

# Water Lines

A publication of the Higgins Lake Property Owners' Association

Fall, 2004

## President's Message



by Ken Dennings  
HLPOA President

### ***The Weevils Have Arrived***

While the annual HLPOA meeting was being conducted on July 10th, Enviroscience from Stow, Ohio, under contract with Huron Pines RC & D, was busy planting some 10,000 Eurasian Water Milfoil (EWM) weevils at

two locations in Higgins Lake. This is a three-year project to determine whether supplementing our native supply (as determined by the US Army Corps of Engineers in 2002) will aid in controlling this invasive aquatic nuisance plant.

Thanks to financial support from the Roscommon County Community Foundation, the Higgins Lake Foundation and the Schroeder Foundation with matching funds from the Muskegon River Watershed Assembly, we were able to raise the required \$20,000 necessary to initiate this biological control approach this summer.

The milfoil weevil is a small, herbivorous aquatic beetle. It is a milfoil specialist, meaning that it feeds and develops only on plants in its genus. The weevil completes all life stages fully submerged, and the larvae are stem miners. These characteristics are precisely why the milfoil weevil has shown the most promise as a potential bio-control agent for EWM.

The complete life cycle of the weevil takes 21-30 days with the female laying its eggs on milfoil plants. After hatching, the larvae feed on meristem tissues for 3 to 5 days while the older larvae spend the majority of their time inside the stem. Metamorphosis takes place inside of the milfoil stem in a pupal chamber. Typical development times through the pupal stage are 9-12 days at mid-summer water temperatures. Adult milfoil weevils are usually located on the upper part of the milfoil plant. They are

weak swimmers and will usually remain on a plant even after it has been dislodged. It is only in the adult stage that it can exit the water. However, this apparently occurs only in the fall when it migrates to shore and overwinters terrestrially in organic matter near the shoreline. While the adult possesses wings, it is unclear if the weevil swims or flies to shore. Adults leave the shore in spring and return to the water after ice out . . . sometime between mid-April and mid-May.

Our stocking program is a significant financial investment in the future of Higgins Lake. Therefore, both lake users and riparians are being asked to help ensure the success of this project. Areas were originally marked with orange buoys to identify the two weevil planting sites (Flag Point and directly north of B&B Marina). Boat traffic in these two areas could tear through the EWM . . . not only fragmenting and thus spreading this invasive plant throughout the lake, but also keeping the weevils from doing their job by separating them from their food source.

### ***House Bill 4141(H-6)/Senate Bill 481***

With the primary election the focus of most House members, a great deal of their time has been spent in their respective home districts . . . except for limited sessions in Lansing, primarily directed at resolve of severe budget concerns for next fiscal year. Therefore, House Bill 4141 has not moved from the Conservation and Outdoor Recreation Committee as we prepare this newsletter.

Please continue to write to the committee members as well as your elected state house/senate representatives in support of HB 4141 (H-6) and oppose any efforts to continue the private taking of public property at inland lake/stream road endings in Michigan.

Regardless of the eventual language in HB 4141, this law will not change the "outcome" of the appellate court decisions for those road ends in subdivisions already adjudicated at Higgins Lake. In other words, passage of HB 4141 does not supersede the appellate court ruling

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## ***President's Message***

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already received by the HLPOA. It would, however, eliminate the private taking of public property without further litigation at our remaining road ends.

### ***DEQ Approves Townline Ramp/Dredging Project***

On May 24, 2004, the Michigan Department of Environmental Quality (DEQ) issued a permit to a private party allowing construction of an 18 foot by 48 foot boat ramp and placement of a 4 foot by 18 foot seasonal dock at the Townline Road within Lyon Township.

The permit allowed dredging, as necessary, to construct the ramp to a depth of 3 feet for a distance of 24 feet from the water's edge. From the onset, the HLPOA had protested issuance of a permit to a private party, and subsequently, in August, Lyon Township accepted responsibility for the project, and the permit was transferred.

Prior to DEQ approval, the HLPOA had contracted with Progressive AE of Grand Rapids to conduct an ecological study to determine if construction of the ramp and dredging, as originally proposed, would be considered harmful to Higgins Lake. The HLPOA was especially concerned with the dredging aspect. (As initially proposed, dredging would have removed bottom material to a depth of 3 feet for a distance of 124 feet from the shore.) The report prepared by Progressive AE's limnologist advised that approval of the permit would not be prudent. However, the DEQ moved forward with issuance as noted.

The HLPOA immediately filed for a contested case hearing within the DEQ under the Administrative Procedures Act to afford an opportunity for review in advance of any dredging and construction. Lyon Township officials, in spite of recommendation to the contrary by legal counsel, solicited bids and awarded a contract for dredging and construction to commence on August 23<sup>rd</sup>.

HLPOA then sought relief in the 34<sup>th</sup> Circuit Court to stay construction on the basis of the ecological concerns cited by Progressive AE in its report. Through a legal maneuver by attorneys for Lyon and Gerrish townships, a motion was filed to disqualify Judge Baumgartner charging "appearance of impropriety" because he had recently appointed HLPOA counsel, on a contractual basis, as Friend of the Court for Roscommon County.

Essentially, this action prevented the HLPOA from presenting its environmental concerns before Judge Baumgartner. Lyon Township quickly moved ahead with dredging and construction rather than wait until the outcome of our contested case hearing at the DEQ.

