

July 23, 2007

Dear Friends of Michigan's Lakes and Streams,

Please read and pass along.

Thank you,

Bob Frye

Michigan Waterfront Alliance, President

**POSITION PAPER OF THE MICHIGAN WATERFRONT ALLIANCE and  
MICHIGAN LAKES AND STREAMS ASSOCIATION REGARDING  
PROPOSED PUBLIC ROAD ENDS AT LAKES LEGISLATION**

(July, 2007)

During late June, the Michigan House of Representatives (by a vote of 61 to 48 and 62 to 47) passed HB 4463 and 4464, bills which had been pushed by backlot property owners groups since last winter. The bills now move to the Michigan Senate for consideration. The Michigan Lake & Streams Associations, Inc. ("ML&SA") and the Michigan Waterfront Alliance ("MWA") are strongly opposed to this proposed legislation. Although the bills which passed the Michigan House in June are not as objectionable as earlier versions pushed by the backlot property owner groups over the past several years, the bills which passed the House are still bad and should be rejected by the Michigan Senate.

The issues involved are more complicated than they appear at first glance. Also, the history of the "road ends wars" is important so that legislators can put the backlot property groups' current legislative attempts in context. Accordingly, this paper seeks to provide that context and to fully illuminate the important issues involved.

**1. What are these road ends?**

Many inland lakes in Michigan have public roads (whether developed or undeveloped) which end perpendicular at the lake. These are public roads and, hence, public property. Theoretically, both the county road commission and local township government where a given road end is located have certain jurisdiction over such public roads. The width of the rights-of-way or easements for these public roads vary—they can be anywhere from only 10 feet wide to 66 feet wide in some cases.

**2. The problem.**

People who own properties near inland lakes, but without lake frontage, are often referred to as the owners of backlots or “backlotters.” Some backlotters at many inland lakes throughout Michigan (particularly at Higgins Lake) are misusing these public road ends at the lakes. How? In a variety of fashions. Some backlot owners are attempting to seize or appropriate these public properties for their own private and exclusive use. They are doing this by installing private docks, shorestations and boat cradles in the water adjacent to these public ways, and are permanently storing, anchoring and mooring their boats at such docks, shorestations or other structures at these public road ends. This not only “junks up” the water at the public road ends, but also prevents other members of the public from utilizing the narrow road ends for what they were intended for—that is, public travel to and from the water and for such permissible public activities as swimming, fishing and temporarily pulling boats up to shore.

**3. Road ends make lousy marina sites; safety issues.**

Even if it were not unlawful to have overnight boat moorage, shorestations, private docking, and similar uses at public road ends, the public road ends make lousy marina sites in any event. They are too narrow. Furthermore, they lack parking, bathroom facilities, and other basic necessities and amenities. They can also be unsafe, given that swimmers and fishermen want to use the same small areas as boaters.

If the backlotters’ legislation becomes law, it will cause severe overcrowding at the narrow road ends as well as create significant safety issues for nearby waterfront property owners. The boaters who would use the municipal floating marinas proposed by HB 4463 and HB 4464 would constantly be backing their boats up over the bottomlands of adjoining riparian property owners. Such boaters would also be coming and going over the bottomlands of those adjoining riparian property owners in general. That is inevitable, given the narrow width of the public road ends (even out into the lake), and the fact that the dockage allowed under the legislation will take up a significant amount of the area comprising the road ends in the water. Such comings and goings of motorboats to and from the road end marinas (as well as boats backing up from those docks) will endanger swimmers, fishermen, and other boaters on the adjoining riparian properties.

The backlotters should not be wasting their efforts “tilting at windmills” regarding narrow and unsafe road ends—rather, they should be attempting to obtain more and better public lake access sites with acreage and significant lake frontage that will be safe, have adequate parking, and accommodate reasonable public access.

**4. Why have are backlotters been allowed to seize and abuse these public properties?**

Obviously, local governments would never allow anyone to misuse, seize or appropriate for their own private and exclusive use the front yard of a township or city hall, a public park or other public way or property. Unfortunately, with public road ends at lakes, county road commissions and local governments (such as townships) have generally abdicated their responsibility to properly regulate activities at such public ways. In many cases, these governmental units fear the political clout and stridency of some of the backlotter groups. In this vacuum of governmental abdication, it has been left up to area lakefront (riparian) property owners or lake associations to stop backlotter abuse of

public road ends by pursuing expensive and time-consuming civil lawsuits. That is an inefficient way to vindicate public rights regarding these public road ends.

