



A publication of the Higgins Lake Property Owners' Association

Fall, 2006

President's Message

by Pat Springstead, HLPOA President

I hope that all our members enjoyed another superb summer at beautiful Higgins Lake. It is our goal to keep this spectacular natural resource as pristine as possible. I am happy to report that it was a much quieter summer for our members who live adjacent to adjudicated road ends. This was the first summer with no hoists or boats at these road ends. It seemed to encourage the people who live off the lake to come down and swim and enjoy the lake without the worry of private dock associations. Also to our surprise the Department of Environmental Quality decided to give notice of violation to the non-adjudicated roads for operating as marinas without a permit. It has taken a long time to get to this point, and I would like to thank our members for their financial and moral support through many trying and frustrating years.

On the legal side, our attorneys, Bill Carey and Rich Jaskowski, have had a very successful year representing us from the Circuit Court all the way to the Supreme Court. Later in the newsletter they will update you on these cases and other cases that affect the lake.

As usual, we have been exceedingly busy on the environmental issues which impact the lake. Marv Bolton and his crew of scuba divers and deck hands have been cleaning and moving the benthic barriers to eradicate the Eurasian water milfoil. Marv has done a marvelous job since assuming the responsibility from Rick Meeks. We continue to do our deep water testing in conjunction with the Michigan Lakes and Streams Association. There are many other environmental projects we are working on, and Rick Meeks will fill you in on them in his column.

A high priority of our board has been to improve our relationship with the different public officials in the Roscommon County area. Herb Weatherly has been in charge of making sure that all the public meetings are attended by a board member to keep us well informed. Even though the township officials do not always agree with our positions, we have managed to establish an open

door policy allowing them to listen to our side of the issue. I am very happy to report that our relationship with the Roscommon County Road Commission is greatly improved. Instead of meeting them in court, we are first sitting down and trying to find some common ground. I believe that this is a major accomplishment that we will try to build upon.

I am also pleased to report that our financial position is very strong. I would like to thank all our members who paid their dues and so generously contributed to our legal, general and community funds. I would like to encourage anyone who has forgotten to pay their dues to pay them now for the health of your lake. Stan Cooke has continued to monitor our funds and make sure that we remain financially stable.

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FYI:

House Bill 6418 has been introduced in the legislature as an attempt to circumvent the *Jacobs* decision by the Michigan Supreme Court. There may be some activity on this bill in the lame duck session after the election.

Please check the HLPOA website (www.hlpoa.org) once a week to learn of any updates. Also, call the HLPOA office (989-275-9181) to give us your e mail address so we can notify you of recent developments.

President's Message

(Continued from page 1)

Pam Mills worked very hard to get our database ready for our new directory. The directory you received recently is the first one that we have published since 2003. I hope that you like the new format and the expanded information. I would like to take this moment to express the board's and our members' appreciation for the unbelievable hard work that Laurie Tudor put into making this directory something we can all be proud of. She and Pam both spent months taking it from infancy to the beautiful final product you received.

Now that this busy summer is over, we can concentrate our efforts on getting our new office in shape. A conference table and chairs have been donated so that we have a place to hold our meetings without having to inconvenience our board members by using their homes. Pam Mills will fill you in on the other office activities later in the newsletter.

Gerrish Township continues to seek approval for their marina project. We will monitor it and push them to pass an ordinance that will make them responsible for enforcing the *Jacobs'* ruling at the road ends in Gerrish Township. We continue to work to pass HB 4576 (H3) and make sure that legislation is not passed that would be a detriment to our riparian interests. It is of the utmost importance that you check our website each week for important legal and legislative news: www.hlpoa.org. It is our way to keep you informed and let you know if you need to contact your legislator to protect your riparian rights.

Laurie Tudor continues to work within the community to help the less fortunate people who live in the Higgins Lake area. We have donated to Roscommon High School's Project Graduation and are about to become involved with the Gerrish Township Shop With A Cop Program. This project is for children who will not have Christmas due to changes in their family situations, whether it be loss of a job, a death in the family, divorce or other changes. We encourage our members who have suggestions regarding community needs to contact Pam Mills at our office. Please read the rest of the newsletter for more details on our activities.

I hope everyone has a wonderful winter and enjoys the holidays. Your board will be diligent in protecting Higgins Lake and your riparian rights while you are away.

Thank you very much,

Pat Sprunstad

Office Central

by Pam Mills, Administrative Assistant

Is it time for another newsletter already? Where does the time go? The HLPOA office has been a busy place. When the Board decided to create a member directory in house, we needed to do some record "housekeeping." I spent several weeks updating the mailing address database, creating a business owners' database and generally getting the paperwork in order so that Laurie Tudor could work her magic to produce, what I think, is an extremely professional and informative directory. Kudos to you, Laurie.