As it now stands, a boat ramp presently exists at Townline Road. (See photos in this issue.) While the

HLPOA will eventually have an opportunity to voice its concerns at the DEQ contested case hearing, the sad reality is we were unable to prevent construction pending appropriate review of the decision by the DEQ. Certainly, the administrative process is "flawed" when the Michigan Department of Environmental Quality is unable to stay an action that, under its own rules, was subject to contested case hearing.

In the meantime, legal counsel for the HLPOA has resigned as Friend of the Court, and a motion for reconsideration has been filed with respect to Judge Baumgartner's disqualification. Should the reconsideration motion fail, the case would likely move to the Michigan Court of Appeals and perhaps the Michigan Supreme Court. Both the Roscommon and Ogemaw Boards of County Commissioners have voted to appeal the disqualification ruling.

### **News Flash**

**MDEQ (Michigan Department of Environmental Quality) has officially denied the Kelly Avenue ramp/dredging project.**

### ***Don't Forget to Vote***

I'll close this column by reminding everyone to vote in the general election on November 2<sup>nd</sup>. Enclosed with this newsletter is a list of candidates supported by the HLPOA-PAC for state, county and township offices. It's not too late (see insert from Norma Boyle, Gerrish Township Clerk below) to register and participate in the selection process of public officials who have an impact on the quality of Higgins Lake.

***The following information was provided by  
Gerrish Township Clerk, Norma Boyle:***

The last day to register for the November 2nd General Election is October 4, 2004. By law, your voter registration must be at the same address as the address used for your driver's license.

Your Principal Residence (formerly called Homestead) qualifications: your voter registration address, driver's license address, and Federal and State Income Tax address must all be the same address. This address should be the address at which you receive all of your mail.

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***Higgins Lake Property Owners' Association  
Annual Meeting - July 10, 2004  
Roscommon High School Auditorium***

The sixty-ninth HLPOA annual meeting was called to order at 9:05 a.m. July 10, 2004, by President Kenneth Dennings who read the following letter given to him just prior to the meeting by nine-year-old Lander Cook:  
Dear HLPOA,

My name is Lander Cook. I have a cabin on Higgins Lake. All of my elder friends say the lake used to be clean up on the shore by the rocks. That's the way I would like it now, so my kids will get a beautiful lake too. What everyone says is we need a sewer system. I know it costs a lot but it will cost a lot more in 10 years. And the lake will be much more polluted.

Sincerely,  
s/ Lander Cook

Miss Cook received a healthy round of applause from the HLPOA members in attendance for her efforts.

President Dennings encouraged those in attendance to review the informational materials available and for members to help themselves to any items of interest.

He also indicated he hoped the membership took the opportunity to meet the candidates for public office in the coming August 3rd. primary election since this is an especially important election with 37 seats becoming vacant because of term limits in the Michigan House and equally important contests within the county and townships.

President Dennings stressed that we need elected representatives at the state, county and local levels who understand the unique problems associated with protection of our inland lakes and streams. He commented that it appears that national and state initiatives always seem to focus on the Great Lakes, leaving little attention for problems or issues associated with our inland water resources. He urged members to vote for candidates who support the mission statement of the HLPOA.

At this juncture in the meeting, President Dennings introduced the HLPOA Board of Directors: Robert Morley, Rick Meeks, Pat Springstead, Stan Cooke, Eileen Starks, Edward Trautz, Wayne Hall, Kathryn Bangs, Brad Gibson and Robert Frye. Also in attendance representing the HLPOA board was William Carey and Jane and William Case. There were approximately 190 HLPOA members and a few visitors in the audience. In the audience and individually introduced by Present Dennings was Anne Meeks, former HLPOA board member and present HLPOA newsletter editor and Brian Wines, HLPOA web-site master. Both were applauded for the outstanding contributions they have been making.

President Dennings then asked that a motion be made to accept and approve the minutes of the 2003 annual meeting as published and distributed in the Fall 2003 Newsletter. Motion made by William Sharp and seconded by Herb Weatherly. There being no additions or corrections, the motion was passed unanimously.

Wayne Hall reported the 2003 audit of the HLPOA found no outstanding debts and the organization is, in fact, in sound financial condition. He made mention that HLPOA Treasurer Stan Cooke maintains immaculate records and keeps effective fiscal control. President Dennings then called for a motion to accept the audit report. Motion made and seconded by audience members to accept Hall's report as presented. There being no discussion, the motion was passed unanimously.

HLPOA Treasurer Stan Cooke then reported the condition of the HLPOA treasury and concluded by stating that the HLPOA was in sound financial condition with some \$25,000 carried over in reserve. A motion to accept the Treasurer's report was made and seconded by HLPOA members in the audience and passed unanimously.

President Dennings then went over the proposed 2004 HLPOA budget of \$42,040 which is almost identical to the 2003 budget. Each member received a copy of the proposed budget upon entering the auditorium.

Again, under President Dennings' guidance, a motion to accept the budget was made and seconded by audience members and approved unanimously.

Handed out with the proposed budget and agenda upon entering was also a copy of a proposed change in the HLPOA by-laws as stated below:

**Article VI - Governing Body**

1. The Board of Directors, consisting of eleven (11) members, AND EXECUTIVE SECRETARY, shall be vested with the responsibility and authority to manage the affairs, funds, property and finances of the Association and may, from time to time, adopt rules governing the operation of the Association, its officers, committees and employees.

The board shall CONSTITUTE A QUORUM FOR CONDUCTING OFFICIAL ASSOCIATION BUSINESS.