**5. Rights of usage to public road ends under real estate or property law.**

The Michigan appellate courts have universally held on numerous occasions that virtually every public road end which terminates at an inland lake in Michigan can be used only for travel purposes such as walking to and from the lake, swimming, fishing, temporarily pulling a boat up to shore to let off people or pick them up and similar nonsedentary purposes. The courts have consistently ruled that non-travel activities and uses such as sunbathing, lounging, picnicking, the permanent mooring of boats and the use of shorestations, boat cradles and similar items are prohibited at public road ends and the waters adjacent thereto. Depending upon the width of the public road right-of-way, the courts have usually allowed the installation of one limited dock to aid in navigability, but have also held that permanent or overnight boat mooring at any such dock is prohibited. Furthermore, if an individual installs such a dock, it becomes public and anyone has the right to use the dock for fishing, swimming and temporary boat pull-ups.

For this long-settled Michigan case law, please see *Jacobs v Lyon Twp*, 199 Mich App 667 (1993); *Thies v Howland*, 424 Mich 282 (1985); *Higgins Lake Property Owners Assn v Gerrish Twp*, 255 Mich App 83 (2003), lv to appeal denied by the Michigan Supreme Court in 469 Mich 907 (2003); and *Lyon Twp v Higgins Lake Property Owner's Assn* (unpublished Michigan Court of Appeals opinion, April 11, 2006, Case No. 265162).

These cases are based on the common law regarding real estate or property principles. In other words, when the public road ends were created, these are the only activities they were intended to be used for (i.e., access only) and those uses cannot be exceeded or contradicted. These court cases (which prohibit private dockage, permanent boat moorage, lounging, sunbathing, etc. at public road ends) have been the law in Michigan for over a century. Contrary to the claims by some backlotter that all of the cases simply represent the views of "activist" judges, the cases were decided by appellate judges from across the political spectrum and have been settled real property law in Michigan for many generations.

Backlotter continue to violate this clear case law. Unfortunately, without appropriate state legislation enforcing the common law, vindicating these matters requires private civil lawsuits which can be time-consuming and expensive. Many responsible parties, including the Michigan Townships Association, have wanted to see state legislation implemented which would allow any police officer or sheriff deputy to write a simple enforcement ticket (similar to a traffic ticket) regarding anyone doing anything illegal at a public road end. That would constitute a cheap, quick and efficient way of not only enforcing the law, but also clearing the public road ends of prohibited uses, structures and activities so that responsible members of the public can use the public road ends for lawful lake access purposes. Of course, the backlotter's bills passed by the Michigan House in June do not do anything to enforce the existing law. In fact, the bills would expand dockage, boat mooring, etc. activities at road ends, and they contain no provision to punish the misuse of road ends even where municipalities decide not to allow floating marinas.

6. **The rights of the lakefront/riparian lot owners who adjoin public road ends at lakes.**

People who own lakefront properties next to public road ends are suffering in these situations in at least two ways. First, illegal dockage and boat moorage on the bottomlands at public road ends quite often spill over onto their riparian bottomlands. Also, the intense dockage and high speed boating activity at public road ends endangers the adjoining riparian landowners and their families.

Second, in many public road end cases, the adjoining riparian property owners actually own to the center of the public road end subject to the limited public access easement for travel purposes to and from the lake. To the extent that the public road ends are being abused by backlotter, that is a violation of the property rights of the adjoining riparian landowners who own the land under the public road right-of-way or easement, or have other rights as to the soil under the road. See *Shell Oil v Village of Kalkaska*, 433 Mich 348 (1989); *Morrow v Bolt*, 203 Mich App 324 (1994); *Loud v Brooks*, 241 Mich 452 (1928); *Thies v Howland*, 424 Mich 282 (1985).

7. **Some of the extreme examples.**

The abuse by some backlotter of certain road ends at lakes around the state is truly amazing. Contrary to what some of the backlotter at Higgins Lake have asserted, this problem is occurring statewide with increased frequency and is not limited solely to Higgins Lake. In the past, some of the public road ends have resembled floating marinas (with multi-stage docks, 30 or 40 boats being permanently moored and dozens of families claiming a road end as their own exclusive property)! Some backlotter have even chased other members of the public away from public road ends and their docks.

