

## **THE ROAD ENDS PROBLEM – SOLVED - ALMOST**

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By now, almost every riparian landowner in Michigan is probably sick and tired of hearing about road ends at lakes. However, the typical riparian's patience or tolerance is even shorter with regard to off-lake or backlot property owners who are still misusing road ends.

Prior to 2012, no state statute regulated the usage of road ends (whether private or public) at lakes. Rather, the scope of usage rights for road ends was (and still is) governed by the Michigan common law; that is, by the sum of Michigan's Supreme Court and Court of Appeals written decisions over the years. A few Michigan municipalities (cities, villages or townships) did and have regulated road ends by local ordinance, but those ordinances are still not common.

The Michigan appellate case law on road ends is consistent, decades old and overwhelming. That case law states that road ends at inland lakes (whether public or private) cannot be used for private dockage, overnight or seasonal mooring, anchoring, docking or storing of boats or for lounging, sunbathing, picnicking or camping. Road ends are for ingress and egress to lakes (i.e., travel) only. Some of those Michigan appellate cases that make such limited road end rights clear include *Jacobs v Lyon Twp* (after remand), 199 Mich App 667 (1993), *Higgins Lake Property Owners Assn v Gerrish Twp*, 255 Mich App 83 (2003) and *Magician Lake Homeowners Assn, Inc v Keller Twp Bd of Trustees*, Michigan Court of Appeals decision issued July 31, 2008; 2008 WL 2938650 (Docket No. 278469). Many of those cases allow the governmental unit (not a private individual) to install one public dock on wider public road ends for "day use" only – boats can be temporarily docked or moored for use during the day but not

permanently or overnight. A similar “day use only” dock is also generally allowed by the courts for wider private road ends.

The problem with the common law is that it is not “self-executing”, nor is its violation a criminal matter. It is more like a civil law boundary line dispute. Accordingly, police agencies (whether a municipal police department, county sheriff, the Michigan State Police or Department of Natural Resources officers) could not and cannot enforce the common law by prosecution. Rather, riparians had to maintain expensive and often extended private action lawsuits to stop the violations.

In 2012, a new state law became effective (MCL 324.30111b) that prohibits the installation, maintenance or use of a private dock, as well as any overnight boat moorage, dockage or storage, at a public road end at an inland lake (as well as the shore and bottomlands thereof). Now, police officers can issue criminal misdemeanor tickets to enforce that statute. While the new legislation has helped considerably, continued public road end violations are still occurring based on several reasons. First, unfortunately, some local police agencies and prosecutors have shown their bias in favor of what they perceive as anything that favors “public access” and have refused to enforce the statute. Second, in some situations, individuals, prosecutors or police officers assert that a particular road end is not covered by the statute because it is not “open for use by the public” as required by the statute. In some cases, they are right, but in other situations, that is simply an excuse not to enforce the statute. Third, some are concerned about political pressure from backlot groups.

If a lake association or area riparians are concerned that the statute is not being enforced at a particular public road end, there are generally two options available. First, the statute allows

any individual to file a lawsuit to enforce the statute. Second, police or prosecuting authorities will sometimes bend to public pressure to enforce the law. The Michigan Lake & Stream Associations, Inc. has a “tool kit” that is available to its members to assist with writing the appropriate letters and notices to help prompt officials to enforce the statute. Members of the ML&SA may obtain the “tool kit” by sending a specific request to [info@mlswa.org](mailto:info@mlswa.org).

A particularly effective way of enforcing the common law regarding road ends is for the local municipality involved to enact its own police power road end ordinance. Such ordinances can be drafted to apply to both public and private road ends at lakes and can prohibit such activities as installing or utilizing a dock, mooring, storing or anchoring a boat overnight or for longer than a certain period of time, lounging, camping and sunbathing at a road end. In fact, MCL 324.30111b(3) makes it clear that local municipalities can enact and enforce those ordinances, although that was the case even without such legislation.

Over the years, many backlot property owners (as well as organizations that represent them) have slanted the debate and accused riparians and others of attempting to cut-off public access completely, destroying vested property rights or hurting tourism. All of that is nonsense. The unlawful activities that have been occurring at many road ends for years have created unsafe situations and huge liability potentials, promoted lawlessness, unfairly favored some individuals over others (including situations where a few backlot owners have run everyone else off these public properties) and interfered with legitimate lake access activities such as swimming, fishing and temporary boat moorage while the boat owner is present. The “entitlement mentality” of many backlot owners regarding road ends is widespread and often quite militant. Most riparians and related groups throughout the state have favored responsible, safe public access.

Frankly, the overwhelming majority of road ends in Michigan make lousy public access sites. Most are too small – rarely is a public road end wider than 66 feet and many are only 33 feet, 25 feet or 10 feet wide or even narrower. Most have no parking available. Few sites have restroom facilities. Finally, many of the illegal floating marinas at road ends are poorly maintained and resemble an obstacle course.

Misuse of public road ends at lakes effectively becomes confiscation of public property by a few individuals. That cannot be tolerated.