



Water Lines

A publication of the Higgins Lake Property Owners' Association Spring, 2005

President's Message



by Ken Dennings
HLPOA President

There are so many issues to comment on in preparing my last column for *Water Lines* that seemingly I could fill every page in this edition. Instead, I'll attempt to focus on those that are (in my opinion) currently of the most importance to the HLPOA membership. As always, our plate

is full: from legal and legislative items to strategic planning . . . from organizational restructuring to protecting our lake environment.

Public Access Sites

The HLPOA has remained steadfast in its efforts to assure that road end access sites in the townships surrounding Higgins Lake are open to the public for the purpose intended by the original plat developers: "Ingress and egress to the surface waters of Higgins Lake."

It's been a "lonely" vigil. State officials could have helped . . . but haven't. County officials could have supported our efforts . . . but haven't. The road commission could have challenged road end marinas . . . but haven't. And when former officials in Lyon Township tried, they were recalled.

In Gerrish Township the previous administrations essentially took no action while privatization of public road ends continued unabated. More recently, in Lyon Township, former elected officials actually became "obstructionists" by rescinding an ordinance in 2002 (which incorporated the *Jacobs* ruling) and then adopted ordinance #53 this past October that is directly contrary to *Jacobs*. Fortunately, Lyon Township named the HLPOA as defendant, and when the issue came to trial on May 2nd, Judge Baumgartner found the township in contempt and

declared the proposed ordinance invalid.

In related road end disputes both Gerrish and Lyon Townships filed frivolous lawsuits in 2004 claiming that an impropriety would occur should Judge Baumgartner hear pleadings on behalf of the HLPOA for injunctive relief and summary disposition in our consolidated road end cases. This legal maneuver . . . which essentially sought to "paint" the Chief Justice in the 34th Circuit as favoring HLPOA legal counsel (because he had been selected by the presiding judges in Roscommon County as attorney for Friend of the Court) . . . cost taxpayers and the HLPOA needless legal fees. It simply delayed the eventual outcome, as determined by visiting Circuit Court Judge Terrence Thomas, which proved favorable to the HLPOA.

Unfortunately, when the dust settled, the Friend of the Court for Roscommon County also lost the respected

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Happy 70th Birthday, HLPOA!

1935 - 2005

On Saturday, June 25th, the Higgins Lake Property Owners' Association will be celebrating its 70th anniversary. The HLPOA is one of the oldest, if not the oldest, lake association in the state of Michigan and is well-recognized state-wide as a leader in promoting and protecting riparian rights.

The HLPOA Board of Directors invites all members to attend this 70th annual meeting to be held at the Roscommon (Gerrish Higgins) High School beginning at 8:30 a.m. in the school cafeteria. After a 30-minute social period, the annual meeting will begin in the auditorium. A complete report will be given concerning environmental, legal and legislative accomplishments.

Mark June 25th on your calendar!

President's Message

(Continued from page 1)

services of a local law firm. Our legal counsel formally resigned his appointment with Roscommon County rather than give up a long-standing relationship as attorney for the HLPOA.

Have we finally reached a conclusion over the privatization of road ends at Higgins Lake? The answer is YES for those subdivisions where appeals are complete, and Judge Thomas ruled the HLPOA has the right to place "Public Notice" signs instructing people on the proper use of these access sites. Additionally, should there be violations with continued mooring and placement of boat hoists (as occurred last boating season) injunctive relief is expected from the court.

While the Roscommon County Road Commission recently filed an appeal at the Michigan Court of Appeals, we intend to move forward with placement of the public notice signs in accordance with the lower court ruling.

Is our vigil over? Obviously, the answer here is NO. It appears the HLPOA will be solely responsible for enforcement. Therefore, we must continue to "press forward" to gain adoption of state legislation that would insure that ALL platted public road end access sites at inland lakes and streams in this state are open to the public. We must act to eliminate control by a select few who aggressively "take" them for private marina purposes. This legislation (HB 4576) is referred to as the Public Lake Access Assurance Act, and the HLPOA is working hard (see separate article in this issue of *Water Lines*) to gain passage through the support of other lake associations in Michigan that are experiencing similar "privatization" problems. Rest assured this is a state-wide issue . . . not just a Higgins Lake problem . . . although no other lake in Michigan has anywhere near the number of public road end access sites that we have.

House Bill 4576 (Public Lake Access Assurance Act)

On March 24th House Bill HB 4576 was introduced and assigned to the House Local Government and Urban Policy Committee, chaired by Representative John Stakoe. The language in this proposed legislation is identical to HB 4141 (H6) introduced by Representative Stakoe during the last session of the legislature.