8. **The backlotter's bills are an improper attempt to overturn a century of case law and common law as determined by the Michigan Court of Appeals and Michigan Supreme Court.**

The backlotter's legislative proposals are a blatant attempt to eliminate over a century of clear Michigan case law including, but not limited to:

- *Jacobs v Lyon Twp*, 199 Mich App 667 (1993)
- *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83 (2003)
- *Lyon Twp v Higgins Lake Property Owners Ass'n* (unpublished Michigan Court of Appeals, Case No. 265162, dated April 11, 2006)

9. **Past and current proposed responsible legislation.**

Road ends legislation was first introduced several years ago as a way of legislatively codifying and making the enforcement of the common law easier regarding the proper usage of public road ends at lakes. The Michigan Attorney General's office probably first broached the idea of regulatory legislation years ago. Legislation to limit what

occurs at road ends has been supported by virtually every responsible group in Michigan which is directly affected, including, but not limited to, the Michigan Attorney General's office, MTA, ML&SA, and MWA. The legislation as originally introduced (and as supported by those groups over the years) would have prohibited the mooring, storing, and anchoring of watercraft at public road ends, as well as prohibit the installation or use of dockage except when installed by a governmental unit. This is what the Michigan appellate courts have ruled civilly. However, that legislation was hijacked by a small but very effective group of backlot property owners (primarily at Higgins Lake) who produced their own proposed counter-legislation which sought to overturn the longstanding case law and common law. In fact, the various pieces of legislation pushed by the backlot owners over the years have often been deceptive and somewhat of a wolf in sheep's clothing—they purported to enhance public access and local control. In fact, in most versions of the bills pushed by the backlot owners in the past, the bills would have actually allowed a few backlot owners to appropriate the public road property (and the attendant bottomlands) for their own private use and would have actually impinged upon local governmental control.

The latest versions of the bills being pushed by the backlot owners (HB 4463 and 4464, as passed by the Michigan House in June) are almost as bad as the past bills they have sponsored. Although cloaked in language that might appear at first blush to be somewhat responsible and even-handed, the latest bills attempt to actually validate floating private marinas, crowd out proper uses at road ends such as swimming and fishing, and make local governments complicit in such actions. Rather than allowing this controversy to settle down and have certainty reign (as has gradually occurred within the last few years as the courts have slowly stopped illegal backlot activity at the road ends through civil lawsuits), the backlot owners' current bill will re-ignite new range wars all over the state when backlot owners attempt to have local governmental units do their bidding by passing self-serving road end ordinances.

#### **10. The most recent version of the backlot owners' bills.**

After repeated legislative losses in the Michigan legislature during the past several years regarding their proposed road end bills, the backlotter groups decided to move in a new direction this past winter. Their new bills (HB 4463 and 4464) attempt to change longstanding property rights (by means of new retroactive "presumptions" allowing dockage, boat moorage, sunbathing, etc. at road ends) and couch matters in terms of municipalities being able to establish marinas at public road ends. Of course, the earlier versions of those bills from this past winter allowed local governments to "contract" with backlotter associations and property owners to run the road end marinas. When that did not fly, the backlotter groups modified the bills to shift responsibility for allowing and running road end marinas to municipal officials.

Even though the backlot owners' bills are "new" and "improved," they are still bad bills. As the old saying goes, with the respect to these bills, even though you might put lipstick and perfume on a pig, it is still a pig! The bills passed by the House are bad public policy and will likely be declared unconstitutional if enacted into law. They will make road end fights on lakes around the state worse, not better.

**11. The backlotter's claim that their proposed legislation is "pro-local control" is false and patently misleading.**

Backlotter's cleverly and cynically have tried to sell their proposed legislation over the years as "pro-local control." That is a sham.

Local governments already have full authority to regulate road ends at lakes. See *Square Lake Hills Condominium Assn v Bloomfield Twp*, 437 Mich 310 (1991); *Jacobs v Lyon Twp*, 199 Mich App 667 (1993), app den'd, 444 Mich 906 (1994); *Robinson Twp v Ottawa County Bd of Road Commissioners*, 114 Mich App 405 (1982) and Article 7, Section 29 of the Michigan Constitution of 1963. In actuality, the backlotter's bills would hurt local control by municipalities. The backlotter's proposals have been deceptive and illusory—they purport to give local governments the authority to expand scope of usage rights at public road ends to allow extensive dockage, permanent boat moorage, shorestations, lounging, sunbathing, picnicking and other activities which are clearly not permissible under long-standing Michigan property principles. Any municipality which would take advantage of any such legislation would be subject to extensive lawsuits, since the municipality would be effectively taking private property without due process and without just compensation (i.e., a "taking").

