. Bloom

Law, Weathers & Richardson, P.C.
333 Bridge Street, N.W.
Suite 800
Grand Rapids, Michigan 49504

All of a sudden, you discover that survey stakes have appeared on some undeveloped lake frontage land, not too far from your riparian lot. Although the undeveloped property has some frontage on the lake, the parcel also has a significant amount of land area away from the lake. All sorts of bad things go through your mind. Is it going to be a mobile home park? Is the property owner/ developer going to develop a large number of lots upland and attempt to "funnel" those lots onto the lake through the limited lake frontage of the parcel? Is someone attempting to put in a marina or commercial operation? It is enough to send a chill up the spine of any riparian property owner.

In these situations, ignorance is not bliss. While riparians cannot always prevent overdevelopment disasters, riparians can often stop or lessen the more negative impacts of development, if they act swiftly and decisively.

If you are alerted to a possible development either by word of mouth, by the appearance of survey stakes or otherwise, the first thing you should do is to contact local municipal officials. You must determine immediately what, if any, local ordinances will apply to any development. Applicable local ordinances could include, but not be limited to, the zoning ordinance, a separate dock and boat mooring ordinance, the local land division ordinance, and local environmental regulations. Seek out your local municipal officials immediately—in most cases, the best contact will be the local zoning administrator or planner, although in some municipalities their duties are fulfilled by other municipal officials. Be candid with local officials—tell them your concerns, ask them whether they are aware of development plans for the property involved, and ask them which ordinances may be applicable. All of this should be public information. If, for whatever reason, local municipal officials are uncooperative, you may need to make a formal request for documents under the Michigan Freedom of Information Act ("FOIA"). Only use FOIA as a last resort—start out with the honey approach.

You should immediately obtain copies of all applicable local ordinances and review them in detail, preferably with your own legal counsel. Carefully review the local zoning regulations for the following:

- Anti-funneling or anti-keyholing regulations
- Lake frontage requirements
- Lot width and road frontage requirements
- The permitted uses in the zoning district involved
- Any zoning regulations regarding dockage
- Lot width-to-depth maximums or boat mooring
- Any greenbelt or setback requirements
- Lot width-to-depth maximums
- Regulations regarding common usage, such as private parks, common areas, access easements, etc.

Some or all of these issues may also be addressed in non-zoning regulations such as a local dock and boat mooring regulatory ordinance, local environmental ordinances and any other applicable ordinance.

Next, you should determine whether the developer has applied for land division approval. Unless plats or site condominiums are involved, no land can be divided without prior local municipal approval under the Michigan Land Division Act (MCLA 560.101 *et seq.*).

Ascertain whether the developer has applied for any zoning approvals. If those approvals have not been given, find out whether any hearings are scheduled and what the municipality's position is regarding which zoning approval(s), if any, must be obtained. Obviously, you should attend all such meetings—better yet, organize your lake association and other riparians to attend and to state a position regarding the proposed development.

Apart from local municipal regulations, the proposed development may also be subject to the Michigan Wetland Protection Act, the Michigan Inland Lakes and Streams Act and other state legislation. You should investigate to determine whether the proposed development will involve a request for a wetland fill application, any dredging or filling of the lake shoreline, or similar activities. Generally, these matters are handled by the Michigan Department of Environmental Quality ("DEQ"), and you should contact that agency to determine what, if any, applications have been filed and also to alert the DEQ to any concerns you might have about the proposed development. Be forewarned, however, that although sometimes state officials can help minimize some of the more adverse impacts of

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developments, state legislation and state officials will rarely stop a development—your better bet is to rely more on local ordinances (if any).

Occasionally, a riparian will luck out and there will be deed restrictions on the property which could preclude certain types of development. That is relatively rare, however. You can obtain information about deed restrictions through a title search of the property.

What if local officials are wimpy, refuse to help, are good buddies with the developer involved, or some combination of these? Sometimes, political pressure will work. Organize. Attend local municipal meetings with large support groups. Do petition drives. Recall officials who are not doing their job. Ultimately, if local municipal officials are not applying local ordinances, you, other riparians and/or the lake association may have to institute litigation against both the local municipality and the developer. Obviously, that should be a last resort option.

What if the proposed development turns out to be pretty bad, state officials have been of little help and the local municipality does not have ordinances in place to stop or soften the harsh aspects of the development? Is it too late? It may not be. Although it is like being on your own 5-yard-line with the ball with only a minute left in the football game, riparians can sometimes turn matters around. First, there is always the option of a riparian rights/reasonable use lawsuit. Unfortunately, such lawsuits can be both expensive and risky. Second, municipalities can sometimes enact ordinances at the last minute. On occasion, municipalities can adopt quick moratoria for certain types of development in order to buy time to craft appropriate zoning or other regulations. Such moratoria normally can only be imposed for relatively short periods of time—say six months or less. Typically, until a developer gains a vested right by obtaining required permits and actually physically commencing the development, zoning regulations can be changed. Additionally, non-zoning regulatory ordinances can be enacted quite rapidly, and often without the need for a moratorium. Obviously, enacting a local ordinance at the last minute requires cooperative (and even gutsy) local governmental officials.

Boat Speed On Michigan Waters

(ACT No. 58, Public Acts of 1995)

All motor boats being propelled on Michigan waters shall travel no faster than a slow no-wake speed when within 100 feet of shore where the water is less than three (3) feet in depth. (Sec. 80146(3)).

A "Motorboat" means a vessel propelled wholly or in part by machinery. (Sec. 80103(f)).

The "waters of the state" means any waters within the territorial limits of this state, and includes those waters of the Great Lakes that are under the jurisdiction of this state." (Sec. 80104 (p)).

"On the waters of this state for which a motorboat speed limit is not established...a maximum speed of 55 miles per hour is established, except in an emergency and except for authorized peace and conservation officers when engaged in official duties. (Sec. 80146 (@)).

PLEASE HELP US—WE NEED INFORMATION ON LOCAL COURT CASES

Although we have ready access to Michigan appellate decisions (i.e. by the Michigan Court of Appeals and Michigan Supreme Court), there is no effective means for researching or gathering lake decisions by local county circuit courts, which are the Michigan trial courts. Although such decisions are not binding precedent for anyone located outside of the particular county involved, they are often instructive, useful and persuasive in other courts.

Accordingly, if you or anyone you know have been involved in any local court cases over the last 15 years where a decision has been rendered by the trial court judge involving any aspect of a lake, please send us a copy of the final trial court decision. Such decisions usually take the form of an order, transcript or written decision – written decisions are the most helpful. Cases of particular interest to us include those involving anti-keyhole/anti-funnel regulations, road ends, alleys, walkways, parks, promenades and similar ways at lakes, riparian or reasonable use lawsuits, marinas, lake front development, docks and boat mooring. Please send copies of any such court decisions to us as follows:

Don Winne
124-1/2 N. Main Street
P.O. Box 249
Three Rivers, Michigan 49093

If you will enclose a bill for copying and postage costs, we will reimburse you for the same.



Michigan Court of Appeals, in an unpublished decision on August 3, 1999 in the case of The Attorney General and The Department of Environmental Quality vs. Chalet du Paw Paw, ruled that the DEQ has no authority to regulate dockage and boat moorings where individual docks or moorings are owned or controlled by individual property owners within a condominium.

Editor's Opinion:

If other courts follow this precedent, the role of the State (DEQ) in the prevention of overcrowding of lakes will be severely limited.