

August 31, 2019

Mr. Robert Elrod, Supervisor
Columbia Township
8500 Jefferson Road
Brooklyn, MI 49230

Re: Initial Draft of Common Use Riparian Lot Ordinance (Funneling)

Dear Mr. Elrod:

Attached is an ordinance that regulates the manner in which a lot on a water body can be used to provide lake access to persons residing on non-riparian property. This scenario is commonly referred to as "funneling" or "keyholing." It is generally recognized that a municipality cannot prohibit this development option but a municipality can adopt provisions to regulate this practice. The ordinance has been formatted to generally correspond to past ordinances adopted by the township, with minor modifications to make the ordinance more user-friendly. Please note the following aspects of this ordinance.

- 1) A key element of this ordinance is the phrase "*common use riparian lot*" (CURL) and is defined in Sec. 3.0 of the Ordinance. This Ordinance applies to CURLs only.
- 2) To the extent that this Ordinance regulates the docking of boats on/from a CURL, the Sec. 3.0 definition of "boat" excludes non-motorized vessels such as kayaks. Some communities chose to regulate the docking of all watercraft – motorized and otherwise.
- 3) Sec. 4.0(C) addresses the minimum water frontage for a CURL and requires a minimum of 60' of lake frontage for each non-riparian lot afforded access to a lake, and this standard is based on an approximate average of minimum lot widths among lakefront lots in the township. It is very important that the Ordinance's standards be rationale and defensible and for this reason, the required minimum water frontage for a CURL is tied to current lakefront conditions.
- 4) Section 5.0 addresses the procedural aspects of applying for approval of a CURL. As currently drafted, the Township Board is the approving body and a public hearing is required prior to action by the Township Board. The Ordinance permits the Township Board to seek the advisory comments of the Planning Commission but does not require the application go to the Planning Commission.

I am available to meet with the Township Board or other officials to review this draft Ordinance and discuss any concerns, questions and revision issues. I recommend the township consult with Eric White on this matter as well including a review of this ordinance.

I will be out of my office between September 4 and September 20, and I will not have regular access to communications. I will respond to any phone or email communications as able and if not prior to, I will respond upon my return.

Sincerely,



Mark A. Eidelson, AICP
President

Attachment

TOWNSHIP OF COLUMBIA JACKSON COUNTY, MICHIGAN

COLUMBIA TOWNSHIP COMMON USE RIPARIAN LOT ORDINANCE

— Draft: August 31, 2019 —

An ordinance to protect the public health, safety and general welfare of Columbia Township residents and visitors by establishing regulations relating to the use of property for enabling non-riparian land owners to access the Township's lakes; to provide penalties for the violation of this Ordinance; and to repeal all ordinances or parts of ordinances in conflict therewith. The Columbia Township Board may, at any time, amend this Ordinance.

The Township of Columbia, County of Jackson, State of Michigan ordains:

SECTION 1.0 TITLE

This ordinance shall be known as the Columbia Township Common Use Riparian Lot Ordinance.

SECTION 2.0 PURPOSE and ENABLING AUTHORITY

The Township's lakes and connecting water courses are a valuable and irreplaceable natural resource providing important recreational, aesthetic, economic, and residential benefits to Township residents and visitors. The lack of management of access to lake waters and shoreline areas encourages the deterioration of wildlife habitat, water quality, property values, and recreation opportunities, and threaten the health and safety of persons in, on or about such lakes. The purpose of this ordinance is to promote the public health, safety, and general welfare of Columbia Township residents and visitors through controls intended to balance the value, benefits and protection interests in the Township's lakes with opportunities for access to the lakes and shoreline areas by non-riparian land owners. This Ordinance is adopted pursuant to the Township Ordinances Act, Public Act 246 of 1945, as amended (MCL 41.181, *et seq.*).

SECTION 3.0 DEFINITIONS

A. Specific Terms and Phrases: For the purpose of this Ordinance, the following terms and phrases shall have the following meanings.

