

Unusual (But Potentially Helpful) Local Municipal Regulations

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Many riparian property owners are generally familiar with the zoning regulations of their local township, city or village, particularly with regard to the waterfront. Many municipalities with substantial lake or river properties have zoning or other local ordinance provisions that regulate water access, docks, the setback of new structures from the waterfront, and similar matters. On occasion, however, waterfront property owners “push the envelope” with regards to new and potentially objectionable uses or structures that are not covered by the existing regulations of the local governmental unit involved. This article addresses some of those uses and structures.

Municipal regulations governing docks are fairly common. Typical dock regulations include limits on dock length, width, and the allowed number of docks per waterfront property. Less common are regulations requiring that the docks be roughly perpendicular from the shoreline and be located at least a certain distance or setback from where the side lot lines intersect the waterfront. Some municipalities ban permanent docks or piers in inland lakes. Others disallow built-in benches on docks, as well as deck-like or patio components of docks.

Local swim raft regulations are not very common. A few municipalities regulate the number of swim rafts or water trampolines allowed per waterfront property, the distance that such items can be anchored from shore (often expressed in terms of the depth of the lake), the size of the raft or trampoline, and the maximum height of any such

item above the water. A few municipalities require the owner of every raft and dock to prominently display the owner's name, address, and telephone number on the item.

“Bubblers” are becoming increasingly common for inland lakes in Michigan. Typically, a riparian landowner will utilize a bubbler to prevent ice damage to a year-round dock or pier, and a few property owners even keep their boats in the water in an inland lake year-round by the use of a bubbler. Many people consider bubblers to be severe safety hazards for those who go out on the ice of an inland lake in the winter, since a bubbler not only causes open water, but also weakens the ice for a significant distance beyond the open water. The drowning potential is particularly significant in the winter when not only is the water frigid, but wintertime visibility conditions can be almost zero due to blowing snow even during the day, thus endangering children, pets, snowmobilers, and those who ride four-wheelers on the ice. Bubblers can also present negative environmental impact issues. Some municipalities have adopted local regulations that ban bubblers altogether.

Some municipalities have enacted regulations to prevent “crowding” or the cluttering up of the lakefront. Most zoning ordinances prohibit dwellings and significant buildings from being located within a certain setback distance from the ordinary high water mark of a river, lake or stream. Some municipalities allow gazebos and small sheds to be located closer to the water (and within the setback areas), but not all municipalities are so permissive. More than a few municipalities prohibit decks, patios (above ground level), swimming pools, and impermeable surfaces within a specified distance of a body of water.

A few municipalities have considered the possibility of buildings or decks being built out into a body of water or being “cantilevered” out over the water. But they often assume that the Michigan Department of Natural Resources or other state agency will always disallow such structures; however, that is not always the case. While a few communities have a proliferation of boathouses at, near or over the water, and approve of those boathouses as a part of the local community’s heritage, most local governmental units do not want any building, item or structure built in or over the water except for lawful docks and temporary, seasonal boat hosts. If structures on, in or over the water are a concern, a local ordinance should address those issues.

On occasion, even boat hoists, boat cradles or shore stations can be overdone. A few waterfront property owners in Michigan have installed boat cradles that resemble boathouses or that have mechanical methods resembling small train track that allows a portion of the boat hoist to be ramped up onto dry ground when a boat is in the cradle. A few municipalities have prohibited or strictly regulated such items.

What about floating signs or billboards? Such advertising has popped up in a few other states, but apparently has not occurred in Michigan (or, if so, has occurred only rarely). Should a local municipality attempt to ban or regulate such signage before a problem occurs, or is that an intrusive government regulation that goes too far?

What about the problem on many inland lakes where a number of boaters tie their vessels together on a sandbar or shallow area for hours at a time, party hard, and cause significant heartaches to nearby riparians? To my knowledge, no municipality has an ordinance in place that would regulate or prohibit such activities (although disorderly or

criminal conduct, such as indecent exposure, drunk boating, disturbing the peace and similar offenses, can always be prosecuted, regardless of whether or not a boat or watercraft is involved). While such partying activities can cause significant problems for nearby riparian land owners, it would be exceedingly difficult to draft a local ordinance that would help resolve the problem without being unduly vague or overly restrictive, or both.

