ATTORNEY WRITES

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Although many readers probably tire of my constant urging of riparian property owners to become involved with local zoning and planning issues, I cannot overstate the importance of having so-called "anti-keyhole" or "anti-funneling" zoning regulations in effect. Every month, at least two or three riparians or lake associations contact me and are frantic about battling a new development which proposes to give lake access to a large number of new off-lake lots through narrow strips of land. Without local municipal lake access controls in place (either via zoning or separate regulatory ordinance), riparians are generally helpless. Relying on the Michigan Department of Environmental Quality ("DEQ") to fight lake access battles or riparian rights ("reasonable use") lawsuits alone can often prove costly and frustrating.

In my opinion, enacting and enforcing reasonable local lake access controls for developments should be the absolute top priority for riparians and lake associations. Although sometimes this means having to become politically involved, it is highly likely that riparians will rue the day if they do nothing.

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Beware of the several groups around the state comprised of back lot owners who attempt to seize public road ends, alleys and walkways for their own exclusive (and intensive) use! Although they wrap themselves in the mantle of open "public access," in most cases they have effectively seized public ways for their own private use by "junking" them up with private docks, shore stations, overnight mooring, etc., to the point where the general public cannot use these public ways for passive uses such as swimming, ice fishing, canoeing and sailing. Such groups are pushing state legislation to permit them to continue overcrowding these public ways, even though clearly such uses at road ends are illegal. If you feel strongly about this issue, please contact your local legislators to let them know that you are against such "backlot" legislation and that public ways should be used only for the uses originally intended—that is, passive uses such as swimming, ice fishing, sailing and day use only (i.e., no overnight mooring of boats or storage of personal items).

Of course, the position of many of the above-mentioned backlot groups is absurd. They claim to be the champions of free access for the general public, but at the same time effectively preclude use by the general public. There is one way to help show the hypocrisy of such groups, while at the same time emphasizing how impractical it is to allow such permanent intensive uses at public road ends. If a road end is public (i.e., has been dedicated to the public and accepted as such), anyone has just as much right to use that property as a back lot owner. Once a dock has been put on a public way, it becomes fair game for anyone to use. Accordingly, area riparians have just as much right to use those docks as a backlotter or a member of the general public. So long as backlot owners insist upon "junking up" road ends with elaborate docks, shore stations, permanent moorings, etc. and are not prohibited from doing so by the local courts, riparians might want to consider mooring their extra rowboats, speedboats, etc. on such docks and permitting their guests to utilize the docks. Certainly riparians must be careful to avoid physical conflict and not to jeopardize anyone's safety. Nevertheless, if this technique can be used safely in a given case, it could help demonstrate to the local courts, legislators and the objective public that the use of permanent structures and overnight mooring by a few backlot owners is folly and that these narrow public ways must be reasonably regulated.

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Do lake associations have to worry about developers creating new channels or canals, thereby increasing the number of waterfront users? Theoretically, both the DEQ permitting process and general riparian common law principals should stop the creation of most new canals or channels. Again, however, this is another area where a local municipal zoning or other ordinance can definitively "shut the door" on new channelization. Unfortunately, very few municipal ordinances address creating new channels or canals. If a new local ordinance is adopted, the terms "canal" or "channel" should be carefully defined. Furthermore, an ordinance should normally permit the cleaning out of existing canals or channels so long as the appropriate state permit is obtained and the canal or channel is not made larger or deeper than its original dimensions.

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I am often asked what riparians can do to combat careless or reckless motorboat operators, particularly involving personal watercraft. Generally, there are enough stringent state boating laws on the books already to be effective if only they were vigorously enforced. While many counties have marine patrol divisions of the county sheriff's department, few have the financial resources to provide any particular lake the patrol time really needed. A few lake associations have solved this problem by contracting for additional sheriff patrol time. Such additional patrols might not be as expensive as you might think. I am aware of one lake association in Kent County which pays approximately $6,000 for the summer for additional patrol time, which has increased the presence of marine sheriff deputies on the lake from a handful of hours each week to approximately 25 hours per week. The frequent presence of the deputy sheriff has resulted in a dramatic decline in the amount of careless and reckless motorboating occurring on the lake.

Normally, a county sheriff's department will not contract directly with a private lake association. This can often be remedied by having the sheriff contract directly with the local municipality (i.e., city, village or township) and having the lake association reimburse the municipality. Some sheriff departments are more accommodating in such matters than others. Nevertheless, if a lake association encounters resistance from a local sheriff who refuses to provide additional patrols for a fee, the lake association should consider flexing its political muscles—all county sheriffs in Michigan must run for reelection every four years.