Now that the summer projects are behind us, it is time to begin planning for the fall. One of the first tasks I hope to finalize is getting the office furniture in place. Thanks to so many generous members, we should have professional looking offices soon. Since the HLPOA established a central office for records, I will be diligently working on organizing those records and creating more database tables for future mailings and resource information. I enjoy learning new things, so I am planning to take a computer workshop this fall.

This past summer presented opportunities to meet and talk with many of the members through the annual meeting and calls or visits to the office. I've had some wonderful conversations with HLPOA members. Thanks for taking the time to introduce yourselves. I'm in the office most generally from 10:00 a.m. to 3:00 p.m. Monday through Friday, so if you have a need, call or drop by.

I'd also like to take this opportunity to thank ALL of my wonderful bosses—the HLPOA board members—for their support and encouragement to me and for all the work and hours they spend taking care of your lake.



Pam Mills busy preparing the new directories for mailing.

Lyon Township's new Zoning Ordinance addresses shoreline development, funneling

by Kathryn Bangs, Secretary

After several years of work by the Lyon Township Planning Commission, the completely new zoning ordinance was adopted by the Township Board on January 18, 2006, and put into effect on February 28, 2006. There are two items of particular interest to lakefront property owners.

The first provision addresses a newly formed Shoreline Protection Overlay (Article IV). This shoreline protection area extends five-hundred (500) feet from the lake's ordinary high water mark and applies to all future subdivision plats, land divisions and new construction or renovation. The overlay applies to all zoning districts which border the Higgins Lake shoreline. The primary purpose of this provision is to "provide the most desirable residential areas while preserving the existing quality of Higgins Lake."

Objectives address the following: excessive structural encroachments on the water, encouraging greenbelts along waterfronts, protecting the natural environment of the lake for wildlife habitat purposes, and promotion of the general welfare of Higgins Lake. Development standards include: provisions for greenbelts, high groundwater construction limits, sanitary waste systems, subsoil drainage, earth changes, stairs and steps on embankments, seawalls, the use of concrete or impervious surface pavements within 25 feet of the shoreline and detached uncovered decks or patios. The Township Building Inspector/Zoning Administrator should be contacted to answer any specific questions you may have.

Article XIII- Special Provisions - addresses Keyhole Development (Funneling)-Section 1316. The intent of this Section is to prevent the overuse and misuse of water resources, particularly by boating traffic and similar impacts of inland waters and to protect the quality of inland waters by limiting uses of the water that tend to pollute them. With the implementation of this Zoning Ordinance, funneling is prohibited with the exception of a marina in a commercial district. Section 1316.4. reads: "The following is specifically prohibited: selling, leasing, assigning or otherwise conveying dock rights or riparian rights to third parties whose property does not front on the lake, river or stream, with the exception of a marina in a commercial district." Section 1316.3. reads: "Nothing in this Section shall be construed as depriving any riparian owner of any natural body of water or waterway of any riparian rights."



Bill and Jane Case holding their richly deserved Friends of Higgins Lake award.



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Water Lines is published by the
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P.O. Box 55, Roscommon, MI 48653.

*Dedicated to preserving the quality
and beauty of Higgins Lake.*

Visit HLPOA online at
www.hlpoa.org

Higgins Lake Property Owners' Association Board of Directors

President	Pat Springstead
Vice President	Rick Meeks
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Environmental Committee

by Rick Meeks, Chair

Phosphorous and its sources

Many of the projects the HLPOA is involved with, and many of the best management practices we encourage, are motivated by a desire to reduce the amount of phosphorus entering the lake. Phosphorus contributes to plant growth in Higgins Lake. Increased phosphorus means more weeds. More weeds mean more ducks and more dead vegetation lying in the bottom of the lake decomposing, using the oxygen fish need to survive. Too much phosphorus will eventually irrevocably change the composition of the lake.

This is why phosphorus was removed from laundry detergent in the 1970's and why we should attempt to use low or no phosphorus dishwasher detergent. This is why the HLPOA urges the use of no phosphorus fertilizer -- or preferably no fertilizer -- on near-shore properties. It is also why we encourage the timely pumping of septic tanks and why we work with the county commissioners in an effort to maintain legal lake levels to prevent erosion of phosphorus-rich shoreline soil and protect green belt areas.

Lake levels, the gage and the dam

The water level can be read on your computer through a link from the HLPOA website (www.hlpoa.org). The water level gage was installed in 1978 and is maintained and calibrated monthly by the United States Geologic Survey (USGS). As we go to press, the water is returning to its historic level. As many of you no doubt noticed, the water level dropped below legal level during the latter part of August. On our 9,600 acre lake with over 20 miles of shoreline, the level can only be influenced, not controlled, by a 40' wide dam.

