

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

HERON COVE ASSOCIATION, et al,

Appellants,

v.

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

Appellees.

Case No. 24-2751-AA

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APPELLEES' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

Appellees Midland County Board of Commissioners, Gladwin County Board of Commissioners, and the Four Lakes Task Force (“Appellees”) do not dispute Appellants Heron Cove Association’s and the numerous individual appellants’ (“Appellants”) statement of jurisdiction, except to the extent that Appellants lack standing as outlined further below.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Do the Appellants (Heron Cove Association and the numerous individual appellants listed in its Claim of Appeal) lack standing where:

a. the claims asserted by such persons or entities listed in the caption are inherently antagonistic, separate, and unique;

b. some of the persons listed in the caption do not own property within the Four Lakes Special Assessment District, and

c. several of the persons listed in the caption failed to perfect their right to appeal the special assessment rolls by not objecting or submitting evidence to support a claim that the Four Lakes Task Force’s special assessment was contrary to law or was arbitrary, capricious, or fraudulent?

Appellants Answer: No.

Appellees Answer: Yes.

2. Did the Delegated Authority comply with Michigan law by assessing costs necessary to restore Secord, Smallwood, Wixom, and Sanford Lakes (the “Four Lakes”) and to administer, operate and maintain the normal levels of the Four Lakes, to property owners within the Four Lakes Special Assessment District where the lake level assessments were based on the benefits derived to best protect the public health, safety and welfare, preserve the natural resources of the state, and preserve and protect property values around the Four Lakes?

Appellants Answer: No.

Appellees Answer: Yes.

3. Did those specific property owners listed in the caption and with property located within the Four Lakes Special Assessment District receive due process when they were notified of the public hearing to discuss the special assessment roll, were given the opportunity to question the Delegated Authority regarding the apportionment methodology and factors affecting their specific property or property but did not present *any* evidence that the Delegated Authority and Counties’ decision failed to comply with the law?

Appellants Answer: No.

Appellees Answer: Yes.

INTRODUCTION

This administrative appeal challenges and threatens to derail FLTF’s longstanding efforts to rebuild the Four Lakes that have been a core feature of the Midland community for decades and prominently factor into the property values and recreational opportunities for every homeowner in the FLTF Special Assessment District. Specifically, Appellants Heron Cove Association (“HCA”) and a group of individuals identified in the caption of the Claim of Appeal (collectively “Appellants”) seek to set aside the lake level special assessment rolls prepared by the Appellee FLTF and approved by Appellees, Gladwin and Midland County Board of Commissioners (the “Counties”). The lake-level special assessment rolls were confirmed in accordance with the procedures set forth in Part 307 to cover the administrative, operation, maintenance, repair, replacement and improvement costs to four high hazard dams required to maintain the lake levels of the Four Lakes. Nonetheless, under a deferential standard, Appellants seek to rehash the *factual* basis for FLTF’s comprehensive judgments in apportioning approximately 55% of the capital improvement costs needed to complete restoration of the Four Lakes to over 8,000 waterfront and backlot properties. Though property owners are entitled to challenge the lake level special assessment rolls, Appellants’ challenge here wholly lacks merit.

First, HCA lacks standing. As an organization, it cannot represent multiple persons or entities where their claims are inherently adverse, separate, and unique. Indeed, MCR 2.201(B) provides that: “An action must be prosecuted in the name of the real party in interest” In this case, the special assessment rolls were compiled using an apportionment methodology, which calculates the percentage of the project costs and the derived benefit to each specific property based on the general characteristics of that property. The total apportionment must equal 100%. Consequently, decreases to the apportionment of one property or class of properties, requires an increase to other properties (and

by design, the special assessment) in the lake level special assessment district. In other words, each of the purported property owners listed in the caption on appeal (assuming they have property in the FLSAD and perfected their right to appeal by objecting at the special assessment hearing), has uniquely different claims in connection with the assessment to their property which makes them adverse to one another. HCA, as an organization, cannot advocate the interests of the persons listed in the caption on appeal where each of the purported members' interests are antagonistic to one another. Beyond HCA's lack of standing, numerous persons or entities in the HCA (or listed as individual Appellants) either do not have property in the Four Lakes Special Assessment District or never bothered to submit timely objections prior to or at the lake level special assessment hearing. Consequently, these persons or entities also lack standing to sue. And this Court should dismiss the claim of appeal as to those entities.

Next, contrary to Appellants' claims in their brief, Appellants received adequate due process through Part 307's statutorily prescribed notice and hearing, which met the minimal constitutional standards of due process. The Delegated Authority is given broad authority to make special assessments it determines are reasonable according to benefits homeowners derive from the Four Lakes. To prevail, Appellants must overcome the presumption that the lake level special assessments are valid and prove that the lake level special assessments are contrary to law or arbitrary and capricious. Appellants cannot satisfy this heavy burden. Appellants were provided an opportunity to discuss, submit information and object to the special assessment rolls at the public hearing, but never bothered to present *any* evidence that the Delegated Authority and Counties' decision approving the special assessment rolls failed to comply with the law.

In short, FLTF acted reasonably. And Appellants have not shown otherwise. Accordingly, this Court should affirm, or—alternatively—dismiss the appeal for lack of standing.

COUNTER-STATEMENT OF FACTS

A. The History of the Four Lakes

Secord, Smallwood, Wixom and Sanford Lakes (“Four Lakes”) are located in Midland and Gladwin Counties (State of Michigan) and were originally created by the impoundment of the Tittabawassee and Tobacco rivers by four privately-owned hydroelectric dams. On May 19, 2020, the Edenville (Wixom Lake) dam and Sanford (Lake) dam failed, resulting in catastrophic flooding leaving many in Midland and Gladwin counties with damaged property, flooding debris and shoreline devastation. The historic flooding of Midland and Sanford was a tragedy reaped from the combination of record rainfall and the negligence of the private dam owner, Boyce Hydro, that went too long uncorrected by government officials.

Years prior to the Edenville Dam failure, lake property owners—through the Four Lakes Task Force (“FLTF”) (and its predecessor the Sanford Lake Preservation Association)—raised concerns over Boyce Hydro’s operations which threatened the very existence of the Four Lakes. In early 2018, a group of lakefront property owners learned that Boyce Hydro was not in compliance with the terms of its FERC¹ license in connection with the Edenville Dam, and FERC was threatening to revoke the license. The dam operator, Boyce Hydro Power, LLC (and other Boyce entities, collectively “Boyce Hydro”) had complete control over dam operations and ownership of the dams, bottomlands and flowage rights. Michigan common law does not require a private dam owner to maintain the existence of a dam or the artificial level of a lake.² Concerned

¹ Federal Energy and Regulatory Commission (“FERC”).

² *Goodrich v McMillan*, 217 Mich 630; 187 NW 368 (1922) (Ownership of a dam does not impose a duty on the dam owner to maintain the water at an artificial level created by operation of a dam); *see also, Drainage Board v Village of Homer*, 351 Mich 73; 87 NW2d 72 (1957) (Riparian landowners were continuously charged with notice that the pond is artificial and that its level may be lowered or returned to natural state at any time by the dam owner).

with the potential loss of Wixom Lake, and future loss of the other three lakes, the lake associations and property owners sought a public solution and began the process of transitioning the four hydroelectric dams from private ownership to public ownership.

The counties of Midland and Gladwin formed a citizen task force to explore the process of acquiring, financing and managing the dams and lake levels in accordance with Part 307 “Inland Lake Levels” of the Michigan Natural Resources and Environmental Protection Act (“Part 307”). 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, that best serves to preserve the natural resources of the state, and *best preserves and protects the value of property around a lake.*³ [emphasis added]. 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.⁴ It authorizes the establishment of a special assessment district to defray the costs in connection with administration, operation, maintenance and improvement of lake level structures.⁵ Moreover, the special assessment district is authorized to issue municipal bonds, notes and lake level orders in anticipation of special

³ See MCL 324.30701(h), “Normal level” mean the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake..[.]”.

⁴ *In re Matter of Van Ettan Lake*, 149 Mich App 517, 525; 386 NW2d 572 (1986).

⁵ MCL 324.30711(1): “The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state owned lands under the jurisdiction and control of the department. If the county board determines that a special assessment district is to be established, the delegated authority shall compute the cost of the project and prepare a special assessment roll.”

assessments.⁶ Part 307 provides the legal, operational and financial model for the public's sustainability of lake level structures.

B. Part 307 “Inland Lake Levels” of the Michigan Natural Resources and Environmental Protection Act.

This administrative appeal is based on the actions taken by the FLTF in its capacity as the delegated authority,⁷ and the Counties pursuant to Part 307. Understanding the scope and purpose of Part 307 and processes will assist the Court with factual steps leading to the approval of the special assessment rolls, and this administrative appeal.

Part 307 authorizes a county board of commissioners to petition the local circuit court and request that it establish the appropriate (or normal) lake level for inland lakes located within the county.⁸ Once the lake level(s) are established, Part 307 also grants the circuit court “continuing jurisdiction.”⁹ Realizing that there are costs associated with maintaining the court-ordered lake level, the legislature sensibly determined that the county can petition the circuit courts to establish a lake level special assessment district for the express purpose of allowing the county to defray the administration, design, construction, operation, maintenance, repair and improvement costs by distributing the costs to those in the judicially-established special assessment district.¹⁰ Those who benefit from the lake, such as the private property owners adjacent (*i.e.*, waterfront) or with deeded access (*i.e.*, backlots), political subdivisions,

⁶ MCL 324.30705.

⁷ MCL 324.30701(e) “Delegated authority” means the county drain commissioner or any other person designated by the county board to perform duties required under this part [Part 307].

⁸ MCL 324.30702, MCL 324.30707.