The change would allow a quorum to be maintained at winter meetings when some board members may not be available. The proposed change was read aloud with a motion and second to accept it coming from the floor. There being no discussion, the motion was passed unanimously.

**Political Action Committee (PAC)**

Chairman Pat Springstead brought the membership up to date on the formation of the HLPOA-PAC and the role it will be playing in upcoming and future elections. He

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## ***Annual Meeting Minutes***

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informed the group that, with the help of HLPOA Lobbyist Chris Kindsvatter, the HLPOA-PAC could be, and probably is, the first lake association PAC in the state of Michigan. Last January (2004) a brochure and letter of explanation concerning the PAC was sent out to all HLPOA members with an impressive financial response being realized. HLPOA Treasurer Stan Cooke, who is also the PAC treasurer, has spent innumerable hours filing the necessary paperwork with the state and keeping the rather complicated records.

Springstead went on to relate the actions of the PAC which included sending questionnaires to some 47 state, county and local candidates which included questions concerning lake issues and the HLPOA position on local issues. Twenty-five of the candidates responded with 22 appearing for interviews and follow-up. Present Lyon Township officials did not respond in spite of the fact that they have continuously berated the HLPOA for not being willing to meet with them to discuss the very issues the questionnaires addressed. (To date, there has been no known effort of communication from any present Lyon Township official to any HLPOA board member to meet concerning local and/or road end issues.) The interviews that were held helped clarify many lake issues for the candidates.

Springstead went on to encourage HLPOA members to seek absentee ballots if they thought they might not be available to vote in the August primaries or the November general election. He also encouraged members to register to vote in the Higgins Lake area if possible. He emphasized that PAC contributions can be sent in at any time and that a list of candidates the HLPOA recommends in the upcoming election will be sent to all members in the near future.

### **Camp Westminster Report**

Jim Bates, who, with wife Susan, heads up Camp Westminster, reported that the camp which has been operating on the north shore of Higgins Lake for many years is in great financial shape and has more children attending now than ever in the past. He invited anyone who might wish to attend to any or all August 2004 worship services any Sunday morning at 11:00 in their outdoor cathedral. His presentation was concluded by a rendition of the camp song sung by students who have leadership roles in the camp and come from all parts of the world.

### **Higgins Lake Foundation**

Don Mick, Gerrish-Higgins School Superintendent and chairman of the Higgins Lake Foundation, spoke on the HLF's ongoing role working in conjunction with the HLPOA and Huron Pines in placing and maintaining a benthic barrier in a number of spots on Higgins Lake to

control and discourage Eurasian Watermilfoil. He also spoke of HLF's role in helping to implement the watershed management program. Mention was made of the foundation's educational efforts in sending area teachers to conservation school and seminars to develop a better understanding of the lake's environment which, in turn, brings vital knowledge to children living in the lake community.

An announcement was made inviting everyone to attend the 15th annual Foundation Awareness Day to be held August 7, 2004, at the RAM Center on the north shore of Higgins Lake. Children's activities will be held between 1:00 and 2:30 p.m. with free hot dogs, pop and chips, along with many interesting activities. Adult activities will run from 4:00 to 6:00 p.m. with a raffle and social get-together.

### **Friend of Higgins Lake Award**

Outgoing board member Robert Frye presented this year's award to HLPOA Attorney William Carey who has been involved with on-going HLPOA property rights litigation for over 15 years. He praised Mr. Carey's dedication and effectiveness in pursuing and completing the legal nightmares that have developed. Mr. Carey was more than surprised and spoke of his humility in acceptance of the award during the opening statement of his legal report.

### **Recognition of Term-Limited Board Members**

President Dennings made a special presentation to both Wayne Hall and Robert Frye of wall plaques for their dedicated time and effort given to the HLPOA. Wayne was a board member for nine years and contributed heavily in the effort to clean up the existing road end issue. Bob was a board member for 20 years, 18 of which he served as president. Bob currently heads up the Michigan Waterfront Alliance as president. Both men will be greatly missed on the HLPOA board, not only as excellent contributors but also as friends who have been dedicated to the continuing "stewardship" of Higgins Lake.

### **Higgins Lake Watershed Management Plan Update**

Darcia Little, second in command under Liz Wade, gave a short report on this comprehensive plan which was started two years ago. The ultimate goal is to educate people living within the Higgins Lake watershed and those visiting the watershed to reduce, control and manage any and all pollutants or potential pollutants from finding their way into Higgins Lake.

The plan, which was in an implementation stage for over 15 months, has thus far led to action by the HLPOA to control Eurasian Watermilfoil through the use of benthic barriers and the introduction of milfoil weevils, and a lake carrying capacity study of watercraft on Higgins Lake.

There are other studies being conducted by other stakeholding organizations. At present, a \$100,000 grant has

been presented to develop an education program directed at conducting workshops for local officials. A huge portion of the program will also be directed to riparian property owners who will receive surveys to fill out somewhere near the end of August, 2004. The survey will point out current conditions and will ask riparians to turn in ideas and suggestions for improvements. It is imperative that as many riparians as possible fill out these forms and quickly return them.

**Nominating Committee**

The HLPOA nominating committee, under the guidance of Robert Morley, offered up two candidates to replace outgoing board members Wayne Hall and Bob Frye, those candidates being Laurie Smith Tudor and Tom Jennette. Morley received a motion and a second from the floor. Motion passed unanimously. The term of two other board members, President Ken Dennings and Treasurer Stan Cooke, were up and both were reappointed to the board. (Note: Officers of the HLPOA board are not term limited as long as they are in office.)

