

A HIGGINS LAKE PROPERTY OWNERS' ASSOCIATION PUBLICATION

water LINES

President's Message

By Pat Springstead, HLPOA President

It certainly was a beautiful July for all recreational activities on the lake, the warmest I can remember in many years. There was very little rain fall this summer which caused the lake to be lower than normal even though all the gates on the dam were closed all the way until October 12th. That confirms the dam actually has very little effect on the lake and Mother Nature has a lot!

I would like to thank everyone who attended the HLPOA annual meeting and made it the largest yet. We certainly appreciate your interest and support and hope we were able to answer all your questions. We hope those who were unable to attend will join us next year for updates about the lake and issues in the area that affect your quality of life at the lake.

Gerrish Township had a very serious issue in their assessor's office for the last several years. Their records, lack of field work and miscalculation of the economic condition factor (ECF) caused them to have their 2011 tax rolls taken over by the state. Their assessor failed a mini 14 point review and, as it turned out, had not been properly supervised for the last several years. This resulted in her resignation, and the Township has hired a new assessor, Brent Bosley. Unfortunately, action was not taken last December when the HLPOA discussed this situation with the Township; the delay resulted in additional expense and grief. Many of you appealed your property taxes to the Board of Review. It is our understanding

that the residents who have appealed to the State Tax Tribunal in the past have won overwhelmingly. This has been a very painful process for both the Township and tax payers of Gerrish Township. We can only hope that the Township takes this opportunity to fix their tax rolls to assure no recurrence takes place. Unfortunately, this issue has required a lot of time and effort which could have been applied to other projects of benefit to township residents.

The Spicer engineering report, requested by the Roscommon County Commissioners did not directly address the ability of the dam to regulate the lake level of Higgins Lake. It found the dam to be in good mechanical condition, but not actually able to regulate the lake in a consistent manner. Because of the lack of scientific data, we have partnered with the Michigan Department of Fisheries, Muskegon River Watershed Assembly, and Huron Pines to seek a \$100,000 HIA (Habitat Improvement Account) grant for a study of the lake encompassing environmental and recreational impact in the present and long term. The study would take two and a half years to complete with data supplied by University of Michigan and Michigan State University. Huron Pines would compile data from residents on the lake and local municipalities. The Higgins Lake Foundation has contributed \$15,000 toward the grant contingent on the final approval which is expected this month. This study will provide the most comprehensive scientific study done yet on the lake.

In the meantime, we are in the third year of a five-year, court approved trial period during

which the winter lake level has been lowered by an additional six inches. The purpose is to prevent ice damage to the lake shore during ice-out in the spring. Results are reported to the circuit court, and thus far results have been very good.

Swimmers itch was once again a problem affecting us all on Higgins Lake. We have encouraged the local municipalities to pass resolutions to the state to fund research with Michigan State University to find a solution to this vexing problem. We also lobbied the Department of Natural Resources to support this study. We have discussed with the state administration that this problem will have a negative impact on tourism in Northern Michigan if it is not addressed. I can assure you that this is a very high priority to us and our members.

South Higgins Lake State Park will be doing a total makeover of the entrance and launch area in 2012. The Higgins Lake Foundation will be funding a boat wash facility within the Park located conveniently near the launch area. This will give us the opportunity to lobby the DNR to use Higgins Lake as a pilot program mandating boat washing at State launch sites on Higgins Lake. With the rapid increase of invasive species, this is the best way to protect the lake from these threats.

(continued, pg. 2)

hlpac

With the Presidential election primaries just around the corner, it makes us think about how important our Political Action Committee is. This coming year has both statewide and local politicians up for election. Locally this includes county commissioners, all township officials, and some of the road commissioners. We have worked hard to have positive relationships with all of the public officials. We feel it is very important to be able to at least talk with every public official.

However, in spite of our efforts, there are some public officials who seem to have a bias against people who live on the lake. As we draw closer to the election next year, we will share our opinion of which candidates we believe deserve your vote.

