

## **WHAT HAPPENS IF THE DOG CATCHES THE CAR?**

To those backlot owners around the state who are attempting to lay claim to public road ends, alleys and walkways by lakes I say, be careful what you wish for, you might regret the practical outcome if your wish comes true!

A number of militant backlot owners around the state are asserting that they have some constitutional or basic American right to install private dockage and to permanently moor their own boats on public property such as road ends, alleys and walkways at lakes. I know, I know—you have heard this all before. Trust me and read on, however, because this month's column addresses a neglected area of this backlot access controversy.

Backlot owners in various locations around the state keep asserting that road ends are more akin to parks, such that they have the right to sunbathe, picnic, play volleyball and lounge on road ends, as well as install private dockage and boat moorings. Unfortunately for them, they keep losing in the courts based on the time-honored legal precedent that—duh—public road ends are both public property and roads, and can be used only for access. At least one foolish township has even flirted with the idea of spending taxpayer monies to “condemn” by eminent domain such road ends in an attempt to essentially turn them over to backlot owners. Some backlot owners are even pushing ill-founded legislation (Michigan Senate Bill 232) which purports to permit backlot owners to seize such public road ends for their own private uses.

Okay, let's assume for a second that the judges in Michigan suddenly flip their wigs, and overturn a century of property law and declare that public road ends can be used for park purposes, including permanent boat mooring and dockage. Backlot owners will have gotten their wish, right? Not so fast! Such properties will remain public, even though they might effectively become parks. With public property, every person has equal access and usage rights as everyone else.

Here are some matters for backlot owners to ponder. First, even if dockage and permanent boat moorage is ultimately allowed, no responsible municipality should permit the installation of private dockage, shorestations or other structures on a public property. Can you imagine what your local municipal officials would say if you indicated you wanted to install your own signage or other private structures in the front yard of the town hall? Besides, a municipality's insurance carrier would probably nix the idea of letting individuals install their own structures on a public property due to liability concerns. Even if a municipality were to permit private individuals to install items on a public road end or bottomlands thereof, the law dictates that such items essentially become public and anyone can use them—the person who installs such items has no right to preclude other individuals from utilizing the items. For example, can you imagine a police officer in Cadillac, Michigan asking you or me to get off of a park bench in a city park by asserting that such park benches must be kept clear for use only by the residents of the city of Cadillac? Of course not! Second, backlot owners cannot be given exclusive rights to a public property or even be shown favoritism. Both Michigan law and federal constitutional law make it crystal clear that a municipality cannot give a particular group of people (for instance, area backlot owners) special privileges or usage rights to a public property greater than any other member of the public. To the extent that a local municipality permits dockage and permanent boat mooring, the limited spaces would have to be allocated on an equitable basis by means of a

lottery, a day use only set up or similar allocation. Militant backlot owners had better learn to understand this simple notion—that is, I or any resident of the state of Michigan, or any citizen of the United States for that matter, have just as much right to use public road ends as the backlotter who owns property 100 feet away. That simple fact is true today and would remain true even if dockage and permanent boat mooring were expressly allowed by law. In fact, backlotter might be shocked to know that adjoining riparian property owners have just as much right to use public road ends as any backlotter or other member of the public. Third, as Michigan's population increases and the areas around lakes become more crowded, the few backlot owners who have attempted to appropriate road ends for their own personal use will have a great deal of competition. Even if dockage and permanent boat mooring are permitted at road ends, the limited space will have to be allocated somehow. It is likely that many municipalities will ban dockage and permanent boat moorage all together on road ends as a necessary component of maximizing public access to the waters. If the municipality chooses not to become involved, how will scarce space be allocated with an increasing number of backlotter and members of the public desiring to use road ends at lakes? Will brute force prevail? Will new users simply add additional sections of dock and boat moorings until there are hundreds of boat slips on a road end extending fully to the center of the lake? Won't these road ends become so overcrowded and unsafe that many backlotter will simply give up in disgust?

It is curious how many backlot owners (as well as the few judges in the state who have supported their untenable position regarding road ends) have simply refused to address or even acknowledge these issues. For backlot owners and a handful of judges to assert that road ends at lakes can be used for private purposes such as dockage, boat moorage, picnicking, etc., particularly where no effective local municipal controls are in place, is totally irresponsible. Chaos would rule. Hopefully, we will never have to confront the issue of road ends becoming lawful marinas, since the entire concept is inherently irresponsible. Hopefully, municipalities, the Michigan Legislature and the courts will follow the example of public camp grounds and custodians of other types of public property who have prevented public land from being seized by a few individuals for private uses. The only way to ensure free public access to waters through road ends (and to ensure the safe use thereof) is to follow a "bright line" rule—that is, these public ways must be kept open and all dockage and permanent boat mooring must be prohibited. That is the only way to ensure maximum use and enjoyment of road ends at lakes in a responsible fashion by the largest number of people.