HB 4576 would prohibit: mooring or docking of an unoccupied vessel at any time between midnight and sunrise on bottomland directly offshore from a public road, the construction, installation, or maintenance of boat hoists on the road or in the adjacent waters, the construction, installation, or maintenance of a seasonal dock larger than 4 feet wide or 25 feet long unless the purpose of the dock is to aid in the public access and the construction, installation, or maintenance of the seasonal dock is authorized by the

local unit of government, the obstruction of ingress or egress to the water in any manner. THIS LEGISLATION WOULD NOT ALTER THE RIGHTS OF THE PUBLIC TO USE LAWFULLY ACCESSIBLE INLAND LAKES AND STREAMS IN A MANNER AUTHORIZED BY LAW.

Concurrent with the introduction of HB 4576, Representative Joel Sheltroun (representing Roscommon, Iosco, Ogemaw and Missaukee Counties) introduced HB 4578 which proposes to disregard the *Jacobs v Lyon Township* ruling and allow what he refers to as "historic use" of the public road ends to continue. In other words, Representative Sheltroun supports the continuing appropriation of public road ends for private marina purposes . . . precisely what the HLPOA has consistently opposed and successfully litigated against in all road end cases.

Obviously, we need passage of HB 4576 this session in order to preserve public access at inland lakes and streams in Michigan. Your help is needed in contacting your legislator and expressing strong support. The HLPOA has taken a leadership role in building support by contacting other lake associations in Michigan which are also experiencing the growing "privatization" of road end access sites.

HLPOA Conducts Strategic Planning Session

In my last *Water Lines* column I mentioned our commitment to a strategic planning session. Late in January with the snow piled high on the roof, ice on the lake sufficiently thick to support motor vehicles and the temperature well below freezing, the HLPOA Board of Directors spent the better part of a Saturday at the RAM Center on the north shore. Under the guidance of a skilled facilitator, board members examined our mission statement, explored (in depth) our current activities and worked diligently to mold future goals and objectives for this organization which will celebrate its 70th anniversary in July. It was an "exhausting" experience, but one that proved both rewarding and productive.

I'm pleased to share the "end product" . . . a strategic road map for the future . . . which clearly provides direction and purpose in keeping with our mission statement: TO PROTECT, PRESERVE, AND ENHANCE THE QUALITY OF HIGGINS LAKE AND ITS SURROUNDING WATERSHED.

Goal # 1: The HLPOA Board will recommend to the membership an organizational restructuring plan by May, 2005.

Goal #2: The HLPOA Board will broaden its role by extending its influence and involvement with other riparian

organizations and lobbyists by May, 2005.

Goal #3: The HLPOA Board will initiate a membership development program by May, 2005.

Goal #4: The HLPOA Board will develop a public relations plan to enhance the HLPOA image by May, 2006.

Goal #5: The HLPOA Board will strengthen a two-way communications structure with members, non-members, government agencies, the general public and the media by July, 2006.

Goal #6: The HLPOA Board will devise a legislative plan of action to promote passage of road end legislation by January, 2006.

Goal #7: The HLPOA Board will focus on lake quality and watershed issues by developing projects/activities to address the following concerns by August, 2006:

- Waste Water
- Invasive Species
- Non-Point Source Pollution
- Nutrient Pollution
- Shoreline Erosion and Water Levels
- Watershed Land Use
- Boat Speed, Noise and Carrying Capacity
- Next Generation's Education

HLPOA's Environmental Committee

The HLPOA's Environmental Committee, chaired by Rick Meeks, is now operational and has joined forces with the newly formed Higgins Lake Watershed Council under a program funded by the Higgins Lake Foundation (HLF). The HLF allocated sufficient funds to conduct training and implement a comprehensive water quality testing program this summer. In part, the program includes systematic testing for water clarity, chlorophyll "a", spring and summer total phosphorus, and dissolved oxygen/temperature under the Cooperative Lakes Monitoring Program (CLMP) sponsored by the Michigan Department of Environmental Quality and the Michigan Lake and Stream Associations.

In addition, microcystin tests will be conducted by this volunteer group to determine if metabolic toxin is present in our lake . . . a byproduct of zebra mussel colonization and the formation of blue-green algal blooms, similar to what has been reported at Muskegon Lake.

More than 100 of Michigan's inland lakes are reportedly infected with the zebra mussel, an exotic species which originated in the Black Sea and traveled to the Great Lakes in the 1980's. Thus far, no known antidote has been found, and apparently no native predator exists to help curb further colonization.

The Grayling office of the United States Geological Survey, Water Resources Division, has served as consultant and assisted in design of the water quality testing program for this summer. Contact has also been initiated with Michigan State University in an effort to gain the services of a qualified graduate student who would help supervise our volunteers, assist in collating the test data collected and prepare a summary report covering water quality testing at the conclusion of the summer program. This will provide base-line data for reference purposes in future years.