⁹ MCL 324.30707(5)

¹⁰ MCL 324.30704, MCL 324.30711, MCL 324.30712.

and state owned lands, are typically included in the special assessment district and are subject to the lake level special assessments levied by the delegated authority.¹¹

Part 307 provides for the control and maintenance of inland lake levels for the benefit and welfare of the public, to best serves to preserve the natural resources of the state, and to best preserve and protect the value of property around a lake.¹² Part 307 “authorizes counties to make policy decisions as to the levels of their inland lakes, and build and finance dams as necessary to maintain the desired lake levels.”¹³ To this end, the lake level special assessment district is authorized to issue municipal bonds, notes and lake level orders in anticipation of special assessments.¹⁴

To pay costs associated with a lake level project, Part 307 requires the “delegated authority” compute the costs of the lake level project(s), and prepare a lake level special assessment roll.¹⁵ In levying the lake level special assessments, the delegated authority prepares a special assessment roll in accordance with the Michigan Drain Code.¹⁶ The lake level special assessment roll is based on the delegated authority’s apportionment of all costs required to maintain the court-ordered lake level, and if the revenues raised are insufficient to meet the computation costs as provided in Section 30712, the “special assessment district may reassessed without hearing using the same

¹¹ MCL 324.30711.

¹² See MCL 324.30701(h), “Normal level” mean the level or levels of the water of an inland lake that provide the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake..[.]” See also *In re Van Ettan Lake*, 149 Mich App 517, 525; 386 NW2d 572 (1986) (“[T]he purpose of the Inland Lake Level Act is to provide for the control and maintenance of inland lake levels for the benefit of the welfare of the public.”)

¹³ *In re Van Ettan Lake*, 149 Mich App at 525–26.

¹⁴ MCL 324.30705.

¹⁵ MCL 324.30711(1); MCL 324.30712.

¹⁶ MCL 324.30705(3) “[A]ll proceedings relating to the making, levying, and collection of special assessments authorized by this part ... shall conform as nearly as possible to the proceedings for levying special assessments... as set forth in the drain code of 1956”

apportioned percentage used for the original assessment.”¹⁷ Lake level special assessments, similar to drain assessments under the Michigan Drain Code, are based on the delegated authority’s methodology that apportions the lake level project costs on the benefits derived to the properties, public corporations and state lands within the lake level special assessment district.¹⁸

Before submitting the special assessment roll to the county board of commissioners for final approval, there must be a public hearing to discuss the project costs and the special assessment roll.¹⁹ The Part 307 lake-level special assessment hearing is akin to a “day of review” under the Michigan Drain Code, where property owners may have their apportionment reviewed and object to the special assessment. Part 307 requires that a mailing of the notice of hearing to each property owner in the special assessment district and the publication of the hearing notice twice in a newspaper that circulates in the special assessment district with the “first publication to be at least 10 days prior to the hearing.”²⁰ The notice mailed to each property owner must comply with Michigan Public Act 162 of the Public Acts of 1962.²¹ Public Act 162, among other things, provides that the hearing notice shall be mailed to the property owner of the property to be assessed (and whose name appears on the tax records) at least 10 days before the hearing and contain a statement that appearance and protest at the hearing is required in order to appeal the amount of the special assessment or may file an objection in writing, “in which case his or her personal appearance shall not be required.”²² Accordingly, before or at the hearing, property owners may

¹⁷ MCL 324.30711(1) and (2).

¹⁸ *Id.*

¹⁹ MCL 324.30714(2).

²⁰ MCL 324.30714(2)

²¹ *Id.*

²² MCL 211.741(1), (2), & (3).

review their lake level assessment, present evidence or other information that may affect the apportionment percentage, object to the special assessments and the costs of the project.

After the hearing, the costs of the lake level project and the lake level special assessment roll may be approved (or revised) by the delegated authority.²³ The final step in the process requires the costs of the project and the special assessment roll to be approved by the county board of commissioners.²⁴ A property owner subject to the assessment may then challenge the special assessment roll by appealing to the circuit court within fifteen days after approval by the county board.²⁵

C. Four Lakes Lake Level Proceedings; Four Lakes Special Assessment District

In 2018, and in accordance with Part 307, the Counties adopted resolutions finding that in “order to protect the public’s health, safety and welfare, to best preserve the natural resources of the state, and to preserve and protect the value of property around the lakes” that it was necessary to establish the normal (legal) levels for all Four Lakes.²⁶ In addition, the resolutions provided that all costs in connection with the maintenance of the normal levels of the Four Lakes “shall be defrayed by special assessments for the benefits derived against privately owned parcels of land, political subdivisions of the state, and state owned lands.”²⁷ The FLTF (formerly known as the

²³ MCL 324.30714(3).

²⁴ *Id.*

²⁵ MCL 324.30714(4); MCL 324.30701(c). Note: the Michigan tax tribunal lacks subject-matter jurisdiction to hear lake-level appeals. See *In re Project Cost and Special Assessment Roll For Chappel Dam*, 282 Mich App 142, 145 & 147; 762 NW2d 192 (2009); see also *USL Improvement Assoc v Oceana County Drain Commissioner*, unpublished per curiam opinion of the Court of Appeals issued Mar 13, 2012 (Docket Nos 297157 & 298080) (*Held*: Circuit court—not the Tax Tribunal—has jurisdiction to hear lake-level special assessment appeals).

²⁶ Record, Tab #1, Gladwin County Resolution p 5; Midland County Resolution, p 12.

²⁷ *Id.*

Sanford Lake Preservation Association), was appointed as the Counties' Part 307 delegated authority, and to serve as the counties' agent to oversee the lake level project, to prepare a special assessment district(s) and special assessment roll(s), and to "take all other actions as necessary and required by the delegated authority as provided in Part 307."²⁸

In 2019, the Counties filed a petition in the Midland circuit court to establish normal levels of the Four Lakes and confirm the boundaries of Four Lakes Special Assessment District ("FLSAD"). In support of their petition, the Counties submitted its memorandum in support which included a lake level study that comprehensively detailed information and facts that the Midland Circuit Court adopted in its determination of the normal levels for each of the Four Lakes and boundaries of the lake level special assessment district. This information can be found as a matter of record, *In the Matter of: Wixom Lake, Sanford Lake, Smallwood Lake and Secord Lake*, Midland Circuit Court Case #19-5980-PZ.

On May 28, 2019, following notice to all interested parties, receiving testimony and hearing, and after careful consideration Judge Carras entered the Lake Level Order confirming the FLSAD.²⁹ In confirming the FLSAD, Judge Carras' accepted the information presented by the Counties and found that that all four lakes were hydraulically and hydrologically interrelated, and the continued operation of the dams were of paramount importance to the environment, recreation, property values of lake residents, and the public and economic health of Gladwin and Midland

²⁸ *Id.*

²⁹ Record #2, Lake Level Order.

Counties.³⁰ No one appealed the Lake Level Order. The map below depicts the FLSAD as set forth in the Lake Level Order, which also lists the properties in the FLSAD:³¹



The FLSAD consists of 8,170 parcels with 6,278 parcels having direct waterfront access and 1,892 parcels having deeded private access (*i.e.*, easement) to the waterfront (*i.e.*, backlots).³²

D. Edenville Dam Failure, May 19, 2020

Thereafter, the Counties, through their delegated authority, sought to obtain property rights in the dams and bottomlands from the private dam owner, Boyce Hydro. But, before the transaction could be completed, on May 19, 2020, an embankment failed on the Edenville Dam and several hours later excess water from the Edenville Dam failure caused the Sanford Dam to breach.³³ The

³⁰ *Id.*; see also *In the Matter of: Wixom Lake, Sanford Lake, Smallwood Lake and Secord Lake*, Midland Circuit Court Case #19-5980-PZ, Memorandum In Support of Petitions Pursuant to Part 307 of the Michigan Natural Resources and Environmental Protection Act, File April 29, 2019, p3.

³¹ Record #2, Lake Level Order, Exhibit A to Lake Level Order.

³² Record #12, Memorandum “Four Lakes Special Assessment District Assessment Methodology Revised December 2023,” p1.

³³ Record #4A, Amendment 1 to County/FLTF Interlocal Agreement, pp 2–3.

upstream dams at Secord and Smallwood lakes were also damaged.³⁴ And thousands of homes, properties, businesses and public infrastructure were damaged or destroyed by this catastrophic flood event. The region was declared a national disaster.³⁵

In the days after the disaster, a strategy was needed to address the immediate recovery efforts and coordinate with federal, state and local agencies. In addition, until the Counties obtained control and ownership of the dams and related properties, no long-term planning could proceed. Accordingly, in June 2020, the Counties appointed FLTF the lead local agency in coordinating the funding, administration, design, improvement, repairs and replacement of the dams, including funding with Federal, State and local agencies.³⁶

From 2020 through 2023, massive recovery efforts were undertaken, which included debris removal, shoreline restoration and dam stabilization, as well as planning for the restoration of the dams and lakes.³⁷ The lake restoration plans included flood studies, design engineering, risk analysis, and environmental assessments.³⁸ In addition, the Counties proceeded to condemn and secure Boyce Hydro properties and flowage rights in order to undertake the recovery and restoration of the Four Lakes.³⁹ All pre-construction and recovery work, at a cost of over

³⁴ Record #5, EGLE letter to FLTF, dated June 30, 2021, pp2–3.

³⁵ Robert Acosta “*President Trump Oks major disaster declaration for mid-Michigan after severe flooding,*” Saginaw and Bay City News, July 9, 2020. <https://www.mlive.com/news/saginaw-bay-city/2020/07/president-trump-oks-major-disaster-declaration-for-mid-michigan-after-severe-flooding.html>

³⁶ Record #4A, Amendment 1 to County/FLTF Interlocal Agreement, pp 2–3.

³⁷ Record #26, “The Four Lakes Restoration Plan,” February 2024 Update.