**HB 4141 and Legislative Action**

HLPOA lobbyist Chris Kindsvatter was introduced to the membership in attendance. He congratulated the HLPOA for taking the initiative in forming a PAC and stated that our PAC is being used as a model for other lake associations that he serves as lobbyist. He complimented the leadership of Pat Springstead and our use of questionnaires for dealing with local issues.

Chris then went into some detail concerning the status of HB 4141 which deals with road ends at inland bodies of water in Michigan. He stated that the legislators are currently weighing all the facts and that the climax of the long road-end battle could be coming to a conclusion in the very foreseeable future. He and President Dennings then talked briefly about the boat noise project being conducted and developed by MSU and the need for additional funds, the help from Senator Michelle McManus and the potential outcome.

**Legal Report**

William Carey was pleased to report the outcome of the Shady View case which was the use of R-1 zoned property by 20 families to funnel them into the lake. These 20 families bought this 77 foot frontage and turned the small residence there into a clubhouse. This action was found improper by the local circuit court, overturned by a two to one vote by a State Appeals Court and re-overturned by the State Supreme Court. This final finding was indeed a monumental finding, not only for Higgins Lake but for all lakes within the state who have R-1 zoning along their lakeshore. As of this ruling, single lots zoned R-1 on inland lakes cannot and may never be used for funneling activities.

Also, 15 subdivisions containing a majority of the 78 road ends leading to Higgins Lake have been adjudicated and may never again be used for the mooring of watercraft. Anyone so doing may be taken to court for contempt charges.

Carey also stated that during the 15 years he has been representing the HLPOA he has made two trips to the State Supreme Court, four trips to the State Appellate Court and countless trips to the local circuit court. Regardless of all these court visits, there is still very important work to do. Because HB 4141 has not yet been passed and because the local townships have refused to pass ordinances regulating road end use, the effort to control and bring to justice falls upon the shoulders of the HLPOA.

Right now we have a considerable number of individuals who are seeing fit to violate the rules of the court by placing moored watercraft (most of them on lifts) at adjudicated road ends. There are also a number of lifts or hoists at these road ends vacant of watercraft. Needless to say, the HLPOA is pursuing these violators. Three court dates in July and August of this year have been set in the local circuit court. These watercraft and hoists will be removed. Otherwise, the court rulings we worked so hard to obtain would be useless.

The second issue of importance is the potential development of road end boat ramps. Over a year ago the HLPOA developed a position paper on road end boat ramps.

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Water Lines is published by the  
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*Dedicated to preserving the quality  
 and beauty of Higgins Lake.*

Established  
 July 15, 1935

Visit HLPOA online at  
[www.hlpoa.org](http://www.hlpoa.org)

**Higgins Lake Property Owners' Association  
 Board of Directors**

- |                     |                    |
|---------------------|--------------------|
| President           | Ken Dennings       |
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|                     | Rick Meeks         |
|                     | Robert Morley      |
|                     | Pat Springstead    |
|                     | Eileen Starks      |
|                     | Laurie Smith Tudor |

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Our position was not one of opposition but one of concern that proper procedures be taken protecting the environment, the safety of swimmers and children, the disturbance of abutting property owners, etc. Since that time in late 2003 a permit was granted by the DEQ to both dredge and install a ramp at the end of Townline Rd. to an individual who is not a riparian and does not even own property in the immediate area. As a result of the DEQ's action, the HLPOA has filed a contested case hearing with the DEQ.

At the same time, we have filed an action at the local circuit court level. It is our position that the present structure of this permit constitutes a nuisance. It is unregulated, unsupervised, no mention of maintenance, and environmentally negative for the lake and, therefore, a nuisance as presently planned and structured. Through the hard work of Ken Dennings, we have thus far been successful in halting a dredged-out 200' channel into the lake which would have been ripe for the introduction of yet more aquatic exotic nuisance species.

The last major issue presently facing the HLPOA is the potential replatting of a subdivision or potential subdivisions. Recently the Sovereign Park subdivision, or rather the non-riparians living in this subdivision, have filed a lawsuit in the Roscommon Circuit Court asking the court to rewrite the plat giving them permission to put boat hoists at the road ends and use same as parks, also giving them rights to use the lakeshore in front of present riparians. This process is called a plat amendment, and the court does have full authority. In contrast, the riparian owners in Sovereign Park have done a tremendous job of becoming organized in offering opposition to the plat amendment. We fully expect that this case will undoubtedly end up in Appellate Court.

Question and answer period followed.

### **President's State-of-the-Lake Report**

This is my third State-of-the-Lake address...and it has been a momentous year for the HLPOA, from success in the courts as aptly described by William Carey...to significant progress in the political arena as conveyed by Pat Springstead, chair of our Political Action Committee.

The HLPOA is as active today in the protection, preservation and enhancement of the quality of Higgins Lake and its surrounding watershed as it was when first founded in 1935...perhaps even more so because of the vast complexity of issues that surface in today's society.

### ***Eurasian Watermilfoil (EWM)***

At last year's annual meeting I reported the HLPOA had accepted the leadership role under the Higgins Lake Watershed Management Plan to develop a plan of attack in

controlling Eurasian Watermilfoil.

