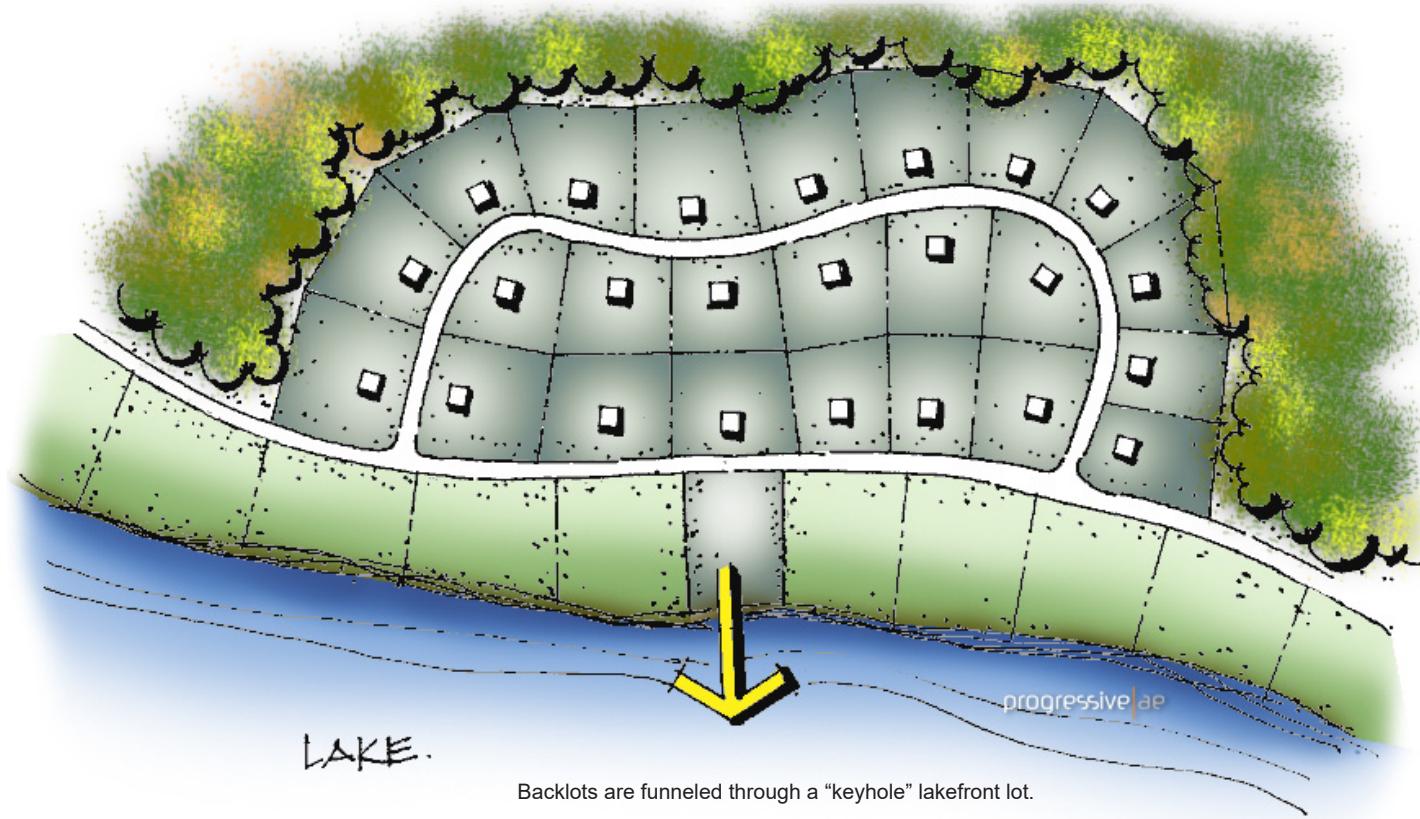


Keyhole or Anti-Funneling Ordinances

by Water Resources Group
Progressive AE

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Funnel or keyhole development occurs when a lakefront lot is used to provide lake access to a larger development located away from the lake. Funneling allows a large number of individuals to gain access to a lake through a small corridor of property. Unregulated funnel development has the potential to create a number of problems, including land use conflicts, unsafe and inadequate access, lake and shoreland congestion, multi-use conflicts, degradation of the environment, and decreased property values.