I close my final column for *Water Lines* knowing that plans have been carefully laid for the future, our riparian mission is well defined, the organizational structure of the HLPOA is sound and we have a very capable and dedicated volunteer Board of Directors. For 70 years Higgins Lake has been in good hands . . . with an active HLPOA! With your willing support and encouragement it will continue that way in the future . . . so mark your calendar and make plans to attend our annual meeting on June 25th.



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

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Proposed Changes to HLPOA By-Laws

*by Kathryn Bangs
Chair, By-Laws Committee*

Consistent with the Board's discussions for re-structuring the HLPOA, the By-Laws Committee made changes to the existing By-Laws which were approved by the Board on March 28, 2005. The full text of the proposed By-Laws is included in this edition of *Water Lines*. The Membership will be asked to approve these proposed changes at the Annual Meeting on June 25th, 2005. The following is a brief synopsis of the proposed changes:

Article I - Name - clarifies that HLPOA is a 501(c) (4), private, not for profit organization.

Article II - Objectives - adds the HLPOA Mission Statement.

Article III - Membership - expands eligibility for membership to include immediate family of the owner; defines the membership year from January 1-December 31; clarifies that dues must be paid before the Annual Meeting in July for members to be eligible to vote.

Article V - Meeting of the Members - revises the Agenda for Annual Meeting.

Article VI - Governing Body - allows for a minimum of eleven Board members; eliminates term limits of Directors to allow productive board members to continue serving; adds a clause for removal of Directors upon recommendation of the Executive Committee; allows Board members to call for Special Board meetings; defines the Board's powers more explicitly; allows for reimbursement of expenses and reasonable compensation for services approved by the Board; defines the Executive Committee as the Board Officers and Executive Secretary, all with full vote, and the Immediate Past President in an advisory role; defines the powers of the Executive Committee.

Article VII - Officers - sets term of office for the President, Vice-President, Secretary and Treasurer for three consecutive years; defines roles of Officers.

Article VIII - Committees - designates the President to assign all Committee Chairs from the Board; designates Committee Chairs to recruit Committee members from HLPOA membership which must be approved by the Board; defines Committee functions, power and authority; requires Standing Committees to have at least three members; allows the President and Executive Secretary to

serve as ex officio members on all Committees; designates the Executive Committee to annually review the functions and operations of all Committees.

Article IX - Financial - requires a Board committee to prepare the budget before the beginning of the fiscal year and present it to the Board for approval; requires the HLPOA financial report to be presented to the membership at the end of each fiscal year.

Article XI - Dissolution - provides a procedure for distribution of assets if HLPOA should ever dissolve.

Much thought and discussion by the entire Board went into these proposed changes. The revised by-laws begin on page 5 of this issue; if you have any questions, please feel free to contact me or any Board member.

From the DEQ

Dear Higgins Lake Landowner:

The Department of Environmental Quality (DEQ) administers Part 301, Inland Lakes and Streams, of the Natural Resources and Environmental Protection Act, 1994 P.A. 451. This law requires a permit for most work being done below the ordinary high water mark of an inland lake or stream, including placement of a structure on lake bottom. Permits may also be needed from the township or county.

For erosion control of your shoreline, landowners may apply for a permit to the DEQ. Clean field stone placed at the water's edge and parallel to the shoreline is one option recommended by the DEQ, when erosion warrants it. Groins, which extend perpendicular to the shoreline, generally interfere with the movement of sand in near shore areas and cause accelerated erosion down drift of the structure. You can observe this yourself as you motor along the shoreline in a boat. The DEQ generally discourages groins for this reason.

If you have tires, stone groins, or other similar structures on your beach, or in the water in front of your property, please remove them, or contact this office to discuss removal options. Such work done without benefit of a permit is a violation of state law. But perhaps more importantly, such structures interfere with the natural process of sand movement, and detract from the scenic beauty of Higgins Lake. Let's all work together to keep Higgins Lake healthy and beautiful.

Please feel free to contact the Cadillac office of the DEQ if you have any questions.

Jeff Silagy
Department of Environmental Quality
231-775-3960 x6201

HIGGINS LAKE PROPERTY OWNERS' ASSOCIATION

Roscommon, Michigan
As Amended June 25, 2005

ARTICLE I – Name

1.1 The name of this association shall be the Higgins Lake Property Owners' Association, hereinafter referred to as the Association, a 501(c) (4), private, not for profit organization.

ARTICLE II – Mission Statement and Objectives

2.1 The Mission Statement adopted by the Association is: To protect, preserve, and enhance the quality of Higgins Lake and its surrounding watershed.