Your vote matters! We have seen local elections won and lost by as few as two votes here at the lake. If you do not vote at the lake, please consider registering

here. Stop by your township hall to make the change.

We also interact with not only our senator and state representative but also statewide officials who are influential about environmental and lake issues. We make many trips to Lansing to meet with these officials to discuss issues that impact your quality of life at Higgins Lake.

In the last election cycle we supported all the important elected officials at the state level. Our support continues to give us the ability to at least have an audience to express our position on an issue, and we never expect more than that opportunity.

It is vital to have the funds to support the candidates who we think will be supportive of environmental and lake issues. This is imperative at both the local and state level and continues to be one of the most important things we can do as an organization. If you would like to help us with this cause, please fill out the form at the bottom of this page. This will help us preserve and protect Higgins Lake and your quality of life.

President's Message, continued from pg. 1

We now have a suction harvester machine that was purchased by the Higgins Lake Foundation to remove Eurasian water milfoil from the lake. You can read more about this in the milfoil report.

Did you know that Higgins Lake has the largest number of launch facilities of any inland lake in the state of Michigan? Even on July 4th weekend you can still launch your boat at one of three State launch facilities or at one of two local marinas. Expanded parking at the West launch site and the "drop and go" program have made legal lake access even more available. We are pleased to say that the vast majority of residents and visitors honor the lake access regulations at the road ends.

The HLPOA continues to be active with government and community groups to make the area a great place to live and visit. The better the local community, the better the quality of life for all.

Bill Carey and Rich Jaskowski continue to provide us with the highest quality of legal expertise regarding lake issues available in the state. Don't miss their legal report in this newsletter.

Our members have been extremely loyal and supportive during this most difficult of economic times. I would also like to thank the totally volunteer and uncompensated board members on the HLPOA team. We will be busy over the course of the winter representing you and protecting your interests and Higgins Lake.

Wishing you and your family a happy and healthy Holiday Season!



By Marv Bolton

Milfoil sucks!

More accurately I should say that we plan to suck the milfoil. The next surge in our ongoing war with milfoil is to pull it up and suck it out of the lake. This summer the Higgins Lake Foundation funded the purchase of suction harvesting equipment. It consists of a pontoon boat deck fitted with two powerful water pumps for sucking water out of the lake and an air compressor to supply air to workers in the lake. The boat is anchored near a patch of milfoil and the workers go into the water to pull up the milfoil plants. The water pumps, connected to flexible six inch tubes, suck up the manually harvested plant material. The water is discharged into mesh bags on deck which removes all of the plant material and the water returns to the lake.

This process has been used commercially in several lakes in Michigan and in other states. The boat was delivered to Higgins Lake in midsummer and volunteers had it out on the lake on two days to try it out and get experience with its operation. Everything on the boat worked as it should, and some planned improvements to the engine and flotation should make it even better next year.

The plan is to put this suction harvester into full time use next season. First we will need to get the appropriate permit from the Michigan DEQ. We expect the permit requirements to get reduced and streamlined over the next few months. If there is still a

requirement for public input meetings, we would like all of our members to express their support for the suction harvesting process.

It has the characteristics that I hope all of us want for Higgins Lake. It will allow us to control milfoil without the use of chemicals, will have a minimum impact on aquatic animals and can be done on a large enough scale to have a significant effect on the lake's milfoil infestation. Secondly, we will need to contract with a crew of about 5 or 6 people to operate the machine. There will be the need of a crew leader to plan, oversee and be responsible for the operation of the equipment and for crew members to work on deck and in the water. This should be an ideal summer job for college students, especially if they are studying in the marine ecology field. The funding for the operation and maintenance is hoped to be provided by grants from various interested organizations. It is estimated that it will take a little more than two seasons of full time operations to take care of most of the known milfoil sites in Higgins Lake.