1. **Boat:** Any type of motorized water craft or vessel used and/or operated upon a lake. This definition shall include amphibious craft capable of moving on land or in the air and floating in water.
2. **Boat Launching:** The placement of a boat in a lake by any means.
3. **Commercial Marina:** A facility for the secure mooring of boats that is made available for use to non-owners of the lot on which such facility is located, for remuneration including rental fees and user fees. A commercial marina may provide support services including boat service, repair, storage, fueling and sales.
4. **Common Use Riparian Lot (CURL):** A lot with water frontage on a lake, which allows, has been created to allow, or is proposed to allow, the common use thereof by non-owners of the CURL, multiple owners of the CURL, non-riparian land owners, the public, members of an association, occupants of a campground, or by more than the residents of one dwelling unit or, in the case of a two-family dwelling on such lot, by more than the residents of such two-family dwelling.
 - a. The phrase "common use riparian lot" or "CURL" shall apply to such lot irrespective of its creation or recordation date, or the date when such common use was initiated or permitted to be initiated, including in the case of a deed, grant, reservation, easement, covenant, or other recorded instrument, and irrespective of the nature or character of the ownership of such lot.
5. **Dock, Docked or Docking:**
 - a) The mooring of a boat directly to a pier or structure, including a platform, hoist, or other permanent or seasonal fixture or structure extending from the shore or place in the water off the shore, and directly accessible to water frontage; and
 - b) The regular anchoring of a boat adjacent to a water frontage; and
 - c) The placement or storage of a boat, temporarily or permanently, upon the shoreline or at the water frontage.
6. **Lake:** A year-round body of water in excess of five (5) acres in surface area and with an average water depth of twenty-four (24) inches or more, including rivers, streams, and other watercourses, whether a natural body of water or artificially made.
7. **Lot:** A tract of land, occupied or intended to be occupied by one or more buildings or uses, and which is described as a platted lot or portion thereof, or a tract of land described by metes and bounds or a portion of such parcel described by metes and bounds, or any portion of a condominium.

8. **Ordinary High Water Mark:** The line between upland and bottomland which persists through successive changes in water levels below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.
9. **Water Frontage:** That portion of a CURL that abuts or intersects with the ordinary high water mark of a lake.

B. Terms and Phrases Not Defined: Terms and phrases used in this Ordinance that are not defined in subsection (A) shall be assigned their common meaning.

