



Water Lines

A publication of the Higgins Lake Property Owners' Association

Spring, 2004

President's Message



by Ken Dennings
HLPOA President

House Bill 4141 Senate Bill 481

At times, it seems the wheels within our judicial and legislative branches of government turn all too slowly. The latest draft . . . a substitute for the original HB 4141 introduced in January 2003

. . . has now been written to placate and resolve specific concerns in an effort to gain the necessary majority and report HB 4141 out of the eleven-member House Conservation and Outdoor Recreation Committee.

The HLPOA as well as the Michigan Waterfront Alliance (a statewide advocacy organization of lake associations in Michigan) have steadfastly maintained that HB 4141 must "mirror" the 1993 *Jacobs v Lyon Township* decision. In other words, the state law should prohibit boat hoists, unattended mooring of watercraft and activities that would obstruct ingress and egress to the surface waters at public road endings in Michigan.

Unfortunately, there are legislators on this Committee who do not share this view, in spite of repeated Michigan Supreme Court conclusions that support this very position and with expressed judicial recommendation for legislative action.

Even our local township officials recently acted (Lyon Township on March 30th and Gerrish Township on April 13th) to oppose the posture of the Supreme Court by approving a "resolution" that advocates amendment of HB 4141 to permit continuation of these illegal activities. Simply put, our local township boards are refusing to accept or recognize that we have successfully litigated 18 subdivisions to the highest court in the state of Michigan. And in each case the court has determined sunbathing,

picnicking, lounging, mooring of watercraft and placement of boat hoists at platted public road ends exceed the scope of the dedication.

We hear claims from township officials that state legislation is necessary to assure "local control." This is absolute "nonsense" . . . our townships have the authority to regulate activities at public road ends today (within the scope of the dedication) but have failed to do so! The current township boards have chosen not to act . . . and where the previous board in Lyon Township did adopt an ordinance enforcing the *Jacobs* ruling, members of the present board rescinded that ordinance in 2003 after successfully organizing a recall of the *pro-Jacobs* board members.

In spite of the stubborn resistance by local officials and certain state legislators, the HLPOA will continue to press for state law that "mirrors" our hard fought victories in the appellate courts.

The HLPOA has built a strong alliance in support of HB 4141 with the Michigan Township Association, Michigan Road Commission Association, Department of Natural Resources (DNR), Department of Environmental Quality (DEQ), and Michigan United Conservation Clubs (MUCC).

I remain optimistic that our steadfast resolve and civil approach will result in a state law prohibiting the "continued privatization" of public road endings in Michigan. In the meantime, the HLPOA will take appropriate action to "enforce" the court decisions with respect to those subdivisions already litigated.

If you pause to think about it . . . isn't this an election year?

HLPOA Files Formal Opposition to Townline Road Ramp/Dredging Proposal

On March 8, 2004, the HLPOA filed a strongly worded objection with the Michigan Department of Environmental Quality (MDEQ) regarding an application for a DEQ

(Continued on page 2)

Invasive Species Boater Information Card

by Ken Dennings

With the boating season upon us, we need to concentrate on protecting Higgins Lake from further infestation by nuisance aquatic species. Zebra mussels and Eurasian watermilfoil have invaded our lake, and boating activity is the primary way these exotic species have spread from the Great Lakes to our aquatic corner of Michigan.

The HLPOA is spearheading an effort to “alert” boater enthusiasts about the potential danger of bringing additional exotic species to Higgins Lake. We have initiated a “partnership” with the Higgins Lake Foundation, Huron Pines Resource Conservation and Development Area Council, and the Michigan Department of Natural Resources to get the word out on these aquatic trouble makers.

A boater information card entitled “WE NEED YOUR HELP!” has been designed and produced for distribution to

the thousands of boaters who utilize the several DNR public launch facilities at Higgins Lake. The card advises of the potential for spreading these nuisance aquatic species and provides a specific checklist for boaters before and after launch to “help” protect against further infestation from one water body to another.