The amount of rainfall (not just that which falls into the lake but also the water that continues to drain into the lake from the watershed long after the rain has stopped) or hot, dry, windy, high evaporation days have much more impact on lake levels than the operation of the dam. Successfully maintaining the legal level by anticipating and reacting, but not overreacting, to some of our severe summer weather conditions requires an experienced hand. County Commissioner Larry Mead, who manages our dam, is to be commended for his success in maintaining the legal level through most of the summer. But bad luck can undo even the best efforts, so when zebra mussels got into the gage apparatus and the gage started sending erroneous information, we lost our ability to properly influence the lake level. Our apologies to all who experienced difficulties in removing their boats from their hoists.

The county commissioners did vote in their September 14, 2006 meeting to make \$69,000 worth of improvements to the dam. HLPOA has been encouraging the commissioners to make these improvements in the hope



Bob Anderson, volunteer water quality tester, records data on Higgins lake.

that it will make for more accurate and timely control of the lake level.

Milfoil treatment and water quality testing

Rather than simply rolling up the 15'x15' Eurasian water milfoil barriers at one underwater site (after a minimum of 60 days) and then moving them to a new site, this summer the decision was made to take on the arduous task of completely removing six panels from the lake for cleaning and inspection. Four of these panels were returned to the lake making a total of 19 panels on the bottom working to snuff out the milfoil. We continue to be pleased with the lack of regrowth in places where the panels were removed even three years ago.

The water quality testing is now complete, and all the samples have been turned in for the 2006 season. The sampling begins around the third week of April and continues into the middle of September. Some of our Secchi disk readings for water clarity were not as deep as last year. This could have been caused by a number of factors including testing on less than perfect sunny and calm days or excess pollen in the water. We have been cautioned not to conclude a negative trend based on a one- or even two-year result.

The HLPOA again wishes to thank all of the volunteers for their time, the use of their boats, their energy and enthusiasm. These are labor intensive projects which are made possible only through their efforts.

**HIGGINS LAKE PROPERTY OWNERS'
ASSOCIATION
ANNUAL MEETING – JULY 15, 2006
Roscommon High School**

The Annual Meeting of the HLPOA was attended by 147 registered members and guests. The meeting was called to order by President, Pat Springstead, at 9:10 a.m. The Board was introduced as follows: Pat Springstead-President, Ed Trautz, Brad Gibson-Vice-President, Stan Cooke-Treasurer, Bill Case, Herb Weatherly, George Scofes, Kathryn Bangs-Secretary, Marvin Bolton, Laurie Smith Tudor and Rick Meeks. Sue Balger was absent. Ken Dennings, Chair of the Higgins Lake Foundation, and Pam Mills, Administrative Assistant, were also introduced.

Pat asked for approval of the 2005 Annual Meeting Minutes. A motion was made, seconded and carried.

Election of Directors: Brad Gibson reported from the Nominating Committee that the three-year terms of Pat Springstead, Rick Meeks and Brad Gibson end this year. A twelfth Director, Bill Case, was approved by the Board in November, 2005, with his term ending in 2008. Pat Springstead called for additional nominations from the floor and there were none. A motion was made and seconded to approve the appointment of Bill Case with his term to end in 2008 and the re-election of Pat Springstead, Rick Meeks and Brad Gibson for another three year term, ending in 2009. The motion carried.

Treasurer's Report: Stan Cooke presented the 2005 Financial Report and 2006 YTD Report. The income for 2005 was \$88,604, which was 162% above budget. Total expense was \$88,370, which was also above budget. Net income for 2005 was \$233. Extraordinary expenses included legal and lobbyist fees but were covered by generous legal and other contributions from the members. There were 778 members at the end of 2005. For 2006, YTD income through June is \$64,227. YTD expense is \$33,877. Both legal contributions and expense are above budget, and there is no lobbyist expense so far this year. Membership is currently at 660. Stan asked for a motion to accept the financial reports as presented. Motion was made, seconded and carried.

Audit Committee Report: Rick Meeks reported that the Audit Committee reviewed the Treasurer's books and found everything to be in order. Rick and Pat complimented Stan for the ease of examination because of the accurate and understandable system he has created.

By-Laws Revisions: Kathryn Bangs referred to the June letter that was sent to the membership which detailed the

By-Laws' revisions. She noted that an indemnification section had been added to both the Articles of Incorporation and the By-Laws, to provide protection from personal liability and claims brought against the Association. The language conforms to the standards set forth for non-profit corporations in Michigan and was developed by our legal counsel. The other changes to the By-Laws were editorial, deleting references to the executive secretary position. Kathryn then asked for a motion to approve the By-Laws as presented; motion was made, seconded and carried.

Environmental Committee and Public Relations: Pat Springstead remarked on the importance of these two committees, as they provide an avenue into the community for creating a positive image for the HLPOA and its valuable resources to the community.