In response to concerns regarding lake overcrowding, many townships around the state adopted anti-funneling or keyhole ordinances in the 1970s and 1980s. However, in 1987, the Michigan Court of Appeals ruled in the Fox and Associates, Inc. v Hayes Township case that townships did not have the authority to regulate funnel development under the zoning enabling statute. Thus, for several years, Michigan townships were unable to regulate funnel development effectively. However, two subsequent decisions by the Michigan Supreme Court shed new light on the issue.

In 1991, the Michigan Supreme Court ruled in the case of Square Lake Hills Condominium Association v Bloomfield Township, "that townships have the authority to regulate by ordinance boat docking and launching for the protection of the health, safety, and welfare of persons and property within their communities under the Township Ordinance Act" (Public Act 246 of 1945). In 1992, the Michigan Supreme Court ruled in the case Hess v Charter Township of West Bloomfield, "that the Township Zoning Act permits townships to regulate riparian rights, such as dockage of boats, as part of their zoning power." This decision effectively overturned Fox and Associates Inc. v Hayes Township.

Thus, the Michigan Supreme Court has confirmed that townships have the ability to regulate boat docking under both the Township Ordinance Act and the Zoning Enabling Act (Act 110 of 2006). However, the two acts do not regulate existing and future uses in the same manner. Existing and future uses can be regulated under the township's general police power pursuant to the Township Ordinance Act, while zoning under the Zoning Enabling Act regulates future uses only. Thus, for a lake community that is experiencing problems as a result of existing uses, it may want to consider proceeding under the Township Ordinance Act, since an ordinance adopted under this act does not need to recognize non-conforming uses. On the other hand, if existing uses are not a major problem but future uses are a concern, then it may be more appropriate to proceed under the Zoning Enabling Act.

Although the courts have repeatedly stated that township ordinances carry an assumption of validity, townships must provide a logical basis for an ordinance. Otherwise, a court may find an ordinance unreasonable or arbitrary and, therefore, invalid if challenged. Care must be taken in the drafting and application of a lake use regulation to ensure the ordinance would not be deemed unreasonable or confiscatory (i.e., constitute a "taking" of property without compensation). The ordinance should clearly and concisely articulate standards, and address a specific, defined need. A keyhole or anti-funneling ordinance can be an effective way to help prevent lake overcrowding and related problems.

About the Authors:

For over 30 years, Progressive AE's Water Resources Group has provided professional lake and watershed management services to communities across Michigan. The Water Resources Group created MichiganLakeInfo.com, a website for those interested in Michigan's inland lakes. On the site you can find this article and information on topics such as lake water quality, lake and watershed management, aquatic biology, emerging issues, invasive species and more.

Hess v. West Bloomfield Twp.
 439 Mich. 550, 486 N.W.2d 628
 Mich., 1992.
 May 22, 1992.

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 1992 WL 189,601

Supreme Court of Michigan.
 HESS
 WEST BLOOMFIELD TOWNSHIP
 Docket No. 90773.
 (Calendar No. 10).
 Argued December 5, 1991.
 Decided May 22, 1992.
 For the plaintiffs,
 Robert H. Golden for the plaintiffs.
 Defendants,
 Kohl, Secrett, Wardle, Lynch, Clark & Hampton (by William P. Hampton and

A. Fisher) and Cummings, McClorey, David & Acho, P.C. (by Carol Rosati and

Amicus Curiae:
 Baucham, Sparks, Roffe & Thomsen, P.C. (by Lynda E. Thomsen and

BRICKLEY, J. for Michigan Townships Association.
 Baucham, Sparks, Roffe & Thomsen, P.C. (by Lynda E. Thomsen and

This case presents an opportunity for us to determine whether a
 authority to regulate docking of boats pursuant to the Township
 (TRZA), MCL 125.271 et seq.; MSA 5.2963(1) et seq. Contrary
 Court of Appeals in *Fox & Associates, Inc. v. Hayes Twp.*, 162
 NW2d 465 (1987), we find that the TRZA does in fact vest
 authority, and reverse the decision of the trial court, and
 further proceedings consistent with our decision.