The latest survey conducted by Huron Pines RC&D of Grayling indicated we have approximately ten acres of EWM distributed in some 84 locations in Higgins Lake. You'll recall that at last year's meeting Brad Jansen from Huron Pines encouraged lakefront property owners to carefully "hand harvest" EWM in shallow water areas using garden rakes. And many of you were successful in accomplishing just that in front of your property.

Additionally, we started a program of placing "benthic" or bottom barrier in selected locations as approved by the Michigan Department of Environmental Quality. We've stepped up those efforts this season with three SCUBA dive teams and soon will have some 4,900 square feet of barrier material in place at five locations in the south basin.

Winter meetings with DNR Parks management resulted in agreement to contract for granulated 2-4D at the three state-controlled public launch sites...the North State Park, South State Park and the west DNR ramp site...in an effort to reduce re-infestation of EWM from outside our watershed. The treatment should occur either this Monday or the following Monday...July 19th.

Through the financial support from the Higgins Lake Foundation, with assistance from Huron Pines RC&D and the cooperation of the DNR, we designed and printed 10,000 Invasive Species Information cards for distribution at the state public launch sites to visiting boating enthusiasts. This simple card cautions boaters to "look before they launch" and remove any EWM or Zebra Mussels that might be attached to their trailer or boat.

You may recall my mentioning that the U.S. Army Corps of Engineers had located native milfoil weevils in Higgins Lake in 2003, but it appeared there weren't sufficient quantities to control the spread of EWM. I'm pleased to announce today...as we meet...some 10,000 milfoil weevils are being placed at selected EWM sites under a contractual agreement with Envirosience, Inc....an environmental consulting firm located in Stow, Ohio.

We believe...in addition to the very limited herbicide treatment at the DNR access sites, hand harvesting by lakefront owners, and the continued use of benthic barrier... that supplementing our natural milfoil weevil population with implants this summer will prove to be another positive aspect in our integrated EWM management program.

The cost for the weevil project is \$20,000, and it's being funded by commitments from the Roscommon County Community Foundation, the Schroeder Foundation, and the Higgins Lake Foundation with matching funds obtained through the Muskegon Watershed Assembly via the Wege Foundation.

In summation, the HLPOA has built a strong alliance through association with other organizations and volunteers in an effort to control and, hopefully, eradicate this very invasive aquatic plant species from our lake.

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### ***Political Action Committee (PAC)***

Formation of our Political Action Committee was unanimously approved by the membership at last year's annual meeting. To my knowledge we are the only lake association in Michigan that has taken this step in an effort to strengthen political ties by supporting candidates who share our commitment toward protecting and preserving our natural water resource.

Possibly the greatest benefit from this first year of activity was the opportunity to share HLPOA views and positions on a vast array of issues through contact with nearly every candidate for public office in this district at the state, county and local level.

It was extremely time consuming but of great value because, in the follow-up of candidate interviews, we had a chance to initiate dialogue and stress our reasoning for support of House Bill 4141 and our concern...or perhaps I should say frustration...regarding the lack of support by local officials regarding issues which impact directly on Higgins Lake.

It may take some time, but I firmly believe the existence of an HLPOA Political Action Committee will help foster a better understanding of riparian concerns and will lead to meaningful support in the political arena at all levels.

I can assure you the seven members of your Political Action Committee spent countless hours in recent weeks developing and distributing a screening questionnaire specific to HLPOA issues, conducting personal interviews, and reaching final decisions in the selection of candidates for support by the HLPOA voting membership.

And now we have an important decision for you! This is an ongoing process, and we thank each of you who have already contributed to its success through your financial support. We also need your support at the ballot box, so I feel a need to stress a point: Give serious consideration to registering to vote here at Higgins Lake. It's with your help that the HLPOA can make a difference!

### ***Townline Road Ramp/Dredging Permit***

The initial project proposal within the Lyon Township portion of Townline Road would have resulted in an 18'x48' ramp and a 4'x18' seasonal dock with dredging to a depth of 3' at a distance of 124' from the shoreline of Higgins Lake. The DEQ permit request was filed last year by a private citizen in Lyon Township.

The HLPOA filed three formal letters dating back to July of last year...objecting to the DEQ even processing this request. In addition, last February we contracted with an engineering firm, Progressive AE of Grand Rapids, to conduct an ecological review and determine whether dredging could cause potential damage to Higgins Lake. A noted limnologist, Anthony Groves, advised the DEQ that

approval of the permit request would not be prudent.

Instead, on May 24 the DEQ (on advice from Lansing we're told) approved the construction of the ramp and installation of the dock with limited dredging necessary to build the ramp. That translates to dredging or removal of lake bottom material out 24' to a depth of 3'.

We anticipate this may be the first of many such requests for construction of ramps in R-1 zoned residential subdivisions surrounding Higgins Lake. For the record, I learned yesterday that another ramp permit request has been filed for Kelly Ave. in Michigan Central Park, 1st Addition in Gerrish Township by a resident of Dearborn Heights, Michigan.

The HLPOA has never opposed the building of ramps, per se, because we believe access to the waters of Higgins Lake, at dedicated public road ends, should be available to all.

However, we have steadfastly maintained that the responsibility and control of any launch facility at a public road end rests squarely with our local townships and that a feasibility study must be conducted for each and every request to assure that the ecological impact on our lake, as well as any impingement on riparian owners, is given proper weight in the ultimate decision by the DEQ.

