

ATTORNEY WRITES

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“I Can No Longer Even Enjoy My Lake...”

Are you a riparian who owns a waterfront property with a sandbar off your shore where many boat owners gather on weekends during the summer? Or, were you one of the unfortunate lakefront property owners on Torch Lake in the vicinity of the thousands of boats that congregated *en masse* during the nightmare party that occurred over the 4th of July weekend in 2015? If so, you may be one of the many riparians throughout Michigan who ponder whether their waterfront problems have become so severe that selling their inland lake waterfront property is the only solution. If so, you are not alone.

Tolerating a crowded inland lake during a Michigan summer is one thing. Enduring significant numbers of boats congregating together on a sandbar or other areas on an inland lake with dozens, hundreds or even thousands of people partying, drinking heavily, playing loud music and generally disturbing the peace is quite another matter. Such situations have often been referred to as the “party barge” or “sandbar from hell” problems. Unfortunately, there typically is no easy solution to these problems.

Riparians faced with these problems potentially have both civil remedies and government remedies. Unfortunately, the civil remedies are likely impractical and ineffective. Under the Michigan common law, boaters have the right to temporarily anchor on the riparian bottomlands of another to engage in navigable conduct. Clearly, anchoring for a limited period of time for

fishing, seeking shelter in a storm or simply enjoying the scenery is generally allowed. Anchoring on the bottomlands of another for long periods of time for partying is likely not permissible under the common law. The potential civil remedy, however, would involve filing a lawsuit against the offenders, which can be both costly and time consuming, with the possibility that the riparian might not prevail. More importantly, such civil lawsuits are normally totally impractical, as a court order after a lawsuit only binds the parties involved. With the type of violators in party barge or sandbar situations, they are generally different people for each violation incident. Furthermore, the riparian often cannot determine the names and addresses of even one or more of the violators. Hence, civil litigation would normally be for naught.

Theoretically, the better solution to these problems would be local government action. Unfortunately, however, in the past, the tools available to local government officials to solve these problems were limited. Also, in many cases, local government officials did not have the political will or desire to solve the problems by definitive local municipal action.

Importantly, though, many of the individuals involved in the party barge or sandbar situations are already violating one or more existing state laws or local ordinances. Local police officers, sheriff deputies, and Department of Natural Resources officers can issue tickets for disorderly conduct, public indecency, drunk boating, disturbing the peace and similar infractions. In order to expand police efforts, some marine safety patrols (or the local police or sheriff's department) will enter into a contract with a lake association or local government to increase lake police patrols and enforcement for a price. Special assessment districts can often be set up to fund such increased police efforts.

Unfortunately, there typically is no state law or local ordinance by which a police officer or sheriff deputy can require boats to disperse from a sandbar or party barge situation where no other laws are being violated (for example, the partiers are not engaged in disorderly conduct or disturbing the peace). Furthermore, it would be difficult to draft, enact and enforce a local municipal ordinance disallowing boat congregation. How would such an ordinance be drafted? Would it apply only if five or more boats congregate together? Ten boats? And for how long – two hours, six hours, eight hours? Such ordinances would be difficult to enforce and could be invalidated by a court for being arbitrary or vague.

There are some novel approaches, however, that the townships around Torch Lake (and other municipalities throughout Michigan with similar problems) could undertake. First, the local zoning ordinance could be amended to make it clear that any person, group, business or organization that sponsors or promotes an event like that which occurred at Torch Lake last summer would need a special zoning approval in advance of the event. That could also be handled by a police power ordinance separate from the zoning ordinance. Pursuant to such an ordinance, there could be prior notice requirements, licensing regulations, requirements for the posting of a bond or monetary security for damages, limitations on hours and similar regulations. Such an ordinance or ordinance provisions could be applied to organized lake events, fishing tournaments, boat races and similar events.

Another novel approach would be the adoption of a local ordinance by which police officials could declare a “lake emergency” or the equivalent. Pursuant to such an ordinance, where the congregating of a large number of boats and watercraft in an inland lake (or many individuals partying on the bottomlands of a lake or shoreline thereof) creates a navigability hazard, a safety emergency or similar problem, a police department could declare the situation to

be unsafe or a hazard to navigability and police officers would then be authorized to disperse the congregated boats or crowds. The violators could also be ticketed by the police.

Would statewide legislation help alleviate these problems? It is possible, but unlikely, given the strength of the boating and related lobbying groups.

Finally, any business, person or group that would sponsor a large-scale lake event also runs a significant liability risk, particularly if the event gets out of hand, individuals become unruly, people are injured or killed or property damage occurs. In some cases, those who sponsor or promote the event could be sued for damages. The risk would be particularly high for a sponsoring or promoting restaurant, tavern, party store or other business with a state liquor license, as their liquor license could potentially be put in jeopardy.

Some people have little or no sympathy for riparian property owners in these situations. They assert that the waters of an inland lake with a public access site is public property and that the riparians should expect to have significant (even crowded) public use. However, such arguments fall flat for at least two reasons. First, people normally do not have the legal right to utilize the bottomlands of a riparian property owner for partying without the permission of the riparian property owner. Second, no one should have to put up with the extreme crowds, vandalism and severe health and safety issues frequently involved in these situations. The Torch Lake incident in 2015 resembled an invasion, not just “good clean fun”. Those who claim that riparians should simply put up with these problems as an incident of ownership on a public body of water should consider the following analogies. How would you feel if you owned property next to a public park or campground and several times a year there was a “mini-Woodstock” event next door on the public property (with spillover and trespassing onto your property)

involving humongous crowds, partying, excessive drinking of alcohol and general disturbance of the peace? Or, since the public road right-of-way for most public roads goes 20 to 30 feet into a private property owner's front lawn, how would that property owner feel if members of the public decided to stage a party in the front yard with large numbers of people involved in drinking and rowdy behavior? When one considers those analogies, everyone should have empathy for the riparians who must suffer from the out-of-control party barge or sand bar problems.

Hopefully, local governments and police officials will be able to work with Torch Lake riparians to prevent the type of huge problems that occurred during the 4th of July weekend at the lake last summer.

The severe problem at Torch Lake this past summer is also discussed extensively in another article elsewhere in this issue of the magazine.