

HB 4463 and HB 4464 Update – July 2007

HB 4463 and HB 4464 were voted out of the house and into the Senate where they currently reside. These two bills attempt to overturn the Jacob's ruling and re-instate the marinas at the road ends. You can make a difference by contacting your senator and expressing your displeasure and opinion of these two bills to them.

Some talking points for your convenience: (provided by Michigan Waterfront Alliance)

The Legislation would be Unconstitutional: While it is true that the Legislature can effectively "overturn" court decisions involving existing statutes by amending the statute, the Legislature cannot take away property rights and deprive a person or entity of property without due process and without paying compensation – that would be unconstitutional. For the overwhelming majority of road ends in Michigan, the adjoining riparian property owners own the land under the public road right-of-way/easement to the center thereof. See *Shell Oil vs. Village of Kalkaska*, 433 Mich 348 (1989); *Morrow vs. Bott*, 203 Mich App 324 (1994); *Loud vs. Brooks*, 241 Mich 452 (1928); and *Thies vs Howland*, 424 Mich 282 (1985).

The Legislation would be Invalid: Just as Lyon Township at Higgins lake could not by ordinance expand usage rights at public road ends, neither can the Michigan Legislature legislatively expand the usage rights at public road ends by legislation. *Jacobs vs. Lyon Twp.* 199 Mich App 667 (1993); *Higgins Lake Property Owners Ass'n vs. Gerrish Township*, 255 Mich App 83 (2003); *Lyon Township vs. Higgins Lake Property Owners Ass'n*, (unpublished Michigan Court of Appeals, Case No. 265162, dated April 11, 2006).

The Legislation would betray the public trust: Even if the proposed legislation did meet constitutional challenges, these bills would deprive the vast majority of the public of the space in the water at public road ends that allows the public to go into and out of the water. Little children would now have to swim and play around a long line of boat hoists. The people who like to fish would also be impacted. At the Committee on Tourism, Outdoor Recreation and Natural Resources hearing held on March 20, 2007, Kelly Huntsman, a representative of the Higgins Lake Civic Association, testified that when there were approximately 500 boats moored at the public road ends at Higgins Lake everything was great. She is right. Everything was great for the 500 private individuals who took over the public right of way for the whole summer with their boats and hoists. It was a shame for the other 6500 near shore summer residents who accessed the lake around all those 500 private boats and hoists. This legislation would create a circus Coney Island like atmosphere on all the lakes in Michigan that have roads dedicated to the Public in the State of Michigan. According to an attorney who helped write the proposed Bills, "all the Bill's supporters want this Bill to do is to allow private hoists and boats to be placed at the Public road ends in Michigan". This is why the Michigan Townships Association oppose these Bills, as does the DEQ and the DNR.

If a Township wants to create a Marina: To create a legitimate marina, all the township has to do is buy lakeshore property and get a DEQ Marina Operating Permit. Part of the DEQ permitting process ensures sound water and lake shore management including balancing the needs of the public and the private waterfront owners. If these Bills pass, it would be devastating to Michigan's legitimate marina operators and wreak havoc on the environment of Michigan's Inland Lakes!

These Bills would be unworkable: Under this legislation, townships could “subcontract” with private neighborhood associations and individuals, who would then operate the floating “marinas” at public road ends. It is not difficult to predict how that would work out. The friends and supporters of the township supervisor and township board would most likely be the ones who end up with the free seasonal wet storage at public road ends.

The legislation would create commercial activities in mostly single family residentially zoned communities: How would you like it if your township decided to make a seasonal RV parking lot on the road in front of your house?

As I wrote to you in January of 2007, at the end of the past boating season, at almost every adjudicated road end at the lake, the Jacob’s ruling, prohibiting road end mooring, was respected. A letter has been sent to the few violators advising them that, should they moor at a road end this coming summer, they will be taken to court. We have initiated court action against the two most blatant violators. The Department of Environmental Quality (DEQ) has ruled that Maplehurst and Hitchcock road ends were being operated as marinas without permits. Citations were issued followed by a DEQ and Court ruling that the boats must be removed. There should be no boats at these two road ends this coming summer, much to the relief of the adjacent riparians.