In the instant case of Townline Road, our concerns about responsibility and control of traffic, parking, sanitation, children swimming, hours of operation and maintenance have thus far fallen on "deaf" ears at both the local and state levels. Obviously, similar concerns must now be voiced about the Kelly ramp/dredging proposal.

Rest assured, the HLPOA has not lost the battle at Townline. We have filed for a "contested case" hearing within the DEQ under the State's Administrative Procedures Act.

Additionally, the HLPOA is joined by the two adjacent subdivision associations and the two riparian owners on either side of Townline Road in a suit filed in Circuit Court this week charging violation of the Natural Resources and Environmental Protection Act. We're convinced this Act was not written by the Michigan Legislature with the intent of giving private citizens control over access ramps at public road ends.

We believe the issuance of a ramp construction permit at a public road end to a private party is no different than the "privatization" of public road ends through the use of boat hoists and stored watercraft activities that already have been determined as illegal at the appellate court level in Michigan.

### ***Lake Carrying Capacity***

Another issue which ties directly to public access and boat ramp facilities is the watercraft carrying capacity of a

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body of water. Seemingly, Higgins Lake has exceeded “reasonable” capacity when you view the boat traffic on any holiday weekend such as last Saturday.

Under the 2002 Higgins Lake Watershed Management Plan, the HLPOA assumed leadership responsibility in efforts to determine a “reasonable” carrying capacity for watercraft on our nearly 10,000 acre body of water. To this end, we’ve spoken with other lake associations, met with DNR officials to obtain illustrative formulas which they have used on other lakes, and in the past the HLPOA has conducted manual counts of watercraft over the 4th of July.

This past weekend we initiated another approach which included the use of aerial photography in an effort to secure basic data relating to watercraft utilization during a “peak” capacity interval. So, if you observed a plane last Saturday circling the lake and making several passes over our natural resource, you witnessed our most recent initiative to obtain actual data toward our goal of establishing a reasonable watercraft carrying capacity for Higgins Lake. We know we’re only scratching the surface in attempting to codify this illusive concept, but we believe photographic data will prove beneficial in formalizing a lake-carrying capacity in the future.

### **Keyholing**

I’ll close my State-of-the-Lake message by simply emphasizing the importance of the recent Shady View Supreme Court decision. William Carey was modest when he provided the details in his portion of the program this morning. I won’t be modest.

In the face of actual resistance from the then township supervisor and a negative decision from the then director of the DEQ and in spite of a Michigan Court of Appeals determination to the contrary, the steadfast resolve of two Higgins Lake riparians and the HLPOA as co-plaintiffs set a precedent in finally gaining a Supreme Court decision which will benefit all inland lakes in Michigan.

Once again, the HLPOA has taken a leadership role and successfully defended against further degradation in the quality of Higgins Lake by preventing the continuation of a marina operation in a residential area. Our mission: To Protect, Preserve and Enhance remains squarely in focus as it has been for the past 69 years.

As your president, I want to take this opportunity to personally thank the membership as well as each and every member of the Board for your support. I want to especially express my appreciation to executive secretary Bill Case and legal counsel William Carey for the tremendous effort you’ve given me these past 12 months. It’s been truly a “team” effort!

In closing, I would remind everyone that membership is the backbone of this volunteer organization, so please pick up a copy of your HLPOA brochure when you leave the meeting and give it to a neighbor or acquaintance who is not currently a member of the HLPOA and then encourage them to join.

Membership comments/questions period followed.

The dispatch number to call when lake irregularities are observed is 275-0911. Our Sheriff, Fran Staley, is squarely behind boater safety on Higgins Lake.

President Dennings closed the meeting with the following statement: “I hope you found the annual meeting both informative and beneficial. Your HLPOA Board is active twelve months of the year in representing your riparian interests at all levels of government. Obviously, we welcome your continuing and generous financial support in the coming months.”

With a motion made and seconded to adjourn the meeting, motion passed unanimously and the meeting was adjourned at 11:05 a.m.

Respectfully submitted,

*Jane Case*

Secretary to the HLPOA Board



### **News Flash**

#### ***Motor Boat Noise Project Receives Support***

Through the efforts of Senator Michelle McManus and Speaker Rick Johnson, SB 1068 passed both Houses on September 9th. This legislation provides for \$35,000 of DNR’s budget to be assigned to MSU for development of equipment and procedures that will accurately measure and record distance to and sound levels of watercraft engines.

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## ***Political Action Committee Update***

*by Pat Springstead, Chair, HLPOA-PAC*

The HLPOA Political Action Committee, HLPAC, is off to a terrific beginning. Ours is the first lake association Political Action Committee to be formed in Michigan, with our goal to educate and influence public officials about issues that affect our local natural resource, Higgins Lake.

Since the Spring *Waterlines* newsletter, our PAC has been active in the political process. A Candidate Questionnaire was developed and mailed to all local candidates running for office in the primary general election. After reviewing the responses, we interviewed 22 local candidates. (None of the incumbent candidates in Lyon Township returned the questionnaire; therefore, they were not interviewed.)

The interviews proved to be a valuable process as we were able to explain our position on several issues, including use of public road ends and H.B. 4141, motorboat noise measurement, lake dredging, recall of public officials, control of lake pollution and other lake quality issues. We found that most of these individuals were previously unaware of or misunderstood our position, so we were successful in correcting misconceptions with those interviewed.

