



MICHIGAN WATERFRONT ALLIANCE NEWSLETTER

November 2006

www.mwai.org

MWA Mission Statement “This corporation is formed to protect, preserve and promote the wise use of inland waters – lakes, streams, rivers, creeks and the waters and bottomlands of the state of Michigan.

Presidents’ Corner

By Bob Frye

Dear MWA Members,

Our new lobbyist group, Scofes and Associates, has been working out quite well. A good example is when MWA was asked by Representative Elsenheimer to attend a Lake access meeting on Nov 2.

I arrived at 7:45 AM at the Scofes office on Capital Avenue in Lansing and Del Chenault (president of Scofes & Associates) took fellow MWA board member Attorney William Carey and me to the Lobbyist Firm of PAA (Public Affairs Associates) where we met with PAA and another Lobbyist to discuss the pending meeting that was to take place at 9AM.

After reviewing the position of our Michigan Riparians’ regarding Inland Lake access at Road ends, Mr. Chenault took Mr. Carey and I to a meeting attended by 3 legislators (Elsenheimer, Sheltroun and Stakoe) and a number of attorneys representing all sides of the issue and a number of lobbyists also representing all sides of the issue.

Our MWA Board Member William Carey was asked to interpret the history of Road End Law. He did so very well and the result of the meeting I believe, was a better understanding of what can and cannot be legislated as far as Road Ends go.

Your membership enables this kind of Riparian participation at the Legislative Level. It is a very good investment.

Best Regards,
Bob Frye, MWA President

Michigan Waterfront Alliance -Legislative Update - November 2006

By Nikki McCord

On Thursday, November 2, 2006, Del Chenault and Bob Frye attended a Road Ends meeting arranged by Reps. Elsenheimer (R-Bellaire), Sheltroun (D-West Branch), and Stakoe (R-Highland). The meeting included representatives of lake associations from around the state who are concerned about HB 4576 regarding road ends. The main purpose of the meeting was to facilitate discussion among the groups to decide whether or not the courts were correct in their interpretation of ‘public use’ as well as to discuss whether or not the legislature had any standing on defining ‘public use’. The group was asked by Rep. Elsenheimer to discuss this issue and to report back to the group during the next meeting. The group was also assured that this legislation is still being discussed and will not be taken up by the full legislature during the upcoming ‘lame duck’ session.

Scofes and Associates is keeping a close watch on this legislation and will report any and all developments.

S&A is aware that the MWA members are interested in the results of the elections that took place on Tuesday, November 7, 2006 and what it means for the group and will provide a update once the results are made public.

[Nikki R. McCord](#)
[Scofes & Associates Consulting, Inc.](#)
[Director for Communications and Research](#)
[535 N. Capitol Ave., Lansing, MI 48933](#)

(Continued on Page 2)

LETTER TO LEGISLATORS

By Attorney for MWA & ML&SA

Clifford H. Bloom

Direct Dial (616) 732-1710

Direct Fax (616) 913-1210

E-Mail: CliffBloom@lwr.com

October 20, 2006

The Honorable Kevin Elsenheimer
Michigan House of Representatives
The State Capitol Building
P.O. Box 30014
Lansing, Michigan 48909

Re: The Proposed Bills Regarding Public Road Ends at Lakes

Dear Representative Elsenheimer:

We are legal counsel for the Michigan Lake & Stream Associations, Inc. ("ML&SA"), the largest organization in the state of Michigan representing riparian and waterfront property owners, as well as the Michigan Waterfront Alliance ("MWA"). ML&SA and MWA asked that I provide you with some general background regarding their position on the proposed legislation involving public road ends at lakes prior to your November 2, 2006 meeting (rescheduled from October 5). Both my own legal practice as well as that of our law firm's municipal practice group involve the representation of numerous municipalities throughout West Michigan, including the general legal representation of more than two dozen townships, many of which have a large number of lakes and streams (including public road end problems). I have also lectured extensively for the Michigan Townships Association (including teaching the water law seminar at MTA's statewide convention this past January) and have authored articles for both the MTA magazine and the Michigan Planning & Zoning News magazine. Accordingly, I have a great deal of experience with regard to public road ends at lakes.