³⁸ *Id.*

³⁹ *Id.*

\$64,000,000 was accomplished using private donations, state and federal grant with no cost to the properties in the FLSAD.⁴⁰

In May 2021 following the FERC order terminating its prior federal licensing of the Secord, Smallwood and Sanford dams, the dams reverted to the regulatory authority of the State of Michigan.⁴¹ The Edenville Dam (Wixom Lake) came under jurisdiction of the State of Michigan when Boyce Hydro's FERC license was revoked prior to the dam failure. All four dams are now regulated and fall under the jurisdiction of the Michigan Department of Environment, Great Lakes and Energy ("EGLE"), and before construction and restoration of the Four Lakes, must be permitted. All four dams have been given a "high hazard potential ratings" by EGLE. "[A] high hazard potential rating means that the dam is located in an area where a failure may cause significant potential environmental degradation, or where danger to individuals exists with the potential for loss of life."⁴² Each dam must comply with dam safety requirements and state regulations and receive state permitting pursuant to Part 315 "Dam Safety" of the NREPA, as well as Part 31 "Water Resources Protection", Part 301 "Inland Lakes and Streams" and Part 303 "Wetland Protection" of the NREPA ("dam and environmental permitting").⁴³

FLTF obtained grants from both the federal and State of Michigan in excess of \$240,000,000, which, in addition to the recovery work, allowed FLTF to begin the design, dam and environmental

⁴⁰ Record #25, FLTF Memorandum to Midland and Gladwin County Board of Commissioners re: 2025-29 Operations and Maintenance and Capital Computation of Costs and Assessments Rolls, p2.

⁴¹ Record #5, EGLE letter to FLTF, dated June 30, 2021, p1.

⁴² *Id.* at pp 1–2.

⁴³ *Id.* at pp 1–5; Part 315 "Dam Safety" of the NREPA, MCL 324.3150 *et seq.*; Part 31 "Water Resources Protection," MCL 324.3101 *et seq.*; Part 301 "Inland lakes and Streams," MCL 324.30101 *et seq.*; and Part 303 "Wetland Protection" of the NREPA, MCL 324.30301 *et seq.*

permitting, and construction of all four dams (“Lake Level Capital Project”).⁴⁴ In accordance with its authority and utilizing federal and state grants, FLTF proceeded to design, obtain necessary permits, obtain construction bids, and construct the Lake Level Capital Project which, due to the complexity and state dam safety requirements, was to be completed in phases over multiple years. Restoration construction began in December 2022 with the awarding of contracts for the Secord and Smallwood dams, utilizing the funding from the state of Michigan.⁴⁵ All four dams, are under construction, with the final phase of construction that includes the Edenville dam (Wixom Lake) to start in May 2024.⁴⁶ The total cost of the Lake Level Capital Project with contingency is \$399,700,000.⁴⁷

In addition, and in accordance with its mandated responsibilities pursuant to Part 307, during “recovery and restoration of the dams,” FLTF is required to:

“[o]perate and maintain the dams in a safe manner consistent with current industry standard practices. FLTF should develop an Operation, Maintenance and Surveillance Plan which outlines operational procedures (if any) and type, frequency and reporting of monitoring and maintenance at each dam. Emergency action plans are required to be developed for each dam in coordination with the County Emergency Managers. The plans must be submitted to EGLE for review and should be reviewed annually by FLTF and updated accordingly as modifications are made to the dams.”⁴⁸

Accordingly, the cost to administer, operate and maintain the FLTF system, was budgeted at \$1,775,200 per year, and for the 5-year period from 2025 through 2029 the total cost for operation and maintenance is \$8,876,600.⁴⁹

⁴⁴ Record #6, 2022 Public Act 53, p 23.

⁴⁵ Record #26, “The Four Lakes Restoration Plan,” February 2024 Update.

⁴⁶ *Id.*

⁴⁷ Record #10 Memorandum: “Capital Assessment for the FLSAD,” dated December 21, 2023, p4; Record #11 Updated Memorandum: “Capital Assessment for the FLSAD,” dated January 4, 2024, p4; Record #26, “The Four Lakes Restoration Plan,” February 2024 Update, p 1.

⁴⁸ Record #5, EGLE letter to FLTF, dated June 30, 2021, p 4.

⁴⁹ Record #9 Memorandum: “Operations and Maintenance Assessment for the FLSAD,” dated December 21, 2023, Appendix A 2025–2029 Computation of Costs, pp 4–5.

E. Apportionment Methodology.

Per Part 307, and by resolution, the Counties determined that all costs associated with the administration, construction, operation, maintenance, repair and improvement of the legal or normal levels of the Four Lakes shall be defrayed by special assessments to the properties in the FLSAD.⁵⁰ Accordingly, the delegated authority (here, FLTF) is required to distribute or “apportion” project costs to the benefits derived to “privately owned parcels of land, political subdivisions of the state, and state owned lands.”⁵¹ The apportionment must equal 100% of the costs. While there can be other sources of funding, the revenue derived from special assessments to waterfront and backlot properties in the FLSAD is considered the *primary* source of funding to restore and maintain the lake and lake level structures.⁵²

The FLSAD consists of waterfront properties and backlot properties that have deeded access to the lakes.⁵³ The FLSAD contains 8,170 parcels, with 6,278 parcels that have direct waterfront access, and 1,892 backlot parcels with lake access.⁵⁴ The lake-level special assessments levied on properties within the FLSAD is based on a methodology that uses criteria for determining the benefits derived from the lake level project. Before the dam failure in 2020, the initial apportionment methodology under consideration was derived from existing weed control districts surrounding the Four Lakes.⁵⁵ The “previous methodology” considered waterfront lots versus backlots (with deeded access to the lakes), location with respect to the dams, and property use. However, following the dam

⁵⁰ Record #1, 2018 Resolutions - Midland and Gladwin Counties re: Determination of Normal Levels for the Four Lakes and Establishment of the Four Lakes Special Assessment District.

⁵¹ MCL 324.30711(1).

⁵² Record #12, “Four Lake Special Assessment District Methodology,” Revised January 2024.

⁵³ *Id.*, p 1.

⁵⁴ *Id.*

⁵⁵ *Id.*

failure, FLTF determined that further review of the initial methodology was necessary based on input received from property owners and community leaders.⁵⁶

In May 2021, FLTF established a special assessment work group (“SAD Work Group”) led by its consulting engineers, Spicer Group, to discuss, revise and develop an apportionment methodology for apportioning project costs in connection with both the operations and maintenance (“O&M”) of the dams, and the capital improvements required to restore the lakes (*i.e.*, Lake Level Capital Project”).⁵⁷ This SAD Work Group consisted of engineers, geographic information system (“GIS”) specialists, assessment advisors, individuals familiar with levying special assessments and legal counsel.⁵⁸ FLTF then shared the proposed apportionment methodology with the public in an informational webinar on December 6, 2021.⁵⁹ This methodology was used for the 2022–2024 operations and maintenance assessment, which went through an extensive process of review as well, in addition an estimated Project Cost and Capital Assessment estimate was provided in 2022.

In 2023, the special assessment methodology was revised, reflecting changes based on the fact the capital assessment was larger than estimated and conditions found in property differences. The final version of the apportionment methodology to apportion the O&M and the Lake Level Capital Project, was approved by FLTF at the special assessment hearing on January 15, 2024. The Four Lakes Special Assessment District - Assessment Methodology, Revised January 2024, is set forth in Record #12 of the Record on Appeal.

⁵⁶ *Id.*

⁵⁷ *Id.*, p1.

⁵⁸ *Id.*

⁵⁹ https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/dec_6_community_info_session_final_12.6.21.pdf, Appellants’ Ex F.

To apportion the O&M and Lake Level Capital Project costs to property owners within the FLSAD, the FLTF employed a comprehensive apportionment methodology that apportions costs to lakefront property owners and backlot property owners with deeded access to the lakes. The apportionment methodology for determining benefits derived uses the following benefit factors:⁶⁰

1. **Base benefit factor.** All parcels (waterfront and backlots) within the FLSAD are assigned a base factor of either: 0, 0.5 or 1. All parcels which are exempt, such as school properties or cemeteries and properties in the FLSAD that receive no benefit are assigned a “0” base factor, which results in no assessment. All “backlot parcels” that are not directly on a body of water but have private access to the lake, receive a base factor of “0.5.” All other parcels (waterfront) receive a base factor of “1.”
2. **Derived Benefit Factor.** The derived benefit factor is a factor applied to non-residential or limited development/use residential development parcels (such as marinas, commercial properties, state land, local parks, trailer parks/campgrounds, and agriculture) within the FLSAD that have various amounts of use and is calculated similar to frontage. See Record #12, Four Lakes Special Assessment District - Assessment Methodology, Revised January 2024; Table 1, p. 4.
3. **Frontage Benefit Factor.** The frontage factor is applied solely to parcels with direct access to the water. The frontage for all waterfront parcels was determined by three methods: (1) review of all subdivision plats; (2) review of metes and bounds description for un-platted parcels, and (3) utilizing GIS to manually measure the frontage based on parcel linework and aerial photography. Once parcel frontage was determined, parcels were grouped (A through F) according number of feet of frontage, and then assigned a benefit factor weighted according to number of feet of frontage. Below is the Table 2 from Record #12, Four Lakes Special Assessment District - Assessment Methodology, Revised January 2024; Table 1, p. 5:

⁶⁰ This section summarizes the methodology. For a full understanding, please see Record #12, Four Lakes Special Assessment District - Assessment Methodology, Revised January 2024.

Table 2: Lake frontage bracket

Low (feet)	High (feet)	Group	Factor
0	48	A	0.8
48	134	B	1
134	175	C	1.25
175	220	D	1.5
220	2,000	E	1.75
Greater than 2,000*		F	2

*Changed from 2,000-7,900 in the July 2022 special assessment methodology to 2,000+

The Frontage benefit factor is then calculated similar to how income taxes are calculated such that if you have a parcel with 200 feet of frontage -- for the first 48 feet, a factor of 0.8 is applied, and the next 86 feet a factor of 1 is applied. The greater the frontage the higher the benefit factor. Below is an example of calculating the frontage benefit factor for a parcel with 200 feet of frontage:

Example calculation: parcel with 200 feet of frontage

(1st bracket): 48 feet * 0.8 = 38.4 feet

(2nd bracket): 86 feet * 1 = 86 feet

(3rd bracket): 41 feet * 1.25 = 51.25 feet

(Determine frontage to be applied to 4th bracket): 200 feet – 48 feet – 86 feet – 41 feet = 25 feet.