A PAC committee meeting was then held to evaluate the candidate's positions and compatibility with our goals. The selected candidates were then contacted to discuss how we could best assist them in their primary election. Some needed promotional funds, some just asked for support of our membership. We were pleased to find out that the candidates, as a whole, were happy to be endorsed visibly by the HLPOA. We then developed the slate of candidates that we support and mailed it to our 860 members. We are happy to report that most of our candidates made it through the primary process.

I would like to use Gerrish Township as an example of the opportunity we have to impact an election. In Gerrish Township we have 255 registered HLPOA voters; of that number 188 voted. There was a turnout of 45% of all voters in Gerrish. We are proud to say that 74% of our registered voters went to the polls, which was a very good performance by our members.

We are sure it made a difference in the clerk's race, which our candidate won. However, in the trustee race our candidate lost by only 37 votes! If only more of our 67 members in Gerrish had come out to vote, our candidate could have won. This is a perfect example of the reason we encourage everyone who can possibly register to vote in Roscommon to do so. We cannot impress upon our members in Lyon Township how important it is to elect our candidates. The incumbent Supervisor and Board of Trustees are extremely anti-HLPOA.

We are supporting a write-in candidate, **Nelson Craig**, in the Lyon Township Trustee race. It is very important that his name is written correctly, or it will not count. We also urge everyone to support **Bruce Rendon** in every possible way, a candidate for representative in the 103<sup>rd</sup> district.

Looking forward to November, we must double our efforts to get the people we support elected. We are enclosing a sheet with a list of candidates we are supporting, and we would like you to take this list to the polls with you.

Absentee ballots will be available by the end of September for those who cannot vote at the polls on November 2. **The local elections are decided by very few votes, so it is essential that all registered voters get out and vote.**

Thank you for your financial support in the past. We have candidates who still need financial help and encourage contributions to be sent to: HLPAC, PO BOX 511, Higgins Lake, MI 48627-0511. We can only accept personal checks; they should be made out to HLPAC.



## **HLPOA LEGAL UPDATE**

*by William L. Carey  
Counsel to HLPOA*

### ***Consolidated Cases (Road-Ends)***

A series of cases involving various lakefront subdivisions in Gerrish Township have been decided at the appellate court level. The cases include subdivisions in Triangle Park, Old Point Comfort, Lyon Manor Subdivision, Shoppenagon Lodge Subdivision, Whittington Park, Sovereign Park, Honolulu Beach, Evergreen Park, Almeda Beach, and Highland Subdivision. In all of the cases, the trial court has determined that the original developers of the plats did not intend for the road ends to be used as parks and mini-marinas. The trial court had entered court orders which determine that road-end use does not include the right to moor boats, maintain hoists or wet anchors, sunbathe, picnic, or lounge.

Oral argument before the Michigan Court of Appeals was completed on August 6, 2002. A decision of the Court of Appeals was issued on January 17, 2003. The Court of Appeals has upheld the legal principles first declared in the matter of *Jacobs v Lyon Township*. The Michigan Court of Appeals has held that the public roads in the subdivisions mentioned in the preceding paragraph may not be used as mini marinas and lakeside parks. The decision of the Court of Appeals is a published decision.

The application for leave was considered by the

*(Continued on page 10)*

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## **Legal Update**

(Continued from page 9)

Michigan Supreme Court on March 4, 2003. The Michigan Supreme Court has issued an opinion denying the application for leave. The appellants (backlot interests) requested that the Michigan Supreme Court reconsider its decision denying the application for leave. A decision on the motion for reconsideration was issued the last week of December, 2003. The motion was denied. The denial of the motion for reconsideration brings finality to the decisions. Each of the subdivisions named above, and each of the roads contained within the subdivisions, have now been declared by the appellate courts of the State of Michigan to not be available for boat mooring, hoist maintenance, wet anchors, sunbathing, picnicking, or lounging.

The Court of Appeals heard similar arguments involving the subdivisions of Chicago Beach, Woodlawn, Michigan Central Park 1<sup>st</sup> Addition, and Sylvan Beach on October 21, 2003. A decision was subsequently issued which upheld the legal principles of *Jacobs v Lyon Township*. The October 21, 2003 hearing resulted in a decision identical to the first series of cases reported above. No further appeal is expected on the second round of lake cases.

The process of beginning enforcement of these important Court of Appeals decisions has begun. HLPOA is fully committed to complete a uniform enforcement of road end use in each subdivision surrounding Higgins Lake. HLPOA has authorized its legal counsel to begin enforcement proceedings on a road-by-road basis. Each road in each subdivision will be brought before the court, and each violator of the appellate court's order will be the subject of contempt proceedings before the trial court.

Enforcement actions will be both time consuming and cost inefficient. It is not likely that each road in each subdivision will be the subject of enforcement action during 2004. However, HLPOA, through the efforts of its volunteers and board members, will document each violation of the appellate orders and continue prosecution of these violations throughout the fall of 2004. It is anticipated that the State Attorney General's office will participate and assist in at least some of the prosecutions. Currently the enforcement phase is expected to continue throughout the balance of 2004 and into 2005.

### ***HLPOA V Lyon Township (Townline Road Boat Ramp)***

Beginning in 2003, HLPOA has monitored the interest various residents of Lyon and Gerrish Township have expressed toward the construction of boat launch ramps at various road end sites throughout the respective townships. HLPOA promulgated a position statement regarding the construction and use of road end launch sites prior to any

applications being submitted for the construction of such ramps. HLPOA does not oppose the installation of launch ramps so long as adequate consideration is given to the environmental impact ramps would have upon Higgins Lake together with the impact any particular launch site has on the adjoining riparian owners. In furtherance of its position, HLPOA commissioned the completion of an environmental assessment which analyzed the potential impact of road end launch sites upon the environmental quality of the lake.