2.2 The objectives of the Association shall be to further and protect the interests and rights of property owners at Higgins Lake, Roscommon County, Michigan.

a. The Association, by these articles, directs its attention, in every respect, to the use of lake front property around the entire lake.

b. Through its governing body (Article VI) engage in activities to safeguard the environment, especially the water quality of Higgins Lake.

c. When appropriate, bring to the attention of local, township, county and state government officials, incidents and conditions that affect the future environment and water quality of Higgins Lake.

d. Publicize, through the local media, those activities that the Association performs, or is engaged in, contributory to safeguarding the environment.

ARTICLE III – Membership

3.1 Any person who owns or whose immediate family (defined as spouse, children, siblings, parents and grandparents, by blood, marital relationship or adoption) owns, resides at or uses property which is located on or within one-half mile of Higgins Lake shores shall be eligible to Membership in the Association, subject to approval by the Board of Directors. The latter may also accept other interested persons to Membership in the Association. Association members are hereinafter referred to as Members.

3.2 The membership year for Members shall be January 1 - December 31.

3.3 Each Member shall have one (1) vote. Payment of dues shall be made prior to the Annual Meeting to be eligible to vote.

ARTICLE IV – Headquarters

4.1 The Board of Directors shall approve the location of the headquarters of the Association and the establishment and location of any additional offices of the Association.

ARTICLE V – Meetings of the Members

5.1 The Annual Meeting of the Members shall be held at a suitable meeting place not over 10 miles from Higgins Lake on a Saturday between Memorial Day and Labor Day and at a time and place determined by the Board of Directors.

5.2 Special meetings of the Members may be called by the Board of Directors at a place and time determined by the said Board. Upon petition of fifty Members in good standing, requesting a special meeting, the said Board shall call such a meeting.

5.3 Notice of the Annual Meeting and all other business meetings of the Members shall be sent by U.S. Mail at least 20 days prior to the date designated for the meeting, and to the mailing address indicated by the respective Member.

5.4 Quorum – Presence in person, or by proxy duly signed and witnessed, of Members representing at least 10 percent of the total membership shall constitute a quorum at any business meeting of all the Members. A majority vote of the Members constituting a quorum shall be necessary to carry a proposal.

5.5 The business at the Annual Meeting shall cover the following:

- a. Call to order.
- b. Approval of Minutes of last Annual Meeting, as provided to Members.
- c. Report of the Secretary, as necessary.
- d. Report of the Treasurer.
- e. Report of the President.
- f. Reports of Standing and Special Committees, as appropriate.
- g. Any other pertinent business or reports.
- h. Announcements and open discussion.
- i. Election of Directors.
- j. Adjournment.

5.6 Voting Rights – All Members shall have the same and equal voting rights, regardless of the number of dwellings or lots they may own. Such voting rights may be exercised either in person or by proxy duly filed with the Secretary, prior to or at the time of any Association meeting.

5.7 Meeting Reports – Following the Annual Meeting and/or any Special Meetings, the Executive Secretary shall prepare and mail to the Members a full and detailed report of such meetings, and from time to time, in writing, advise the Members of important activities and events related to the Association.

ARTICLE VI – Governing Body

6.1 Board of Directors

a. The Board of Directors, consisting of a minimum of eleven (11) members, and the 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.

b. Six voting members of the Board of Directors shall constitute a quorum for conducting official Association business.

c. Directors, other than the Executive Secretary, shall be elected by the Members at the Annual Meeting, for a term of three (3) years, and the terms of the elected Directors shall be staggered so that each year the terms of a minimum of three (3) Directors expire and a minimum of three (3) Directors are elected. Term of office for Directors shall commence on the date of election at an Annual Meeting of the Members. A vacancy incurred in any unexpired term shall be filled promptly by the Board of Directors. Appointment by the Board to such vacancy shall be subject to ratification by the Members at the next Annual Meeting.

d. Upon the recommendation of the Executive Committee, a Director may be removed with or without cause by the affirmative vote of a majority of the Board of Directors.

6.2 Board Meetings

a. The Board of Directors shall hold such meetings as it deems necessary, at a time and place determined by the Board.

b. Special Meetings - Special meetings of the Board of Directors may be called by the President or by any three (3) or more of the Directors, upon three (3) days notice to each Director, given personally or by mail, telephone, fax, or email, which notice shall state time, place and purpose of the meeting.

c. The President may propose action for a written or electronic ballot decision of the Board of Directors when, in his/her opinion, prompt decision or action regarding Association matters is required between regular meetings and there is not sufficient time to hold a meeting or the proposed action does not justify the time and expense of a meeting.

d. If a Board Member is unable to attend a scheduled meeting of the Board, he/she may vote on a proposed action by written or electronic ballot or by proxy. The written or electronic ballot must be addressed to the President and received by him/her no later than 24 hours before the scheduled meeting.