Step 4 will vary based on total amount of frontage.

(4th bracket): 25 feet * 1.5 = 37.5 feet

(Sum of frontages): 38.4 feet + 86 feet + 51.25 feet + 37.5 feet = 213.15 feet

(Divide total frontage by sum to get weight factor): 213.15 feet/200 feet = 1.07

- 4. Waterfront View Benefit Factor.** The waterfront view factor measures the width of the waterway in front of a parcel perpendicular to its frontage and is intended to account for parcels located on canals and tributaries which receives a reduction in benefit as compared to those located directly on a lake.
- 5. Water Depth Benefit Factor.** This factor is intended to account for the quality of lake access and opportunity for a property owner to install a dock to achieve greater water depth. The lower the water depth, the lower the benefit factor.

Below is an illustration calculating the derived benefit applied to a typical waterfront residential property within a subdivision⁶¹:

⁶¹ *Id.*

Example Calculation: Typical residential property within a subdivision

Assessable lakefront property – Base Factor (BF) = 1

90 feet of water frontage – Frontage Factor (FF) = 0.893

Greater than 500 feet of waterfront view – Waterfront View Factor (WV) = 1

Water depth of 4 feet or greater – Water Depth Factor (WD) = 1

Residential property – Derived Factor (DF) = 1

Product of factors – $BF \times FF \times WV \times WD \times DF = 1 \times 0.893 \times 1 \times 1 \times 1 = 0.893$

Parcel apportionment – parcel's total benefit factor divided by the sum of all factors in SAD* = $0.893/4973 = 0.0001796$ or 0.018%

Estimated total O&M Assessment – (Computation of cost amount – at large assessment) x parcel apportionment = $(8,876,000 - 798,840) \times 0.0180\% = \$1,450.00$

Estimated annual O&M assessment = Total O&M divided by 5 years = $\$1,450.00/5 \text{ years} = \$290.08/1 \text{ year}$

*The sum of all factors is calculated by adding all the total factors for all parcels together. The sum is subject to change as it is tied to all the factors in the district. If the total factor of one parcel changes, the sum of all factors also changes.

For backlots with deeded access to a lake, the base factor is 0.5, but then it takes into consideration that not all backlots provide the same quality of access. Research determined that there were three primary lake access “types” that exist within the Four Lakes system and include: (1) Non-developed/un-maintained access where the subdivision allow for backlot access to the lake, but the access location was not developed or maintained as intended. Parcels with low access to the lake will have the lowest total factor in the lake level special assessment district; (2) Maintained minor access, which provide parcels with walkways, parks or road ends, but were not intended or developed as high-volume access points for a boat launch or dock slip; and (3) Maintained major access, where parcels have access to launch boats and or have boat slips, allowing for quality access for backlot property owners. Backlots with maintained major access will have the highest access benefit factor. The lowest quality backlots have a total apportionment factor of 0.075, while backlots with the higher quality of access are capped at 0.5 base factor.⁶²

⁶² *Id.* at 8–9.

The foregoing methodology is designed to ensure that costs are borne by properties with greater amount and superior frontage, or in the case of backlots, properties with the same access whether improved or not improved (as in the case vacant backlots) receive the same derived benefit and pay will have the same lake level special assessments. In other words, the methodology does not look at a property's state equalized value ("SEV") or market value, as such information would result in a disproportional derived benefit based on the property owner's choices whether to improve or not improve the property, such as keeping a property vacant, or improving the property with a garage, small or large home.

The total cost of the Lake Level Capital Project with contingency is \$399,700,000.⁶³ After receiving bids and computing the final costs of the project, FLTF prepared a capital special assessment roll levying approximately 55% of the costs (or \$217,700,000) of the project to the property owners in the Four Lakes Special Assessment District in order to "defray" the capital costs of the Lake Level Project utilizing the apportionment methodology described above.⁶⁴ The difference or \$182,000,000 is being primarily subsidized with public funds received primarily from the state of Michigan. The plan of financing called for spreading the lake level capital special assessments via annual installments not to exceed 40 years. In addition, FLTF prepared a separate operation and maintenance special assessment roll for the years 2025 through 2029 to cover the expenses required to administer, operate and maintain the Four Lakes system during construction (*i.e.*, \$1,775,200 per year).⁶⁵ The O&M lake level special

⁶³ Record #11 Updated Memorandum: "Capital Assessment for the FLSAD," dated January 4, 2024, p 4; Record #26, "The Four Lakes Restoration Plan," February 2024 Update, p 1.

⁶⁴ *Id.* at p 4; Record #12, January 2024 Apportionment Methodology, pp 2–10; Record #36 Approved Capital Assessment Roll, p 1.

⁶⁵ Record #9, Re: Operations and Maintenance Special Assessment for the FLSAD, dated December 21, 2023, p 1–5; Record #34, 5-Year Operation and Maintenance Special Assessment Roll.

assessment roll allocates 90.14% of these costs to the landowners, and the remaining 9.86% of the cost to public corporations and to the Michigan Department of Natural Resources.⁶⁶

The table below list the annual payment for both the O&M lake level special assessment and the Lake Level Capital Project special assessments for a range of properties in the FLSAD. Almost all waterfront residential properties have an annual payment between \$1,440 to \$2,880 per year with a typical waterfront property at \$2,160 per year. Most Backlots have a 0.25 benefit factor and will generally pay \$720/year, however, backlots range from \$216/year to \$1,440/year depending on the access quality.⁶⁷

Total Annual Payment for O&M and Capital Assessments				
Benefit Factor Assigned	2025-2029 O&M Annual Assessment Payment	Capital Assessment Annual Payment (Principal + Interest on \$217.7M)	Total Average Annual Payment (O&M + Capital)	Total Principal* Estimate (\$217.7M total) *This is the amount to prepay to pay off the assessment
1 (High Residential Lot)	\$ 320	\$ 2,560	\$ 2,880	\$ 43,760
0.75 (Typical Front Lot)	\$ 240	\$ 1,920	\$ 2,160	\$ 32,820
0.5 (Lowest Front Lot)	\$ 160	\$ 1,280	\$ 1,440	\$ 21,880
0.25 (Typical Backlot)	\$ 80	\$ 640	\$ 720	\$ 10,940
0.075 (Lowest Backlot)	\$ 24	\$ 192	\$ 216	\$ 3,282

Currently, these are based on a 5% interest rate and a 40-year term. These are average numbers over the life of the financing term.

F. Four Lakes Lake Level Special Assessment Hearing; and Heron Cove Association Appeal.

FLTF held the lake level special assessment hearing in connection with the O&M and Lake Level Capital Project special assessment rolls for January 15, 2024.⁶⁸ Prior to that date, on December 6, 2023 FLTF held a webinar to inform property owners within the FLSAD of the updated project costs

⁶⁶ Record #34, Approved 5-year O&M Four Lakes Level Special Assessment Roll, p 1.

⁶⁷ Record #25, FLTF Recommendation to Counties, Dated January 30, 2024.

⁶⁸ Record #13, Notice of Lake Level Special Assessment Hearing.

and estimated special assessment amounts for the capital improvements to the lakes and costs required for operation and maintenance (“O&M”).⁶⁹ Also at that time, FLTF created a “virtual map” that was posted online which illustrated the estimated capital and O&M lake level special assessment to each individual parcel in the FLSAD.⁷⁰ This “virtual map” allowed any property owner within the FLSAD to log on and locate their respective property or properties to observe the apportionment benefit factors applied to their property that was used to calculate the lake level special assessment.⁷¹ In addition, although not mandatory, throughout December 2023 through January 15, 2024, FLTF conducted “one-on-one” virtual meetings with landowners to review apportionment benefit factors affecting their specific properties. During these virtual meetings, and through email or written correspondence, landowners had the opportunity to provide additional information and have their parcel reviewed in connection with the apportionment factors that were applied to their property, to calculate its derived benefit, and also to submit written objections.⁷² In the course of the “one-on-one” virtual meetings with landowners, “over 780 adjustments” were made to properties where property owners availed themselves of the review process prior to the January 15 lake level special assessment hearing.⁷³

As described above, the apportionment methodology used to calculate the lake level special assessments depends first on whether a property is a waterfront or a backlot with deeded access. In the case of a waterfront property, the apportionment methodology for determining the benefits derived considered the following benefit factors: (1) base; (2) derived benefit; (3) frontage; (4) waterfront view;

⁶⁹ See <https://www.four-lakes-taskforce-mi.com/events.html> “December 6, 2023, 5:00–7:00 p.m. | Day of Review Process | [Webinar](#) | [PowerPoint](#)”

⁷⁰ Record #13, Notice of Lake Level Special Assessment Hearing; and special assessment maps <https://www.four-lakes-taskforce-mi.com/>