This new boater information card (made possible through funding from the Higgins Lake Foundation) is simply another weapon in our proclaimed “war” against these aquatic nuisances. It’s designed to create awareness and stimulate support by the boating public in guarding against additional zebra mussels and/or Eurasian watermilfoil being carried into Higgins or spreading to other inland lakes in the state.



Eurasian watermilfoil & Zebra mussels

These nuisance exotic species have invaded Higgins Lake and we need your help in preventing further infestation of this beautiful natural resource.

Did You Know?

Boating activity is the primary way these nuisance species are spread from water body to water body. And they can survive out-of-water for days. SO, PLEASE INSPECT YOUR WATERCRAFT AND TRAILER BEFORE AND AFTER EVERY LAUNCH . . . TAKE THE TIME TO REMOVE ALL AQUATIC PLANTS AND ANIMALS.

Eurasian watermilfoil can become entangled in boat propellers, depth finders and anchors. It can even attach to keels and rudders of sailboats. Stems can become lodged among any watercraft apparatus or sports equipment that moves through the water, especially boat trailers.

Zebra Mussels will attach to any hard surface, especially the exterior surfaces of watercraft and boat trailers, as well as, anchors, water skis and SCUBA gear.

- Inspect your boat, trailer, and boating equipment (anchors, centerboards, rollers, axles, etc.) and remove any plants and animals that are visible before leaving and prior to entering any water body.
- Drain water from your engine, outboard motor, live-well, bilge and transom well while on land before leaving any water body.
- Empty your bait bucket on land before leaving the water body. Never release live bait into a water body, or release aquatic animals from one water body to another.
- Wash and dry your watercraft, tackle, downriggers, trailer and other boating equipment to kill harmful species that may not have been visible at the boat launch. Some aquatic nuisance species can survive for several days out of water.

Thank You For Your Cooperation

The Higgins Lake Foundation
The Higgins Lake Property Owners' Association
Huron Pines Resource Conservation and Development Area Council



HLPOA LEGAL UPDATE

by William L. Carey
Counsel to HLPOA

Shadyview

This lawsuit involves a challenge to the activities of 20 families who purchased a single lakefront lot in Woodlawn Subdivision (Gerrish Township). The 20 families (who purchased the lot via a non-profit corporation known as Shadyview, Inc.) set up a multiple slip marina. Lot owners on either side of the Shadyview parcel filed suit in Roscommon County Circuit Court seeking to enjoin the multiple family use.

The Michigan Supreme Court has ordered that the Shadyview property may not be used for communal park or marina activities. The court has ruled that the lot in question may only be used as a single family residential lot and that Shadyview may not maintain a dock or any number of boat slips on the riparian parcel. The decision made by the Supreme Court is stronger and more protective of the lake interest than even the original trial court decision. The Supreme Court decision is final and not subject to further challenge. The decision represents the most significant victory against funneling/keyholing in the common law history of Michigan.

Shadyview is receiving significant attention throughout the State of Michigan and has been the subject of several law review articles.

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, Alameda 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 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 1st 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 next step in the process is to begin enforcement of these important Court of Appeals decisions. 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 commencing in the summer of 2004. 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 the summer of 2004.

However, HLPOA, through the efforts of its volunteers and board members, will document each violation of the appellate court orders and continue prosecution of these violations throughout the fall of 2004 until the actions are complete. It is anticipated that the State Attorney General's office will participate and assist in at least some of the prosecutions.

Dixon/HLPOA v Lyon:

A private landowner and HLPOA filed a lawsuit in the Roscommon Circuit Court seeking to have a declaration of rights relative to road ends in the Lyon Township subdivision of Michigan Central Park 3rd Addition. This case is noteworthy because it is the first such case filed in Roscommon County Circuit Court since the January 17, 2003 opinion of the Court of Appeals. In this particular case, non-lakefront property owners organized to erect a

300' dock with 30 boat mooring slips. Dock memberships were sold upon a promise that the participants could secure a private spot at the public dock. The case was heard by the Roscommon County Circuit Court (Judge Bergeron presiding) on February 13, 2003. Judge Bergeron sided with HLPOA and the private landowner and ruled that the roads within the subdivision could not be used as marinas and parks.