6.3 Board Powers

a. General Powers as to Negotiable Paper - The Board of Directors shall, from time to time, prescribe the manner of making signature or endorsement of checks, drafts, notes, acceptances, bills of exchange, obligations and other negotiable paper or other instruments for the payment of money and designate the Officer or agent who shall from time to time be authorized to make, sign, or endorse the same on behalf of the Association.

b. Powers as to Documents - The Board of Directors may authorize an Officer or agent to enter into any contract or execute or deliver any conveyance or other instrument in the name of the Association, and such authority may be general or confined to specific instances. When the execution of any contract, conveyance, or other instrument has been authorized without specification of the Officers authorized to execute, the same may be executed on behalf of the Association by the President.

c. Compensation - Directors shall serve without compensation but may be reimbursed for actual, reasonable and necessary expenses incurred by a Director in his or her capacity as Director. Notwithstanding the foregoing, any Director may receive reasonable compensation for professional services performed on behalf of the Association and may be reimbursed for expenses incurred in relation to such services, if such services are determined by the Board of Directors to be reasonably necessary to carry out the purposes of the Association.

d. Appointment of Executive Secretary and Other Agents - Nothing herein shall limit the right of the Board of Directors to hire employees, consultants or subcontractors and to pay reasonable compensation for services performed by such persons on behalf of the Association.

6.4 Executive Committee

a. The Executive Committee of the Board of Directors shall be made up of the Officers of the Board - President, Vice-President, Secretary, Treasurer, and the Executive Secretary, all with full vote. The Immediate Past President may also serve on the Executive Committee in an advisory role, without vote.

b. The Executive Committee shall function as an advisory body to the Board of Directors and President with the authority to act for and in behalf of the Board between regular meetings of the Board. The Executive Committee shall have such additional specific powers and duties as may from time to time be delegated by resolution of the Board of Directors.

c. The following powers and duties of the Members and/or the Board of Directors may not be delegated to the Executive Committee, which is prohibited from acting on any such matter: 1. amending, altering, or repealing the By-Laws; 2. removing or appointing or filling any vacancy among the Directors, Officers or Executive Committee; 3. amending, altering or repealing any resolution of the Directors; 4. authorizing the sale, lease, exchange or mortgage of assets of the Association; 5. adopting a plan of merger or consolidation with another corporation; 6. fixing compensation of paid officers and employees and 7. expelling any Member from Membership in the Association.

ARTICLE VII – Officers

7.1 When necessary, following the Annual Meeting of the Members, but no later than August 31, the new Board of Directors shall convene and elect from the Board's membership a President, Vice-President, a Treasurer and a Secretary. These Officers shall constitute the Executive Committee.

7.2 The principal Officers of the corporation shall be the President, Vice-President, Secretary, and Treasurer, all of whom shall be members of the Board of Directors.

7.3 Effective July 2005, the Officers as provided herein shall serve for three (3) consecutive years beginning when they are elected at the Special Meeting of the Board after the Annual Meeting, or until their successors are elected and accepted. A President-elect may be elected by the Board, upon an announcement by the President of his/her intention not to seek re-election at the end of his/her term.

7.4 The President shall be the Chief Executive Officer and shall preside over all meetings of the Members and of the Board of Directors. He/she shall appoint all Committees in accordance with Article VIII-Committees.

7.5 The Vice President shall serve in the absence of the President, assuming all duties and powers of the President during the latter's absence or inability to serve.

7.6 The Secretary shall oversee the recordkeeping of all books, records and corporate documents and shall perform such other duties as the By-Laws or Board of Directors prescribes.

7.7 The Treasurer shall have custody of all corporate funds and securities and shall keep in books belonging to the Association, full and accurate accounts of all receipts and disbursements. He/she shall deposit all monies and other valuable effects in the name of the Association and in such depository as may be designated by the Board of Directors. He/she shall furnish a bond, if required, and as may be designated by the Board of Directors, the cost of such bond to be borne by the Association.

7.8 The Executive Secretary shall attend all meetings of the Association Members and of the Board of Directors and shall keep or cause to be kept in a book provided for that purpose, a true, complete and permanent record of the proceedings of such meetings. The Executive Secretary shall attend to the giving and serving of all notices of Association meetings pursuant to these By-Laws, shall have custody of the books, records and corporate seal of the Association, and shall perform such other duties as the By-Laws or the Board of Directors prescribe.

