

## **AN INTRODUCTION TO RIPARIAN RIGHTS ON HIGGINS LAKE**

### **Rights of Lakefront (Riparian) Property Owners Are Exclusive and Expansive**

In Michigan, land which includes or is bordering a natural lake or stream is defined as riparian (or littoral) land. As owners of lakefront property on Higgins Lake, you have both upland and riparian property rights. Your property rights are private and exclusive. Entry onto your upland property without your permission is a trespass. Entry onto your riparian property without your permission is also a trespass. Your riparian rights include actual ownership of the lake bed or bottomlands, generally, to the center of the lake. As riparians, you can use your property, including bottomlands and surface waters of the lakefront of your property, for such purposes as swimming, lounging, picnicking, constructing and maintaining docks and permanently mooring watercraft.

To the contrary, the rights of the public to use Higgins Lake are much more limited. Generally speaking, the public has the right to use the water surface of Higgins Lake for boating, fishing and swimming. The right of the public to boat, fish and swim is conditioned upon legal entry into the water. The public may only gain access to the water surface of Higgins Lake at a public access site. Public access sites generally include road ends, state parks, and state maintained launch facilities.

Lake access rights of a road terminating at the edge of the water (road ends) are based on the scope of the dedication of the road. Where the public lawfully gains access to the water surface, he or she may use the water surface for swimming, fishing or operating a watercraft.

Lake access rights provided to the public at a road end are usually limited by court rulings. Michigan courts have defined lake access at road ends to permit temporary activities such as walking to and from the lake, swimming, fishing as well as the launching and retrieval of watercraft. The right of lake access allows construction of a single, seasonal public dock at the edge of a road end. The right of a single public dock is based upon the notion that such a dock provides an aid to access to the water surface itself. On Higgins Lake, a single road end dock must meet certain township requirements such as registration and insurance. Since a road end dock is on public land and can be used by anyone, a permit must also be obtained from the Michigan Department of Environmental Quality under Part 301, Inland Lakes and Streams. Part 301 provides limitations on road end docks that include, a single linear pier with up to one perpendicular extension, no platforms or decks, not greater than the length or size of similar structures in the vicinity and a reasonable length to boatable water. A link to the application form is provided under section 2(d) below. Road ends may not be used for lounging, picnicking or sunbathing.

The use of navigable waters by the public on Higgins Lake has been defined as the right to access the surface water in a reasonable manner for activities such as boating, swimming and fishing. Access to the surface waters, including waters adjacent to a road end, also provides an incidental right to anchor a boat temporarily while present and engaging in permitted activities. Anchoring while engaging in non-permitted activities is prohibited. Use of an auger to anchor at road ends is considered a permanent anchor so it is prohibited (See for example the Lyon Township Public Dock Permit Ordinance below.) Overnight boat anchoring or docking (Defined by Public Act 56 of 2012 as after midnight and before sunrise) at road ends is prohibited and also will subject the violator to criminal penalties. Positioning a boat hoist at a road end is prohibited and also will subject the violator to criminal penalties.

## **The Legal Authority for Riparian Rights**

Riparian rights on Higgins Lake are defined by Michigan courts through a long history of Michigan case law known as the common law. Riparian rights are also defined by state statutes and local ordinances such as Public Act 56. Statutes such as Public Act 56 draw clear lines of criminal behavior to assist local authorities with enforcement. Michigan common law, which has established rules of property law that has shaped the rights and expectations of property owners, continues to be valid, enforceable and subject to the protections of the Michigan Constitution. Common law provides the harmed riparian land owner the opportunity to enforce the civil violation in the courts. To emphasize this important point, and to ensure local enforcement authorities are aware that common law continues to be valid and enforceable along with Public Act 56, HLPOA counsel, William Carey, sent a clarifying letter to Sheriff Stern and the Roscommon County Prosecutor on April 23, 2018. As stated in Mr. Carey's letter, which can be found on [www.hlpoa.org](http://www.hlpoa.org), "Accordingly, public roads may not be used by the public for non-temporary mooring, hoist or anchorage installation, sunbathing, lounging or picnics. The public, with governmental approval, may erect a single seasonal dock to only be used to embark and disembark from a boating trip. Any notion that Public Act 56 has replaced or modified the common law (Jacobs) is simply incorrect."