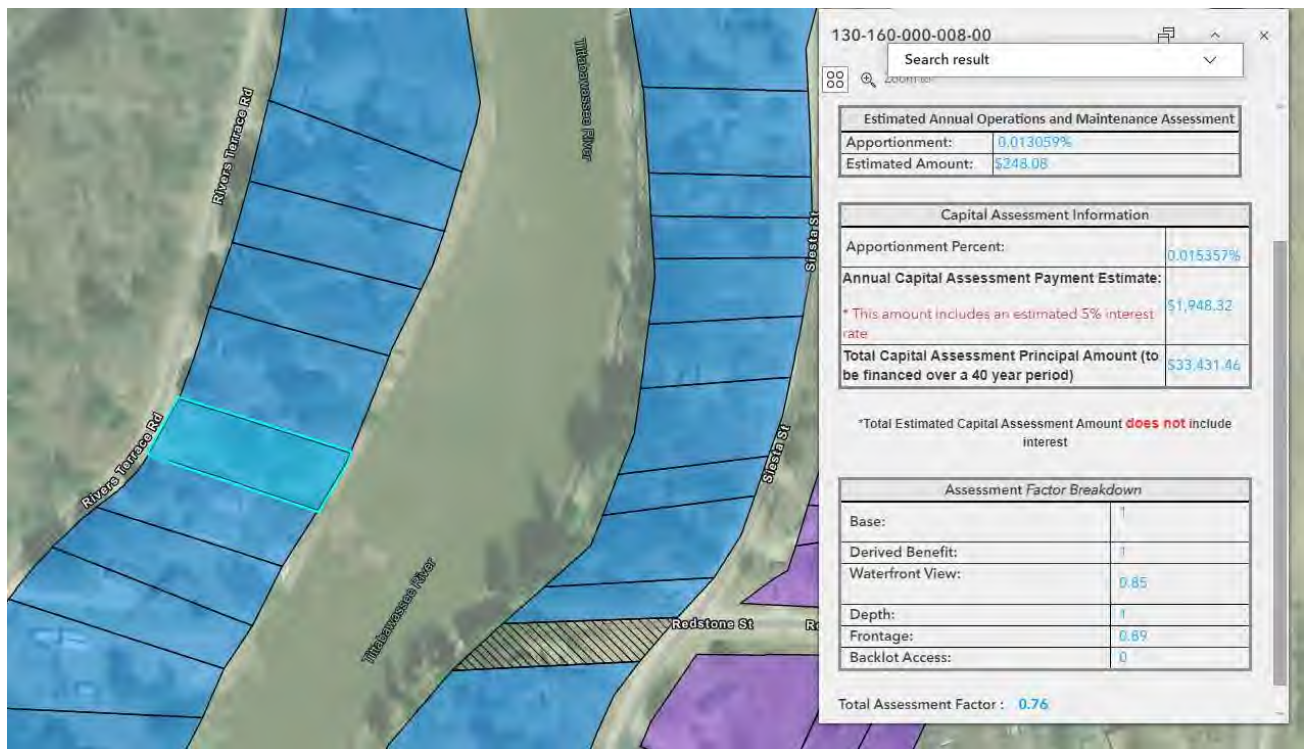
⁷¹ *Id.* at <https://www.four-lakes-taskforce-mi.com/>

⁷² *Id.*

⁷³ Record #19 FLTF Lake Level Special Assessment Hearing Transcript, 20:13–25;

and (5) water depth. The apportionment methodology for determining the benefits derived to backlots (with deeded access to the lake) considered the following benefit factors: (1) base; (2) whether the access was non-developed or not maintained; (3) minor access (*e.g.*, walkways, paths, but not intended as high volume access); or major access (*e.g.*, boat launch). If a change in the factors applied to a specific property were warranted, the lake level assessment roll was updated, and landowner informed.

Below, is an illustration of the information set forth in the “virtual map” that details the location for each property in the FLSAD, apportionment factor breakdown and lake level special assessment for O&M and the Lake Level Capital Project:



In the above example, the above property (130-160-000-008-00) shows an assessment factor breakdown, the apportionments and lake level assessments for both O&M and the Lake Level Capital Project. In this case, the annual assessment for O&M for the period of 2025–2029 is \$248.08 per year.

The total Lake Level Capital Assessment of \$33,431.46, or \$1,948.32 per year (which includes 5% estimated interest rate) paid over 40 installments.⁷⁴

On January 15, 2024, FLTF held the required public hearing in connection with the lake level special assessment rolls. The notice of hearing was prepared in accordance with the requirements of Section 30714 of Part 307, which includes the notice requirements set forth in Public Act 162, *supra*.⁷⁵ The notice was mailed to each property owner and published twice in both the *Midland Daily News* and *Gladwin County Record*.⁷⁶ The notice provided that in order to appeal the amount of the operation and maintenance assessment and/or capital improvement special assessment, “*any person or entity objecting*” shall appear at the special assessment hearing or file their objection in writing with the FLTF “no later than the close of the public hearing; or any such person or entity may file an appearance and protest by e-mail to info@fourlakes-taskforce.org with “Objection” in the subject line, or by letter” to the FLTF “in which case, his or her personal appearance at the public hearing shall not be required.”⁷⁷

On January 15, FLTF administrative staff presented the computation of costs in connection with the 5-year O&M lake level special assessment roll, and the computation of costs for the Lake Level Capital Project special assessment roll.⁷⁸ In addition, Ron Hansen, PE, from the Spicer Group, also gave a brief overview of the apportionment methodology and the number of adjustments made to individual properties based on the information provided by landowners relative to the specific conditions of their

⁷⁴ See, link special assessment maps: <https://www.four-lakes-taskforce-mi.com/>

⁷⁵ Record #13, Notice of Public Hearing.

⁷⁶ *Id.* and Record #14, Affidavit of Mailing and Posting FLSAD Hearing; Record #15 Affidavit of Publication (*Midland Daily News*); and Record #16, Affidavit of Publication (*Gladwin County Record*).

⁷⁷ Record #13, Notice of Public Hearing.

⁷⁸ Record #17 FLTF January 15, 2024 Agenda Special Assessment Hearing and FLTF Board meeting, p1; Record #18 Minutes, FLTF Special Assessment Hearing and FLTF Board meeting, pp 1–3; Record #19 FLTF Lake Level Special Assessment Hearing Transcript, pp 14–19.

properties that were affected by the benefit factors.⁷⁹ In all, prior to the hearing, over 780 properties had adjustments affecting their respective properties after providing information and discussing the same with FLTF's consultant.⁸⁰ FLTF then opened the hearing to receive objections and comments from property owners within the FLSAD.⁸¹ At that time, landowners with questions or concerns as to the apportionment factors that were used to calculate their special assessment were encouraged to and had the opportunity to meet directly with a representative from FLTF's engineering consultant, the Spicer Group.⁸² Following the January 15 lake level special assessment hearing, FLTF revised the special assessment rolls based on the objections and comments received from landowners.⁸³ The revised lake level special assessment rolls were then transmitted to the Counties for consideration.

On February 6, in a joint meeting of the Counties' respective board of commissioners, the Counties approved the lake level operation and maintenance special assessment roll and the capital improvement special assessment roll.⁸⁴ In addition, the Counties approved the financing plan for the Lake Level Project that will provide long-term financing in the aggregate principal amount not to exceed \$217,700,000 (which includes a contingency of \$34,584,150) to be secured by and payable from the collection of lake level special assessments against properties in the FLSAD.⁸⁵

⁷⁹ Record #19 FLTF Lake Level Special Assessment Hearing Transcript, pp 19–22.

⁸⁰ *Id.* at 20:16–18.

⁸¹ Record #17 FLTF January 15, 2024 Agenda Special Assessment Hearing and FLTF Board meeting, p1; Record #18 Minutes, FLTF Special Assessment Hearing and FLTF Board meeting, pp 1–3; Record #19 FLTF Lake Level Special Assessment Hearing Transcript; Record #20, List of Attendees at lake level special assessment hearing, and Record #21, Written Objections.

⁸² Record #19 FLTF Lake Level Special Assessment Hearing Transcript, 24:21–25; 25:1–15.

⁸³ Record #18 Minutes, FLTF Special Assessment Hearing and FLTF Board meeting, p2.

⁸⁴ Record #9 through #12; Record #22; Record #25; Record #26; Record #32 through #37.

⁸⁵ Record #30 Midland County Resolution Approving Financing Plan; Record #3, Gladwin County Resolution #2024-009 Approving Financing Plan.

On or about February 20, 2024, Appellants filed their original Claim of Appeal, which was amended on February 21. Aside from the HCA, the caption listed 992 names that purport to be property owners in the FLSAD. On February 26, 2024, Appellees filed the Record on Appeal and served Appellants' counsel. The lengthy caption for this appeal lists the HCA, a Michigan non-profit corporation, on behalf of several persons/entities. *See* Claim of Appeal. The Claim of Appeal asserts that the HCA “[i]s comprised of property owners and those with property interests within the Four Lakes Special Assessment District or adjacent to it. Individual appellants are members of the HCA who own or have interest in property within the Four Lakes Special Assessment District. Each appellant has standing to claim this appeal”⁸⁶

A review of the record from the January 15 Lake Level Special Assessment Hearing shows that the HCA was not represented and did not present any objections to the approved assessment rolls. In addition, on information and belief, there are at least 36 persons/entities listed in the caption (of the Claim of Appeal) that do not appear to have any property interests within the FLSAD. Moreover, there are 437 properties of persons listed in the caption (of the Claim of Appeal) that did not timely object or submit written objections at or before the January 15 lake level special assessment hearing. See **Appellees' Ex A**. Finally, there are only 248 properties of the persons listed in the caption that formally objected. But these property owners did not submit any evidence to support their claims that the assessments were contrary to law or were arbitrary and capricious.

⁸⁶ (Claim of Appeal, ¶ 12)

ARGUMENT

I. Appellant HCA Lacks Standing To Bring The Claim of Appeal To Set Aside The Lake Level Assessment Rolls Approved By the Appellees.

A. Standard of Review – Standing to Sue.

Summary disposition is appropriate under MCR 2.116(C)(10) where a plaintiff lacks standing to sue. See, *Pontiac Police & Fire Retirees v Pontiac No 2*, 309 Mich App 611, 617–18; 873 NW2d 783 (2015). In reviewing a motion for summary disposition under MCR 2.116(C)(10), the court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. MCR 2.116(G)(5); *Kosmalski ex rel Kosmalski v St John’s Lutheran Church*, 261 Mich App 56, 59; 680 NW2d 50 (2004). Under MCR 2.116(C)(10), summary disposition is appropriate when “there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” MCR 2.116(C)(10); *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Standing refers to the right of a party to invoke the power of the court to adjudicate a claimed injury in fact. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006).