7.9 Each Officer, upon retirement from office, shall deliver to the Executive Secretary all important records concerning Association matters which have been collected during his/her term of office.

Article VIII-Committees

8.1 Candidates for election of Directors shall be nominated by a Nominating Committee, consisting of three (3) members of the Board of Directors appointed by the President.

8.2 An Audit Committee, consisting of three (3) members of the Board of Directors, shall be appointed by the President to audit the books of the Treasurer and any other Association records concerning financial matters.

8.3 The President may designate other Committees (other than the Executive Committee) as deemed desirable to carry out the Mission and Objectives of the Association. The President may exercise this power at any time in writing or orally at any meeting of the Board of Directors. In doing so the President shall specify in writing the composition, duration, duties, powers and authority of the Committee, not inconsistent with these By-Laws. The President shall appoint Committee Chairs from the Board of Directors. Committee Chairs may select Committee members, which shall be Members of the Association and approved by the Board. Committee chairs and members shall serve for one (1) year or until their successors are appointed. Such Committees and members thereof serve at the pleasure of the Board of Directors.

8.4 Each Standing Committee shall be made up of at least three (3) members of the Board of Directors.

8.5 Vacancies on any such Committee shall be filled by the Committee Chair, or if the Chair is unable to do so, by the President, subject to approval by the Board.

8.6 The President and Executive Secretary may serve as ex officio members on all Committees.

8.7 The Executive Committee shall annually review the functions and operations of the Committees of the Association and report on the same to the Board of Directors.

Article IX – Financial

9.1 Funds for meeting the ordinary operating expense of the Association shall be raised by means of annual dues. A special assessment may be levied upon approval of a majority of Members present voting at the annual meeting of the Association.

9.2 Contributions, bequests, and endowments may be accepted upon approval of the Board of Directors. Such funds shall be kept separate and used for purposes specified by the donors.

9.3 Prior to the beginning of each fiscal year, a Committee of the Board of Directors shall estimate the income and ordinary expenses for the coming year, determine the funds necessary to carry out Association activities for the same period, prepare a budget for the year and submit it for approval to the Board of Directors. At the end of each fiscal year, the Association's financial report will be prepared for the Membership.

9.4 Compensation – The Directors and elected Officers shall serve without compensation except for the provisions in Article VI.6.3.c. Compensation for other officers or agents of the Association may be allowed by the Board of Directors.

9.5 No expense shall be incurred by a Director, Officer, Committee Chairman, or other Agent on behalf of the Association except as authorized by the Board of Directors.

Article X – Fiscal Year

10.1 The fiscal year shall start January 1 and end December 31 of each year.

Article XI-Dissolution

11.1 Upon termination, dissolution or winding up of the Association, the Board of Directors shall, after paying or making provisions for the payment of all liabilities of the Association, distribute all assets of the Association to an organization designated by the Board of Directors, in accordance with federal regulations.

Article XII – Amendments

12.1 These By-Laws may be amended by the Board of Directors provided the change does not directly concern the qualification, term of office, or personal gain of a Director. All amendments made by the Board of Directors shall be effective until the next meeting of the Members at which time the amendments, to be continued in force thereafter, shall be ratified by a majority vote of the Members constituting a quorum at that meeting. The By-Laws may be amended by the Members at any business meeting of the Association, provided the regular notice for such meeting, sent to all Members, includes a notice of the proposed change.

HB 4576 Power Point presentation a success!



HLPOA Board Director Laurie Smith Tudor recently put together a 15-minute Power Point presentation which aptly shows and explains the existing road end misuse at Higgins Lake and the introduced legislation (HB 4576) that would correct the problems and which is in concert with recent court rulings. Recently shown at the April 22nd - 23rd Michigan Lake and Stream Associations' Annual Conference, this presentation required over 60 hours of effort by Laurie along with a script put together by HLPOA President Ken Dennings. A great deal of interest and support by members in attendance at the conference resulted from the visual Power Point display.

Assisting Laurie in staffing the HLPOA booth over the two long days of activity were HLPOA Board members as follows: Pat Springstead, PAC Chairperson; Kathryn Bangs, By-Laws Committee Chairperson; Rick Meeks, Environmental Committee Chairperson; and Bill Case, Executive Secretary. Vicki Springstead also gave a great deal of her time and persuasive efforts in support of the HLPOA's efforts.



HLPOA Legal Update

by William L. Carey
Counsel to HLPOA

The HLPOA has been very active and successful in recent litigation matters affecting the use of Higgins Lake and the riparian interests of its members. This legal report will summarize the legal activities of HLPOA during 2005.