Higgins Lake has been a major contributor to the common law of riparian rights in Michigan. Riparian rights are also defined by statutes, such as Public Act 56 of 2012 (Sec. 324.30111b) that codified portions of the common law. Higgins Lake led the successful effort to enact Public Act 56 in 2012 in order to clarify certain riparian rights and to aid in enforcement of those rights. A person who violates Public Act 56 is guilty of a misdemeanor, punishable by a \$500 fine, with each 24-hour period constituting a new and separate violation. The recently enacted Lyon Township Public Dock Permit Ordinance also defines riparian rights on Higgins Lake. This ordinance includes requirements that all road end docks be registered, insured for \$1 million and the permit on the dock must be posted so as to be visible to the public at all times. Among other requirements, it prohibits auguring of boats and placement of swimming rafts within the area of any road end. Gerrish Township currently does not have a Public Dock Permit Ordinance, but it enforces Public Act 56.

Road end docks in Gerrish and Lyon Township also must be registered and insured. The requirement that a road end dock be registered and insured is significant. Registration ensures that someone is responsible for the maintenance of the dock, any activities on the dock, including those that may be illegal such as consuming alcohol, as well as any liability for injuries that occur by anyone using the dock. The requirement that road end dock registrations must be posted on the dock ensures easy identification of the responsible party. The requirement that road end docks now must also be insured in both Lyon and Gerrish Townships helps protect tax payers from lawsuits involving the docks as well as nearby property owners. The Townships as well as nearby riparian property owners will want to monitor road end docks to ensure they meet local requirements including being properly constructed, maintained, registered and insured. The Townships will have registration and insurance records for each road end dock. Contact information for reporting violations of road end dock requirements to Township authorities is contained in the section on Reporting Violations.

## **Higgins Lake Riparian Rights-A Complex Interaction**

Higgins Lake has a complex interaction of property, lake access and surface water rights. Higgins Lake includes more than a thousand lakefront property owners, significant development of property off the

lake, dozens of road ends, paper roads, significant public access from three major boat launch sites including two major state parks, two public marinas and many large and small associations. These interactions have produced some significant Michigan court rulings defining the scope and limitations of riparian rights, including the landmark Jacobs cases that helped define riparian rights on Higgins Lake and in Michigan.

## **Enforcement of Your Riparian Rights**

As riparian property owners on Higgins Lake, it is critical to know how to enforce your riparian rights. This document provides useful information including what violations you can report, contact information for the various local enforcement authorities and what information you need to provide to the enforcement authorities. Timely, fair and consistent enforcement by local authorities is essential to protecting your riparian rights. The HLPOA board and the Riparian Committee are working with local enforcement authorities to help ensure riparian rights are clearly understood, enforcement is consistent and fair, and lines of communication remain open. Some enforcement will require use of the court system. The HLPOA will continue to work with members to enforce riparian rights.

## **Sources of Additional Information on Riparian Rights**

There are many sources of information about riparian rights including the internet and newsletters from Michigan associations like Michigan Lake and Stream Association (MLSA). To make this information more readily available, useable and understandable, we are providing links to important case law, statutes, ordinances, articles and other websites. We also have access to one of the most knowledgeable and experienced riparian rights attorneys in Michigan who lives on Higgins Lake and represents the HLPOA, William Carey. Your Higgins Lake Property Owners (HLPOA) board and the Riparian Committee of the board are working closely with William Carey. We are working to make it easier for you to find useful riparian rights information by creating and maintaining this HLPOA Riparian Committee web site page.

An additional article regarding Riparian bottomland division can be found at the following link; <https://www.ddc-law.com/blog/ownership-of-submerged-bottomlands-is-your-neighbors-dock-on-your-property/>

### **1) Rules for Owners of Riparian Land on Higgins Lake**

Who is a riparian and what are the rules for riparians on Higgins Lake? “Land which includes or is bounded by a natural watercourse is defined as riparian. *Thies v Howland*, 424 Michigan (1985).” “However, strictly speaking, land which includes or abuts a river is defined as riparian, while land that includes or abuts a lake is defined as littoral. However, the term “Riparian” is often used to describe both types of land...” *Thies v Howland*. So if you own property that touches Higgins Lake, you are a riparian. Your land is also riparian if it is only separated from the water by a public road or boulevard. There are several subdivisions on Higgins Lake where a lakeside boulevard runs along the water’s edge. The first tier lots opposite the boulevard are riparian as defined by the courts. Approximately 100 years of Michigan court decisions, as well as state statutes and local ordinances define your rights as a riparian owner of land on an inland lake. The rules are different if you own land on the Great Lakes. This document will explore some of the more significant rights of riparian land owners on Higgins Lake as follows:

## **a) Bottomlands**

As a riparian, you own the bottomlands in front of your property to the center of the lake. So what does that mean? How do you know what bottomlands you own? And what rights do you have as a bottomland owner? If it sounds complicated, it is. Bottomland property lines determine where you can place your dock, hoists and any other structures or equipment such as rafts. They also separate your bottomland property from bottomland road end property which can be very important to those who live next to a road end.