Our benthic barriers will still have their place in our milfoil control program. This summer we concentrated on pulling up barriers so that they would be out of the way of our suction harvester operations next year. Our dependable and dedicated group of volunteer scuba divers and deck hands pulled up about 12 barriers during two work sessions. It was hard work because many of the barriers had

been down for two seasons and were covered with a layer of silt. This makes them very heavy and difficult to pull off the bottom. The barriers will still be used in the future to eradicate small (less than 30' square) patches of milfoil where the bottom is firm sand so that they can be securely fastened down.

There is always a need for more volunteers to contribute as organizers, scuba divers, boat captains, deck hands, or shore help. We have lots of barrier material which can be made available to members who would like to control any milfoil in their own local area of the lake.

Finally, anyone can assist in the milfoil control efforts by learning to recognize milfoil and by reporting any patches they may find. It is very helpful if you can supply the GPS latitude and longitude coordinates of the site, the approximate size, and water depth.

To volunteer or report milfoil sites, contact the HLPOA office by email at hlpoa0@gmail.com or by phone at 989-275-9181.

Higgins Lake Property Owner's Political Action Committee Contribution Form

Amount: \$50 Other \$ _____ Check # _____ Make checks payable to: HLPAC

Personal checks ONLY • NO corporate/business checks • Mail to: HLPAC, P.O. Box 341, Roscommon, MI 48653

Name _____

Address _____ City/State/Zip _____

Telephone _____ E-mail _____

Employer _____ Occupation _____

Business Address _____

This information is required by the State of Michigan

Legal Update

By William L. Carey, Counsel for HLPOA

As legal counsel for the HLPOA, the firm of Carey & Jaskowski continues to be involved in a variety of matters which directly or indirectly impact the riparian interests of all HLPOA members.

The following report summarizes various legal issues now pending with our firm.

Baum v Charlevoix County Road Commission

This very important litigation has now been decided by the Michigan Supreme Court. At issue in the Baum case was whether or not property owners whose land is separated from an inland lake by a public boulevard are considered to be riparian owners. Prior to the lower court decisions in the Baum case, it was considered well-settled law that lots situated adjacent to lakeside boulevards enjoyed exclusive riparian rights. The Charlevoix County Circuit Court and the Michigan Court of Appeals have ruled to the contrary in the Baum case. William Carey represented the Baum Trust in its appearance before the Michigan Supreme Court. A complete review of the court's decision appeared in the May, 2011 issue of the *Michigan Bar Journal*. The high court's decision awarded exclusive riparian privileges to the landowners.

Temporary/recreational Mooring

A problem that is evident at Higgins Lake, and many other inland lakes throughout the state, is the temporary anchorage of water craft for the purpose of socializing, sunbathing and other recreational pursuits. Typically this type of temporary anchorage involves large numbers of boaters located in a small area.

Currently the law in Michigan is less than clear on whether such activities are lawful when conducted on a riparian owner's bottomland, without the riparian owner's permission. The Michigan Supreme Court addressed this issue in the matter of Bott vs. The Commission of Natural Resources of the State of Michigan in a 1982 decision.

In Bott the Supreme Court observed riparian owners have the right to share the reasonable use of waters, but the rights of the public as an incident of the navigational servitude are not coextensive with the rights of riparian owners. This court has recognized fishing as an incident of the navigational servitude in inland lakes but has also held that hunting is not such a right. A member of the public has no right to anchor decoys for the purpose of attracting ducks on the bottomland of a private riparian. Such acts are not incident to navigation, and in doing them a member of the public is not exercising a license to navigate the waters of an inland lake. The public has a right to use the lake as a public highway, but every other beneficial use and enjoyment belongs to the owner of the riparian bottomland.

Fishing is a quiet sport. General boating and water recreation can, however, be intrusive and jarring. Based on Bott a reasonable legal argument can be made for a riparian to assert that temporary recreational mooring is a riparian trespass.

