

"Armageddon!"

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You have just purchased the cottage or house of your dreams on your favorite lake. Shortly after settling in, you receive word that a major housing development or marina is being proposed for the lakefront acreage next to you. Either type of development will ruin your relative solitude, lead to massive overcrowding of the portion of the lake near your property, and create a myriad of other problems and headaches. What do you do?

Some riparians would accept the proposed development as inevitable and do nothing. Others would attempt to sell their property. However, most riparians would fight (within the constraints of our legal system of course!). While most riparians are not against all lakefront development, they are against unreasonable development.

In general, there are five different fronts on which riparians should fight the anti-development war where an unreasonable development is proposed. Those areas are as follows:

- Zoning
- Other municipal ordinances
- State regulatory laws
- Bottomlands ownership
- The riparian rights doctrine

If a riparian, group of riparians, or lake association is serious about fighting a proposed development, one of the initial steps is to hire experienced legal counsel. Although such legal assistance usually does not come cheap, the attorney fees and costs can often be spread among multiple riparians or the members of the lake association involved via dues. Furthermore, the attorney should be hired early on in

the process since legal counsel may be unable to be effective if the development process has proceeded too far.

In many municipalities, a marina, housing project, or other development cannot occur (or an existing development be expanded) without complying with specific requirements of the local zoning ordinance. Although the overwhelming majority of municipalities (townships, cities, and villages) in Michigan have zoning regulations, a few rural townships do not. In some cases, the county has a zoning ordinance.

In some zoning ordinances, a marina or development is allowed "as of right" so long as certain regulations are met. In those cases, the local municipality has very little discretion regarding whether to approve the development. However, in many other municipalities, a developer must seek one or more discretionary zoning approvals (such as a special land use approval, planned unit development, rezoning, or variance) from the municipality. Oftentimes, riparians can successfully oppose a proposed unreasonable development by becoming actively involved in the municipality's zoning review process.

What if a riparian believes that a municipality is not following its own zoning regulations and is simply "rolling over" for the developer? That is where good legal counsel is invaluable. Furthermore, there are often ways of potentially forcing municipalities to enforce their zoning regulations via appeals to the zoning board of appeals, political pressure and other lawful means.

Some municipalities have ordinances separate and apart from their zoning regulations that govern marinas, dockage, boat moorings, and similar matters. Riparians should investigate whether any such ordinances exist and may be applicable.

In addition, any marina or multi-family or commercial development that utilizes the waterfront would typically need to obtain one or more permits from the Michigan Department of Environmental Quality (the "DEQ") or the Michigan Department of Natural Resources (the "DNR"). Such permits could include, but are not necessarily limited to, a marina permit (where two or more families share a dock or boat mooring or there is any commercial or business use of such a dock or boat mooring), dredging permit, permanent dock permit, or seawall permit. Sometimes, riparians can defeat a new marina or waterfront development by becoming actively involved in the state administrative review process. However, my experience has been that riparians are much more likely to successfully fight a proposed unreasonable marina or development through zoning or local ordinances than state agencies. Given the severe budgetary cuts at the state level, the DEQ and DNR are often toothless tigers when it comes to effectively reviewing and policing new marinas or waterfront developments.

Docks and boat moorings for a new marina or waterfront development cannot encroach on the bottomlands of adjoining or nearby riparians. Even if riparians cannot defeat a proposed marina

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or development, they should make sure that the docks and boat moorings for any such development will not encroach upon their bottomlands. In most cases, the riparian will have to hire a surveyor or engineer who is well-versed in trying to establish riparian boundary lines under the water in order to both ascertain whether there might be encroachment and to be able to present proof of the same to the developer or municipality. Of course, any such riparian survey is based only on the opinion of the surveyor or engineer involved and, absent court action, is not definitive. Such surveys can also prove helpful when attempting to persuade the DEQ that a permit application for docks or boat moorings for a marina or proposed development is encroaching on the bottomlands of others.

If all else fails (or potentially in conjunction with some of the other

techniques mentioned above), a riparian or group of riparians can sometimes pursue a successful “riparian rights doctrine” lawsuit against a proposed marina or development. Under the common law, a riparian landowner (in this type of situation, the owner or developer of a marina or development) cannot utilize his, her, or its lakefront and riparian lands in such a way that it would unreasonably interfere with the riparian rights of adjoining or nearby lakefront property owners. See *Thompson v Enz*, 379 Mich 667 (1967); *Three Lakes Ass’n v Kessler*, 91 Mich App 371 (1979) and *Pierce v Riley*, 81 Mich App 89 (1978). However, such lawsuits can be expensive and the results tend to be subjective based upon what the particular judge believes is a “reasonable” use of the lakefront area at issue. In addition, one or more expert witnesses will have to be hired to testify in court, and both the fees of those

witnesses and litigation costs in general can be expensive.

Should you be confronted with this situation, act quickly and decisively. Enlist other riparians and the lake association in your cause. Keep the faith. There have been many situations over the years where the plight of riparians initially looked bleak regarding a proposed unreasonable development, but subsequent events (which were often unforeseeable) intervened and caused the proposed marina or development to be scaled back or not occur at all.

For more information about this topic, please review my earlier article in the August 1999 issue of the Michigan Riparian magazine, which is available at: www.mi-riparian.org by clicking “Archive.”

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