If you live on a circular shaped lake, lines are drawn from the edge of each property line to the center of the lake resulting in pie shaped bottomlands in front of your property. But most lakes are not a perfect circle, including Higgins Lake. Determining bottomland property lines for a lake like Higgins is complex. The Michigan Court of Appeals in *Jodi P. Heeringa v Glenn E. Petroelje*, 750 N.W. 2d 568 (2008), stated, "Briefly, the proper method for determining riparian boundary lines involving irregularly-shaped bodies of water is: first, to draw a "thread" line through the geographic middle (as opposed to the deepest point) of the body of water; second, to determine where the riparian landowners' surface property lines intersect with the water; and third, to draw lines from the thread at as close to right angles as possible as measured at the thread line to the "landward terminus points." The thread line must be determined on the basis of the shape of the "original" shoreline, referring to the date the United States government parted with title to the property." There are also special circumstances as you reach the end of the thread line following the curved shoreline of the lake.

So, given the complexity of determining what bottomlands you own, what should you do? Most people agree with their neighbors to roughly draw perpendicular lines from the end of their property lines into the water and place their docks and other equipment well within those boundaries. It doesn't fit the "legal" bottomlands definition, but it usually works and keeps everyone happy. If that isn't agreeable, you can agree to hire a surveyor who is willing and competent to set bottomland boundary lines according to the established principles above. Finding such a surveyor and agreeing to the results may be difficult and it's expensive. If there is no agreement and competing surveyors are hired, only a court can make a final decision about boundary lines. That is obviously a time consuming and even more expensive undertaking. It also may result in irregularly shaped bottomlands in front of your property and it likely will impact how your other neighbors can place their docks and equipment, which may not make you very popular in the neighborhood.

## **b) Right to use surface waters of Higgins Lake**

As a riparian, you have the same rights as the public to use the surface water of the lake. That means you can do things like swim, boat and fish on the surface waters of the lake. You must respect the rights of other riparians who own land on Higgins Lake. You cannot trespass on the bottomlands of other riparian owners. As an incident to your rights to use the surface waters of Higgins Lake, you can anchor your boat on the bottomlands of another riparian only temporarily for things like swimming and fishing. You cannot anchor your boat so close to the docks and hoists of a riparian so as to block ingress and egress. Like the public, if you violate the rights of another riparian, you can expect to be reported to the local authorities and you may be liable civilly or criminally depending upon the violation. You must also

comply with state watercraft speed laws of 55 mph and the boat noise law. Those will be described in more detail under the noise and speed section of this article.

With increasing frequency, riparian property owners face a scenario where a member of the public will drop anchor on riparian lands and “temporarily” moor at that location for a multi-hour period of time. Unless such temporary anchorage is being done to allow for activities of fishing or swimming, the activity is a trespass. Anchoring for the purpose of engaging in a boat party is a trespass subject to civil enforcement. To protect your rights, you will need to identify the watercraft by its MC#.

### **c) Docks**

As a riparian, you are allowed to construct and maintain a private dock(s) along the shoreline you own. Unlike road end docks, your dock(s) is exclusively available for you to use. The rules relative to where you can place your dock are clear. You must construct your dock on the bottomlands of your property. However, as noted above, determining the property lines of your bottomlands can be very complex. Please review the section on bottomlands for a summary of how to determine your bottomlands boundary lines. Common dock questions include whether I need a permit and how long can my or my neighbor’s dock be?

#### **i) Seasonal private docks of riparians used for single families do not require a DEQ or Township permit**

As a general rule, private, single family seasonal docks constructed by riparians on Higgins Lake do not need a permit and are not required to be registered or insured by local authorities. Seasonal docks to facilitate private, noncommercial recreational use of the water do not require a permit if the dock does not unreasonably interfere with the use of the water by others or interfere with water flow. There is no specified limit on dock length for private docks under common law or by statute. The general rule is docks cannot unduly interfere with navigability or the rights of other riparians to reasonably use their riparian rights. *Thompson v Enz*, 379 Mich 667 (1967.) By statute, items such as a dock, boat hoist or swimming raft cannot be a hazard to navigation (MCL 324.80163.) The DNR can enforce a violation by requiring that the item be moved. If not moved, the DNR can move it and charge the owner (MCL324.80163.) The Lyon Township dock ordinances applies to road end docks. It does not regulate riparian docks.