Rick Meeks, Chair of the Environmental Committee, reported that water quality testing, which is overseen by the Department of Environmental Quality (DEQ), has produced some very positive results. Higgins Lake tested well for water clarity and chlorophyll but did not score well for phosphorus. This indicates that issues with the use of fertilizers containing phosphorus and sedimentary runoff must be addressed soon. With the increase in residences at the lake, the committee is concerned with the near shore conditions and is working with Huron Pines, individuals from the DNR and the townships on obtaining grants for near shore water testing. The Committee may be contacting lakefront property owners in the next year for permission to conduct water testing.

Rick reported that Marv Bolton has assumed oversight responsibility for Eurasian water milfoil panel placement and repair. There are weevils in the lake, and the Committee will be checking in the fall to see if the weevils have had an effect on the milfoil. Rick reported that the dam's water level control was successful during the winter. Attempts to maintain water level are being hampered by the narrow openings in the Cut River dam, which is operated by out-of-date technology. There is a plan to replace the current dam and update the technology. Herb Weatherly is overseeing the details for this project for funding and finalization. Committee members recently met with personnel from the DNR and State Parks and found them to be very receptive to the idea of establishing a boat wash station on a trial basis at the North State Park boat launch. Rick reported on a current boat wash in Lansing and its success. He then introduced Laurie Smith Tudor for the Public Relations report.

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Annual Meeting minutes 2006

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Laurie stated that the Public Relations Committee's responsibility was to educate and inform people and try to bring to the forefront environmental issues, such as water quality and green belting. The Public Relations Committee has also been charged with reaching out into the local community in support of local organizations and projects. They are planning to expand their fundraising efforts for environmental projects. HLPOA participated in the Conservation Expo at the CRAF Center. Laurie is responsible for the HLPOA website and its maintenance. The web address is www.hlpoa.org. She announced that the Member Directory has been proofed and is in the printing process. Distribution should take place within the next few weeks. Laurie reiterated the mission of HLPOA which is to "protect, preserve and enhance the quality of Higgins Lake and its surrounding watershed." Laurie acknowledged that this huge responsibility is undertaken by an extremely dedicated Board who work diligently to carry out this mission. The Public Relations Committee will continue to keep the membership informed about HLPOA activities and thanks the membership for their support.

HPAC Report: Pat thanked the membership for their generous financial support to the Political Action Committee. Pat introduced Brad Gibson, Chair of the HLPAC. Brad commented on the process of interviewing politicians, which brings issues to them and helps us understand their positions on issues related to HLPOA. Brad reported that there are no competitive State races for our area, so the PAC concentrated on local political positions. These include the County Commissioners (five districts in Roscommon County) and Road Commissioners. The PAC mailed letters and questionnaires to 13 candidates, receiving 9 responses and interviewing those who responded. The Committee decided not to be involved in the County Commissioner races for the primary election but will be involved in the general election. The PAC is endorsing Michael VanWormer for the Road Commission position. This recommendation will be confirmed to the membership in a mailing. Another mailing will be sent naming endorsed candidates for the November election with ample time for absentee voting.

Pat Springstead encouraged those who could to register to vote in this location due to the impact of a single vote here. The issue of voting locally in more than one location was raised by a Member. This would be a huge change to get through the legislature, but HLPOA will consult with our lobbyist.

Friends of Higgins Lake Award:

Ken Dennings presented a wonderful personal commentary and plaque to the recipients of this year's award, William and Jane Case, to honor their many years of selfless service to HLPOA for the betterment of Higgins Lake. Bill and Jane gave brief acceptance comments which were acknowledged by a standing ovation.

Higgins Lake Foundation Report:

Ken Dennings presented a brief update acknowledging changes in the Foundation with the retirement of Rob Morley, the recent retirement decision by Don Mick, and Ken's new position as Chair of the Foundation. The HLF continues its efforts to protect and preserve Higgins Lake and works closely with the HLPOA in this effort. They recently opened a new office in downtown Roscommon with office hours M-W-F from 9:30 a.m. to 2:30 p.m. He announced that the Foundation's Annual Raffle Party and Awareness Day will be held on August 5th at the MacMullan Conference Center. Donations received by the HLF provide funding for various environmental projects throughout the year. In the past, some of these included the purchase of barrier material for the Eurasian water milfoil project; the County Sheriff received a patrol boat; construction of a bridge over the Big Creek; a grant to support the wastewater initiative at Camp Curnalia; and a grant was given to Gerrish/Lyon Townships in addition to matching federal funds to study water quality. Initiatives for the coming year include visual recognition by the placement of flags at the residence of property owners who have environmentally improved their lakeshores, and the establishment of conservation easements on vacant land parcels located within the watershed. This effort will be chaired by Bob Frye. Ken encouraged the members to attend Awareness Day and the Raffle Party to support the Foundation in their continued efforts to protect and preserve Higgins Lake.