The current version of the backlotter's proposed legislation would also put local municipalities (townships, cities, and villages) in the middle of range wars and expensive litigation. In fact, backlotter groups in the past have effectively "captured" Lyon Township and Gerrish Township and pressured those townships into spending a significant amount of taxpayers dollars to engage in frivolous litigation and to champion the backlotter's causes. The backlotter's certainly are not proposing true local control legislation or legislation which is advantageous to local municipalities.

**12. The proposed legislation will likely be unconstitutional if adopted.**

The backlotter's attempt to soft sell their proposed legislation by asserting that:

- (a) The legislation would not take away property rights.
- (b) It would simply create a presumption of dockage and boat moorage.
- (c) Over 100 years of history of Michigan Supreme Court and Court of Appeals decisions do not involve basic property rights or the common law, and hence, can be easily overturned by legislation.

All of the above assertions by group are erroneous.

The backlotter's imply that since many of the platted road dedications were done pursuant to platting statutes, that somehow, by amending those statutes today, road usage rights can be changed retroactively back in time, even for roads that have existed for decades, half a century, or longer. Even though the backlotter's cite the current Michigan Land Division Act, that statute, in its overall form, has only existed since 1967. There were a myriad of different prior platting statutes over the preceding century. Also, not all of the road ends at lakes were created pursuant to the platting process. Some were created by common law dedication, some by deed, and others by different techniques.

Regardless of what the backlotters claim, public roads, private roads, private parks, walkways, alleys, and other lake access devices created pursuant to the common law or statutory dedication do involve property rights (and helped “set” property rights). They are attempting to retroactively change property rights going back 100 years or more. That should greatly concern Michigan legislators.

Once a property right has been set by a statute, the statute cannot be changed later in a way that would extinguish or alter those property rights. For example, the Michigan deed recording statutes contain specific procedures for recording deeds, mortgages, and other real estate instruments. They have long stated that the first instrument to be recorded with the county register of deeds records regarding a particular property interest governs over any other recorded claims which challenge the rights of the first recorded document. Like the dedication statutes, the recording statutes are “procedural” and can be amended by the Legislature for future transactions, but they cannot be constitutionally altered today to change or extinguish property rights which were given or accrued long ago.

The backlot groups assert that adjoining riparian property owners have no property rights in the soil under public roads. That is simply incorrect. ML&SA concedes that this is a complex area—attorneys for each side could undoubtedly write lengthy (and equally persuasive) legal briefs regarding the extent of property rights which adjoining riparian property owners might have with regard to public road ends at lakes. The backlot groups conveniently overlook the fact that many public road ends in Michigan do constitute easements (such as roads created by highway by user or by documents which specified an easement), whereby the adjoining property owners unequivocally own to the center of the road easement subject to the easement for travel purposes only. Any attempt to expand the scope of usage rights for any such easement would clearly be unconstitutional and constitute a “taking.” With regard to roads created by dedication under the more modern platting statutes, the law is less clear. However, it is the position of ML&SA that the adjoining riparian property owners do have some property interests in and to public roads at lakes created by plat dedication, such that the proposed bills would unconstitutionally impinge or attempt to alter their property rights.

Do not take our word for it. Please review the unpublished Michigan Court of Appeals decision in *Lyon Twp v Higgins Lake Property Owners Ass’n* (decided on April 11, 2006; Case No. 265152). In that case, Lyon Township adopted an ordinance which purported to allow permanent or seasonal watercraft mooring, as well as dockage and boat hoists, at public road ends. The Court of Appeals agreed that Michigan law and the Michigan Constitution allow townships to regulate public road ends at lakes and to have reasonable control over them. The Court stated, however, that townships cannot expand usage rights. The Court of Appeals also noted as follows:

However, it is not to be inferred that the municipality has the right to appropriate the road ends to any use inconsistent with the dedication ...  
Rather, the municipality’s use of the road ends is limited by the intended scope of the dedication.

(Opinion at p 2, citations omitted.)

The Court of Appeals found that the original dedication or creation of the public road end did not confer absolute fee in the nature of private ownership to the township. The backlotters are fond of citing *Kalkaska v Shell Oil Co* (after remand), 433 Mich 348 (1989), for what they assert is the proposition that neighboring riparian property owners

have no property interests in or to a public road end. However, the Michigan Court of Appeals in Lyon Twp v Higgins Lake Property Owners Ass'n stated the following in a footnote:

In Kalkaska, our Supreme Court held that the plaintiff could not sell 'oil and gas lying beneath the streets dedicated for public use pursuant to the plat acts of 1887 and earlier years' because such a proprietary use of the land exceeded the scope of the qualified fee it had acquired pursuant to the statutory dedication. Kalkaska (After Remand), supra at 357-358. Just as the plaintiff in Kalkaska was not entitled to sell oil and gas beneath roads dedicated for public use because the municipality had only acquired a qualified fee, plaintiff may not grant to others littoral rights that it did not obtain pursuant to the statutory dedication (p 3, n-2).