#### **ii) Seasonal private docks of riparians for multi-family use, such as associations, require a DEQ permit**

The DEQ requires construction permits for marinas which are defined as “...a facility that is owned or operated by a person, extends into or over an inland lake or stream and offers service to the public or members of the marina for docking, loading, or other servicing of recreational watercraft.” As stated by the DEQ, “Whether or not an activity or an ongoing use is considered a marina requiring a construction permit under Part 301 Inland Lakes and Streams of the NREPA, depends on the nature of the use. In addition to commercial businesses that provide docking services, the Department of Environmental Quality maintains that docking or mooring from riparian properties such as outlots, trailer parks, condominium and apartment developments, yacht clubs, and other commonly owned or controlled points of access function as and meet the definition of a marina under Part 301.” The DEQ states further, “While members of the marina is not defined in Part 301, the DEQ has consistently interpreted this phrase to mean individuals or users of waterfront property where there is common interest in the

property and docking, loading, or other servicing of recreation watercraft is being provided.” “Likewise, the DEQ has consistently interpreted “private noncommercial recreational use” as reasonable exercise of legitimate riparian rights associated with waterfront property zoned and used for single family residential use.”

The marina must be operated consistent with the correlative rights of other riparians, including adjacent riparians. Boats that use the association dock must be able to ingress and egress from the dock while staying within the association’s riparian bottomlands. The statute requires a minimum distance of 1.5 times the slip length measured from the end of the slip or the outside edge of the boat for broadside mooring, to the boundary of the association’s riparian bottomlands.

Permits for association marinas with less than ten boats slips are \$100 and \$500 for a marina with 11-50 slips. Once permitted, the association can continue to install docks every year without a new permit as long as the dock is installed in the same location and configuration. Changes require a new permit. The application process and application forms can be obtained through the DEQ at [www.mi.gov/jointpermit](http://www.mi.gov/jointpermit). Complaints about violations can be made online to the DEQ at [www.mi.gov/miwaters](http://www.mi.gov/miwaters).

**d) As a riparian, you can permanently store/use boat hoists and moor watercraft on your own bottomlands, off your own shoreline**

You must anchor your boat(s) so that they do not drift over the bottomlands of your riparian neighbor. Unless permission is obtained, neither you nor the public can anchor a boat on the bottomlands of a riparian without the permission of the riparian, except temporarily for activities like fishing, boating and swimming. This temporary anchoring is an incident to the use of navigable waters including fishing, boating and swimming.

**2) Rules for Use of Higgins Lake by the Public**

Rules for use of Higgins Lake by the public are set by common law decisions of the Michigan Courts, as well as state statutes and local ordinances. Public rights fall into two categories; the right to use the surface water of the lake and the right to incidental and temporary anchorage.

**a) Use of surface waters of Higgins Lake**

The right to use the surface waters of Higgins Lake includes such activities as boating, swimming and fishing. Incidental to use of surface waters is the temporary use of riparian bottomlands for temporary anchoring of boats that do not impede the ingress or egress of riparian owners or the public. While the public has a right to walk along the shoreline of the Great Lakes, that is not the case on inland lakes. The riparians own the shoreline and it is a trespass to walk along the shoreline of an inland lake without the permission of the riparian owner.

The right of the public to gain access to the water surface, particularly road end access, has been extensively litigated.

## **b) Temporary lake access at road ends and docks**

Decades of Common Law court decisions, passage of Public Act 56 in 2012 and local township ordinances combine to provide a clear picture of how road ends and docks on Higgins Lake can be used. They can only be used for ingress and egress to the water. A single public dock can be erected at road ends to aid ingress and egress. Under the common law, the public may erect a single seasonal dock to only be used to embark and disembark from a boating trip. Since docks are an extension of the road end, they can only be used for the purposes allowed for road ends. Docks are also regulated by Lyon Township and by Gerrish Township. The townships require registration and insurance for each dock. Road ends on Higgins Lake can be used to temporarily anchor a boat, which means the user must be present while the boat is anchored. Permanent watercraft anchoring (dock or auger), overnight anchoring, placement of boat hoists, lounging, picnicking, sunbathing and camping are examples of activities that are not incident to lake access and they are prohibited.