In the spring of 2004, the Michigan Department of Environmental Quality authorized a Lyon Township resident to construct a launch facility at the terminus of Townline Road. The permit was subsequently transferred to Lyon Township who currently holds the application.

HLPOA believes that the MDEQ-authorized permit fails to meet common law and statutory standards. Accordingly HLPOA has initiated a two-prong litigation strategy against the maintenance of the ramp. HLPOA has initiated a circuit court action alleging that the proposed maintenance of the ramp, together with its current construction, violates environmental standards and constitutes a nuisance to the adjoining property owners.

In addition to the circuit court lawsuit, HLPOA has also filed a petition for a contested case hearing with the Michigan Department of Environmental Quality. The purpose for the contested case hearing is to seek an administrative review of MDEQ's decision to issue the ramp permit. MDEQ can revoke the permit and require the removal of the ramp or modify the terms and conditions of the permit.

There are no court hearings presently set for either legal proceeding. Discovery, including the deposition of the parties' experts, is ongoing.

### ***Sovereign Park Plat Amendment***

A lawsuit seeking to change the dedication language of the plat of Sovereign Park is currently pending before the Roscommon County Circuit Court. The purpose of the lawsuit is to have the judge rewrite the plat dedication language so as to allow for uses of the roads within the plat for boat mooring, sunbathing, picnicking and lounging. The lawsuit tacitly recognizes that the rule of *Jacobs* precludes using the roads within the plat for boat mooring, sunbathing, picnicking and lounging. Now the plaintiffs in that lawsuit are asking the judge to change the language so that *Jacobs* cannot apply.

The riparian residents of the plat have filed a uniformed defense to the plat amendment action. There are not any court dates currently set, and discovery in the case is ongoing.

### ***Judicial Disqualification of Trial Judge***

In a number of cases involving Higgins Lake water

rights, attorneys representing the townships, the road commission, and various non-riparian owners have filed papers with the court seeking to disqualify Michael J. Baumgartner as the presiding judge.

The stated rationale for the disqualification focuses on three issues. First, it is alleged that the relationship between the HLPOA attorney, William Carey, and Judge Baumgartner is such that it gives an appearance of impropriety before the court. Second, it is alleged that Judge Baumgartner is predisposed to favor the legal rights of riparians over nonriparians. Finally, it is alleged that Judge Baumgartner, while serving in the capacity of the Roscommon County Prosecutor, worked on matters involving Higgins Lake which would prejudice him as a judge in favor of lakefront property owners.

Among the cases in which Judge Baumgartner faces a

disqualification challenge are all of the matters reported above. It is expected that by the conclusion of 2004, the issue of Judge Baumgartner's disqualification will be resolved.

#### **Conclusion**

HLPOA will continue its legal endeavors through the end of 2004 and well into 2005. Enforcement of the legal decisions obtained by HLPOA will be a priority. Continued vigilance over the welfare of the lake and its riparian owners will also be given priority.

Respectfully submitted by:  
*William L. Carey*  
Legal Counsel for HLPOA  
September, 2004

#### ***HLPOA's Mission***

The Higgins Lake Property Owners' Association's goal is the preservation and improvement of Higgins Lake and its watershed for quality use by future generations. Working in cooperation with federal, state and local government entities, educational institutions, foundations and conservancies, the Higgins Lake Property Owners' Association has contributed financial and human resources to fulfillment of this goal.

#### ***Did You Know?***

Roscommon County has the greatest aggregate water surface area of any of the eighty-three counties in Michigan. Roscommon ranks first with 39,132 acres, Antrim County is second at 30,276.9, while Marquette County, in Michigan's Upper Peninsula, follows in third place with an accumulative 30,061.9 acres.

## **Memorials**

*The HLPOA gratefully acknowledges contributions made in memory of the following individuals:*

In Memory of Mr. Carl Ernest Seitz

*Mr. and Mrs. Bill Anderson*

*Mr. and Mrs. Bill Bradford*

*Mr. Richard G. Bottjer*

*Mr. and Mrs. Wm. Case*

*Mr. and Mrs. Wm. Cheek*

*Mr. and Mrs. Cleverdon*

*Mr. and Mrs. Rodney Cook*

*Mr. Dave Cornelius*

*Mrs. Hazel Dengler*

*Mr. and Mrs. Arthur Dietrich*

*Mr. and Mrs. John Eckhold*

*Mr. and Mrs. John Eckhold, Jr.*

*Mr. and Mrs. Glinski*

*Mr. and Mrs. William Herman*

*Ms. Linda Joannette*

*Mr. and Mrs. Edward Kurz*

*Mrs. C. R. MacClaren*

*Mr. Edward C. Manser*

*Mr. and Mrs. Herb Poole*

*Mr. and Mrs. Larry Root*

*Mr. and Mrs. Richard Scorese*

*Mr. and Mrs. Al Seitz*

*Mr. William A. Sulahian*

*Mr. and Mrs. Thomas Williams*

*Mr. and Mrs. Gerhard Wolf*

In Memory of Laurie Kueffner

*Surfside Shores Association*



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## Construction of the Townline Rd Boat Ramp