The judgment in the case was entered and an appeal filed. In a surprising legal maneuver, the Michigan Court of Appeals rejected the appeal without legal argument and affirmed the trial court decision. The decision by the Court of Appeals came on February 26, 2004, less than one year after the appeal was filed. The prompt results in *Dixon* illustrate that the Court of Appeals is no longer struggling with the proper outcome of the road-end cases.

Sunseekers:

This case is expected to be heard in the second quarter of 2004. The decision in the Shadyview case will have a direct and significant impact upon Sunseekers. Factually and legally, the two matters appear to be virtually identical. A hearing before the trial court on January 5, 2004 resulted in a directive from the court that a proposed resolution to the Sunseekers controversy be submitted within 30 days. Absent a resolution, the court intends to rule on the matter fairly immediately.

Conclusion:

2004 will be an active year for HLPOA, which is committed to enforcement of the hard fought legal victories it has achieved. Enforcement of these decisions will bring the objective of protecting riparian interests and the environmental quality of Higgins Lake to fruition for HLPOA.

By-law change to be considered

In an effort to maintain continuity in its meetings over the winter months, the HLPOA Board of Directors proposes the following by-law change to be acted on at the July 10, 2004, annual meeting.

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 appoint the executive secretary AND SIX VOTING MEMBERS SHALL CONSTITUTE A QUORUM FOR CONDUCTING OFFICIAL ASSOCIATION BUSINESS.

Attention all HLPOA members & Higgins Lake Foundation supporters

**HLPOA Annual Meeting - July 10, 2004
at the Roscommon High School**

- 8:30 a.m. - Meet local, county and state political candidates. Enjoy good conversation and indulge in coffee and doughnuts.
- 9:00 a.m. - Move into the auditorium for the latest legal update from our attorney, legislative update from our lobbyist and state of the lake report from President Dennings. Adjourn by 11:30 a.m.
(For more information: 989-821-8880)

July 10, 2004 - Roscommon Arts Festival

Attend the Arts Festival right after the HLPOA annual meeting in the village of Roscommon
(For more information: 989-275-8760)

**Higgins Lake Foundation
Awareness Day & Raffle**

- August 7, 2004, celebrate the 15th anniversary of the Higgins Lake Foundation - MacMullan Conference Center near North State Park.
- 1:00 p.m. - Kids' activities, hot dogs and soft drinks
 - 4:00 - 6:00 p.m. - Adult eats, cocktails, silent auction and raffle
(For more information & raffle tickets: 989-821-8122)



Water Lines is published by the Higgins Lake Property Owners Association P.O. Box 173, Higgins Lake, MI 48627.
Dedicated to preserving the quality and beauty of Higgins Lake.

Established July 15, 1935

Visit HLPOA online at www.hlpoa.org

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

- | | |
|---------------------|-----------------|
| President | Ken Dennings |
| Vice President | Brad Gibson |
| Secretary | Ed Trautz |
| Treasurer | Stan Cooke |
| Exec. Director | William Case |
| Recording Secretary | Jane Case |
| Legal Counsel | William Carey |
| Members | Kathryn Bangs |
| | Robert Frye |
| | Wayne Hall |
| | Rick Meeks |
| | Robert Morley |
| | Pat Springstead |
| | Eileen Starks |

HLPOA membership supports Political Action Committee

by Pat Springstead, Chair HLPAC

Since the mailing of the HLPAC brochure in February, the response in contributions has been extremely successful. HLPOA's political action committee (HLPAC) is off to a great start in being able to provide financial support to those candidates who share our common mission: the protection, preservation and enhancement of Higgins Lake and its watershed.

With the elections only a few months away, the PAC is preparing to meet with political candidates. In this issue on page 8 is a condensed version of our Candidate Questionnaire, which states the HLPOA position on many issues affecting Higgins Lake and asks candidates if they agree/disagree with our position.

After receiving the completed Candidate Questionnaires, a sub-committee of the HLPAC will review them and meet personally with candidates who we believe share our views and can assist in accomplishing our mission.