Legislative Report:

Pat Springstead reported that the HLPOA has been pursuing the passing of House Bill 4576 H-3 in Lansing for the past three years. The HLPOA obtained a new lobbyist, Public Affairs Associates (PAA). The Michigan Waterfront Alliance has retained the services of Scofes Consulting as their lobbyist. Pat has spent countless hours in Lansing reinforcing that this issue is important to the HLPOA and will be pursued until the bill is passed. He commented that much money had been spent on legal issues and for lobbyists, but it was money spent wisely as evidenced by improved conditions at the lake. He encouraged everyone to check the HLPOA website, www.hlpoa.org, regularly for updates.

Legal Report: Pat Springstead introduced Bill Carey and Rich Jaskowski and thanked them for their expertise and

success on behalf of HLPOA. Bill Carey began by reviewing current cases.

- 1) Lyon Township Ordinance #53 which allowed the township to issue permits for boats/hoists at road ends: The Circuit Court struck down this ordinance and held Lyon Township in contempt of court. Lyon Township appealed, and the Appellate Court ruled that the section in the ordinance allowing boats and hoists at road ends was illegal. Both the Circuit and Appellate Courts agreed that the Township had no legal merit for their position of local control of the lake bottomland. Since that time Lyon Township has passed a resolution to rescind Ordinance 53.
- 2) Sunseekers Funnel: Mr. Carey noted that there has been pressure from several arenas for lakefront use. We have been successful in stopping new funneling around the lake. Sunseekers, at Shoppenagon's Lodge in Lyon Township, is on appeal.
- 3) Sovereign Park: The plaintiffs are asking the judge to rewrite the plat in a manner that would allow various types of uses at the road ends to include boat mooring. Under the current plat language this would not be allowed. This case has been pending in the courts for the past two years. The plaintiffs also filed suit to disqualify Judge Baumgartner from hearing the case, and the Michigan Supreme Court has agreed to hear an appeal on this matter. Mr. Carey is confident that the Court will not allow deed language to change.
- 4) Almeda Beach: The use of Don M Blvd. as a park is still pending in the Circuit Court. No trial date has been assigned.
- 5) Other cases of interest include the Townline boat ramp which had been pending in the courts since Fall 2004. The early challenge to this ramp was not the ramp itself, but the proposed dredging that would take place; this issue was resolved. For the next year-and-a-half efforts were put toward setting up rules and regulations for use of the ramp. He reported that the issue is now resolved with a consent judgment signed by all parties; it is to be used as a simple drop-and-go launch site.

Rich Jaskowski began by reviewing important decisions made by both Judge Thomas and Judge Baumgartner which specifically enforced the *Jacobs*' ruling and, more recently, the 2003 case of *HLPOA vs. Gerrish*. The decision of the Court affirmed the application of the *Jacobs*' ruling to virtually every subdivision around Higgins Lake. Following that decision, HLPOA decided to commence enforcement action, particularly to those individuals who were parties to prior lawsuits but continued to moor boats

at various locations around Higgins Lake. As a result of this action, several show cause orders were issued by both Judges Thomas and Baumgartner requiring these individuals to appear in court and show cause as to why they should not be held in contempt of court for violating the court orders. HLPOA prevailed in these cases, and articles appeared in local newspapers informing the public of the actions taken. Sanctions and fines were imposed by the judges to discourage others from these actions.

Mr. Jaskowski reminded the membership of decisions made by Judge Thomas allowing the placement of signs advising allowable uses at road ends. This action caused resistance from backlotters and eventually the Road Commission. The Court of Appeals upheld HLPOA in their right to place signs to advise road use and also affirmed the language of Judge Thomas which prohibited overnight mooring of watercraft.

HLPOA faced opposition from backlotters who stated that the application of the *Jacobs*' ruling violated their Michigan constitutional rights which give townships and local road commissions authority over the road ends. The Court of Appeals rejected this argument in the Ordinance 53 case. Application for leave to appeal to the Supreme Court was denied, leaving no further rights of appeal with regard to this issue. There are some outstanding enforcement issues at road ends currently, and action will continue to be taken as necessary.

A question and answer period followed.

President's Remarks: Pat noted that the HLPOA's strategic plan, goals and objectives that were created over a year ago were either implemented or are currently in progress, thanks to the HLPOA Board. In response to a question, Pat commented the proposed Gerrish Township Marina plan has been submitted to the DEQ and the HLPOA was not asked to take a position on the project. Swimmers' itch is a continuing problem; there is no easy solution. Handouts for prevention and treatment were available at the HLPOA booth.

Adjournment: Pat asked for a motion for adjournment at 11:05 a.m.; a motion was made, seconded and carried.

Respectfully submitted,
Pam Mills
Administrative Assistant



HLPOA Legal Update

by William L. Carey & Richard J. Jaskowski
Counsel to HLPOA

The HLPOA has been active in legal 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 the 3rd quarter of 2006.