Lyon Township Ordinance 53

In late 2004, immediately prior to the general November election, the Lyon Township Board of Trustees enacted Ordinance 53. Ordinance 53 purported to regulate the use of roadends terminating at the water's edge of Higgins Lake. The ordinance, in pertinent part, allowed seasonal boat mooring at roadends if certain conditions were met.

As Lyon Township studied the promulgation of Ordinance 53, HLPOA advised the township that the ordinance as contemplated would violate the rule of law in a number of court decisions. HLPOA further advised Lyon Township that the trustees were in danger of court contempt if they enacted an ordinance violating court decisions.

The Lyon Township Board of Trustees ignored the advice of HLPOA. It enacted Ordinance 53 and promptly filed a lawsuit in the Roscommon County Circuit Court. Lyon Township filed the lawsuit asking the Circuit Court to validate Ordinance 53. HLPOA was a named defendant in the lawsuit.

After being sued, HLPOA filed an extensive motion before the court outlining all of the legal and factual reasons why Ordinance 53 should be invalidated. Additionally HLPOA filed five separate motions for contempt of court against Lyon Township.

On May 2, 2005, the court considered the HLPOA requests. The significant portions of the court's rulings are as follows. First, Ordinance 53 was found to be illegal and was struck down. Second, the court found that the Lyon Township lawsuit lacked all legal merit. Accordingly, the court sanctioned Lyon Township for filing a frivolous lawsuit. The penalty for the frivolous lawsuit was an order that Lyon Township pay the legal fees HLPOA incurred in defending the lawsuit. Finally, and perhaps most significantly, the trial court found the Lyon Township Board of Trustees in contempt of court. The court found that the promulgation of Ordinance 53 violated five prior orders of the court. In each of the five prior orders Lyon Township was a party defendant. In each of the five prior orders the court ruled that the roadends at Higgins Lake could not be used for certain illegal activities including seasonal boat mooring.

An appeal regarding Ordinance 53 remains an option for Lyon Township. Lyon Township had not made a formal decision on appealing the Roscommon County Circuit Court ruling. Should Lyon Township file an appeal, HLPOA will vigorously defend the appeal and seek further cost sanctions for having to defend a frivolous appeal.

Sunseekers Funnel

Previous legal reports have discussed two private funneling cases. The earlier of the two cases has commonly been referred to as Shadyview. In Shadyview 20 families formed an association and purchased a single lakefront lot for the purpose of maintaining a marina. After a lengthy legal battle (which included visits to the Michigan Court of Appeals and Michigan Supreme Court) Shadyview was ordered to cease its marina activities. The courts determined that the members of Shadyview, by conducting funneling activities, created a nuisance and violated the Gerrish Township Ordinance.

HLPOA has more recently been involved in a very similar proceeding which is commonly referred to as the Sunseekers funnel. In Lyon Township (Shoppenagon Lodge Subdivision) eight families purchased a 25' lakefront lot for the purpose of maintaining a marina. At various times the Sunseekers group maintained a dock of almost 200' in length with eight mooring sites. Sunseekers were advised repeatedly that they were operating a marina illegally. Sunseekers refused to cease and desist their operation.

Because Sunseekers would not cease their illegal operations, HLPOA and the riparian owner who adjoined the illegal operation brought suit. HLPOA and the adjoining riparian owner argued that the Sunseekers activity was a nuisance because it violated State law (operating a marina without a DEQ Operating Permit) and because it violated the Lyon Township zoning ordinance.

On April 14, 2005, the Sunseekers case was presented at trial in the Roscommon County Circuit Court. Roscommon County Circuit Court Judge Michael J. Baumgartner ruled in favor of the HLPOA position on all counts. Sunseekers' members were ordered to stop their illegal activities so that the nuisance they had created would be abated. The court ruled that their activities constituted operating a marina. The court also ruled that their activities violated the Lyon Township zoning ordinance.

The courts have now precluded private funneling in both Lyon and Gerrish Township. Important legal precedence has been set by these two cases which can now be relied on to protect the interests of riparian owners on the entire lakeshore.

Jacobs Enforcement

For each of the lakefront subdivisions in Gerrish Township, and for the vast majority of lakefront subdivisions in Lyon Township, HLPOA has been very successful in obtaining Michigan Court of Appeals judgments defining the allowable uses of the roadends in the township subdivisions. Final decisions involving all of the cases in both townships were issued by the Court of Appeals in 2003. Despite the fact that these decisions were well publicized, a number of private individuals have decided that they will test the enforcement capabilities of HLPOA when it comes to these judgments.

These individuals ignored the rulings of the Court of Appeals and placed seasonal boat moorings at roadends throughout the summer of 2004. Every identifiable violator was sued by HLPOA in late 2004 and early 2005. The first series of these enforcement lawsuits was heard by Judge Thomas (Newago County Circuit Court acting by assignment) on March 4, 2005.

