

## ATTORNEY WRITES

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I would like to thank all of the readers for the outpouring of positive feedback triggered by my column in the last issue of the *Riparian Magazine* entitled “The Top Ten Excuses—Are You Kidding?!” Perhaps with the exception of the article entitled “Chutzpah” from several years ago, last issue’s column apparently generated the most enthusiasm of any of my columns.

Although my last column addressed excuses used by many municipal officials who refuse to consider anti-funneling or other lake-related regulations, I did not discuss why funneling itself can be bad and constitutes poor planning. That is the topic of this issue’s column. Following are some of the reasons why funneling constitutes a problem which municipalities should deal with decisively.

### I. 1. Conflict

Allowing more than one family (and quite often, many families and numerous people) to cross and utilize a relatively small piece of property to access and use a lake is a prescription for problems and conflict. What makes the situation worse is the fact that most funnel development devices or lake access properties are not only jointly owned, but also jointly utilized. Anyone who has jointly owned a piece of property or equipment (for example, a boat) with another person (let alone 5, 10 or 50 others) knows that the potential for disagreement, conflict and outright animosity is great. For example, in a high number of situations involving private roads, such conflicts occur. Furthermore, disputes that would otherwise be resolved with normal properties tend to escalate to apocalyptic proportions where lakefront property is involved. All of these conflict points are present in funneling situations.

Lakefront properties also tend to breed more disputes and conflicts than conventional real estate. Even where single-family owned lakefront lots are 50, 75, or even 100 feet wide, there are a high number of disputes regarding property lines, placement of docks, boat usage, and similar matters. It is not difficult to see how such disputes are magnified where many families share a small lake access strip which is only 50 feet, 20 feet, or even narrower in width. Tempers flare. Backlot owners

utilizing the common lake access site must share a small property with others and feel a loss of control.

Conflicts regarding funnel access properties are generally of two types. First, there is almost invariably conflict between the many families utilizing the common lake access property and the adjoining riparian owners on either side. Such conflicts can include the placement of docks, conflicting boat moorings, crossing property lines, noise keeping riparian property owners up at night, and similar problems. Second, there is often also conflict between and among those backlot owners themselves who have the right to utilize the joint lake access property.

Absent municipal regulations, how does one allocate conflicting uses on a small common lake access property? Swimming in a limited area is inherently inconsistent with waterskiing or motorboating in the same area. For every square inch of scarce lakefront and bottomlands property occupied by dockage and shorestations, that is another square inch which cannot be utilized for swimming, boating, or waterskiing. Where one family owns a 100-foot-wide lakefront lot, it is easy to decide what uses will occur—the property owner or the family decide. With a commonly-used and jointly-owned small lake access property, there usually are no clear lines of authority. Conflict is virtually inevitable.

## **II. 2. Safety**

There are a myriad of potential safety hazards attendant to commonly-used lakefront properties which are not present with other types of real estate. These hazards include drowning, dangers associated with fast boats and sharp props, diving into shallow waters, and conflicting uses. Funneling only makes matters worse since it concentrates a greater number of people in a much smaller lakefront area.

## **III. 3. Fairness**

It strikes many people that funneling is inherently unfair. The purchasers of lakefront lots pay a premium for lakefront property. Their lots must meet the minimum lot size requirement, which also often includes a minimum lake frontage width requirement such as 70, 80, or 100 feet or more. Lakefront property owners pay much higher taxes than backlot owners. Lakefront property owners have to keep their lakefront clean, including extensive raking. On lakes where a special assessment for weed control exists, lakefront property owners pay a full assessment.

Conversely, backlot owners with lake access appear to have most of the practical advantages of lakefront lot ownership without the costs and obligations associated therewith. Backlot owners pay much less for their

properties, yet demand full riparian rights. Backlot owners pay much lower taxes than lakefront property owners, even though they have the right to utilize the entire lake surface. Backlot owners want full dock and boat mooring privileges, even though they own only a small fraction of a lakefront lot collectively with others.

Permitting funnel developments also appears contrary to the normal development of residential properties around lakes and leads to unfair overcrowding of lake properties and the lake itself. Funneling leads to two, three, four, and even more “tiered” development. Many would argue that funneling is unfair “piling-on” around lakes.

#### **IV. 4. Adverse Environmental Impacts**

Concentrating a large number of lake users on a small piece of property and lakefront tends to exacerbate the adverse environmental impacts of lake usage. A larger number of lake users along the shoreline will naturally cause more adverse effects upon the shoreline and water. Cattails and water plants get trampled. More intensive usage can cause erosion. More watercraft causes noise and water pollution.

#### **V. 5. Practical Problems**

Most municipalities extensively regulate commercial and multi-family uses, as well as private roads and similar matters. Why shouldn't such municipalities also extensively regulate funnel developments and commonly-used lake access sites? A jointly-used lake access property is a multi-family use. All of the arguments utilized for regulating multi-family apartment complexes and uses are equally applicable to funnel developments.

There are many characteristics of jointly-used lake access properties which are not present with a single-family-owned lakefront lot. For example, the lakefront tends to be located much further away from backlots which utilize a common lake access property than is normally the case with dwellings located on single-family lakefront lots. The lack of bathroom facilities on a commonly-used lake access site can create problems. Experience has shown that it is more likely that trash will be left at the lakefront where joint lake access property is involved.

Practically, if the local municipality does not regulate funneling and common lake access sites, no one will and the problems will accumulate. Good municipal zoning and planning anticipates problems and prevents or minimizes them before they occur. As such, anti-funneling regulations are a reasonable and prudent planning technique.