Lyon Township Ordinance 53:

In 2004, the Lyon Township Board of Trustees enacted Ordinance 53. The ordinance, in pertinent part, allowed seasonal boat mooring at roadends if certain conditions were met. 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.

Ordinance 53 was found to be illegal and was struck down. The court also found that the Lyon Township lawsuit lacked legal merit. Accordingly the court sanctioned Lyon Township for filing a frivolous lawsuit. The trial court held the Lyon Township Board of Trustees in contempt of court.

An appeal regarding Ordinance 53 and the finding of contempt is complete. The Court of Appeals affirmed the trial court. Ordinance 53 has now been rescinded by Lyon Township.

Sunseekers Funnel:

HLPOA has been involved in a proceeding which is commonly referred to as the Sunseekers funnel. In Lyon Township (Shoppenagon's 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.

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 Sunseekers' decision is now under appeal with the Michigan Court of Appeals.

Jacobs Enforcement:

For months, Defendant John Schrek had avoided being served papers for violating the court order regarding mooring boats and installing hoists at road ends. The Circuit Court, upon motion of HLPOA's counsel, allowed HLPOA to serve this Defendant through publication in the local newspaper. Pursuant to the afore-referenced service, a Consent Order of Contempt was entered by the Court on July 17, 2006, requiring the Defendant to pay fines and costs (which he has paid), and further ordering the Defendant to serve 30 days in jail, held in abeyance, pending the Defendant's future compliance with the Judgment of the Court.

As noted in the prior newsletter, late last year, the Michigan Court of Appeals affirmed the enforcement Judgment issued by Judge Terrance Thomas (of Newaygo county) sitting in Roscommon County. Subsequent to issuance of the Court of Appeals decision, two separate applications for leave to appeal to the Michigan Supreme Court were filed in December of 2005 by Defendants in the above action who sought to overturn the decision of the Michigan Court of Appeals. Briefs in opposition to the applications were prepared and filed by counsel on behalf of HLPOA. On May 30, 2006, and on July 31, 2006, Orders were entered by the Michigan Supreme Court denying the defendants applications for leave to appeal in both of the above matters, concluding the opportunities of the Defendants to appeal Judge Thomas' ruling.

An appeal remains pending in the Michigan Court of Appeals concerning Judge Baumgartner's enforcement Judgment of October, 2005. The appeal was temporarily stayed pending the decision of the Michigan Supreme Court concerning the Defendants' applications for leave in Judge Thomas' actions. The rationale behind the stay was that the decision of the Michigan Supreme Court would be directly relevant to the Court of Appeals decision concerning the pending appeal. With the recent issuance of the Orders denying Defendants' application to the Michigan Supreme Court, the stay in the Court of Appeals has been lifted, and briefs in this matter will be filed in the near future.

Townline Road Boat Ramp

In the Fall of 2004, Lyon Township installed a boat ramp on Townline Road. Townline Road separates Gerrish and Lyon Township. The ramp is located on the south shore of Higgins Lake in the area of Lyon Manor.

After the installation of the boat ramp, two separate lawsuits were initiated by HLPOA and the homeowners'

associations of both subdivisions (Shoppenagon's Lodge and Huntington Shores) who are adjacent to the boat ramp. One lawsuit was filed as an administrative proceeding before the DEQ. The other lawsuit has been filed in the Roscommon County Circuit Court. The proceeding before the DEQ sought to eliminate a proposed channel dredge from the foot of the ramp to the water. As a result of the contested case petition being filed, Lyon Township amended its permit request to eliminate any and all dredging to the lake bottom. The Circuit Court case seeks to implement reasonable restrictions on the use of the ramp so that its use does not become a nuisance for the adjoining riparian property owners. The township, DEQ, the subdivision associations, and HLPOA have reached an agreement in this case which prohibits dredging, limits hours of use, and eliminates parking problems. HLPOA is pleased with the outcome.

Kelly Beach Boat Ramp

Like the Townline boat ramp matter referred to above, the DEQ issued a permit and a boat ramp has been installed at Kelly Beach in the Michigan Central Park First Addition Subdivision. While HLPOA and the First Addition homeowners' association do not oppose the installation of the ramp, legal proceedings have been instituted by those groups to ensure reasonable controls on use. Action has also been commenced to ensure that no dredging will occur relative to ramp usage. Finally, HLPOA and the homeowners' association seek to eliminate all boat mooring at that site.

A resolution of the Kelly Beach boat ramp matter is expected to be reached in 2006.

The following cases are of interest to HLPOA and its membership, but HLPOA is not a legal party to any of them.

Sovereign Park Plat Amendment:

A lawsuit seeking to change the dedication language of the plat of Sovereign Park is currently pending before Judge Michael Baumgartner in 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 Plaintiffs have challenged Judge Baumgartner's qualifications to consider this matter. They argue that he is biased in favor of the front lot owners. The Michigan Supreme Court ordered a review of the appellate decision

on August 21, 2006. This case will not move forward until Judge Baumgartner's position is decided.

