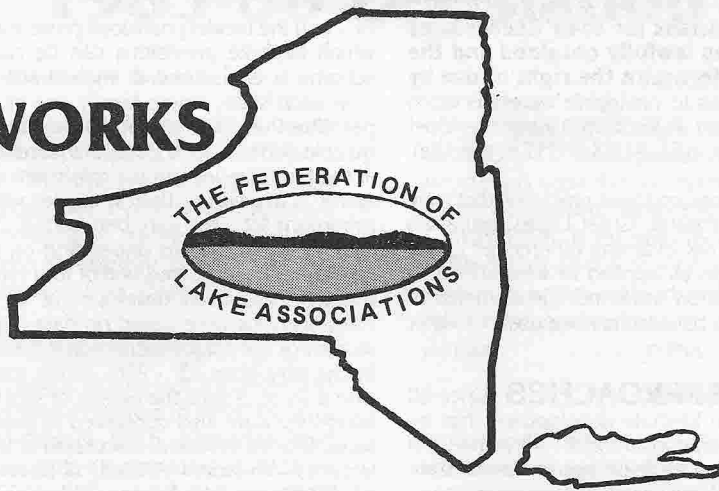


WATERWORKS



Winter 1986
Volume 2
No. 1

This article is reprinted from the March and April issues of PLANNING & ZONING NEWS by permission. PLANNING & ZONING NEWS is a monthly magazine published by the Planning & Zoning Center, Inc., 400 Everett Drive, Lansing, Mi 48915. Subscription information is available on request or by calling (517) 484-3333. A shorter version of this article also appeared in the March issue of LAND USE LAW & ZONING DIGEST by the American Planning Association, Vol. 37, No. 3 (1313 E. 60th St., Chicago, Ill 60637).

Mark A. Wyckoff, AICP is the editor and publisher of PLANNING & ZONING NEWS and President of the Planning & Zoning Center, Inc. a firm providing information, training and consultative services to local governments on appropriate community planning.

INLAND LAKE KEYHOLE DEVELOPMENT:

An Analysis of Local Zoning Approaches: Part One

by Mark A. Wyckoff, AICP Editor

INTRODUCTION: Increased population, leisure time and disposable income have combined to place enormous strains on many inland lakes across the country. Nowhere are these pressures as great as on inland lakes near large urban areas. Yet even lakes within three-four hours of major metropolitan areas are showing signs of severe strain from "wall to wall" cottage development and intensive surface use. As a result, lakefront property owners (of land often worth more than \$1,000/front foot) are increasingly going to court to protect riparian rights felt threatened by intensive waterfront development proposals and greater surface water use. This trend is especially evident in the Midwestern states of Michigan, Minnesota and Wisconsin (each over 10,000 lakes) which are facing many new keyhole development proposals.

THE PROBLEM: "Keyhole development (also known as "funnel" development) is the use of a waterfront lot as common open space for waterfront access for a larger development located away from the waterfront. This results in potentially greater lake use than would "normally" occur if the lot were used for a single family cottage. Increasingly, keyholing occurs with the purchase of a small waterfront lot by a "backlot" owner, who then grants either access (by license or easement) or a share in ownership to the waterfront lot, to backlot owners/residents/users. Many ownership or easement combinations are possible. (see "Water Based Recreational Developments in Michigan - Problems of Developers" Bartke and Patton, 25 Wayne Law Review 1005-1063, July 1979). If unchecked, a proliferation of keyhole developments could dramatically alter both the surface use characteristics and appearance of a lake; especially if canals are dug to increase lakefront access. (See illustration accompanying **Thompson** case in Part II of this feature).

Keyhole development is not new. Many old plats reserved a waterfront lot as access to the lake for backlot owners. Many granted easements allowing legal access, but not full riparian rights. However, as seasonal cottages became permanent year round residences, and lake use increased, water quality often decreased (usually due to faulty septic tanks). As surface water use increases, so do concerns about: shore erosion from speedboats and waterskiers; property values; oil and gas spillage from powerboats; noise; conflicts between various users (sailboats, fishermen, speedboats, waterskiers, swimmers, pon-

toon boats, etc.); and the high costs of correction of damages. For these reasons, and others related to the impacts and compatibility of higher intensity land development near lakes, waterfront owners are suing to protect their riparian rights and municipalities are beginning to regulate (and in some cases prohibit) keyhole development.

Local government efforts in Wisconsin and Minnesota are guided/circumscribed by state shorelands statutes. Elsewhere however, municipalities are venturing forth into uncertain territory armed only with the assumption that their efforts fall within the confines of a state enabling act. Yet, additional support may come from parallels with riparian common law principles of "reasonableness" as applied to the resolution of surface water conflicts. These principles are very similar to reasonableness principles applied by courts in the evaluation of many local zoning provisions.

This article examines twelve local regulatory ordinances prepared by Michigan and Wisconsin municipalities which seek to restrict or prohibit keyhole development. These approaches are compared with "model" shoreland zoning approaches used in Minnesota and Wisconsin, and with the concepts of "reasonableness" as developed and applied by courts in states subscribing to the "riparian doctrine" (generally those states east of the Dakotas, Nebraska, and Kansas). The comparison is made in order to fashion a management approach that seeks both to solve the identified problem of keyhole development and provide a structure for dealing with other related inland lake management problems. The term "riparian" will be used in this article as it is commonly used in law in the Midwest to refer to owners of property abutting a waterbody, whether it is a lake or a stream. Other parts of the country refer to owners of lakefront property as "littoral" owners and owners of property along streams and rivers as "riparian" owners (see Black's Law Dictionary).

For readers unfamiliar with riparian rights, it may be instructive to review the four basic attributes of riparian rights. These rights belong only to fee simple owners of property abutting a waterbody: (a) the right of access to navigable water, (b) the right to build a pier out to the line of navigability, (c) the right to accretions and (d) the right to a reasonable use of the water for general purposes such as boating, domestic use and so on.

Reasonable use in the context of surface use of the water, extends across the entire waterbody which may be used

— continued on page 2

