

AN ATTORNEY WRITES

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A Modest Proposal

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I cannot ride a motorcycle on the North County Trail. Certain types of boats are not allowed in many public marinas. Modular homes over a certain size cannot be transported on some public roads. Permanent deer hunting blinds cannot be erected on public lands, nor can spikes be driven into trees on such lands for tree stands. In many counties, snowmobiles cannot be driven on the shoulder of county roads. Motorcycles under 125cc are expressly banned from expressways. Government at various levels regulates public ways, parks and waterways in many fashions.

To many, there is a perception that most riparian property owners are against public access to lakes and streams. I do not believe that is generally the case. Rather, most riparians appear to be against unregulated or unreasonable public access to bodies of water. This notion that every type of watercraft ever made should be permitted public access at all times to every body of water in the state of Michigan (no matter how small or ecologically sensitive) for every possible use is curious, and I would submit, absurd. Our state government regulates virtually every facet of human behavior for reasons of order, safety, convenience and even aesthetics. Therefore, the stated (or at least de facto) policy of the state of Michigan to permit (and even encourage) unlimited public access involving every known watercraft to every body of water in the state of Michigan seems baffling and irresponsible.

My proposal is as follows. Michigan should list by category all public access sites on inland lakes in the state. Pursuant thereto, a list of "do's" and "don'ts" should be applied to access sites based on the size, shape and ecological status of the lake involved. For instance, public access sites on lakes under 50 acres in size could only be utilized for passive uses such as ice fishing, swimming, wading, and the use of carry-on sailboats, rowboats, canoes and other unmotorized vessels (except electric motors would be permitted). Public access sites on lakes from 50 to 100 acres could be used for the preceding, as well as the launching of boats with motors not

exceeding 10 horsepower. For lakes between 100 and 200 acres, larger motors could be used for bass and fishing boats, but not for water-skiing, personal watercraft, etc. Only public access sites on larger lakes could be used for the full range of intensive motorized watercraft purposes and uses.

Under my proposal, the DNR would closely monitor public access sites, limit vehicle parking to match the carrying capacity of the lake, hire summer help or college interns to monitor the site and vigorously enforce the applicable regulations.

Clearly, state legislation would have to be enacted to authorize the above-mentioned regulations and to give the DNR the authority to enforce them.

Such proposed regulations would not apply to property owners on a lake. Undoubtedly, some will assert that applying such regulations to public access sites and not to riparians would be "discriminatory" or "unfair." Again, that type of argument should wilt under its sheer silliness when examined closely. Users of public property never have as extensive of a right of usage as a property owner. For instance, when I camp at a public campground, I cannot cut down trees, install structures or monopolize a site indefinitely, as could a private property owner. When I go to a public beach, I am subject to a myriad of rules and regulations not applicable to the owners of an adjoining private beach. Private riparians have more duties and responsibilities regarding lakefront property (*i.e.*, property taxes, liability, insurance, upkeep costs, etc) than public users. Riparians are present year around, while specific members of the public use a given lake access site only occasionally. Common sense and human nature dictate that riparian property owners are generally more respectful of their lake than transient users.

DNR officials will also undoubtedly argue that additional rules and regulations will be difficult to police and new law enforcement funding will be needed. So what else is new? When the state of Michigan determines that something is important, it has not hesitated to enact extensive rules and regulations (no matter how difficult the enforcement procedures) and to properly fund the same. For example, the laws governing hunting and fishing are voluminous, often confusing, and exceedingly difficult and costly to enforce. Nevertheless, the Legislature has put a high priority on enjoyable, safe and orderly hunting and fishing. It should do the same to ensure the safety of our public waterways.

Predictably, Michigan tourism officials would probably also criticize my proposal and claim that it will hurt tourism. That same type of argument was made by the tourism industry for years to defeat increased regulation of personal watercraft usage. Such criticisms are shallow, knee-jerk, and incorrect. Intrusive and dangerous boating practices tend to "crowd out" other uses, whether it be reckless personal watercraft operation or improper high speed boating on a small lake. One reckless boater from a public access site can easily deter dozens of sailors, fisherpersons, and swimmers from utilizing a lake. Given the choice, I would certainly rather deter one obnoxious boater from coming to Michigan to use our

lakes than to risk losing a dozen other tourists who would otherwise use a given lake and who would undoubtedly spend many more tourist dollars in Michigan if the obnoxious boater were not there.

How do I justify this proposed allocation of uses for public access sites? The surface area of lakes is a limited resource, as are public access sites. Basic fairness requires the regulation of public uses which "crowd out" other valued passive, natural activities. For example, a high speed boater or water skier utilizing a public access site might effectively take up 40 acres of lake surface area at a time, thus crowding out numerous sailors, slower motorboats, fisherpersons, swimmers and scuba divers. On an 80-acre lake, is it really fair for two high speed boaters to monopolize the lake to the exclusion of dozens of other users? If one puts aside emotion, the answer is quite clear.

The small size of most public access sites reinforces the need for regulations, particularly at the launch site itself. Permitting high speed boats to use the same launch area as swimmers, fisherpersons and sailors is dangerous and can even be fatal.

Will anything like my proposal ever be enacted into law? I believe it probably will be someday, but not until our waterways have become so overcrowded as to present such acute safety and ecological hazards that the resulting public outcry will demand legislative attention. It is unfortunate that the dynamics of our system of government prompt enactment of remedial legislation only after a severe problem has already occurred and festered, rather than utilizing foresight and innovative planning techniques beforehand.