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.

Almeda Beach/Don M. Boulevard

The Higgins Lake Civic Association has initiated a lawsuit against the lakefront property owners living adjacent to Don M. Boulevard. Don M. Boulevard is a lakeside boulevard located in the Plat of Almeda Beach Subdivision. Almeda Beach Subdivision is located just easterly of the Higgins Lake South State Park. In that case, the Higgins Lake Civic Association claims that the rights of its members to use Don M. Boulevard have been infringed upon by the lakefront property owners. The Civic Association claims various encroachments on the boulevard, along with the way the front lot owners are using the boulevard, preclude, or make difficult, easy access for the Civic Association members. The Civic Association, in its lawsuit, also claims that the front lot owners have, from time to time, harassed the Civic Association members for using Don M. Boulevard. Most importantly, the Civic Association, in its lawsuit, claims that the public has the right to picnic, lounge, sunbathe, and enter Higgins Lake from Don M. Boulevard.

The front lot owners sued in this litigation have answered the lawsuit. In that lawsuit, the front lot owners deny any acts of harassment or illegal encroachments. The front lot owners further note, in their defense of this lawsuit, that the boulevard is under the jurisdiction of the Roscommon County Road Commission. The Roscommon County Road Commission has not voiced any objection to the manner in which the front lot owners have used Don M. Boulevard. Finally, the front lot owners, collectively, deny that the public has a right to picnic, sunbathe, and lounge on Don M. Boulevard.

This matter is in the early stages of pretrial discovery. A trial date in this matter has not yet been set by the trial court.

Roscommon County Road Commission vs Steven Shy

In a recently filed action, the Roscommon County

Legal report

(Continued from page 9)

Road Commission has sued a front lot owner whose land is adjacent to Sam-O-Set Boulevard in Lyon Township. Sam-O-Set Boulevard is a developed roadway running along the lakeshore. Steven Shy, the lot owner who has been sued, is using the land between the developed roadway and the water's edge to maintain an historical lakeside deck and docking area. The Road Commission claims that it has the right to remove private structures all the way to the water's edge, despite the fact that it is not using that land to maintain Sam-O-Set Boulevard. The Defendant, Steven Shy, claims a lawful right to use any portion of the boulevard which is not being maintained by the Road Commission as a public way.

This matter is still in the late stages of pretrial discovery. A trial date is anticipated in late 2006.

Conclusion:

HLPOA and its homeowner association partners continue to work toward protection of the environmental quality of Higgins Lake. HLPOA and its subdivision partners also are working to ensure that all riparians on Higgins Lake enjoy their property and their associated riparian rights. HLPOA will be diligent and comprehensive in its efforts to protect the interest of Higgins Lake and its riparian members.

Respectfully submitted by:

William L. Carey and Richard J. Jaskowski
Legal Counsel for HLPOA

Thank You

The HLPOA gratefully acknowledges the following contributions:

*In memory of George Dinu
by Evelyn Dinu*

*In memory of George Dinu
by Pat & Vicki Springstead*

*In memory of Alexander Evseenko
(Kathryn Bangs' father)
by Pat & Vicki Springstead*

*In honor of Rob Morley for all he has done for HLPOA
by Pat & Vicki Springstead*

Political Action Committee update

As reported in our last mailing and at the Annual Meeting in July, your Political Action Committee met with several local candidates running for Roscommon County Commissioner and Road Commissioner. Earlier this summer the HLPAC endorsed incumbent Mike VanWormer for Road Commissioner, but he lost to Bill Ancel in the primary election.

We have met with and now endorse **Bill Ancel** for Road Commissioner. Bill is qualified for the position, as he previously served as Road Commissioner, and we believe he will be open to discuss various issues with our organization's leaders. The PAC also offers its support to **Larry Mead**, incumbent County Commissioner representing Gerrish and Higgins Townships, and to **Pam Stephan**, who is running for the Denton Township seat.

Once again we encourage all HLPOA members to vote at the lake whenever possible. You have a big investment here in Roscommon County, and your vote really can make a difference in the local elections. To vote on November 7th you must register to vote with your Township Clerk by October 10th. Go to the polls on November 7th or cast your vote by absentee ballot.

We continue to appreciate your support of these local candidates as well as your financial contributions. Our organization's political voice is being heard and is making a difference.

Shoreline erosion: Causes and solutions

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Why is my shoreline receding? What can I do to stop it? If you find yourself asking these questions, you may already be experiencing accelerated shoreline erosion. When this is the case, the next question you ask yourself should be, "How will my activities affect the lake?"