As you know, the road ends legislation was first introduced several years ago as a way of legislatively codifying and making the enforcement of the common law easier regarding the proper usage of public road ends at lakes. The Michigan Attorney General's office probably first broached the idea of state-wide regulatory legislation years ago. Legislation to limit what occurs at road ends has been supported by virtually every responsible group in Michigan which is directly affected, including, but not limited to, the Michigan Attorney General's office, MTA, MML, ML&SA, MWA, and MUCC. The legislation as originally introduced (and as supported by those groups over the years) would prohibit the mooring, storing, and anchoring of watercraft at public road ends, as well as prohibit the installation or use of dockage except when installed by a governmental unit. This is what the Michigan appellate courts have ruled civilly. However, that proposed legislation was hijacked by a small but very effective group of backlot property owners (primarily at Higgins Lake) who produced their own proposed counter-legislation which sought to overturn the longstanding case law and common law. In fact, the various pieces of legislation pushed by the backlot owners over the years have often been deceptive and somewhat of a wolf in sheep's clothing—while purporting to enhance public access and local control, in fact, in most versions of the bills pushed by the backlot owners, the bills would have actually allowed a few backlot owners to appropriate the public road property for their own private use and would have actually impinged upon local governmental control.

The latest version of the bill pushed by the backlot owners is just as bad as the past bills they have sponsored. Although cloaked in language that might appear at first blush to be somewhat responsible and even-handed, the latest bill attempts to actually validate floating private marinas, crowd out proper uses at road ends such as swimming and fishing, and make local governments complicit in such actions. Rather than allowing this controversy to settle down and have certainty reign (as has gradually occurred within the last few years as the appellate courts have slowly stopped illegal backlot activities at road ends), the backlot owners' current bill would re-ignite new range wars all over the state when backlot owners would attempt to pressure local governmental units do their bidding by passing self-serving road end ordinances.

Candidly, no road ends legislation at all would be better than adopting bad legislation. Every proposal made by the backlot owners to date would be terrible legislation.

Undoubtedly, it would be desirable in theory to try to reconcile the desires of the MTA, MML, the state of Michigan, MUCC, ML&SA, MWA, etc., on the one hand and the backlot owners on the other by reaching a compromise on the road ends legislation. Unfortunately, that is almost certainly not possible, since the positions are diametrically opposed. The first group (including our clients, ML&SA and MWA) desire to allow police officers, sheriff's deputies, and peace officers to enforce the longstanding common law usage rights of public road ends (as confirmed repeatedly by the Michigan appellate courts) by being given the ability to issue simple civil infraction tickets for violations. The backlot owners group desires to legislatively expand common law usage rights and allow private permanent boat mooring, shorestations, boat hoists, etc., at public road ends. These two views cannot be reconciled in any legislation.

As a practical matter, these narrow public road ends make lousy marinas and boat mooring sites. The backlot groups should stop wasting everyone's time proposing unconstitutional special interest legislation and devote their resources to fundraising for purchasing lakefront properties of significant size for good public access sites. The notion that any of the legislation being pushed by the backlot groups is "pro-local control" is absurd. Local municipalities (including townships, where most inland lakes are located in Michigan) already have full statutory and constitutional authority to regulate activities which occur at public road ends. However, municipalities do not (and should not) have the authority to alter basic property principles by unconstitutionally attempting to expand usage rights at public road ends at lakes. In fact, the Michigan Townships Association recognizes that and opposes the backlotters' HB _____.

What the backlotters seek is not "local control," but special privileges. Some additional reasons for opposing any legislation which would allow permanent or overnight boat mooring, shorestations, or private dockage at public road ends include the following:

1. The Legislation Would be Unconstitutional

For the overwhelming majority of road ends in Michigan, the adjoining riparian property owners own the land under the public road right-of-way/easement to the center thereof. See *Shell Oil v Village of Kalkaska*, 433 Mich 348 (1989); *Morrow v Bott*, 203 Mich App 324 (1994); *Loud v Brooks*, 241 Mich 452 (1928); and *Thies v Howland*, 424 Mich 282 (1985). Accordingly, attempting to broaden the original dedication legislatively in order to allow permanent boat moorage, private dockage, etc., would be invalid and an unconstitutional taking of the property rights of the adjoining riparian landowners who own the land under the road right-of-way or easement.

2. The Legislation Would Clearly be Invalid

The backlot property owners tried a similar route unsuccessfully already. They were able to prompt Lyon Township to pass a self-serving local ordinance which attempted to expand the usage rights for public road ends at lakes within that township. In *Lyon Township v Higgins Lake Property Owners Association* (unpublished Michigan Court of Appeals Case No. 265162, dated April 11, 2006), both the trial court below and the Michigan Court of Appeals held that Lyon Township could not lawfully broaden the scope of allowable usage rights for road ends by ordinance. Thirteen years earlier in *Jacobs v Lyon Twp*, 199 Mich App 667 (1993), the Court of Appeals also thwarted an attempt by Lyon Township to do essentially the same thing which Lyon Township attempted to do more recently in the 2006 case—that is, unlawfully attempt to expand usage rights to road ends by legislation. Just as Lyon Township could not constitutionally expand usage rights at public road ends by ordinance, neither can the Michigan Legislature constitutionally legislatively expand the usage rights at public road ends by legislation.