## **c) Lounging, picnicking and sunbathing on road ends and road end docks is prohibited**

The landmark Higgins Lake riparian rights case of *Jacobs v Lyon Township*, 181 Mich App 386 (1989) held that the road ends on Higgins Lake can be used for maintenance and use of streets, and to provide temporary public access to the water. However, such uses as lounging, picnicking and sunbathing are prohibited on road ends and road end docks.

## **d) Seasonal road end docks require permits from the Township and from the DEQ**

Permits for a seasonal dock constructed at a road end on Higgins Lake are required from both the local Township and the DEQ. According to Bethany Matouzek, DEQ Inland Lakes and Streams Program Coordinator, "A permit is required from the DEQ for a seasonal dock at a public road end. Prior to applying to the DEQ for a permit, the applicant must first obtain authorization from the local Township. A peace officer can issue a ticket up to \$500 to someone in violation of the statute."

Information about the process for obtaining the required Gerrish Township permit is available on the Gerrish Township Police website. Insurance for the dock is required. The new Lyon Township Dock Ordinance also requires a permit and \$1 million insurance coverage. Information about the Lyon Township Dock Ordinance is available on the Lyon Township website.

Under Part 301 of the Natural Resources and Environmental Protection Act (NREPA), a road end dock is on public property and a DEQ permit must be obtained prior to construction and installation of the road end dock. A penalty of \$500 can be assessed for violation of the statute. A road end dock is considered a Minor Project (MP) and the DEQ provides an expedited permit application process. Permits will be issued under an MP category only if it is determined that the proposed activity is in accordance with the criteria and requirement of the NREPA. A person seeking a permit under an MP category must submit a permit application on a form supplied by the Water Resources Division (WRD) of the DEQ at [www.michigan.gov/jointpermit](http://www.michigan.gov/jointpermit). A preliminary determination of whether an application may be processed under an MP category is made by WRD staff when the application is received. A site inspection may also be conducted. The DEQ will provide written authorization for an approved project or will otherwise notify the applicant in writing of the decision on the application. Part 301 specifies the criteria that must be met before a permit may be issued. These general criteria, as well as the specific criteria detailed later in the MP categories, must be met before the WRD can issue a permit under an

MP category. Adverse impacts must be avoided and minimized to the greatest extent possible, and mitigation may be required.

MP 49, Docks on Public Land (road ends), contains the following requirements:

The construction of a noncommercial dock on public land to facilitate launching and loading of recreational boats that meets all the following:

This MP is limited to 1 permanent or seasonal dock per property that is not used for overnight mooring or docking.

The structure will not unreasonably interfere with the navigability or boatability of the water involved or interfere with the riparian rights or use of the waters by others.

The structure shall be a linear single pier with up to one perpendicular extension for fishing access.

The structure shall not have roofs, sides, platforms, or decks.

The structure shall allow for the flowage of littoral materials and water.

The structure and associated extension shall be placed in the center of the property or at least 1.5 times the dock length from any property lines, unless it is not feasible based on site conditions.

For inland lakes and streams, the structure shall be of reasonable length to boatable water or at a length from shoreline that is not greater than the length of similar structures in the vicinity and on the waterbody, whichever is the minimum necessary. The structure shall not exceed a width of 4 feet unless the applicant demonstrates their need for construction of a wider dock.

Members of the public and riparians can monitor the compliance of road end docks with the above requirements and report violations to the DEQ Permitting Staff in Gaylord at 989-731-4920.

The application form includes three parts, 1) Application Form, 2) Maps and Drawings and 3) Fee. An authorization from the Township must be included as the owner of the property. Application requirements include overhead drawings to scale or with dimensions, length and width of the proposed project, cross section drawings and photographs of the proposed site. Applications should be sent to the Gaylord District Office at 2100 West M-32, Gaylord 49735.

### **3) How do I report violations and what information do I need to provide?**

Gerrish Township has its own police department which is prepared to respond to complaints. Lyon Township does not have its own police department, so reports will be routed to the Roscommon County Sheriff's Department. In general, reports should be made through the **Central Dispatch** number: **989-275-0911**. The Dispatcher will route your call based on where you live as well as the proper agency to respond to your complaint.

#### **a). Common Law v Statutory/Ordinance Violations.**

The various types of conduct noted above that may infringe upon your riparian rights fall into two basic categories. On the one hand, a violation may be identified by state statute (Public Act 56 or MNREPA) or township ordinance. Examples of statutory or ordinance violations include overnight mooring at a road end, non-permitted dock installation and speeding. You can and should expect efficient enforcement of these violations by the townships, Roscommon County and the MDNR.