There has also been little, if any, discussion of an important provision in the Michigan Constitution of 1963. Article 7, Section 31, which provides as follows:

The legislature shall not vacate or alter any road, street, alley or public place under the jurisdiction of any county, township, city or village.

ML&SA respectfully submits that the proposed legislation would be an attempt by the Legislature to alter or vacate public road ends at lakes, and as such, would be unconstitutional under the Michigan Constitution.

While the Michigan Legislature can constitutionally reverse certain Michigan appellate court decisions, that is not the case with regard to appellate court decisions and common law rules regarding, affecting, or pertaining to property rights.

The backlotter's bills would effectively "amend" plats by legislation.

If an act of government is unconstitutional since it provokes a taking or other unconstitutional result, it is still invalid, regardless of whether the governmental action is called a presumption, rule, statute, or regulation. Furthermore, to attempt to retroactively amend platting statutes as to plats, subdivisions and properties that were created decades ago or longer is not to merely "amend the legislation that is used by courts to interpret plats" as the backlotter's suggest. Rather, what the backlotter's propose would be an unconstitutional retroactive attempt to alter long-settled property rights.

**13. Why "grand parenting" illegal and bad behavior would be both unlawful and unwise.**

In past versions of the backlotter's legislation, the backlotter's attempted to expressly "grandparent" past illegal uses at public road ends by backlotter's. Although the backlotter's do not expressly use the concept of "grandparenting" in their current proposed legislation, it would have the same effect.

Why would de facto "grandparenting" for backlotter's who illegally used these public road ends in the past be a bad idea? There are many reasons, including the following:

- (a) It would reward illegal behavior.
- (b) It would be unconstitutional.
- (c) It would prove unworkable.
- (d) One cannot obtain a "grandparent" right as to a public property!

(e) It would make many of the public road ends at lakes unusable by members of the general public through extensive use by backlot owners who would effectively be “grandparented” as to their formerly illegal dockage, shorestations, permanent boat mooring, etc.

(f) It would set a bad precedent regarding other statutes and public properties.

(g) What message would this send to the people of the state of Michigan—engage in illegal conduct, lobby the government for an exemption and ultimately you will not only benefit by your past illegal conduct, but you will be able to continue to engage in the formerly illegal conduct forever!

\* \* \*

Michigan law has recognized for well over 100 years that private individuals cannot obtain “squatters rights” (often legally referred to as “adverse possession” or “prescriptive easement rights”) as to public roads or public road rights-of-way. Representative Sheltroun (who was the main sponsor of the backlotter bills in the Michigan House) has stated that any Michigan appellate court decision can be overturned by the Michigan Legislature. Of course, that is incorrect. While it is true that the Legislature can effectively “overturn” court decisions involving existing statutes by amending the statute, the Legislature cannot take away property rights and deprive a person or entity of property without due process and without paying compensation—that would be unconstitutional. Presumably, Representative Sheltroun is familiar with (or should be familiar with) the relevant portions of both the Michigan Constitution and the United States Constitution. The numerous Michigan Court of Appeals and Michigan Supreme Court cases which Representative Sheltroun talks about “overturning” by the backlotter’s proposed legislation involve basic property rights. Any attempt to overturn those appellate court decisions or to seize private property rights by legislative fiat will almost certainly be struck down by the courts.

**14. What is the ultimate goal of the backlotter’s?**

Many backlotter’s appear to want special privileges, pure and simple. They also want their own floating marinas at road ends.

**15. Many backlotter’s utilize emotional and baseless arguments.**

Among lawyers, there is an old saying that if you have the law at your side, argue the law in front of the jury. If you don’t have the law on your side but you have the facts on your side, argue the facts before the jury. If you have neither the law nor the facts on your side, “obfuscate” or use emotion. The backlotter’s have lost every major court case brought regarding public road ends at lakes in Michigan. When the issues involved are explained to the average Michigan resident, that person is almost always appalled that a group of backlotter’s could seize public property for their own private use. Accordingly, the only argument or tactic left to the backlotter’s is to make emotional arguments. In the past, the website for the backlotter’s group at Higgins Lake has used a series of “talking points” which backlotter’s were urged to utilize when attempting to make their

case to legislators or members of the public. These talking points have included claiming that lakefront property owners simply desire to close these public access sites and urging backlot owners to make emotional arguments about how their families have used these road ends for generations and similar emotional claims. People should not be swayed by these hollow appeals.