Some municipalities ban the creation of new canals or channels cut into lakes, but allow existing lawful channels to be cleaned out (but not widened, deepened or extended).

Although local single family zoning regulations likely prohibit the practice of a riparian property owner allowing a friend or relative to keep their boat at the riparian's dock or shoreline for long periods of time, a few municipalities write that specific prohibition into the regulations (typically, the regulation will state that only the then-owner of the riparian property involved can keep boats or watercraft that are titled in the landowner's name at his or her waterfront property).

Occasionally, a lakefront property owner on an inland lake will install their own private boat ramp (and might occasionally allow a friend or relative to use the ramp). For a variety of different reasons, boat ramps for the benefit of one riparian property are likely undesirable and could be regulated or even prohibited by a local ordinance provision.

Surface water diversion from lakes and streams can be a significant problem. While theoretically subject to state licensing requirements, given the tight budgetary

constraints for state government, state watchdogs can sometimes be overly permissive. A local municipality can regulate significant water withdrawals from lakes and streams (for example, for golf course watering or ski slope snow-making purposes) by a local ordinance.

While all-lake boat fishing tournaments, organized ice racing in the winter, charitable ice-fishing events, and similar corporate or charity-sponsored events can be beneficial to a community, they can also cause significant problems due to boat traffic congestion, high risk activities, crowds, and lack of sanitary facilities. Accordingly, some municipalities require prior zoning or licensing approval before such an event can occur. That allows a local municipality to also impose reasonable conditions such as insurance requirements, extra police assistance, sanitary facilities, first aid, trash disposal, and similar safeguards.

What if a dedicated platted road right-of-way, park or other item is located between the waters of a lake and the first tier of lots in a plat? How is a municipality to treat the setbacks from the body of water? First, in most cases, where a platted road right-of-way, park or similar public or jointly used property is located between a body of water and the first tier of platted lots and there was no intervening land shown on the original plat between the platted road, park or other dedicated item and the water, the first tier of lots are deemed to be waterfront or riparian. *See 2000 Baum Family Trust v Babel*, 488 Mich 136 (2010), and *Dobie v Morrison*, 227 Mich App 536 (1998). In other words, the side lot lines of the first tier of platted lots are deemed to go under and extend to or “through” the platted road, park or other dedicated item and to the body of water.

Second, how should a municipality treat setbacks from the body of water for purposes of new buildings, additions or structures on the adjoining platted lots? If the intervening dedicated item is a road right-of-way (whether public or private), alley or similar way dedicated for vehicular traffic, the setback would normally be measured from the edge of such dedicated way to the new structure, addition or dwelling, rather than from the body of water. This normally results in a more significant setback requirement. Why should the setback be measured from the edge of the road or way rather than from the body of water? Theoretically, in the future, a road could be developed in the now-vacant right-of-way for vehicular traffic, and dwellings and structures should be located some distance from any such traffic. What about the setback from a platted walkway, park or beach? Normally, the setback from those items would be measured from the body of water and not from the edge of the dedicated item, so long as the building or structure is not built within the platted park, walkway or beach.

Third, as a general rule, municipalities should not allow a building or significant structure (apart from driveways, fences, docks and similar minimal structures) to be built within a platted road right-of-way, alley, park, beach or similar dedicated item.

Given the difficulty of ascertaining setbacks where platted dedicated roads, parks, walkways, alleys or beaches are involved, it is normally prudent for a local municipal zoning ordinance to expressly state which rules and regulations apply where such platted items are present.

Some municipalities require private septic systems to be located a certain minimum distance away from the ordinary high water mark of a lake, river or stream

(which, in some cases, may be stricter than county or state requirements). Other municipalities prohibit swimming pools from being located between a dwelling and a lake on a waterfront parcel in order to prevent “clutter” in the lake yard and the blocking of the lake views of other dwellings or cottages. Many municipalities prohibit solid fences or fences over a certain height (for example, three feet) from being located within a certain distance of a lake or river.

The examples above are just some of the miscellaneous matters regulated by some municipalities regarding the waterfront. Anticipating new structures and uses that might have negative impacts on the waterfront often requires imaginative municipal approaches. If the proper regulations are not in effect and a new objectionable use commences or an unusual structure is installed, it will normally be too late to prevent that particular use or structure from occurring.