Responses to requests for financial contributions to candidates from the PAC will then be determined. In addition to evaluating local candidates, the HLPOA lobbyist will assist us in selecting legislators at the state level who would be worthy of PAC support.

HLPOA members are encouraged to become active and involved in governmental affairs at the local, county and state level. Our many voices need to be heard regarding issues that may impact our lake.

For those who have already contributed, thank you. For those who wish to contribute, a personal check made out to HLPAC can be mailed to HLPAC, P.O. Box 511, Higgins Lake, MI 48627.

Boat Noise Monitoring Project

by William Case, HLPOA Executive Director

Six years ago in 1998, Ned Wickes of Higgins Lake and Jack Norris of Torch Lake came up with an idea to control and lessen the extreme and irritating loud noise created by unmuffled watercraft in flagrant violation of state noise statutes.

Since that time, Ned has bulldogged this project to the point where success is within sight. Striking a deal between Michigan State University and Michigan Lake and Stream Associations, Ned contacted Professor Clarke Radcliff of the MSU Engineering Department who developed a prototype instrument that would measure both distance and sound decibels accurately for a moving watercraft. Seed money to finance this project came from various lake associations, foundations and lakefront home owners.

In April of 2003 and again later that same summer, the prototype was tested extensively in Higgins Lake and found to work almost flawlessly. During these initial tests, both Fran Staley, sheriff of Roscommon County, and Terry Johnson, sheriff of Antrim County, participated and were quite impressed with the repeated accuracy displayed. As a result, Sheriff Staley has worked for and received the endorsement of the Michigan Sheriffs' Association which will be invaluable in lobbying efforts to enact necessary changes in marine statutes.

In an effort to procure the necessary funds to fine-tune the prototype and conduct further extensive testing, HLPOA President Ken Dennings (working in concert with MSU and ML&SA) made contact with Senator Michelle McManus, who immediately went to work and was successful in placing a potential \$35,000 budgetary item in the Senate version of the 2005 state budget.

Without the assistance and understanding of Senator McManus, Roscommon County Sheriff Fran Staley, Antrim County Sheriff Terry Johnson, HLPOA President Ken Dennings, our lobbyist Chris Kindsvatter and, of course, Ned Wickes, this project would be nowhere near the completion stage but would probably be dead in the water. Their efforts are to be recognized and applauded.

Memorials

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

In memory of Mrs. Helen Theofanis

Mr. and Mrs. Stanley Cooke
Mr. and Mrs. William Case
Mr. and Mrs. Pat Springstead

In memory of Mrs. Lucy Schultz

Mrs. Jenny Hansen

In memory of Mr. Mike Springstead

Mr. and Mrs. William Case
Mr. and Mrs. Kenneth Dennings

In memory of Mr. Carl Seitz

Mr. and Mrs. Ernie Bacsanyi
Mr. and Mrs. William Bridge
Mr. and Mrs. Dean Coobac
Mr. Bruce Elmblad
Mr. and Mrs. William Gibson
Mr. and Mrs. Wilmer Moore
Mr. and Mrs. Joseph Redmond
Mr. and Mrs. Jim Rudnick
Mr. and Mrs. John Ryan
Mr. and Mrs. Arthur Schauer

DNR Fish Planting in Higgins Lake

by Ken Dennings

Ever wonder where those trout come from that we see so proudly on display in the local newspaper throughout the year? Well, the Michigan Department of Natural Resources keeps Higgins Lake pretty well stocked with young trout just waiting to grow large enough to battle your fishing tackle.

In the past five years the DNR has planted 134,958 Browns, 170,402 Lakers and 118,934 Rainbows . . . or something nearing a half million of these beautiful slender creatures in our lake. It certainly appears our fishery is vigorous and healthy.

It's no wonder Higgins is regarded as a prime fishing spot regardless of the time of year. It can be a hot summer day in August or blowing snow at below freezing temperatures in January, and you'll find fishers on the lake. They know there are trout to be caught and that's but one of the factors that makes Higgins such a treasured natural resource.