Backlot owners have also raised the specter of difficulty involving seniors and handicapped persons having to remove boats from the water at these public road ends each night if illegal use of the road ends cannot continue. What about handicapped individuals and seniors who desire to use the public road ends for the purposes for which the road ends were intended (for wading into the water, fishing, and swimming), but who cannot do so practically or safely due to the myriad number of docks, shorestations, and watercraft constituting an obstacle course at the road ends? Some backlot owners assert that dismantling the illegal road end marinas would hurt their property values, but have provided no definitive proof of that argument. What about the negative impact on property values (and local taxes) for adjoining riparian properties due to the presence of huge, illegal floating marinas kept by backlot owners? Clearly, the backlot owners' arguments are strained and effectuated.

**16. This is not simply a situation of lakefront property owners versus backlot owners.**

Some of the backlot owners love to paint this controversy as between wealthy, elitist lakefront property owners versus the supposed victims (i.e., backlot owners, who are afraid of losing their lake access rights). Of course, that is absurd. Certainly, riparian property owners have a major interest in ensuring that public road ends are properly used in order to prevent the “spilling over” effect which results in trespassing on adjoining private bottomlands and also to prevent the “overburdening” of the property underlying the public road right-of-way or easement. Ultimately, however, this is primarily a public interest issue—these limited public access sites must remain free and clear of clutter and obstructions and be available for use by everyone, not just a few pushy backlot owners. Some backlot owners falsely claim that the ultimate goal of lakefront property owners is to close the public road ends at lakes forever. That is simply a scare tactic. Most lakefront property owners have no problem with public road ends as public access sites at lakes so long as they are reasonably and properly used. Furthermore, Michigan statute makes it virtually impossible for a public road end at a lake to be closed, abandoned or vacated.

**17. Backlot owners are not “victims.”**

Many of the backlot owners are attempting to cast themselves as “victims” in this debate. It is an attempt by backlot owners to garner sympathy. It is difficult to see how “squatters” can ever be true victims.

Some backlot owners attempt to build their victimhood status by claiming that realtors promised them before they bought their off-lake properties that they would have boat mooring rights at the road ends. They also assert that generations of backlot owners at Higgins Lake in particular have been utilizing the road ends for marina use without any problem. Finally, they sometimes claim that local township officials encouraged them to use the road ends for private use. Of course, upon closer examination, all of these

arguments melt under the microscope. To the extent that any real estate salespeople or realtors misled backlot owners when they purchased their properties, that is unfortunate. However, the old adage “buyer beware” is applicable and the proper course of action to take would be a lawsuit against any salesperson who misrepresented matters. While it is fairly common for salespeople to advertise a backlot has having lake access, that does not mean boat and docking rights.

The case law which prohibits floating marinas at road ends has been clear for a century or more. Candidly, some of the backlot owners are lucky that they have been able to engage in illegal conduct for so long without sanction. Clearly, backlot owners are not victims in any sense of the word.

**18. The parking and campgrounds analogies don’t work.**

In a document entitled “Frequently Asked Question About Road Ends,” Representative Sheltroum (who is working with the backlot owners) has attempted to present a supposedly more moderate view and has suggested that perhaps permits or an annual lottery system could be used for road end boat docking, similar to what he asserts is done for public campgrounds. However, public campground permits are for relatively short periods of time (usually days or a week at most), and are not for an entire summer season! Short-term public camping is appropriate for a large public park or campgrounds (which are specifically designed for such sedentary or stationary uses)—long-term boat mooring and private boat hoists are not appropriate for narrow public roads (which are for travel only)! In reality, a more appropriate analogy would involve illegal public parking. Quite simply, public parking spots along a public street (in those areas where parking is allowed, and whether or not parking meters are involved) cannot be monopolized by one group of people. One person cannot “hog” a parking spot for weeks or months at a time without being ticketed and being required to move his/her car. No person can have “grandparented” public parking! On a public street where parking is allowed, no one can get a permit or enroll in a lottery where they are allowed to utilize the same parking spot along the public street for months at a time to the exclusion of other members of the public—rather, parking must be very temporary. Finally, parking along public streets is normally only allowed where the public street is wide enough to accommodate parking safely in light of the primary purpose—the movement of traffic. Under the proper parking analogy, Representative Sheltroum’s arguments break down totally.