SECTION 4.0 SITE AND DEVELOPMENT REQUIREMENTS

- A. Relation to Zoning Ordinance and District Regulations:** A common use riparian lot (CURL) shall be permitted in any district of the Columbia Township Zoning Ordinance, Ord. #___, as amended, that permits parks or other outdoor recreation use, and shall comply with the Zoning Ordinance's site development requirements of Table 3-4 of Article 3 except as otherwise provided in this Ordinance.
- B. Minimum Area:** The minimum area of a CURL shall be thirty thousand (30,000) square feet.
- C. Minimum Water Frontage:** The minimum water frontage of a CURL shall be the greater of one hundred twenty (120) feet or sixty (60) feet for each dwelling or campground campsite served by the CURL. For example purposes, a CURL that serves four dwellings shall have a minimum water frontage of two hundred forty (240) feet.
 1. **Exceptions:**
 - a. In the case where the CURL shall not be used for the docking of boats and/or is used as part of a campground, the Township Board may permit a lesser frontage than that of the 60 foot standard referenced above after finding that the proposed character and intensity of use complies with the approval standards of Section 7.0.
 - b. This subsection (C) shall not apply to CURLs used solely for the docking of boats. See subsection (G).
- D. Minimum Road Frontage:** The minimum road frontage of a CURL shall be one hundred twenty (120) feet.
- E. Minimum Depth:** The minimum depth of a CURL shall be 100 feet.
- F. Vehicular Parking:** There shall be no vehicular parking on a CURL except where expressly authorized according to an approved site plan that delineates the specific location and dimensions of such spaces, permissible hours of such parking, and screening measures to minimize negative impacts on nearby properties.
- G. Boat Docking:** The following regulations shall apply to CURLs that permit boat docking. Except for subsection (2) and (3) below, these regulations shall not apply to commercial marinas.
 1. A CURL devoted solely to the docking of boats shall have a minimum of sixty (60) feet of water frontage for each two (2) boats that may be docked on the CURL or otherwise intended to be accessed from the CURL, and no dock, pier or similar device shall be closer than fifty (50) feet to another dock, pier or similar device.
 2. The development of and the operation of a boat dock shall comply with all applicable local, county, state and federal rules and regulations, including but not limited to the rules and regulations of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, the Michigan Department of Natural Resources, and the Michigan Department of Environment, Great Lakes and Energy.
 3. Boat docks and boat launching are not permitted from a CURL on any manmade channel or canal.
 4. Boat docks may be used only by individuals residing on the CURL or are otherwise authorized to use the CURL as provided by subsection (H).
 5. The right to boat docks, boat slips, boat launching, lake access, docking privileges, and storage of boats, shall not be leased, rented, conveyed, granted, gifted, or in any way used for compensation, except in conjunction with the lease or rental of a dwelling entitled to use the CURL as provided by subsection (H).
- H. Conveyance Instrument:** Application for a CURL shall require the submittal and approval of a deed, plat, covenant, restriction, easement, or other instrument conveying, granting and/or reserving the right to common use of the CURL, specifically identifying the properties, dwelling units or persons that are entitled to use of the CURL. Such instrument shall include a restrictive covenant prohibiting the use of the CURL for boat liveryes, public or commercial beaches, commercial marinas, public boat launching sites, public access, or for any recreational use operated for profit, except where such uses and activities are the subject of the CURL application. Said instrument shall further provide that the use of the CURL shall be limited to and enjoyed exclusively by the owners, occupants and designated users of the property included in said instrument, and that the right of use may not be further assigned, gifted, leased or rented.

SECTION 5.0 APPLICATION AND APPROVAL PROCESS

- A. Application and Site Plan:** An application for a common use riparian lot (CURL) shall be available from the Township Clerk or designated representative of the Township. The application shall include a site plan and any additional documents as may be necessary for the applicant to adequately present the proposed use and development of the CURL. A minimum of ten (10) copies of the application and supporting materials shall be submitted to the Township Clerk.
- B. Site Plan Preparation:** Each site plan shall be provided on a professional quality drawing of a scale not less than 1"=100'. The site plan shall be of sufficient clarity, scope and detail to adequately illustrate, for construction purposes, the character of proposed site improvements and the manner in which the site improvements are to be constructed and used. All information depicted shall be designed by a professional engineer, land surveyor, or landscape architect licensed in Michigan and shall bear the seal and signature of the licensed individual. The site plan shall identify the following minimum information:
1. **Applicant Information:** The applicant's full name, address and phone number.
 2. **Survey:** A survey showing property dimensions and legal description, including angles, lot area and dimensions, and an arrow pointing north.
 3. **Project Description:** Project description in narrative form including a description of the intended uses on the lot, type of recreation facilities to be provided, the programmed use of any designated open space, hours of operation, proposed site modifications, and similar descriptive narrative.
 4. **Existing Features:** Existing features of the proposed CURL including natural features such as woodlands, marsh and wetland areas, and water bodies and courses; topography (at two-foot intervals on-site and within one hundred fifty (150) feet of the site); internal and adjacent roads including right-of-ways and easements; any additional easements or right-of-ways adjacent to or upon the lot; utilities; and structures. The site plan shall identify which existing features are to be retained and which are to be removed or altered and the extent of such alteration including limits of grading and clearing.
 5. **Proposed Features:** Proposed features of the CURL including structures, access drives, parking areas, lighting, fencing, landscaping and screening, trash stations and storage, sidewalks and other circulation ways, docks, ramps, utilities including sewage disposal, and any other proposed features. The site plan shall include construction details and specifications including access drive and parking area cross-sections, parking spaces and dimensions, signs, light fixtures, fences and walls, and proposed topographic modifications and storm water management measures including soil erosion and sedimentation control measures and spot elevations where necessary to adequately portray drainage patterns and final elevations and grades.
 6. **Required Permits:** A statement from the applicant identifying all federal, state and local permits required.
 7. **Other Information:** Such other information as may be deemed necessary to enable the Township Board to determine whether the proposed site plan shall conform to the provisions of this Ordinance.
- C. Township Board Review and Action**
1. **Public Hearing:** The Township Board shall fix a reasonable time and date for a hearing, taking into account adequate time for Township Board members to review the application prior to such hearing. The notice of the hearing shall describe the nature of the request; the property that is the subject of the request; the date, time and place of the hearing; and when and where written comments will be received concerning the request. The notice shall be published in a newspaper of general circulation in the Township; shall be provided to the owner of the property for which approval is being considered, and the applicant if the applicant is different than the property owner, by mail or personal delivery; and to all persons to whom real property is assessed within five hundred (500) feet of the boundary of the project subject to the request. All mail, personal and newspaper notices shall be made not less than fifteen (15) days before the date the request will be considered.
 2. **Review and Action:** After conducting a review, the Township Board shall reject, approve, or conditionally approve the application, as it pertains to requirements and standards contained in this Ordinance including the site plan submittal requirements of subsection (B) and the application approval standards of Section 7.0. Any conditions required by the Township Board shall be documented in the Township Board's meeting minutes or otherwise stated in writing. The Township Board may refer the application to the Columbia Township Planning Commission for advisory comments.
 - a. **Initiation of Construction and Occupancy:** Upon approval of an application, no construction shall be initiated prior to the receipt of all necessary building permits except as may be expressly authorized by the Township Board.
 - b. **Continued Compliance:** All modifications to the CURL shall be in compliance with the approved application. No changes shall be made to an approved site plan prior to or during construction except as may be approved by the Township Board according to the approval standards of Section ____.