MCR 2.201(B) provides that “[a]n action must be prosecuted in the name of the real party in interest....” The real party in interest is a party who is vested with a right of action in a given claim, although the beneficial interest may be with another. *In re Beatrice Rottenberg Living Trust*, 300 Mich App at 356; 833 NW2d 384; *Barclae*, 300 Mich App at 483; 834 NW2d 100. In general, standing requires a party to have a sufficient interest in the outcome of litigation to ensure vigorous advocacy and ‘in an individual or representative capacity some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.’ *Bowie v Arder*, 441 Mich 23, 42; 490 NW2d 568 (1992) (citation and quotation marks omitted); see also *Lansing Sch Ed Ass’n v Lansing Board of Educ*, 487 Mich. at 355–56; 792 NW2d 686. Both the doctrine of standing and the included real-party-in-interest rule are prudential limitations on a litigant’s ability to raise the legal rights of another. *Lansing Sch Ed Ass’n*, 487 Mich

at 355–356; 792 NW2d 686; *In re Beatrice Rottenberg Living Trust*, 300 Mich App at 355; 833 NW2d 384. Further, “a litigant has standing whenever there is a legal cause of action.” *Lansing Sch Ed Ass’n*, 487 Mich at 372; 792 NW2d 686. But plaintiffs must assert their own legal rights and cannot rest their claims to relief on the rights or interests of third parties. *Barclae*, 300 Mich App at 483; 834 NW2d 100. The real party in interest is one who is vested with the right of action as to a particular claim, or, stated otherwise, is the party who under the substantive law in question owns the claim asserted. *In re Beatrice Rottenberg Living Trust*, 300 Mich App at 356; 833 NW2d 384.

Pontiac Police & Fire Retirees, *supra* 309 Mich App at 621–22.

A private citizen does not have standing if he or she is unable to establish that he or she has been harmed in a manner different than a member of the general public. *Detroit Fire Fighters Ass’n. v. City of Detroit*, 449 Mich 629, 634; 537 NW2d 436 (1995).

An organization will have standing to advocate the interests of its members “where the members themselves have a sufficient stake or have sufficiently adverse and real interests in the matter being litigated.” *Trout Unlimited, Muskegon–White River Chapter v City of White Cloud*, 195 Mich App 343, 348; 489 NW2d 188 (1992). In other words, “organizations . . . have standing to bring suit in the interest of their members where such members would have standing as individual plaintiffs.” *Nat’l Wildlife*, *supra* at 629; 684 NW2d 800.

MOSES Inc, *supra*, at 414.

B. Appellant HCA Lacks Standing To Represent Members Listed In The Caption Of The Claim Of Appeal Where Such Members Claims Regarding The Lake Level Special Assessments Levied are Inherently Antagonistic, Separate and Unique and HCA’s Representation is Akin to Advocating the Interests of the General Public.

HCA lacks standing because as an organization, in this instance, it cannot represent multiple persons or entities where each of the named parties’ claims against the Appellees are inherently antagonistic, separate, and unique from each other. MCR 2.201(B) provides that: “An action must be prosecuted in the name of the real party in interest....” Lake special assessment rolls, as in this case, are compiled using an apportionment methodology, which calculates the percentage of the project costs and benefits derived to each specific property based on the general characteristics of that property.

The total apportionment must equal 100%. Consequently, decreases in the apportionment of one property or class of properties, requires an increase to other properties (and by design, the special assessments) in the lake-level special assessment district. In other words, each of the purported property owners listed in the caption on appeal (assuming they have property in the FLSAD and perfected their right to appeal by objecting to the at the special assessment hearing) has uniquely different claims in connection with the assessment to their property—which makes them antagonistic to one another.

HCA’s brief proves this. HCA attacks Appellees apportionment methodology alleging that methodology was arbitrary and capricious asserting that it does not account for “actual benefit to that property.” (Appellants’ Br 11.) But later, it criticizes Appellees’ apportionment methodology for not considering certain factors or differences between property owners who live upstream of the dams as compared to downstream property owners. (Appellants’ Br 14). HCA claims that the Appellees apportioned the assessment without regard to proportionality, and then cherry picks only 12 properties of the purported 992 HCA members. Then it further advances the misleading argument regarding alleged disproportionality for just two properties (ignoring that there are 8,170 properties in the FLSAD). (Appellants Br, p 16). Aside from the fact that the two examples presented misrepresent the application of the apportionment methodology, the SEV information presented by Appellants shows that each property and the respective property owners have distinctly different claims. And the outcome, whether in favor of one property or class of properties, affects other properties in the FLSAD.

Also, none of the purported property owners listed in the caption *even bothered to submit evidence* at the lake level special assessment hearing that could or would have been addressed by the Appellee at that time of the hearing.

Because each person or entity listed in the caption has distinctly different claims, HCA's representation is akin to advocating the interest of the general public. It thus lacks standing.

C. Appellant HCA Lacks Standing To Represent Members Listed In The Caption Of The Claim Of Appeal Where Such Members Either Do Not Own Property In The FLSAD Or Did Not Perfect The Right to Appeal By Failing to Object at The Hearing.

Section 30714 of Part 307 provides:

(1) A special assessment roll shall describe the parcels of land to be assessed, the name of the owner of each parcel, if known, and the dollar amount of the assessment against each parcel.

(2) The delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll. Notice of a hearing shall be by both of the following:

(a) By publication of notice at least twice prior to the hearing in a newspaper that circulates in the special assessment district, the first publication to be at least 10 days before the hearing.

(b) As provided in Act No. 162 of the Public Acts of 1962, being sections 211.741 to 211.746 of the Michigan Compiled Laws.

(3) At or after a public hearing, the delegated authority may approve or revise the cost of the project or the special assessment roll. Before construction of a project is begun, the county board shall approve the cost and the special assessment roll by resolution.

(4) The special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.

The notice of hearing requirements of Public Act, in pertinent part provides:

(2) The notice of hearing shall include a statement that appearance and protest at the hearing in the special assessment proceedings is required in order to appeal the amount of the special assessment to the state tax tribunal⁸⁷ and shall describe the manner in which an appearance and protest shall be made.

⁸⁷ The Michigan tax tribunal lacks subject-matter jurisdiction to hear lake level appeals. See *In re Project Cost and Special Assessment Roll For Chappel Dam*, 282 Mich App 142, 145, and 147; 762 NW2d 192 (2009); see also, *USL Improvement Assoc. v. Oceana County Drain Commissioner*, unpublished, Docket Nos. 297157, 298080, March 13, 2012 (*Held*: Subject matter jurisdiction

(3) An owner or party in interest, or his or her agent may appear in person at the hearing to protest the special assessment, or shall be permitted to file his or her appearance or protest by letter and his or her personal appearance shall not be required.

(4) The governing body shall maintain a record of parties who appear to protest at the hearing. If a hearing is terminated or adjourned for the day before a party is provided the opportunity to be heard, a party whose appearance was recorded is considered to have protested the special assessment in person.

Michigan courts have recognized that “a protest of an assessment before the local board of review is clearly required before the tribunal may acquire jurisdiction.” *Manor House Apartments v City of Warren*, 204 Mich App 603, 605; 516 NW2d 530 (1994). The Tax Tribunal properly grants summary disposition to a respondent on the basis of the lack of subject-matter jurisdiction when the petitioner fails to timely file the petition or protest the assessment at the local level as required by law. *Kelser v Dep't of Treasury*, 167 Mich App 18, 20–21; 421 NW2d 558 (1988).

Appellant, HCA contends that “[I]ndividual appellants are members of the Heron Cove Association who own or have an interest in property within the Four Lakes Special Assessment District”, and that “[E]ach appellant has standing to claim this appeal.” (*Id.*)

The FLSAD consists of 8,170 parcels, with 6,278 parcels having direct waterfront access and 1,892 parcels having deeded private access to the waterfront (backlots). Aside from Appellant, HCA, there are 974 separate persons/entities listed in the Claim of Appeal.⁸⁸ A review of the names to the properties within the FLSAD show that 36 persons/entities listed in the caption do not own property in the FLSAD and hence, were not assessed for the Lake Level Capital Project or for O&M. Clearly,

does not rest with the Michigan Tax Tribunal, but with the circuit court to hear lake level special assessment appeals).

⁸⁸ The amended caption actually lists 992 persons/entities that HCA purports to represent, however, following the filing of Appellants’ Brief, 18 persons named in the caption requested to be removed and a stipulation was entered between the parties to amend the caption and removed those individuals and properties from the appeal.

these properties have not suffered an “injury in fact” that would invoke standing to sue in connection with the approval of the special assessment rolls. Accordingly, these property owners should be dismissed. **Appellees’ Ex A.**

Next, 437 the persons identified in the caption never bothered to appear at the January 15 lake level special assessment hearing to formally object or provide evidence that the FLTF’s methodology and special assessments were contrary to law, or was arbitrary, capricious or fraudulent. **Appellees’ Ex A.** As indicated above, before approving a lake level special assessment roll, the Part 307 process requires a hearing to receive objections, and then requires property owners to appeal the roll following the approval of the county board of commissioners. The failure to object and submit evidence at the hearing is fatal to those property owners’ right to appeal. Otherwise, why have a hearing at all? Indeed, because Appellants’ argument claim that FLTF and the Counties lacked substantial, competent, and material evidence, this failure is particularly crucial, how can they object to purportedly insufficient evidence when they did not present *anything*?

Accordingly, Appellant, HCA and those property owners that did not appear and object at the January 15 lake level special assessment hearing should be dismissed.

Finally, only 248 properties of the persons listed in the caption formally objected at the January 15 lake level special assessment hearing. But even those did not submit any evidence to support the claims alleged—*i.e.*, that the assessments were contrary to law or arbitrary and capricious. HCA and the remaining property owners should not be permitted to add new evidence and rehash the facts. Accordingly, this Court should dismiss this Appeal in full.