**19. No one has advocated closing the public road ends.**

The way that some of the backlot owners are complaining about the court decisions and the reasonable road end bills advocated by ML&SA (and numerous other responsible organizations over the years), you would think that the public road ends are being shut off. The regulatory legislation urged by ML&SA will not shut or close off any public road end. Furthermore, the assertion by many backlot owners that lakefront property owners are attempting to close or vacate public road ends is untrue in all but the rarest of situations (for example, where a particular public roadway never truly existed). In actuality, the past conduct of some backlot owners has been an impediment to public access and removing the “floating marinas” illegally installed by some backlot owners will greatly help public access to lakes. These road ends can be used for a variety of lawful

purposes and uses, including, but not limited to, walking to and from the lake, fishing, hand-launching of small watercraft (so long as such boats are removed when not being used and are not kept there), swimming and ice fishing. Such activities are consistent with the uses normally allowed for the public at most waterfront public parks.

**20. The backlottery's proposed legislation will likely hurt tourism and recreation.**

The backlottery are peddling their most recent road end bills as supposedly protecting and even promoting tourism and recreation. In actuality, adoption of the backlottery's legislation would likely hurt both tourism and recreation. Many of Michigan's lakes are already overcrowded. The backlottery's bills would make a bad situation worse. Furthermore, by seizing public road ends for de facto private marinas, members of the public who wish to use road ends for proper purposes such as swimming, fishing, ice fishing, etc., would not be able to utilize those road ends as a practical matter. Common sense indicates that the proposed bills would hurt everyone except for a handful of backlot property owners.

**21. The need for respect for the law.**

Unfortunately, some backlottery have flagrantly disregarded the law, including the clear mandates of the Michigan Court of Appeals in *Jacobs v Lyon Twp*, 199 Mich App 667 (1993), and *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83 (2003), by continuing to maintain private docks, permanent boat moorings, shorestations, and other prohibited uses and activities at public road ends at lakes. Such flagrant and open violation of law should not be permitted by the state of Michigan, let alone rewarded! The enforcement legislation backed by ML&SA is a simple, straightforward way to enforce and maintain the law.

**22. This is primarily an inland lakes issue.**

The problems associated with public road ends at lakes involving docks, boat moorings and similar matters relate primarily to inland lakes, not the Great Lakes. Accordingly, the decision by the Michigan Supreme Court in the "beach walker" case in July of 2005 regarding walking along the shore of the Great Lakes applies only to the Great Lakes and does not change any of the case law or controversies regarding public road ends at inland lakes in Michigan.

**23. Technical flaws in the current proposed legislation.**

Even putting aside all of the general and substantive objections to the backlottery's bills (which include unconstitutionality, bad public policy, rewarding past bad behavior, etc.), there are major technical and drafting flaws in the bills passed by the House. It is unclear whether such flaws were based on defective drafting or they were intentional, or both. Such flaws include the following:

- (a) Even if a township does not expressly act in order to allow docks, boat mooring, sunbathing, etc., it would still be allowed.

All of the supposed “local control” and “enforcement safeguards” cited by the proponents of the bill only kick in if a local municipality takes express action (by adopting an ordinance) to allow the floating marinas. Even if the local municipality refuses to do anything, the way that the current proposed legislation is drafted, backlotter can still put boats and docks at a road end in an almost unlimited fashion based on the “presumption” contained in subsection 253(2) (of HB 4464)-no local governmental approval will be required. As the legislation is currently drafted (and as it passed the House), the “presumption” is not expressly tied to local municipal approval or a municipal ordinance. Accordingly, if a municipality does nothing, backlot property owners could still put in docks and boats without the supposed “safeguards” referenced in Sections 30106(2) and 30106A of HB 4463. Therefore, at the very least, the presumption should be revised to expressly state that it is not applicable unless the municipality involved has adopted a complying ordinance authorizing road end dockage under HB 4464 (subsection 30106(2) and Section 30106A)!

(b) Shouldn't what is “good for the goose be good for the gander”?

Where a municipality has not acted (and does not expressly allow a floating marina by ordinance), shouldn't a person who violates the law by placing an unauthorized dock, engages in improper boat mooring, etc. be subject to the same civil infraction tickets and enforcement actions as backlotter advocate in their bill for violation of a municipal ordinance expressly allowing road end provisions? Of course, no such provision is contained in this legislation.

(c) The presumption also applies to private road ends.

The presumption of dockage, permanent boat moorage, etc. contained in HB 4464 is not limited to public road ends! Rather, as drafted, the presumption also applies to private road ends. To date, altering property rights regarding private road ends has not been openly discussed with regard to this proposed legislation. That should greatly alarm many people, since the backlotter have consistently attempted to sell their road end legislation as only applying to public road ends.