3. It Would be an Improper Attempt to Overturn a Century of Case Law and Common Law as Determined by the Michigan Court of Appeals and Michigan Supreme Court

The backlotters' proposals are a blatant attempt to eliminate over a century of clear Michigan case law including, but not limited to:

- *Jacobs v Lyon Twp*, 199 Mich App 667 (1993)
- *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83 (2003)
- *Lyon Township v Higgins Lake Property Owners Association*, (unpublished Michigan Court of Appeals, Case No. 265162, dated April 11, 2006)

4. Illegal Conduct Should not be Rewarded, Validated or "Grandparented"

Why should lawbreakers be rewarded by new legislation which would attempt to validate their wrongful conduct? What type of a message would that send to Michigan residents?

5. It Would be Bad Public Policy

In addition to the bad message that the backlotters' legislation would send about rewarding lawbreaking, no legislation should be adopted which would allow a few people to monopolize a public property such as a public road end.

6. The Legislature Should not be an "Enabler" for Illegal Activities

Why should law-abiding citizens be penalized and the lawbreakers be rewarded by special legislation? Passage of the backlotters' bill would send a very unsavory message to the people of the state of Michigan—engage in unlawful conduct, lobby the government for an exemption, and ultimately you will not only benefit by your past unlawful conduct, but you will be able to continue to permanently engage in the formerly illegal conduct!

7. The Practical Results Would be Disastrous

The backlotters' bill would not only allow certain road ends to continue to be "junked-up," but it would make townships the new battle grounds for road end disputes. Certain townships would receive great pressure from backlot property owners to enact self-serving ordinances favoring the backlot owners.

8. The Backlotters' Current Proposal Would be Unworkable

Under one version of the backlotters' proposed legislation, townships could "subcontract" with private neighborhood associations and individuals, who would then operate the floating "marinas" at public road ends. It is not difficult to predict how that would work out. Furthermore, it would also likely be unconstitutional to allow a private association or individual to have such control over a public property. At the very least, it would be undesirable.

When and if legislation were adopted allowing local governments to permit boat marinas at public road ends, local municipalities could not favor one group over another. Accordingly, members of the public who do not even own property in the vicinity of the public road end involved would have just as much legal right to have use of scarce road end boat slips as a backlotter who owns property a short distance away. How would the local municipality allocate scarce mooring sites

and administer the same? Seniority could not be utilized, as that would be unlawful. "First come, first served" does not work. Presumably, an annual lottery would have to be utilized. Good luck with that!
 Our clients hope that legislators will not allow this one narrow special interest group of backlottery to continue to appropriate public property for their own private use and to the detriment of the public.
 Please do not hesitate to contact me should you or any other legislators have any questions regarding these issues. Our clients thank you for your attention to this matter.

Very truly yours,
 Clifford H. Bloom

egk
 cc: Brian Mills, Chief of Staff for Representative Kevin Elsenheimer
 ML&SA, MWA
 Senator Patricia Birkholz



**MICHIGAN
 WATERFRONT
 ALLIANCE,
 ONLY THROUGH YOUR
 ACTIVE INVOLVEMENT, IS
 YOUR LAKE PROTECTED**

**Your Support
 Does
 Make a difference!**

MICHIGAN WATERFRONT ALLIANCE
 P.O. Box 346, Three Rivers, Michigan 49093
 Phone (269) 273-8200 Fax (269)273-2919
 Email: mwai@mlswa.org
 WEB SITE: www.mwai.org

**Michigan Waterfront Alliance
 Board of Directors:**

Officers:
 President **Robert Frye** Ph 989-821-6661
 Email: skibones@aol.com
 Vice President **Richard Brown** Ph 810-629-5964
 Email: RLSBrown@prodigy.net
 Secretary **Roger Carey** Ph 989-588-9538
 Email: mcarey55@earthlink.net
 Treasurer **Pearl Bonnell** Ph 989-257-3583
 Email: pbonnell@mlswa.org

Directors:
Ed Highfield Ph 231-972-2190
 Email: edhelenhighfield@centurytel.net
Del Sipes Ph 269-463-8166
 Email: delavan1122@comcast.net
William Carey Ph 989-348-5232
 Email: wlc@freeway.net
Bill Sharp Ph 517-332-4255
 Email: aewbsharp@voyager.net
Pam Tying PH 517-647-2294
 Email: tyningP@progressiveae.com

Membership Application



The minimum annual dues for individual membership In Michigan Waterfront Alliance are \$25.
 Commercial and Individual Donations Are Appreciated

Plea _____ MWA

 Last Name First Name () _____ - _____ () _____ - _____
 Day Phone Evening Phone

 Street Address City State Zip Code

 County Township Lake or Stream Association if established

Make Checks payable to: **Michigan Waterfront Alliance**
 Mail to: **MWA, P.O. Box 204**
Long Lake, MI 48743

Nov 2006