D. Approved Site Plans: A minimum of three (3) copies of the approved site plan, with any conditions contained within, shall be maintained as part of the Township records for future review and enforcement. Two (2) copies shall be returned to the applicant. Each copy shall be signed and dated with the date of approval by the Township Supervisor and Township Clerk, for identification of the approved plans.

E. Expiration of Application Approval: An approved application shall expire one (1) year after approval unless the Township Board determines that construction of the facility has substantially progressed and can be reasonably expected to be completed within six (6) months. The Township Board may extend this time restriction upon finding that surrounding conditions and the most current standards of this Ordinance continue to support the adequacy of the application.

SECTION 6.0 OPTIONAL PRELIMINARY APPLICATION APPROVAL

A. Application and Review: An applicant may seek approval of a preliminary application, the purpose of which is to seek approval for the general use, design and layout of the CURL before a more detailed plan is prepared. A minimum of ten (10) copies of a preliminary application shall be submitted including the required application form and accompanying preliminary site plan. The preliminary site plan shall be at a scale of not less than one (1) inch equals one hundred (100) feet and shall contain the same information as required by Section 5.0 except that detailed construction drawings to address specific site improvements are not necessary. However, the detail of the submitted information shall adequately portray the intended use and general design and layout of the project including general measures for storm water management, grading, vehicular and pedestrian circulation, limits of clearing, and conceptual landscaping and screening. The Township Board shall act on the preliminary application and either approve, approve with conditions, or deny the plan, based on compliance with the standards of Section 7.0. The Township Board may refer a preliminary application to the Columbia Township Planning Commission for advisory comments.

1. Approval of the preliminary application is valid for a period of six (6) months. If a final application has not been submitted during that period, the preliminary approval shall be null and void. This time limit may be extended by the Township Board upon finding that surrounding conditions and land uses, and the most current standards of this Ordinance, continue to support the adequacy of the preliminary application.

SECTION 7.0 APPLICATION APPROVAL STANDARDS

A. An application for a common use riparian lot (CURL) shall not be approved except upon a finding by the Township Board that the application complies with all of the following.