So, get your fishing equipment out and try your luck . . . there are trout waiting for you! But remember, they must be fifteen inches to keep for dinner.

Fish Planting Higgins Lake* 1999-2003

Year	Species/Strain	Avg. Size-Inches	Number Planted
1999	BROWN TROUT (Seeforellen)	6.08-6.84	34,980
	LAKE TROUT (Marquette)	6.48	35,000
	RAINBOW TROUT (Eagle Lake)	6.24-8.52	34,780
2000	BROWN TROUT (Seeforellen)	6.12	17,500
	BROWN TROUT (Wild Rose)	6.52	17,500
	LAKE TROUT (Marquette)	6.32	30,402
	RAINBOW TROUT (Eagle Lake)	6.12-6.48	34,905
2001	BROWN TROUT (Seeforellen)	5.56	17,500
	BROWN TROUT (Wild Rose)	6.48	17,500
	LAKE TROUT (Marquette)	6.52	35,000
	RAINBOW TROUT (Eagle Lake)	6.16-7.28	30,550
2002	BROWN TROUT (Wild Rose)	6.84	14,978
	LAKE TROUT (Marquette)	6.48	35,000
	RAINBOW TROUT (Eagle Lake)	6.48	25,000
2003	BROWN TROUT (Wild Rose)	6.92	15,000
	LAKE TROUT (Marquette)	5.84	35,000
	RAINBOW TROUT (Eagle Lake)	6.56	25,001

* All plants at North State Park
Source: DNR Web Site



P.O. Box 173
Higgins Lake, MI 48627
Address Service Requested

PRST STD
U.S. POSTAGE
PAID
Permit No. 3
Roscommon, MI 48653

**Higgins Lake Political Action Committee (HLPAC)
Candidate Questionnaire for the 2004 Election**

The HLPAC (Higgins Lake Political Action Committee) has distributed a questionnaire to candidates running for elective office in 2004 in Lyon and Gerrish townships, Roscommon County, and State Representative for the 103rd House District. The candidates are asked their names, the office for which they are running, and whether or not they are an incumbent. The questionnaire also allows room for comments. Questions include:

1. Do you own, or do you have a relative or close friend who owns, property bordering a Michigan inland lake or stream?

2. If yes, what is the name of the lake or stream?

Do you agree or disagree with the following?:

3. HLPOA supports state legislation and local ordinances that limit the use of public roads ending at inland lakes and streams to public access and the installation of a public dock to aid access.

4. HLPOA is opposed to any activity that would obstruct ingress and egress to the water in any manner where public roads terminate at inland lakes and streams.

5. HLPOA supports: a) development and testing of an instrument, the purpose of which is to measure motorboat noise levels and, b) an amendment to the Marine Safety Act to incorporate standards for the use of this instrument on inland lakes and streams.

6. HLPOA opposes dredging the bottomland of inland lakes and streams for the purpose of launching boats.

7. HLPOA supports legislation which would limit the recall of county and local public officials to acts of misfeasance or malfeasance while in office.

8. HLPOA opposes the selling or diverting of water resources in our state from the Great Lakes watershed without appropriate State regulatory control and approval.

9. HLPOA supports efforts to prevent the further invasion of exotic species and the control of those species already present in our lakes and streams.

10. HLPOA supports efforts to control pollution of our lakes and streams from existing sources such as surface runoff, septic tanks and municipal waste water systems.

11. HLPOA supports legislation to expand Michigan's bottle law to include containers for non-carbonated beverages and alcoholic beverages.

12. HLPOA believes it is the responsibility of the State to lawfully protect our natural resources while respecting the right of Native Americans to hunt, fish and gather as deemed appropriate.

13. HLPOA supports efforts to encourage a "boat wash" facility at every public boat launch site in order to control the introduction of exotic species such as zebra mussels and Eurasian watermilfoil.

14. HLPOA supports legislation that would merge the DNR and the DEQ into one Department which would greatly simplify and improve the effectiveness and enforcement of Michigan's environmental laws, especially those laws governing inland lakes and streams.

Please indicate whether you would accept a campaign contribution from a Political Action Committee.

Yes No