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A Blueprint to Protect Your Lake

Frequently, I am asked by riparians around the state how they can lobby their local municipality to protect their lake. This issue's column will answer that question by means of a blueprint or road map for municipal protection of inland lakes.

The following are my suggestions for the most important ordinance provisions which a municipality can adopt in order to protect lakes:

1.   **Anti-Funneling Regulations.**

Typically, anti-funneling regulations are adopted as an amendment to the municipality's zoning ordinance. Such regulations usually require a minimum amount of lake frontage (for example, 100 feet) for each new lot or dwelling which will have access to or use of a lake. Such items and uses as docks, shorestations, and boat mooring are also frequently regulated by these regulations. The creation or expansion of canals or channels can also be banned. If contained in the local zoning ordinance, these regulations are subject to the lawful nonconforming use defense and all structures and uses which lawfully exist when the regulations are adopted are "grandparented," but cannot be expanded once the regulations become effective.

Be aware of the "Trojan Horse" effect which is sometimes utilized by a few municipalities. Such municipalities actually set the anti-funneling minimum lakefront requirements so low (for example, 15, 20, or 25 feet) for each new lot or dwelling which will have access to or use of a lake, that it actually promotes or prompts funnel developments! Such regulations can be worse than having no anti-funneling regulations at all. Generally, if the minimum frontage requirement for each new lot or dwelling is set at the minimum lot width requirement for the zoning district involved or approximates the actual average lot width/frontage which exists on a given lake, it is highly likely that the courts will uphold such regulations as being reasonable.

2.   **So-Called "Dock and Boat Launching Ordinances."**

Such ordinances are similar to anti-funneling zoning regulations but are adopted by a municipality outside of a zoning ordinance and as a "police power" ordinance. These are often complementary to and supportive of anti-funneling regulations. These ordinances often regulate dockage, swim rafts, boat mooring, and boat ramps. They can also be utilized to regulate dockage and boat moorage on existing lake access devices such as easements, private parks, walkways, alleys, and private road ends. Some ordinances prohibit permanent docks. Since a police power ordinance is involved, the normal lawful nonconforming use defense is not applicable. Unless a "grandparent" provision is expressly put into the ordinance by the municipality, existing uses and structures can be prohibited or severely regulated by the police power ordinance.

3. **Public Road End Ordinances.**

In municipalities with lakes where there are public road rights-of-way which end at one or more of the lakes, it is prudent for the municipality to adopt a public road end ordinance to regulate the lakefront use of these roads. Pursuant to such an ordinance, a municipality, if it so chooses, can ban docks and shorestations at public road ends, as well as prohibit uses and activities such as permanent boat mooring, picnicking, lounging, disturbing the peace, and boat launching. Limits on the hours of usage can also be imposed.

4. **Other Useful Zoning Regulations.**

There are a variety of zoning regulations which can be utilized to control development around lakes and to minimize the adverse impacts of over-development. For instance, each new lot or parcel on a lake should be required to have lake frontage equal to or greater than the minimum lot width requirement for lots within the zoning district involved. "Flag lots" or lots which have a lot width-to-depth ratio greater than a certain formula (for example, a lot which is more than three times as deep as it is wide) should be prohibited. Zoning setbacks for buildings and structures from a lake should be sufficiently large to minimize adverse impacts upon the lake. Private road regulations should be carefully drafted to prevent over-development along the lakeshore. Planned unit development regulations should not only be subject to strict anti-funneling requirements, but should also be carefully drafted to allow a municipality to attach conditions to a PUD approval to minimize adverse impacts upon a lake. There are also a variety of other zoning regulations which can be utilized to protect lakes.

5. **Local Wetlands Ordinances.**

Although the Michigan Legislature severely limited the ability of municipalities a decade ago to regulate wetlands, there still remains some limited local authority in this area. Protecting wetlands near and adjacent to lakes obviously can also protect the lakes themselves.

6. **Local Stormwater and Water Runoff Ordinances.**

Quite often, where local municipalities leave the enforcement of stormwater and water runoff regulations to state or county officials, the oversight function is not always performed well. Many municipalities have taken over this responsibility, and in many cases, it has given added protection to lakes.

7. **Miscellaneous Ordinances.**

Some municipalities have ordinances prohibiting "bubblers" which keep ice from forming in the winter around permanent docks. Other municipalities prohibit or restrict the landing of seaplanes on crowded or urban lakes.

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Although not a panacea, if a riparian can prompt a local municipality to adopt the above regulations (particularly anti-funneling zoning regulations, a dock and boat launching ordinance, and effective zoning regulations), it can give a good deal of protection to local lakes. Furthermore, the time to act is **now**—if riparians wait to prompt local municipalities to adopt such regulations only after a funnel development has been proposed, there will be little that can be done with regard to that development. Try to get the regulations in effect **before** a severe problem arises.