While erosion and deposition of sediment are important parts of the natural dynamic process of every lake, a shift in the balance between these two forces can spell trouble for riparian property owners. Over the years, Tip of the Mitt Watershed Council staff has noticed that serious erosion problems sometimes go unrecognized by shoreline property owners, resulting in shoreline habitat degradation, water quality problems or even loss of property and structures. This shift is typically brought on by historic or modern changes to the natural features of a lakeshore. Some examples include:

- Removal of native woody and herbaceous vegetation
- Extension of maintained turf lawn to the water's edge
- Installation of hard armoring, including concrete, wood, or metal breakwalls/bulkheads

If most or all of the woody vegetation along your



This type of shoreline, known as greenbelting, is the easiest to maintain and the best management practice for the lake and surrounding environment.

shoreline has been removed and replaced by turf grass, the shallow 4"-6" roots of the grass will not be strong enough or deep enough to defend your shoreline against wave and ice action.

Large concrete, wood, or metal structures on your shoreline will deflect energy away from the areas they protect, but will intensify erosion in adjacent areas.

Beach sanding is very detrimental to near-shore fish spawning habitat, and may bring outside chemical or biological contaminants into the lake system. If you think your shoreline may be affected by any of the aforementioned alterations, take a walk along your shoreline. Look for these signs of accelerated erosion:

- Pushed-up or “bermed” banks along the shoreline
- Bare soil (especially on steep or high banks)
- A noticeable recession of the shoreline
- Leaning or downed trees and/or exposed roots
- An area of discolored/brown water along your shoreline during periods of heavy rainfall or high winds
- Seasonal shoreline ice mounds covered with soil

Solutions to these problems do not have to be high-tech or costly. One way to build a beautiful, functional, low-cost and low-maintenance defense against accelerated shoreline erosion is through the designation of a no-mow, vegetated “greenbelt.” This can be accomplished most simply by establishing a strip of land next to your shoreline at least 15 feet in width that you no longer mow. By allowing the turf grass to grow taller and the area to fill in with other plants, you will build a deeper, more complex root system that will bind your soil in place.

If you were to augment this already-attractive grassy area with a few scattered dogwood or willow shrubs, you would have a healthy mix of plants that would protect your shoreline against the forces of erosion. After only one or two growing seasons, you might start to notice that the songbirds, butterflies, fish and other animals that first attracted you to the lake are enjoying your new greenbelt as much as you.

Your greenbelt will work “24-7” to protect your shoreline and improve water quality.

Note: Huron Pines recently completed a program which involved the greenbelting of five shorelines on Higgins Lake, one included the removal of a cement seawall. Financial assistance was provided by the MDEQ and matched with property owners’ contributions. The Higgins Lake Foundation promoted the program, and Higgins Lake Landscape provided professional services. Good news, many neighbors of those sites are joining the greenbelt effort. For more information on the Huron Pines Program go to www.huronpines.org



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Grandmothers, grandfathers, moms & dads, Think Summer '07!

The old saying, “can’t see the forest for the trees” may apply to an often overlooked treasure on the north shore of Higgins Lake. When you boat by what appears to be a dream picture of an ideal summer camp, blink again! Not a dream, Camp Westminster has been “changing lives since 1925.”

Though it is no secret, residents are often unaware that some weeks of day camps are offered at the camp as well as overnight camp stays featuring a variety of programs. If your child or grandchild has not had the opportunity to attend a camp, the day camp is a good way to introduce them to the enriching experience. Most “alumni campers” return again and again. Guided by loving counselors, campers enjoy a variety of activities, safe adventures and learn new skills. United with new friends who together choose swimming, canoeing, arts & crafts, archery, nature and more, each camper is a vital part of this Christian community at summer camp.

The calendar has turned the page to fall, but the early birds will soon be planning for next summer’s fun. Camp Westminster on Higgins Lake is a ministry of Westminster Church of Detroit, licensed by the State of Michigan and is A.C.A., (American Camp Association) accredited. For more information check out their web site www.campwestminster.com. Or ask your neighbors, many of them are camp alumni!

Supervisor Tatro, Lyon board move ahead with Camp Curnalia sewage project

Larry Fox of Capitol Consultants gave a presentation recently to the Lyon Township Board requesting final approval for the resolution of engineering design work for the Camp Curnalia (American Legion) sewage treatment facility. Fox also urged the board to proceed with an application for a \$353,530 grant. The township was not previously eligible for this grant; however, with the engineering resolution requirement completed, they may now submit the application. Larry Fox advised the board, “This is a no risk deal” and if approved, the funds will help lower the cost to Camp Curnalia residents. The board unanimously voted in favor of the final engineering resolution and the grant application.

Paul Tatro thanked the Higgins Lake Foundation for a \$39,500 grant that has kept the project alive while waiting for authorization of state funding. The HLPOA was instrumental in working with Lansing to obtain approval of the acreage donation for the facility.

Construction is expected to start in October 2007. This is the largest undertaking in township history, a giant step for the health of Higgins Lake and possible future expansion of improved waste systems around the lake.