PATTORNEY WRITES

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"Take Advantage of the Pause …"

It is no secret that land development in Michigan has been at a virtual standstill for the past few years. That includes new development at Michigan lakes. While municipal budgets have been decimated by state revenue sharing cuts and the poor economy in general, the corresponding workload for municipal officials involved with zoning, planning, and development has also decreased. Accordingly, this is the perfect time for riparians, lake associations, environmental groups, and other organizations that care about lakes, rivers, and water resources in Michigan to urge local municipalities (townships, villages, and cities, as well as counties with countywide zoning) to review and update their zoning ordinances, other ordinances, and master plans as they relate to waterfront areas. Now is a good time to undertake such an ordinance and master plan review while the developmental pressure is off.

Unfortunately, the ordinances and master plans of many municipalities are woefully inadequate when it comes to protecting any lakes, rivers, and other water resources within their jurisdictional area. Now is a good time to remedy that deficiency, rather than wait until a disastrous waterfront development proposal is knocking at your municipality's door sometime in the future.

Both the Michigan Lake & Stream Associations, Inc. and I have stressed for the better part of two decades that the single most important (and effective) regulation for protecting riparians and water resources in Michigan is the presence of a well-drafted and reasonable anti-

funneling/anti-keyholing provision contained in the local zoning ordinance (or if the local municipality does not have a zoning ordinance, in a standalone police power ordinance). With regard to such regulations, municipalities in Michigan tend to fall into one of several categories. A significant number (although still a relatively small minority of municipalities in Michigan) have anti-funneling regulations. Unfortunately, however, the majority of municipalities in Michigan with lakes, rivers, and other water resources do not have anti-funneling regulations. Furthermore, many of the municipalities with anti-funneling ordinance provisions have regulations that are woefully inadequate. In fact, in a few cases, the substandard anti-funneling regulations actually encourage funnel and other detrimental developments at lakes.

Some anti-funneling provisions are unduly complicated and unwieldy. Rather than use straightforward language that deals with the number of dwelling units that can have access to a lake or other body of water, some regulations utilize an elaborate set of definitions that seek to prevent funneling only in specific instances. For example, some ordinances define an "access property" (or the equivalent), require that the access property not have a dwelling thereon, and mandate that it be of a certain minimum size. Given the complexity of such regulations and potentially conflicting definitions, it is much more likely that a court will invalidate the provision or that there will be a "loophole" that the developer of a funnel project can exploit.

The best anti-funneling language tends to be fairly straightforward. A good example for the "core" of an anti-funneling regulatory scheme is as follows:

1. In all zoning districts, there shall be at least _____ (___) feet of lake, river, or stream frontage as measured along the ordinary high water mark of the lake, river, or stream for each single-family home, dwelling unit, cottage, condominium unit, site condominium unit, or apartment unit utilizing or accessing the lake or stream frontage.

2. Any multiple-unit residential development in any zoning district that shares a common lake, river, or stream front area or frontage may not

permit lake, river, or stream use or access to more than one (1) single-family home, dwelling unit, cottage, condominium unit, site condominium unit, or apartment unit for each _____ (___) feet of lake, river, or stream frontage in such common lake or stream front area, as measured along the ordinary high water mark of the lake, river, or stream.

3. Any multiple-unit residential development shall have not more than one (1) dock for each _____ (___) feet of lake, river, or stream frontage, as measured along the ordinary high water mark of the lake, river, or stream, in any zoning district in the township. All such docks and docking or mooring shall also comply with all other applicable Township ordinances.

4. The above restrictions shall apply to all lots and parcels on or abutting any lake, river, or stream in all zoning districts, regardless of whether access to the lake, river, or stream waters shall be by easement, park, common-fee ownership, single-fee ownership, condominium arrangement, license, or lease.

5. If a property is located within a zoning district where the minimum lot width requirement is greater than _____ (___) feet, the minimum water frontage requirements of subsections 1, 2 and 3 hereof shall be increased so as to equal the minimum lot width requirement of the zoning district in which the property is located.

Ideally, a municipality should not only amend its zoning ordinance to include a well-drafted anti-funneling regulation provision (that applies to all lakes and rivers within the municipality, regardless of the zoning district involved), but also should adopt a standalone dock and boat launching ordinance. Lake access and usage regulations contained in both a municipal zoning ordinance and a standalone police power ordinance can complement each other, potentially govern slightly different topics, and can serve as a "failsafe" procedure (that is, if the provision of one ordinance is invalidated, there is a backup provision in the other ordinance; or, if a developer is able to exploit an unanticipated loophole in one ordinance provision, the other ordinance might "close the barn door").

Riparians should also urge their local municipal officials to take advantage of the current lull in development applications in other ways as well. Other provisions of the local zoning

ordinance involving lakes and bodies of water should be reviewed and updated (for example, overlay zones, greenbelts, zoning escrow fee policies, water setbacks, and minimum lot size requirements). Master plans should also be reviewed and updated as well. If the municipality has its own junk ordinance, dangerous and dilapidated building ordinance, nuisance ordinance, and/or blight ordinance, those ordinances should be reviewed and updated. If a municipality does not have all those ordinances, it should consider adopting them. If a municipality does not have a local wetlands ordinance, land division ordinance, private road ordinance (or a provision governing private roads in its zoning regulations), wind generating systems ordinance, or outdoor furnace ordinance, the municipality should consider adopting such ordinances or, if the municipality does have such ordinances, updating them.

If your municipality claims that it does not have the funds to review and update its zoning ordinance, other relevant ordinances, or the master plan, it is permissible for riparians and lake associations to donate funds to a municipality to be used for a particular purpose, such as for drafting and adopting advantageous amendments to a zoning ordinance (*i.e.*, adding or tightening up anti-funneling regulations).

With regard to anti-funneling regulations, helpful ordinance provisions, and similar matters, ML&SA has a variety of different resources available. For more information, please visit the ML&SA website at www.mlswa.org. In addition, it is always wise for riparians and lake associations to consult with legal counsel who is knowledgeable about riparian matters. Since riparian (water) law is a highly specialized area, make sure that your legal counsel is well-versed in that area.