

New Public Road End Law Passes Court Challenge

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MCL 324.30111b was enacted in 2012 (the “Statute”). The Statute prohibits private docks and piers at public road ends at lakes, as well as the overnight storage, moorage or docking of boats or watercraft. The Michigan Court of Appeals recently addressed the statute in *Colthurst v. Bryan* (unpublished decision by the Michigan Court of Appeals dated June 14, 2016; Case No. 323539; 2016 WL 3297644).

In *Colthurst*, the public road right-of-way at issue ended at Wamplers Lake in Lenawee County, Michigan. The road right-of-way itself was undeveloped and in a grassy state. For over 50 years, a number of off-lake or backlot property owners had installed and utilized a dock and moored boats at the dock seasonally. The owner of one of the adjoining riparian or waterfront lots objected to the backlot owners’ activities at the public road end and filed a lawsuit. Ultimately, both the trial court and the Michigan Court of Appeals ruled in favor of the riparian lot owner and required that the private docks and boats be removed from the public road end.

The Court of Appeals carefully reviewed the Statute and held that the public road right-of-way at issue is covered by the Statute, even though the public road itself was undeveloped. The Court of Appeals also rejected the arguments of the backlot property owners that they had a vested right in dockage and boat moorage at the public road prior to the Statute becoming effective in 2012, such that they should be able to continue those activities on the public road end.

The Court of Appeals also rejected the backlotter's argument that the public had obtained a prescriptive easement for dockage and boat moorage at the public road end.

Putting aside the Statute, the backlotter also argued that they should have the right to continue to use their private dock and boat moorings at the public road as had occurred for over 50 years. Both the trial court and the Court of Appeals rejected that argument based on *Higgins Lake Property Owners Association v. Gerrish Township*, 255 Mich App 83 (2003) and *Jacob v. Lyon Township (After remand)*, 199 Mich App 667 (1993). Road ends at lakes are presumed to provide access only and do not accord members of the public the right to private dockage, seasonal boat moorage, etc. *Ibid.* The Court of Appeals also held that evidence of historical usage years after the road right-of-way had been dedicated is not helpful and generally should not be considered by the courts.