II. The Delegated Authority and Board of Commissioners’ Approval of the Lake Level Special Assessment Rolls Was Not Contrary to Law.

A. Standard of Review: Appellants wrongly insert an inapplicable review standard, and—in any event—the Counties complied with applicable law.

On the merits, Appellants’ brief starts off on the wrong foot by building its first argument around an inapplicable standard of review. Namely, Appellants attack the special assessment rolls as “not supported by competent, material, and substantial evidence on the whole record.” (Appellants Br., pp. 9–12.) But “substantial evidence” review is limited to those circumstances where an administrative body is required to conduct a trial-like evidentiary proceeding, such as a contested case. See, e.g., MCL 24.271–24.288. None occurred here.

Rather, the Counties followed the procedures under Part 307, which prescribes a less-formal public notice and public hearing, providing an opportunity for public comment but not demanding a trial-like procedure involving the admission and weighing of evidence. *In re Project Costs & Special Assessment Roll for Chappel Dam*, 282 Mich App 142, 150, 762 NW2d 192 (2009) (Part 307 guarantees notice and opportunity to be heard before the determination of a special-assessment roll; not a full trial). In other words, because there was no trial-like administrative hearing, there is no reason for this to review the factual support for the Counties’ decision in the same way that an appellate body would review the factual findings of a trial court. Indeed, it *cannot* do so; the substantial evidence standard is simply inapplicable. *Ross v Blue Care Network of Mich*, 480 Mich 153, 164; 747 NW2d 828 (2008), citing Const 1963, art 6, § 28. Consequently, Appellants’ first argument is wholly misplaced.

Yet, even if this Court wrongly assumed that type of review to be applicable here, the Counties would still pass with flying colors. The Counties’ methodology for apportioning the costs of the lake level special assessment rolls among lakefront and backlot property owners who benefit

from the Four Lakes satisfies all relevant criteria. Thus, in any event, Appellants have no valid basis to challenge the lake levels special assessment rolls, and this Court should affirm.

1. The “substantial evidence” test does not apply here because no formal evidentiary hearing was required.

Because no evidentiary hearing was required here, the “substantial evidence” review standard simply does not apply. In other words, in the absence of a trial-like proceeding to review, circuit courts sitting as appellate courts over administrative bodies do not test the evidentiary basis for those bodies’ decisions. Rather, the applicable standard of review simply tests whether the decision is “authorized by law”—*i.e.*, did the body comply with the law? The Counties meet that standard.

2. This Court only reviews administrative decisions under the “substantial evidence” test where an evidentiary hearing is required by law.

The Michigan Constitution provides that review of administrative agencies’ decisions are subject to judicial review as follows:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; *and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.* [Const 1963, art 6, § 28 (emphasis added).]

Substantial-evidence review is akin to the review that appellate courts apply to a trial court’s fact-finding, *i.e.*, a form of clearly erroneous review. *Boyd v Civil Serv Comm’n*, 220 Mich App 226, 234–35; 559 NW2d 342 (1996) (observing the “standard is indistinguishable from the clearly erroneous standard of review that has been widely adopted in Michigan jurisprudence.”); *Vanzandt v State Employees Ret Sys*, 266 Mich App 579, 585; 701 NW2d 214 (2005) (commenting that “the

substantial evidence test to the agency's factual findings . . . is essentially a clearly erroneous standard of review”). Caselaw is clear that the “substantial evidence” standard is a highly deferential form of review. *Id.* at 588 (“Such review must be undertaken with considerable sensitivity in order that the courts accord due deference to administrative expertise and not invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably differing views”), quoting *Michigan Employment Relations Comm’n v Detroit Symphony Orchestra, Inc.*, 393 Mich 116, 124; 223 NW2d 283 (1974). And a court may not substitute its judgment for the administrative body. *Mudel v Great Atl & Pac Tea Co*, 462 Mich 691, 706; 614 NW2d 607 (2000) (noting a court “may not substitute [its] own judgment for” that of the agency).

Notwithstanding the deference ordinarily given to an administrative body’s fact-finding, the standard only applies in limited circumstances: namely, when such a body is required to make factual findings following an evidentiary hearing. As the constitutional text says, it is only applicable “in cases in which a hearing is required.” Const 1963, art 6, § 28. If no hearing is required, then substantial-evidence review does not apply at all. *Ross*, 480 Mich at 164 (“Decisions of an administrative agency or officer, in cases in which no hearing is required, are reviewed to determine whether the decisions are authorized by law.”); see also *Henderson v Civ Serv Comm’n*, 321 Mich App 25, 38–40; 913 NW2d 665, 672–73 (2017), quoting *Brandon Sch Dist v Mich Ed Special Servs Ass’n*, 191 Mich App 257, 263; 477 NW2d 138 (1991) (“Where no hearing is required, *it is not proper* for the circuit court or this Court to review the evidentiary support of an administrative agency’s determination.”) (emphasis added). Not otherwise.

In other words, this standard of review that is analogous to an appellate review of a trial court’s fact-finding only applies when an administrative body uses trial-like procedures. For example,

administrative bodies often permit “contested cases,” which permit the subpoenaing, calling, and cross-examination of witnesses, MCL 24.273, MCL 24.272(4); establish evidentiary standards, MCL 24.275 (“the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable”); allow for legal and factual arguments, MCL 24.272(3); introduction of documentary evidence, MCL 24.276; officially noticed facts, MCL 24.277; factual stipulations, MCL 24.278(1); and ultimately, findings of fact “based exclusively on the evidence and on matters officially noticed.” MCL 24.285. But, if the law does not require such procedures, then the standard is simply inapposite. *Wescott v Civ Serv Comm’n*, 298 Mich App 158, 162; 825 NW2d 674, 676–77 (2012).

3. Part 307 did not require nor did the Counties conduct a trial-like evidentiary proceeding.

Part 307 does not require a trial-like evidentiary proceedings culminating in factual findings based on an evidentiary record. *In re Chappel Dam, supra*. Instead, the Legislature believed that it was sufficient to create a process whereby property owners could file written comments or make oral objections at a public hearing, submit evidence and thereafter appeal to a judicial body any *legal* error.

Specifically, MCL 324.30714(2) provides that “[t]he delegated authority shall set a time and place for a public hearing or hearings on the project cost and the special assessment roll.” Then the delegated authority (here, FLTF) must provide notice by newspaper circulation and in the manner required for special assessments under the 1962 PA 162. MCL 324.30714(2)(a) & (2)(b); see also MCL 211.741–746. Lastly, the delegated authority must hold a public hearing to “approve or revise the cost of the project or the special assessment roll,” MCL 324.30714(3), and “the county board” must also approved the roll. *Id.*

No full evidentiary hearing is required. No “contested case” is provided for. No formal factual findings are required to be made by either the delegated authority or the Counties. In other words, this action is more akin to the quasi-legislative decisions of many municipal and state boards than it is to the quasi-judicial, trial-like proceedings required (or allowed) for certain administrative actions. And the substantial-evidence standard applicable to fact-findings of administrative bodies is inapplicable.

Because the Legislature did not create a trial-like evidentiary proceeding in Part 307, the “substantial evidence” review standard does not apply. In other words, Appellants’ argument based upon that inapplicable standard is simply misplaced. Thus, this Court should affirm.

4. Lake Level Special Assessments Made by the Delegated Authority Is Afforded Great Deference.

But, even if this Court applies a “substantial evidence” review, that standard is more than satisfied here. Simply put, the Appellees did everything they needed to—and more—to justify the methodology of apportioning the lake level special assessment rolls at issue here. And that methodology fairly apportions the benefit of re-establishing the Four Lakes—after significant state taxpayers’ subsidies of nearly 45% of the Lake Level Capital Project—among those who benefit most from the existence of the lakes.

As the “delegated authority,” the FLTF is charged with the obligation to maintain the court-ordered lake levels of the Four Lakes. MCL 324.30702(3), 324.30708(1). To fulfill this duty, “[t]he county may enter into a contract for operation and maintenance of an existing dam.” MCL 324.30708(2). To “defray” the costs of maintaining the appropriate lake levels and, thus, any costs related to maintaining a dam, Part 307 gives the FLTF the authority to “compute the cost of the project and prepare a special assessment roll,” assessing the costs to the property owners in the judicially created special assessment district. MCL 324.30711. The making, levying and collection

of lake level special assessments should conform to the mandates of the Drain Code, MCL 280.1 *et seq.* MCL 324.30705(1). Special assessments for drain improvements, must be based on the special benefits to the assessed land. *Clark v City of Royal Oak*, 325 Mich 298, 313; 38 NW2d 413 (1949); see also *King v Butchbaker*, unpublished per curiam opinion of the Court of Appeals, issued August 9, 2005 (Docket No. 254912). This approach is reflected in the Drain Code, which requires that a special assessment be apportioned according to the benefits derived by each parcel. MCL 280.152; see also MCL 280.151 & MCL 280.262.

It is well-settled, that municipal decisions regarding special assessment are presumed to be valid. *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993), citing *In re Eight and One-Half Mile Relief Drain*, 369 Mich 641, 649; 120 NW2d 789 (1963); *Crampton v Royal Oak*, 362 Mich 503, 514—16; 108 NW2d 16 (1961). Moreover, “decisions of municipal officers regarding special assessments ‘generally should be upheld’” *Id.* at 402, quoting *Dixon Rd Group v Novi*, 426 Mich 390, 403; 395 NW2d 211 (1986).

In *Clark*, the Michigan Supreme Court addressed the issue of special assessments in the context of a drain project and stated:

It is true that special assessments for a public improvement, such as a drain, must be based on the special benefits to the land assessed therefor. Cross-appellants claim that such benefits must be measured by the enhanced value of the land due to the drain as determined many years after the drain was constructed. This is not correct. Drains are not only for the purpose of improving the land, but are also for improving the sanitation and health of the residents and municipalities of the entire district. *The exact and actual monetary benefit to any individual parcel of land would be difficult to measure and at most can only be estimated with a fair degree of exactness.*

Clark, 325 Mich at 313. (emphasis added).

