

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF MIDLAND**

HERON COVE ASSOCIATION, et al,

Case No. 24-2751-AA

Appellants,

Hon. Stephen P. Carras

v.

MIDLAND COUNTY BOARD OF  
COMMISSIONERS, and GLADWIN  
COUNTY BOARD OF COMMISSIONERS,  
and FOUR LAKES TASK FORCE,

Appellees.

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**APPELLEES' MOTION FOR EXPEDITED APPEAL  
AND FOR SCHEDULING ORAL ARGUMENT**

NOW COME Appellees, MIDLAND COUNTY BOARD OF COMMISSIONERS, GLADWIN COUNTY BOARD OF COMMISSIONERS, and FOUR LAKES TASK FORCE (collectively, "Appellees"), by and through their attorneys, CLARK HILL PLC, move to Expedite and schedule oral argument of the Administrative Appeal of Appellees' decision approving the lake level special assessment rolls of the Four Lakes Special Assessment District filed by Appellants, HERON COVE ASSOCIATION and each person listed individually in the caption

on appeal (collectively, “Appellants”) pursuant to MCR 7.111(A)(5), and in support thereof, state as follows:

1. This administrative appeal arises out of the lake level special assessment rolls prepared by the Appellee, Four Lakes Task Force (“FLTF”) and approved by Appellees, Gladwin and Midland County Board of Commissioners (the “Counties”), pursuant to the Part 307 “Inland Lakes Levels” of the Michigan Natural Resources and Environmental Protection Act (“Part 307”)<sup>1</sup> to cover the administrative, operation, maintenance, repair, replacement and improvements costs to four high hazard dams required to maintain the lake levels of Smallwood, Secord, Wixom and Sanford Lakes located in Gladwin and Midland Counties (the “Four Lakes”).

2. The purpose of Part 307 is to provide for the control and maintenance of inland lake levels for the benefit and welfare of the public, to best preserve the natural resources of the state, and best preserve and protect the value of property around the lake. MCL 324.30701(h); *see also, In re Matter of Van Etten Lake*, 149 Mich App 517, 525; 386 NW 2d 572 (1986) (The purpose of Part 307 is to provide for the control and maintenance of inland lake levels for the benefit and welfare of the public).

3. Part 307 authorizes counties to make policy decisions as to the levels of their inland lakes, and to build and finance dams as necessary to maintain the desired lake levels. *Id.* at 525.

4. Part 307 authorizes the establishment of a special assessment district to defray the costs in connection with administration, operation, maintenance and improvement of lake level structures, and for the special assessment district to authorize the issuance of municipal bonds, note and lake level order in anticipation of special assessments. MCL 324.307011; MCL 324.30705.

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<sup>1</sup> 1994 PA 451, as amended, MCL 324.30701 et seq.

5. Pursuant to Part 307, “[A]ll proceedings relating to the making, levying, and collection of special assessments authorized by this part and the issuance of bonds, notes, or lake level orders in anticipation of the collection of the special assessment shall conform as nearly as possible to the proceedings for levying special assessment and issuing special assessment bonds as set forth in the drain code of 1956, 156 PA 40, MCL 280.1 to 280.630.” MCL 324.30705(3).

6. Part 307 guarantees notice and an opportunity to be heard before the determination of a special assessment roll but not a full trial. *See, In re Project Costs & Special Assessment Roll for Chappel Dam*, 282 Mich App 142; 762 NW2d 192 (2009) (Holding that the drain commissioner’s decision requiring landowners in a special assessment district to pay 95% of dam repair costs was reviewable under Part 307 and did not call for the use of the review procedures set forth in the drain code of 1956, 156 PA 40, MCL 280.1 to 280.630).

7. For purposes of Part 307, a sufficient hearing is one that (1) allows the circuit court to ensure that the Counties have considered the varying public interests in reaching its policy decision, and (2) protects the public against arbitrary governmental action. 282 Mich App at 151.

8. Section 30714(4) of Part 307 which provides that the special assessment roll “shall be final and conclusive unless appealed in a court within 15 days after county board approval” signified the legislature’s intent that lake level proceedings, like proceedings under the drain code, requires expeditions resolution. MCL 324.30714(4); *See, Eyde v Charter Twp of Lansing, Drainage Bd*, 109 Mich App 641, 647-648; 311 NW2d 438 (1981) (“[o]nce it is established that a drain is necessary to the public health, it is essential that it be financed and constructed as quickly as possible).

9. The Lake Level capital improvements to all four dams includes design, permitting and construction which is being undertaken in phases with the first phases currently funded using grant moneys received from the State of Michigan and federal government.

10. The grant funding from the State of Michigan covers nearly 45% of the capital project costs, with the remaining 55% of the project capital costs to be defrayed by lake level special assessments.

11. The construction bids for the Edenville (Wixom Lake) dam and final phase of the Lake Level Project were received on January 24, 2024 and are valid for 60 days, and the contract requires commitment of financing before the FLTF can provide a notice to proceed; and construction progress on all other dams would be suspended in accordance with their contract terms.

12. The need for a speedy resolution is particularly required where, as here, legal delays to a valid lake level project will only create additional construction costs resulting in higher assessments to property owners due to missed construction seasons, delayed financing, legal fees and additional staff costs.

13. In further support of this Motion, Appellees rely on the arguments set forth in their accompanying brief.

WHEREFORE, for the reasons stated herein and in their accompanying brief, Appellees respectively request this Court expedite this Administrative Appeal set forth in MCR 7.111(A) and shorten the time for filing briefs and schedule oral argument.

Respectfully submitted,

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