It is, however, far from clear as to how a circuit court would react to such a lawsuit. A case was pending in the 34th Circuit Court which was set to decide this issue. However, prior to trial the parties entered into a settlement thereby avoiding trial. The settlement barred the nontemporary mooring of boats within 100' of a private island owned by the Plaintiff in the case. William Carey represented the island owner.

Property Tax Assessments

After years of monitoring the inequities of the tax valuation process for lake front parcels, HLPOA and Attorney William Carey commenced a proactive challenge to the tax assessing process in 2011. In Gerrish Township 277 challenges were filed with the Board of Review.

In Lyon Township 55 Board of Review challenges were made. In Gerrish Township valuation reductions of more than \$11,000,000 were achieved. Important reductions were also obtained in Lyon Township. Prehearing reductions ranged from 11% to 47%. In

addition to Board of Review challenges, a review of the competency of the Gerrish Township Assessor's office was undertaken at the urging of HLPOA and others. Ultimately the State Tax Commission (STC) concluded that the Assessor's office was substantially deficient in its performance.

The STC has taken over the tax rolls in Gerrish Township for 2011. The assessor is no longer employed by the township. Further review of the assessed values of Higgins Lake properties will continue in 2012.

Sheridan Drive

Sheridan Drive Association's Motion for Summary Disposition was heard before the Roscommon County Circuit Court on July 27, 2011, and was granted by the Court. As a result, other than the eight foot traveled portion of Sheridan Drive (which will remain a public road) the balance of platted Sheridan Drive will be vacated, and an Amended Judgment, as well as an Amended Plat will be filed within the next few months. The Amended Judgment and Amended Plat will confirm that those parcels adjacent to the eight foot traveled portion of Sheridan Drive own the upland portion of land on the opposite side of the road to the water's edge and have subaqueous ownership of the bottomland of Higgins Lake, consistent with other riparian owners.

While restrictions were previously placed upon the ability of the public to utilize Sheridan Drive, which prohibited the public from using the untraveled portion of Sheridan Drive, the aforementioned decision clearly confirms that the untraveled portion of Sheridan Drive is private property belonging to the lots adjacent to Sheridan Drive.

Conclusion:

Carey & Jaskowski as counsel for HLPOA will continue to work diligently toward the resolution of the matters reported above and protect the interests of Higgins Lake and its riparian members.

Respectfully submitted by William L. Carey, Legal Counsel for HLPOA, September, 2011

Office Central

By Noreen Osborn, Administrative Assistant

Another busy year is coming to an end with 2012 right around the corner and that means a new Member Directory will be printed next Spring.

In order to have the most current information in the new directory, please let the office know of any changes in your contact information: mailing address, email and telephone number(s).

*A dues envelope is not included with this newsletter – one will be sent with our Winter Letter later this year or early 2012.

You may reach me through the following contact information:

Office Hours: Monday thru Friday, 9am to 4pm

Mailing Address: P. O. Box 55, Roscommon, MI 48653

Office Location: 207 Terrace Drive, Roscommon

Phone: (989) 275-9181

Fax: (989) 275-9182

Email: hlpoa0@gmail.com

"Happy Holidays" to everyone! Have a safe and enjoyable winter, wherever you will be spending it.



Fourth graders from Roscommon Area Public Schools arrive at the MacMullan Center for the annual Lake Saver Day last May.



Rick Meeks, Environmental Chair of the HLPOA, discusses water testing equipment with students at Lake Saver Day.



Laurie Smith-Tudor accepts the Friend of Higgins Lake award from Rick Meeks at the HLPOA annual meeting. Laurie has served the HLPOA and its members as the recording secretary, member of the Environmental Committee, chair of the PR Committee, newsletter editor, membership directory publisher and office operations liaison to name but a few of roles she filled. In addition to these activities, she led the campaign to acquire sonar equipment for the Roscommon County Sheriff's Dive team where she served as a volunteer citizen diver. As a certified diver, she also assisted in the milfoil barrier project and generously volunteered her time and use of her boat for numerous water testing excursions. Laurie also brought an increased level of involvement in community organizations to the HLPOA. Her contributions are missed. We are all fortunate to have had such a good Friend of Higgins Lake. We wish her well and look forward to her continued involvement with the organization.