Other violations have been defined by case law (the so-called “common law”). These violations should be reported to a police agency when feasible. However, common law violations are sometimes not prosecuted by a state or local police agency. Instead, these common law violations may need to be enforced by you in a civil court proceeding.

A more detailed explanation of reporting instructions is listed below:

#### **b) Reporting violations that occur in the water**

These include alcohol use on road end docks, excessive noise, illegal mooring/anchoring of boats on riparian property or road ends, hoist placement on riparian property or road ends and blocking ingress and egress to your boat by people anchoring too close to your boat and hoists in front of your property.

##### **i) Lyon Township**

If you live in Lyon Township, reports should be made through **Central Dispatch** at **989-275-0911**. Since Lyon Township does not have a police department, the report should be routed by Central Dispatch to the Roscommon County Sheriff’s Department. You will need to be prepared to provide basic information such as the location of the violation and a description of the violation. If the violation involves illegal mooring of a boat, such as mooring past midnight and before sunrise, you should try to include the registration number of the watercraft.

You will be required to provide your name when filing a complaint. Unless the matter is challenged in court, your name should not be released by the law enforcement authorities.

##### **ii) Gerrish Township**

Water-based violations under Public Act 56 include boat hoists maintained at road ends, overnight mooring, mooring with an auger and tying up a boat at a dock for anything but loading and unloading. If you live in Gerrish Township, reports of violations should be made through **Central Dispatch** at **989-275-0911**. The report should be routed by Central Dispatch to the Gerrish Township Police Department. The information listed above should be provided whenever possible.

You will be required to provide your name when filing your complaint. Unless the matter is challenged in court, your name should not be released by the law enforcement authorities.

#### **b) Reporting violations that occur on the land at road ends**

These include alcohol use at road ends, excessive noise, failure to register a road end dock and failure to insure a road end dock.

##### **i) Lyon Township**

If you live in Lyon Township, reports of alcohol use and excessive noise on road ends should be made to **Central Dispatch** at **989-275-0911**. Reports of violations of the local dock ordinance such as failure to register or insure a dock (ordinance requires conspicuous posting of the permit on the dock) will be handled by Lyon Township and should be reported to Lyon Township at 989-821-9694.

## **ii) Gerrish Township**

According to the Gerrish Township Police department, reports of alcohol use at road ends will be handled by them. Reports of excessive noise will also be enforced pursuant to local ordinance.

Local authorities have stated they will enforce violations of Public Act 56.

## **c) Excessive noise and speed (55 mph) violations on Higgins Lake**

State law regulates the maximum noise and speed of watercraft. Today's jet skis are designed to reach maximum speeds in excess of the state law maximum of 55 mph. Higgins Lake users need to be aware of the maximum speed law and to obey the law. Larger, faster and noisier boats are being launched on Higgins Lake and are purchased and used by riparians. The Roscommon County Sheriff's Department Marine Division patrols Higgins Lake with a primary purpose of helping to ensure the safety and well-being of the users of Higgins Lake. However, the Marine Division has been and will continue to enforce maximum noise and speed laws on Higgins Lake. Riparians and other lake users need to be aware of state laws and to abide by the rules. The Marine Division has equipment to measure the noise of boats on Higgins Lake and they have been issuing tickets for violations. Unfortunately, some water craft users monitor the presence of the Marine Division and have been waiting for them to leave the lake to "open them up."

The HLPOA has been working with the Roscommon County Sheriff Marine Division to address this problem and we have assurance they will try to respond to complaints "after hours" this summer when possible. Since we don't want to abuse this important help from the Marine Division, we request that you limit reports to obvious and extreme speed and noise violations by repeat offenders who use the lake "after hours" to avoid detection. Reports should be made through **Central Dispatch** at **989-275-0911**.

## **4) Key Sources of information for Riparians on Higgins Lake**

### **a) Jacobs v Lyon Township (Google Jacobs v Lyon Township. Leagle.com for 1989 decision and CourtListener.com for 1993 decision)**

There were two Jacobs decisions by the Michigan Court of Appeals in 1989 and 1993 which decided the scope of permissible uses at specific road ends on Higgins Lake. In the two Jacobs cases, the property was on the lakefront and it had been subdivided and platted by the original owners. In addition to creating lots, the owners designated essentially perpendicular roads to provide access to the lots and to the shore of Higgins Lake. The words of the dedication simply indicated that the roads were for "public use." Key language setting forth the Court's decision in the second Jacobs case was as follows,