(d) The presumption is not limited to lakes over 2,500 acres.

Part of the necessary “compromise” in order for the bills to pass the House was that the legislation would only apply to lakes over 2,500 acres in size. Unfortunately, that is not the actual effect of the bills. Although the authorization for municipal road end marinas that circumvent DEQ approval specifies that HB 4463 is limited to lakes over 2,500 acres in size, the “presumption” allowing dockage, boat mooring, etc. contained in HB 4464 is not limited to lakes over 2,500 acres.

It should also be noted that municipalities can still adopt ordinances and allow floating road end marinas under HB 4463 for lakes under 2,500 acres in size if the DEQ approves the marina permit. The language in HB 4463 which indicates application only to lakes larger than 2,500 acres only applies where the DEQ must issue a permit to a municipality.

(e) The bills preempt DEQ authority.

As drafted, HB 4463 would take away all discretion from the DEQ with regard to municipal road end marinas. That is an unwise straight jacketing of the DEQ and an improper usurpation of the DEQ's authority.

- (f) The bills do not state that all members of the public have equal access.

There is nothing in HB 4463 which would prohibit municipalities from favoring backlot property owners, residents, or certain political groups as far as usage rights to the road end marinas. Language should be added which makes it crystal clear that every person would have just as much right as every other member of the public to utilize docking spaces. Although there is language regarding what to do if there are not enough boat mooring spaces to meet the demand (i.e., a lottery), that still does not guarantee that local municipal officials will not favor some people over others.

- (g) Immunity for municipalities.

The proposed legislation would immunize local municipalities which operate road end marinas from nuisance lawsuits. That is not only unwise, but unfair also. If a municipality decides to operate a road end marina and it causes problems, the municipality should be answerable and responsible for negatives consequences.

- (h) Problematic language regarding “boat hoists.”

HB 4463 expressly allows boat hoists (which are commonly referred to in everyday language as “shorestations” or “boat cradles”). HB 4463 (as passed by the House) does not indicate whether the boat hoists would be owned by the municipality or whether private boat hoists could be utilized. Private structures should not be allowed to be placed or kept during the entire season at a public dock and on a public property. Section 30106A(2)(i) also contains confusing and contradictory language regarding the location of boat hoists. That subsection states:

Boat hoists shall be placed in a uniform straight line running away from and parallel to the shoreline ...

A line cannot be both “running away from” and also be “parallel” to the shoreline!

- (i) There is no limitation on the number of boats or boat hoists.

There is no limit in the proposed legislation on the number of boats or boat hoists which can be kept at a narrow road end. Furthermore, under HB 4463, the DEQ would have no authority to approve a permit for a municipality with a condition that sets a specific limit on the number of boats or boat hoists. Depending upon how the docks, boat hoists, etc., are configured, that could still result in a road end having 25, 30, or even more boats permanently moored at any one time, even if the first 20 feet of a dock could not be utilized and the dock does not exceed 250 feet in length. Such numbers would be unreasonable. However, if a local municipality is pressured by backlot property owners to allow such large numbers of boats and boat slips, there would be nothing that the DEQ (or any member of the public—nuisance suits would be prohibited) could do.

#### **24. Township headaches—new road ends wars!**

Although the proposed legislation is being touted as “pro-local control,” it will simply result in numerous headaches all over Michigan for townships with road ends at lakes. As has already occurred in several townships in the past, backlotter groups will pressure township officials to adopt ordinances allowing floating road end marinas. That will

inevitably lead to recall attempts (where a township refuses to go along with the backlot property owners), contentious elections and bitterness. Furthermore, it is likely that these townships will become embroiled in expensive litigation. These are just some of the reasons why the Michigan Townships Association is opposed to this proposed legislation.

**25.           Summary.**

To the overwhelming majority of people (including those who are not directly involved in this controversy), once all of the facts are known, this issue is a “no brainer”—a few strident backlot owners simply should not be able (by themselves or through a township government) to junk up and seize public property for their own private use. The common law and real estate or property law as clearly identified by the Michigan appellate courts should be upheld. Past illegal behavior should not be rewarded or “grandparented” for anyone. This is a situation where a small group of people (some backlot owners) have used a good deal of energy spreading falsehoods in an attempt to stop needed enforcement legislation while pushing their own contrary special interest legislation. ML&SA hopes that everyone will carefully review all of the implications of this proposed legislation. Please call, e-mail or write your state of Michigan Senator and let him/her know how you feel regarding the backlot owners’ public road end bills.