2011 Memorial Donations

The HLPOA gratefully acknowledges the following memorial donations:

In Memory of Howard Buhl
Lynn Buhl

In Memory of Jim King
Steve & Dorothy Bakita

In Memory of Mollie Little
Patricia Emmenecker

In Memory of Fred Mills
Tom & Alice Ellis, Bruce Enyart,
The McCue Family,
Robert & Christina Fonger,
Ray & Phyllis Mills,
Vern & Janice Smith,
Carol Williams

Higgins Lake Property Owners' Association Board of Directors

President: Pat Springstead
Vice President: Rick Meeks
Secretary: Mary Jane Hartman
Treasurer: Marvin Bolton
Administrative Assistant:
Noreen Osborn

Directors:
Kathryn Bangs, Bob Blamer,
William Case, Stan Cooke,
Don Correll, Tom Kizer, Herb
Weatherly, Edward Trautz
(Member Emeritus)

Legal Counsel:
William Carey, Rich Jaskowski

Environmental Report

By Rick Meeks

Winter Water Level

By state law if a lake has a water level control device (a dam) a legal water level is set by the circuit court. Also, by state law the size, shape and type of dam is controlled by the state Department of Environmental Quality (DEQ). Once a dam is constructed and a legal water level is set, by state law it is the responsibility of the county board of commissioners, or their designee, to maintain the legal level.

In 2009 the Roscommon County Circuit Court issued an order to change the legal winter water level for Higgins Lake from 6" below the legal summer water level to 9" below the summer level for five years. The legal summer water level remained unchanged from the level that was originally set in 1926.

A different legal level for the winter months was first established in 1982. The change was made to lessen the shoreline erosion caused by high waves from fall and early winter storms and from movement of the ice once it formed.

The additional 3" drop is an attempt to increase the protection the lake receives from having a lower legal winter level. In other lakes which have a lower legal winter level, property owners have seen their beaches return as the ice pushes the sand bars back where they came from. The 2009 court order allows for a five-year study of the effects of a lower winter water level on shoreline erosion.

As per the 2009 court order, public comments regarding the new legal winter level were taken from August 1 through October 1, 2011. The Court will review those comments during its November, 2011 term.

Summer Water Level

This summer gave us another lesson in how

little control we really have of the water level of our 10,000 acre lake. In the past we have seen a two inch rain event bring the water level up two inches immediately even with the dam fully open. The level would continue to rise for a day as the watershed drained into the lake even with the dam fully open. The water level would not return to its pre-storm level for ten to fourteen days, even with the dam fully open.

We experienced the opposite this year as the water level dropped all summer long even though the dam was fully closed. The National Weather Service climate records show above average temperatures and below average precipitation for the five months of May through September with the only deviation being a 0.05 inches precipitation above average for the month of July. With the exception of eight days in June when a portion of the dam was opened due to a multiple day rain event, the dam has been closed all summer. This year the dam was even left fully closed through the month of September. Even with the dam fully closed, the result was a steady drop in the water level from 5.33 on June 1st to 4.98 on August 31st, a drop of over four inches.

A dry season like this may necessitate the relocation of some boat hoists. The water level is tracked by gauges installed and maintained by the United States Geological Survey (USGS). The USGS information can be accessed via a link from the HLPOA website. Members should be aware of the hazards of low water levels during dry summers. Water levels should be monitored on the USGS site and necessary modifications should be made to mitigate these problems.