"Publicly dedicated streets that terminate at the edge of navigable waters are generally deemed to provide public access to the water. The members of the public who are entitled to access to navigable waters have a right to use the surface of the water in a reasonable manner for such activities as boating, fishing, and swimming. An incident of the right of navigation is the right to anchor boats temporarily. The right of a municipality to build a wharf or dock at the end of a street terminating at the edge of navigable waters is based upon the presumption that the platter intended to give access to the water and permit the building of structures to aid in that access. The extent to which the right of public access

includes the right to erect a dock or boat hoists or the right to sunbathe and lounge at the road end depends on the scope of the dedication. The intent of the dedicator is to be determined from the language used in the dedication and the surrounding circumstances.” (Citations omitted.)

Based on the language used in the dedication and the surrounding circumstances, the Court of Appeals decided that where public streets are dedicated “for the use of the public,” a nonexclusive public dock could be erected at the road end, but individuals could not erect boat hoists or sunbathe, lounge or picnic. The complete Court of Appeals decision can be accessed at the link above.

#### **b) Public Act 56 of 2012**

Public Act 56 defines the permissible uses of road ends terminating at the edge of a Michigan inland lake or stream. The law was codified as a new section of Part 301 of the Natural Resources and Environmental Protection Act in 2012. HLPOA was the primary organization behind passage of the law which was intended to provide a clear statutory basis for inappropriate uses of road ends and encouraging enforcement of violations by making it a criminal misdemeanor to violate its provisions.

Key provisions of the statute include prohibitions against:

- (a) Construction, installation, maintenance, or use of boat hoists or boat anchorage devices.
- (b) Mooring or docking of a vessel between 12 midnight and sunrise.
- (c) Any activity that obstructs ingress or egress from the inland lake or stream.

Public Act 56 further states that a person who violates these provisions “is guilty of a misdemeanor punishable by a fine of not more than \$500. Each 24-hour period in which a violation exists represents a separate violation of this section.”

It is important to note that the enactment of Public Act 56 does not affect nearly a century of Michigan common law, including the Jacobs cases, which more fully define riparian rights in Michigan. That common law remains in effect and it continues to be enforceable. Public Act 56 did not intend to supersede or modify existing common law. Furthermore, even if it did, as stated in opinion #7211 by Attorney General Mike Cox, January 30, 2008, “It is my opinion , therefore, that, while the legislature has the authority to modify the law, any legislative modification of the judicially established rules of property law that have shaped the rights and expectations of property owners regarding the meaning of “public use” in the context of public roads ending at the shore of a lake has the potential to impact existing property rights and would be subject to the constitutional protections against the taking of property without due process and just compensation.”

Public Act 56 can be accessed by clicking on link: <http://legislature.mi.gov/doc.aspx?mcl-324-30111b> and is also posted on hlpoa.org (click on the “Riparian Committee” tab on the Home Page, then on “Ordinances, Statutes and PA 56”).

#### **c) Lyon Township Dock Ordinance No. 62 ([www.lyontownship.org](http://www.lyontownship.org). Go to: Ordinances, Lists, 62 Public Dock Permit Ordinance)**

Lyon Township Ordinance No. 62 regulates the licensing, installation, and removal of public docks in Lyon Township effective in 2018. Key provisions of the Ordinance include:

Section 3. Permit Required:

A. No person shall construct, install, operate or maintain a dock at a public road end within the Township without having first obtained a permit from the Township.

B. Only one permit shall be issued for any public road end.

Section 4. Permit Procedure:

B. Application for a permit shall contain:

1) The applicant's name, phone number, name of public road, the name of the applicant's insurance company and policy number applicable to the Dock.

2) A copy of a valid insurance policy providing the insurance coverages required by this Ordinance. A certificate of insurance is not acceptable.

3) A copy of a plat dedication, easement, or deed demonstrating the public road end is dedicated to public use.

4) Proof of compliance with state law, including but not limited to a copy of any permit or license obtained by the applicant from any relevant state agency.

5) Proof that the dock does not obstruct ingress or egress from the waters upon which the dock is located, and proof that the dock will not impede or block travel of vessels on the surface of the waters upon which the dock is located.

6) Construction or installation plans for the proposed dock, including but not limited to a description of the proposed length and width of the dock, the proposed building materials, and whether any component of the dock will be embedded into ground or bottomlands near or beneath the waters upon which the dock is located.

