

A New Road End Bill

By Clifford H. Bloom, Esq.

Over a decade ago, the Michigan Lake & Stream Associations, Inc. (“ML&SA”), the Higgins Lake Property Owners Association (“HLPOA”), the Michigan Waterfront Alliance (“MWA”) and several other state-wide groups believed that it would be prudent to codify into state statute the long-existing common law indicating that public road ends at lakes can be used for travel purposes only, and not for sedentary purposes such as private docks, overnight boat mooring, boat hoists, lounging, sunbathing, picnicking or camping. Michigan common law on the subject is well laid out in the Michigan Court of Appeals decisions *Jacobs v Lyon Twp (After Remand)*, 199 Mich App 667; 502 NW2d 382 (1993) and *Higgins Lake Property Owners Assn v Gerrish Twp*, 255 Mich App 83; 662 NW2d 387 (2003). However, without either a state statute or a local municipal ordinance verifying what activities are prohibited at public road ends and providing a ticketing or police enforcement mechanism, the common law can only be enforced by expensive and time consuming private civil lawsuits.

Riparian and other stakeholder groups were able to persuade some legislators to introduce statewide legislation which would allow police officers to issue tickets to enforce public road end regulations. Unfortunately, when the pro-riparian legislation was introduced, it prompted a fierce backlash by many backlot property owners. Backlot owners formed their own groups which not only opposed all common sense road end legislation but actually urged some legislators to introduce legislation in an attempt to overturn the common law, unlawfully alter plat dedications and allow private dockage, boat moorage, sunbathing and other prohibited activities at road ends.

The pro-riparian and pro-backlotter competing bills seesawed back and forth for the better part of a decade. In fact,

a few years ago, backlot owners were able to convince the then-Democratic majority in the Michigan House of Representatives (and even a few Republican members via horse trading) to pass a bill that would allow private dockage and boat moorage at public road ends on certain larger lakes in Michigan. Luckily, the Michigan Senate refused to pass a similar bill and the proposed backlotter legislation died.

This fall, the MWA and HLPOA helped spearhead a new bill in the Michigan Senate (SB 778) that would prohibit private dockage, boat hoists and overnight boat mooring at public road ends. The proposed legislation would allow police officers to write simple criminal misdemeanor appearance tickets for violations (but would not prohibit a person from bringing a civil lawsuit stemming from a violation). The bill was introduced on October 26, 2011 and was

referred to the Senate Committee of the Whole on November 3, 2011. As of the writing of this article, no further action had been taken on the bill.

ML&SA, MWA and HLPOA hope that this common sense legislation will be enacted and become law in Michigan. The legislation will simply codify existing common law rules regarding public road ends at lakes and provide police officers with an easy ticketing mechanism for enforcement. For more information regarding the public road end controversy in Michigan, please visit the ML&SA website at www.mylsa.org and click on Position Paper of the ML&SA Regarding Proposed Public Road Ends at Lakes Legislation under “Recent News.” In addition, a January 30, 2008 opinion by the Michigan Attorney General (Opinion No. 7211) discusses the legal aspects of activities at public road ends.

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