Water Testing

The windows of opportunity for acceptable weather for water testing are small. Weather assessments and decisions on whether to test are made in tight time frames. Last year's wet, windy weather allowed us to complete only five of the usual eight tests. This summer's warm, dry weather was an asset to water

testing. This year we completed all eight tests with a few trips made on sunny, flat days in almost unbelievably perfect testing conditions. The conditions no doubt contributed to our best water clarity test yet with a secchi disk reading to a depth of 57'.

Boat Wash

Our experience in participating in a public/private partnership with the DNR to provide boat washing opportunities at both the North and South state parks has encouraged other lake associations to explore the idea of having boat washes available at the public launch sites on their lakes. We are being asked to share our experiences with the building and operation of our boat wash with some of these groups.

In April, assisted by Anne Meeks, representing the Higgins Lake Foundation, we made a presentation at a work shop in Leelanau County on boat washing ideas and opportunities. The work shop was organized by Sara and Mike Litch. The Litches have been involved with operating a boat wash on Glenn Lake for over a dozen years.

In September, with the assistance of Vicki Springstead, representing the Higgins Lake Foundation, we lead a group visiting Higgins Lake from Paradise Lake on a tour of the North Park boat wash, the site of the future South Park boat wash and a side trip to see our new Eurasian Water Milfoil suction harvester. Kira Davis, from the environmental services office of the Little Traverse Bay Bands of Odawa Indians, had secured a grant for the construction of a boat wash on Paradise Lake. They hope to have their boat wash up and running by next summer.

It is a pleasure to associate with so many people who are fighting the introduction of invasive species into our inland lakes.



HLPOA board members Marv Bolton and Don Correll at the Michigan Lake & Stream Associations conference last spring.



Board member Mary Jane Hartman represented the HLPOA at the Roscommon Business Expo.

Legislative Report

Earlier we discussed the need for our Political Action Committee to support both local and state officials. This has allowed us to go to Lansing and lobby for things that are very important to Higgins Lake. These issues have included swimmers itch, mandatory boat wash pilot program at Higgins Lake and the need for septic inspections within the watershed.

As a very respected lake organization we are able to lobby senators and representatives about environmental issues that affect inland lakes in Michigan. In the past we have been able to influence the outcome of legislation that would have a negative impact on our lake. This has been possible because we have spent numerous hours in Lansing for many years proving to the legislature that we are passionate, honest and reliable in our support of Higgins Lake and the legal and environmental decisions that impact the lake and your riparian rights.

Presently we are actively working to codify the Jacobs lake access law that we have litigated at Higgins Lake to be applicable state wide regarding lake access at road ends. This would allow any police officer to issue a ticket for overnight mooring. We would hope that when someone would be informed of the violation that they would comply without the need for a ticket to be issued. However, if there is non-compliance, a law enforcement officer could issue a ticket just like a speeding ticket on the expressway. We will keep you informed on our progress on this very important issue that impacts our lake and all inland lakes in Michigan. We have the support of all the large lakes in Northern Michigan on this issue.

If you would like to support our legal and lobbying efforts, please fill out the attached form at the bottom of this page. Thank you for your past and present support.

Higgins Lake Property Owner's Lobbying & Legal Contribution Form

Amount: \$25 \$50 \$100 Other \$ _____

Make checks payable to: HLPOA • Mail to: HLPOA, P.O. Box 55, Roscommon, MI 48653

Name _____

Address _____ City/State/Zip _____

Telephone _____ E-mail _____

Our Mission:

To Protect, Preserve, and Enhance the
Quality of Higgins Lake and its Surrounding Watershed.

P. O. Box 55 • Roscommon, MI 48653
Office Location: 207 Terrace Drive • Roscommon
989-275-9181 • Fax: 989-275-9182
hlpoa0@gmail.com • www.hlpoa.org

Save the Date:

The HLPOA Annual Meeting is scheduled for July 21, 2012 at the CRAF Center



HLPOA
P.O. Box 55
Roscommon, MI 48653-0055

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

Address Service
Requested