

TWO MORE PRO-RIPARIAN ROAD END COURT OPINIONS

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On December 2, 2008, the Michigan Court of Appeals rendered another lake road end opinion which once again affirmed *Jacobs v Lyon Twp*, 199 Mich App 667 (1993), like virtually every other Michigan appellate case which has come out regarding public road ends at lakes. Typically, the road ends involved in these cases are in plats which are so old that the original dedicator or developer is no longer alive to testify as to the intent behind the public road end dedications, and there is little (if any) written evidence of the developer's original intent apart from the plat itself. However, the case decided last December 2, *Higgins Lake Shores Lakefront Property Owners v Lyon Twp* (unpublished Michigan Court of Appeals decision dated December 2, 2008; Case no. 278894) is unusual in that the trial court did have letters from one of the original plat developers which tangentially addressed the road end issue. One of the developers wrote a series of letters to the Roscommon County Road Commission relating to the road ends within the plat he helped create in the decade after the plat was created. Even though there was some language in those letters from which one could imply an intent to allow dockage, permanent boat mooring, etc., the trial court held that the overall evidence indicated that the uses of the road end were limited to *Jacobs*-type uses and activities. Ultimately, both the trial court and the Michigan Court of Appeals held that the public road end could be used only for access to the lake and that permanent boat mooring, sunbathing, picnicking, and lounging were prohibited uses and activities.

On December 18, 2008, the Michigan Court of Appeals also issued another important road end case opinion in *Douglas v Harting* (unpublished decision; Case No. 277892). *Douglas* involved an alley (or small street) which terminated at Portage Lake and was dedicated in the

plat “to the use of the public.” The Court of Appeals affirmed three important principles. First, the Court indicated that any platted road, street, alley, or public way that terminates at a lake is presumed to allow access only (that is, no private dock, permanent boat mooring, lounging, sunbathing, etc.). Second, the Court reiterated that to the extent that one dock is allowed for temporary boat mooring, it must be installed and maintained by a governmental unit. Finally, the Court held that the adjoining riparian landowners had standing (*i.e.*, a sufficient interest) to bring the lawsuit.