E. The applicant shall conspicuously post the permit on the dock so as to be visible to the public at all times.

Section 5. Duration of Permit:

The Permit will remain valid for a period no longer than one (1) year from the date it is issued. Docks located on any inland lake must be removed from the waters of the lake no later than October 31 of the year in which the Permit is issued.

Section 6. Permit Requirements:

A. The dock must be constructed or installed in a safe and professional manner so that it will withstand exposure to the elements and extended use by the public.

B. The dock must be kept in a state of reasonable repair and kept free of any defects which may cause injury to person or property.

C. No vessels may be docked or moored on the dock outside of the hours specified by the permit, and in no circumstances, may vessels be docked between midnight and sunrise.

E. In addition to the Permit required under this Ordinance, the dock must remain licensed or permitted as required by state law, and must be operated in a manner consistent with state law.

F. Permit holders must maintain proof of liability coverage on a "claims incurred" basis in a minimal amount of \$1,000,000 per incident naming the Township as an additional insured, and must maintain that coverage until the expiration of the permit and removal of the dock

I. No more than one dock shall be permitted at any public road end.

J. All docks must extend approximately perpendicular to the shoreline, and be located along an extension of the center line of the public road end. In no circumstances may any dock extend onto or over the riparian land of an adjacent property.

L. All docks shall have some form of reflective device attached at the end of the dock to ensure safe navigation in low light conditions.

M. The auguring or driving of any boat mooring posts, the placing of any permanent or seasonal boat anchoring devices or swimming rafts within the area of any public road end is prohibited.

N. No public road end shall be altered and/or improved upon in any manner without the Permit Holder(s) first obtaining written permission and any required permits for such improvements from the Township, the Michigan Department of Environmental Quality, the Roscommon County Road Commission, and the Roscommon County Board of Commissioners as required by law.

O. Overnight parking of any vehicle in the public road end right-of-way is prohibited.

P. The storage of any boats, boat hoists, docks, ice shanties, or placement of any other man-made structures or plantings which obstructs or which encroach the public road end right-of-way are prohibited.

#### Section 8. Administration and Enforcement:

Any person in violation of any of the provisions of this Ordinance shall be guilty of a municipal civil infraction, and is subject to a civil fine of not more than \$500 plus costs. Each day a violation of this Ordinance continues to exist constitutes a separate violation. The complete Ordinance can be accessed by clicking on the above link.

**d) Gerrish Township Single Season Dock Application and Permit from its website ([www.gerrishpolice.org](http://www.gerrishpolice.org))**

Gerrish Township provides an Application for a Single Season Public Dock constructed in Gerrish Township, including Conditions of the permit. The website includes the instructions that Public Dock

Permits can only be issued by Chief Hill or Lt. Patchin of the Gerrish Township Police Department. Gerrish Township used to have a more detailed Township Ordinance covering docks, but it was repealed. Compared to the new Lyon Township Ordinance, the Gerrish Township rules are quite minimal.

The Gerrish Township Application does recognize Public Act 56 and Michigan Courts as authority for its dock permit rules as follows:

“Conditions of permit (c) Dock is to be open for public use consistent with published decisions of Roscommon County Circuit Court in the State of Michigan interpreting use of public road ends terminating at an inland lake. Docks shall not be used from midnight to sunrise consistent with Public Act 56 of 2012, MCL 324.3011b and published decisions of Roscommon County Circuit Court and appellate courts in the state of Michigan interpreting use of road ends.”

Gerrish Township also requires insurance and has requirements for dock construction, use and location as follows:

Conditions of Permit:

(a). Permit Holder shall obtain liability insurance which shall be kept in force during the term of the permit which names Gerrish Township as an additional named insured. Proof of insurance shall be provide to the township.”

(b). Permit Holder acknowledges responsibility for safe and proper installation of public dock, maintenance of dock free from defects which may cause injury to person or property, and removal of dock prior to expiration date or upon Order as provided herein.

(c). Dock shall not be used from midnight to sunrise consistent with Public Act 56 of 2012

(d). Gerrish Township reserves the right to ensure location of dock does not obstruct ingress or egress from the lake. If a determination is made that a permitted dock obstructs ingress or egress from the lake, Permit Holder will be required to relocate the dock or permit will be revoked. Permit Holder agrees by the erection of a dock to hold Gerrish Township and its officials harmless from any liability for the dock.

**This Introduction to Riparian Rights on Higgins Lake was produced by the HLPOA Riparian Committee under the authorization of the Higgins Lake Property Owners Association Board. We want to thank Bill Carey (<https://www.careyjaskowski.com/>) for his support for this project including his review, input and approval of this work.**