As you know, from our last letter and information posted on our web-site — www.hlpoa.org — there have been some local discussions between our members and HLCA members in three subdivisions, MCP1 (known as Kelly Beach area), Alameda Beach, and Sovereign Park about some increased legal access. In exchange our members would have the subdivisions replatted in a way that would eliminate all “paper roads.” This would end recreational activities and pedestrian traffic by their front windows. The HLPOA offered not to pursue legislation to codify the Jacob’s ruling if the HLCA would not pursue legislation to circumvent the Jacob’s ruling. This offer was turned down recently by the HLCA at a meeting also attended by the Lyon and Gerrish Township Supervisors, and representatives of the Roscommon County Road Commission, Department of Natural Resources (DNR) and Joel Sheltrown. Everyone in the room felt that we should pursue additional local legal access; only the HLCA and possibly a Lyon Township Trustee, were in favor of a statewide statute to give local units of government control of road ends and would allow boat mooring at road ends. The HLCA wants additional local access and also to overturn Jacobs at the state level. They want to have it both ways.

The HLCA decision is very unfortunate. During the grant process for the Gerrish Township Marina the Township was told by the state that Higgins Lake has “more than enough public access.” This is the reason that it is not called a marina but the Gerrish Township Park . The Township would have been disqualified for grant funds if the request were for just additional public access to Higgins Lake .

In the last year the state has allowed a “drop and go” policy at the two state parks and the west launch site when they reach capacity. This coming summer Lyon Township and the DNR have agreed to expand the west launch site parking area to accommodate an additional eighty (80) vehicles. In light of these major increases in access opportunities we can only conclude that the HLCA’s goal is not additional access but preferred access at their specific road ends. Some HLCA members have actually told us they want deeded access. We need to assure retention of the previous court rulings and not subject local officials to increased political pressure.

This past summer the HLCA replaced their moderate president and vice president with two hard line individuals. Both of the new officers have, in the recent past, defied the DEQ, the courts and the requests of both township supervisors (Lyon and Gerrish). It even required Lyon Township to resort to court action to get the required compliance. The HLCA also replaced their attorney of the last twenty years. We can only conclude that their only goal is to attempt to overturn the Jacob's ruling by whatever means necessary. The fact they turned down our offer to not seek a legislative solution will require the HLPOA to be very active both legislatively and in the court system.

I am sorry to say that this means that the costs for our lobbyists and attorneys will obviously increase this year. I ask that when you send in your dues, that you consider what it is worth to have uncluttered road ends and a cleaner and environmentally healthy lake. We are asking you to be generous with your donations to our legal and general funds, so we can protect your riparian rights and maintain protection of the road ends at Higgins Lake . We have enclosed a second dues envelope with the hope that your relatives and adult children who enjoy the benefits of Higgins Lake will consider joining our organization and support our efforts to protect this beautiful lake.

There are two other issues that we will have to keep an eye on regarding additional pressure on the lake. One is a proposed amusement park complex in the advanced planning stages in the Grayling area off I-75 near 4 Mile Road . If this complex materializes it will be a Cedar Point type of amusement park with a hotel and other facilities. Secondly, on the North side of Higgins Lake there are three new subdivisions and more are planned. Higgins Lake is a finite resource and we must be prepared for increased pressure for access and the impact this growth will have on our lake, and it must be protected from unreasonable pressure so that we can protect its delicate environmental balance.

Speaking of environmental issues, Rick Meeks has been very busy testing the lake water and working with numerous groups to keep the lake healthy. There is going to be a new environmental group that will replace the disbanded Higgins Lake Advisory Committee. The difference is that the supervisors of both townships will chair the committee and all local and state officials will be represented at the quarterly meetings. Having all the decision makers in the room will allow us to cut through all the red tape and move forward more quickly in obtaining grants and initiating projects which impact the lake.

There are so many things we have been involved in regarding environmental issues and community activities that I do not have room to detail them in this letter. We will have more articles in our Spring Waterlines newsletter (due out in May 2007) that you will find interesting and enlightening. You will be proud that your organization is doing so much to protect the health of the lake and make our community a better place to live and visit. (due out in May 2007) that you will find interesting and enlightening. You will be proud that your organization is doing so much to protect the health of the lake and make our community a better place to live and visit.

In closing, I want to let you know that your Board of Directors will be diligent and relentless in protecting Higgins Lake and your riparian rights.

Sincerely,

Pat Springstead, President