In a sternly issued opinion, Judge Thomas ruled that each of the individuals sued would have a judgment entered against them. Judge Thomas additionally ruled that if the defendants violated the terms of the judgment entered against them, he would hold them in contempt of court. Judge Thomas made it clear that stern penalties would be included in his contempt findings.

Judge Thomas also ruled that HLPOA was entitled to post signs at each of the adjudicated roadends to put the public on notice of the rules and regulations regarding roadend usage. Judge Thomas approved the language for the signs.

Judge Thomas overruled the objections of the Roscommon County Road Commission which sought to preclude the posting of the signs. The Roscommon County Road Commission was unable to explain to Judge Thomas why it opposed the posting of such signage. Judge Thomas made it clear that he retained exclusive authority to enforce the terms of the judgments including the posting of signage.

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.

The plaintiffs in the Sovereign Park case have argued that while their case is pending they should not be subjected to enforcement rules on roadend use. In essence they argued that their lawsuit immunizes them from complying with current court decisions. Judge Thomas has held to the contrary. In very straight forward terms, Judge Thomas has advised the plaintiffs in the Sovereign Park case that if they do not comply with the terms of the current Court of Appeals decisions they will be subjecting themselves to his contempt powers.

Conclusion

The success of HLPOA in its litigation activities has been very, very good. However, the legal wrangling is not over. HLPOA will be diligent and comprehensive in its efforts to protect the interests of Higgins Lake and its riparian members.

***HLPOA Annual Meeting - June 25, 2005
Gerrish-Higgins High School
8:30-11:30 a.m.***

◆
***Higgins Lake Foundation
Awareness Day & Raffle - August 6, 2005
MacMullan Conference Center
near North State Park***

We honor and remember

In memory of Gladys Chinn
Will and Judy Kerns
Art and Ann Schauer
Don and Joyce Smith

In memory of Mrs. Emma Correll
Rick and Anne Louise Meeks

In memory of Carl E. Seitz
Serafin and Micha Nieves

In honor of James Hirshfeld for 80+ years of
environmental stewardship of Higgins Lake

In honor of the wedding of Karen Louise Lynch
and Jason Evan Trautz, March 15, 2005
Bill and Jane Case



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Applicants sought for greenbelt projects

by Darcia Little

Many water quality protection activities have taken place in the Higgins Lake Watershed this past year. As part of the Higgins Lake Watershed Implementation and Education Grant received through the EPA Section 319 Program, Huron Pines Resource Conservation & Development Council (RC&D) has hosted a planning and zoning workshop for local officials, conducted an information survey of riparian property owners, completed a mailing of water quality protection materials to over 1,000 property owners and developed water quality protection packets which are being distributed to new riparian property owners by our local real estate agencies.

An exciting component of the project is the greenbelt design and implementation that will take place this fall. A greenbelt is a strip of native vegetation along the shoreline and is typically a mix of grasses, shrubs, trees and flowers.

Benefits of a shoreline greenbelt include filtering sediment and other pollutants, reducing erosion, controlling runoff, reducing lawn maintenance costs, providing privacy and aesthetic benefits, deterring geese and establishing corridors for wildlife.

During 2005, Huron Pines is offering assistance to property owners interested in restoration of natural greenbelts along the shoreline of Higgins Lake. Up to 10 sites will be chosen, with design work and planting to be completed this fall. Huron Pines is seeking application sites from landowners. There will be a 50% cost-share for this project and a commitment to caring for the plants. Due to the limited number of sites able to be completed in one year and the amount of homes on Higgins Lake, it is expected that site selection will be a very competitive process.

If you are interested in the restoration of a natural greenbelt on your property, please contact Huron Pines for an application at (989) 348-9319.

Shoreline Naturalization Workshop

by Vicki Springstead

Have you dreamed of having a yard of colorful flowers, ground-covers and shrubs where you can enjoy nature's own theater of birds and butterflies? Learn how to create a yard that is beautiful, low maintenance and a contribution to the health of the pristine water of Higgins Lake. Robert Karner, a lake biologist, will conduct the workshop. Robert has helped many residents in the Glen Lake Association design their dream shorelines.

Register by email: vlspringstead@cs.com or by phone (989) 821-5950.

Please leave your name and phone number.

GRAND PRIZE - when you register, your name will be put in a drawing for a look at a digital shoreline naturalization plan for your home. SURPRISE DOOR PRIZES, TOO. Register now to reserve your seat.

Shoreline Naturalization Workshop

Gerrish Township Hall

Friday, July 29th 7:00 p.m. -9:00 p.m. It's Free!