1. The CURL shall be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and that the use of the lot will not change the essential character of the area in which it is proposed.
2. All elements of the site plan shall be harmoniously and efficiently organized in relation to topography, the size and character of lot, the character of adjoining property, and the type and size of buildings, and shall be developed as not to impede the normal and orderly development, improvement and enjoyment of surrounding property. The CURL shall be of adequate size and configuration so as not to result in the overcrowding of the lot or cause the lot to be subject to overuse as may result in erosion, encroachments onto neighboring properties, and similar circumstances, or otherwise result in hazardous or disturbing conditions in association with parking and circulation patterns on the lot and the generation of excessive traffic, noise, or similar nuisances.
3. The CURL shall not unreasonably interfere with the rights of usage and enjoyment by owner's of property abutting the lake and in the general vicinity.
4. The proposed character and use of the CURL shall not result in the overcrowding or overuse of the lake or the lake's surface, and that the lake has surface area capacity available to handle increased traffic upon the lake without impairment to health, safety and welfare of the users of the lake.
5. The CURL shall be served adequately by essential public facilities and services.
6. The CURL shall not involve conditions of operation that will be detrimental to the natural environment.
7. The landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and other vegetative material removal, soil removal, topographic modifications, and alterations of natural drainage courses and water bodies.
8. Storm water management measures shall not increase off-site sedimentation or otherwise adversely affect lake environments and neighboring properties, and shall minimize disturbances to the natural drainage patterns of the lot.
9. The site plan shall provide a circulation system that is designed to facilitate safe vehicular and pedestrian circulation, and shall permit reasonable emergency access to all areas of the lot where such services may be required.

10. In the case of proposed exterior lighting, the site plan shall incorporate lighting designed and arranged so that it is deflected away from adjacent streets and adjoining properties.
11. The site plan shall provide for the appropriate location of all necessary and proposed utilities. Locational requirements shall include underground facilities to the greatest extent feasible.
12. The site plan shall conform to all applicable requirements of county, state and federal rules and statutes and approval may be conditioned on the applicant receiving necessary permits before final approval is granted.

SECTION 8.0 EXEMPTION for EXISTING COMMON USE RIPARIAN LOTS.

- A. General Exemption:** A lot existing prior to the effective date of this Ordinance that has been providing common access to a lake through an association, subdivision, condominium, deed, grant, reservation, covenant, or other recorded instrument, or by campground arrangement, are exempt from the regulations of this Ordinance except under any of the following conditions:
1. Where the lot is proposed to expand the geographical area, number of lots or persons that are provided access to the CURL.
 2. Where improvements on such lot, including repairs, shall result in the expansion, enlargement, or increase in intensity of use of such CURL.

SECTION 9.0 ENFORCEMENT.

Any person violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not more than \$500.00 and costs of prosecution, or imprisoned in the county jail for a period not exceeding ninety (90) days, or both, for each offense. Each day a violation continues shall be construed as a separate offense.

SECTION 10.0 REPEALER CLAUSE.

All ordinances or parts of ordinances in conflict with this Ordinance, to the extent of such conflict, are repealed.

SECTION 11.0 SEVERABILITY.

Sections of this Ordinance and amendments thereto shall be deemed to be severable and should any section, paragraph, or provision thereof be declared by a court of competent jurisdiction to be unconstitutional or invalid, such holding shall not affect the validity of this Ordinance as a whole or any other part thereof, other than the part so declared to be unconstitutional or invalid by court decree. If any court of competent jurisdiction shall declare invalid the application of any provision of this Ordinance to a particular common use riparian lot (CURL) or proposed such lot, such ruling shall not affect the application of said provision to any other CURL or proposed such lot not specifically included in said ruling.

SECTION 12.0 EFFECTIVE DATE.

This Ordinance shall take immediate effect upon publication of a notice of adoption as required by law.

SECTION 13.0 PUBLICATION.

This ordinance is ordered to be given publication in the manner prescribed by law.

SECTION 14.0 ADOPTION.

This ordinance is hereby declared to have been adopted by the Columbia Township Board, Jackson County, Michigan, at a meeting held on the ____ day of _____, 2019.