In other words, a drain commissioner is given extensive discretion in preparing the special assessment roll, determining what benefit each parcel of property receives, and is not required to apply a

precise mathematical formula when preparing the special assessment roll. See also *In re Eight and One-Half Mile Relief Drain*, 369 Mich at 648 (quoting *Cummings v Garner*, 213 Mich 408, 433; 182 NW 9 (1921) (“Where the rule of apportionment is according to the special benefits received, the application of that rule may be effected by the employment of *any method which will accomplish that purpose*, whether it be by valuation, frontage, superficial area, or any other method which does not lose sight of the fundamental basis of special assessments for local improvements.”) (emphasis added). “In the absence of a readily apparent mistake or abuse of discretion, courts should not attempt to second-guess the administrative board members or municipal officers in whom discretion has been vested and whose expertise inevitably exceeds that of the court.” *Charter Twp Of Lansing v Ingham County Drain Commissioner*, unpublished *per curiam* opinion of the Court of Appeals, issued December 2, 2014 (Docket Nos. 316870 and 318446) (2014 WL 6778948) p4. “There will inherently be a certain amount of arbitrariness in ‘many honest and sensible judgments’ that ‘express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth,’ but in the absence of fraud or a clear adoption of wrong principles, ‘[s]omewhere there must be an end,’ so boards are deferred to within their jurisdiction.” *Id.* at 650, quoting *Chicago, B & QR Co v Babcock*, 204 US 585, 598 (1907).

In *King v Butchbaker*, *supra*, landowners contended that under the drain assessment made against their property was unlawful. The landowners asserted that “under the principle of benefits derived relative to assessing or apportioning the cost of a drain project,” their property received no benefit from the construction as necessarily and solely reflected by changes in the market value of the property and, further that the method used by the drain commissioner “improperly focused on

property features that contributed to the need for a drain, not the benefits derived or received by way of the drain project.” Disagreeing with the property owners, the Court of Appeals stated,

MCL 280.151 and MCL 280.152 clearly and unambiguously indicate that a drain assessment must be based on an apportionment of benefits and that the apportionment of benefits is based on the principle of benefits derived. The concept underlying special assessments to cover the cost of a public improvement, such as a drain, is that the land upon which an assessment is imposed is peculiarly benefited, and thus the property owner does not pay anything in excess of what the owner receives by reason of such improvement ...

We find it unnecessary to address plaintiffs’ argument that benefits derived must be measured by fluctuation, if any, in the market value of the property that is created when taking into consideration the drain project. MCL 280.157 provided the board of review the authority ‘to hear the proofs and allegations of the parties[,]’ yet plaintiffs did not take advantage of the opportunity to submit evidence regarding market value. ...[.]

King v Butchbaker, pp 1–2. (emphasis added).

As the “making, levying, and collection of special assessment” authorized by Part 307 shall conform as nearly as possible to the proceedings for levying special assessment as set forth in the Drain Code, MCL 324.30705(3), the FLTF as the delegated authority, is afforded great deference apportioning the costs in connection with the Lake Level Capital special assessments and the O&M lake level special assessments. In this matter, FLTF exercise its best judgement in preparing the special assessment rolls which fairly and proportionately distributes the costs of the restoration, and operation and maintenance of all four dams. And, like a drain project, Appellants’ claims that the benefits derived must be measured by fluctuation, if any, in the market value that is created when taking into consideration the Four Lakes project to restore the lakes following the catastrophic dam failures should be disregarded.

5. As With Drain Assessments Under the Michigan Drain Code, Lake Level Special Assessments Under Part 307 Are Not Related to Property Taxes, But Are Exactions Made Through the Counties' Police Power Exercised For the Benefit and Welfare of the Public.

The Michigan Tax Tribunal Act⁸⁹ gives the MTT jurisdiction over: “[A] proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under the *property tax laws* of this state.” MCL 205.731. The definition of “*property tax laws*” specifically excludes the drain code of 1956. MCL 205.703(f). Drain assessments made under the Drain Code are not related to property taxes but are exaction “through the state’s police power as part of the government’s efforts to protect society’s health and welfare” or “in connection with a regulatory program to defray the cost of such regulation.” *Ashely Ann Arbor, LLC v Pittsfield Charter Twp*, 299 Mich App 138, 148; 829 NW2d 299 (2012). As such drain assessments are not special assessments with the usual meaning of the term.

Similarly, lake-level special assessments are exactions through the state’s police power as part of a county’s efforts to “promote the most benefit to the public; that best protect the public health, safety, and welfare; that best preserve the natural resources of the state; and that best preserve and protect the value of property around the lake.” MCL 324.30701(h). In this case, all four dams are high hazard dams that are regulated by the State of Michigan, and must comply with dam safety requirements and regulations, as well as other environmental laws.

A lake-level special assessment may not be imposed on lands not benefited by the lake level improvements. This concept is fundamental to both drain law and Part 307, and is a manifestation of legislative intent, which provides: “the cost of a [lake level] project to establish

⁸⁹ Michigan Public Act 186 of the Public Acts of 1973, as amended, MCL 205.701 *et seq.*

and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state, and state-owned lands under the jurisdiction and control of the department.” MCL 324.30711(1). Just as with drain assessments, in fixing the amount of the lake level special assessment, the delegated authority need not adhere to any precise mathematical formula. And while the computation necessarily must comport with the theory of special benefit derived, it is recognized that, in apportioning the cost of a lake-level project among involved property owners, consideration should be given to all surrounding facts and circumstances tending to throw light on the question as to the extent of the benefits resulting from the improvement. Moreover, while special benefit must be recognized an increase in the value of the land as a consequence of improvements undertaken in the context of the typical street improvement special assessment matter issued pursuant to statutory authority accorded townships and municipalities, see *Dixon Road Group v Novi*, 426 Mich 390; 395 NW2d 211 (1986), the same is not mandated when considering drain improvements or lake-level improvements. The rationale for this difference was highlighted in *Clark, supra*, in which the Supreme Court, considering a claim that benefits emanating from a drain project must be measured by the enhanced value to the land, stated:

Drains are not only for the purpose of improving the land, but are also for improving the sanitation and health of the residents and municipalities of the entire district. The exact an actual monetary benefit to any individual parcel of land would be difficult to measure and at most can only be estimated with a fair degree of exactness. *Id.*

By the same degree, once lake levels are established by the circuit court, Part 307 *mandates* that the delegated authority maintain the lake levels:⁹⁰ to promote the most benefit to the public; to best protect the public health, safety, and welfare; to preserve the natural resources of the state;

⁹⁰ MCL 324.30708(1).

and to preserve and protect the value of property around the lake. (emphasis added). And, like drain assessment, the exact actual monetary benefit to any individual parcel would be difficult to measure.

6. The FLTF Exercised its Best Judgment in Preparing the Lake Level Special Assessment Rolls, Fairly Apportioning the Costs of the Restoration and Operation and Maintenance of the Four Dams to the Property Owners.

In this case, the FLTF appropriately assessed the costs of the Lake Level Capital Project and the O&M according to the benefit derived by each parcel and did not act arbitrarily and capriciously. The apportionment methodology used in preparing the special assessments rolls to apportion costs to 8,170 parcels involved a comprehensive process over three years and was revised with input received from property owners. The methodology clearly shows that the making and levying the special assessments are proportional and conform to the process under the Drain Code. As Michigan courts have recognized, it is exceedingly difficult to precisely measure the benefit, in monetary terms, that a property owner receives from having property on or near an inland lake. As explained at the January 15, 2024, and information presented to FLTF Board and the Counties, FLTF administration and consultants prepared the assessment that was fair and equitable. The special assessment rolls fairly and provides for assessments based on the parcels' associated benefits related to the lake restoration capital improvement project and operations and maintenance of the Four Lakes' system. The benefit factors established a base (waterfront or backlot), then took into consideration frontage, water depth, water view and in case of non-residential properties (*i.e.*, commercial marinas, state lands, parks and agriculture) a calculated derived benefit. Proportionately, the special assessment rolls place a higher assessment on properties with greater frontage than those with less frontage. Moreover, the apportionments factors also the quality of lake frontage.

For backlot properties with deeded access, the benefit factors took into consideration the quality of the lake access, reducing the apportionment to accommodate parcels, with poor access (*i.e.*, unmaintained access), limited quality access (*i.e.*, allows for access but not a boat slip) or high-quality access (*i.e.*, allows for boat launching or boat slip). Again, the special-assessment rolls puts a proportionately higher assessment on properties with higher quality access than those that do not.

Appellants claim it is unfair to treat property owners who live upstream of all four dams the same as property owners downstream of all four dams, that the “methodology does not account for the fact that the cost of each dam is different,” that there are differing number of parcels “lie around each of the former lakes” or “that a property owner north of the northernmost dam does not likely benefit at all from reconstruction of the southernmost dam”. (Appellants’ Br, p 14). Aside from the fact that none of the persons or entities listed in the caption of this appeal ever bothered to present any evidence to support whether the foregoing claims would result in a different apportionment, this argument is merely an attempt to second-guess the comprehensive process implemented by FLTF to arrive at fair and proportional lake-level assessments. The 2019 Lake Level Order entered in this matter followed an extensive hearing before this Court. Findings were made that all four lakes and dams were hydraulically and hydrologically interrelated, and the continued operation of the dams were of paramount importance to the environment, recreation, property values of lake. It is simply untrue that the FLSAD was not “arbitrarily drawn.” (Appellants’ Br, p 15).

The apportionment methodology is a common-sense, straightforward, and well-reasoned approach. A parcel with more lake front property obviously derives more benefit from the lake than someone who does not have lake front property (or who has less). Contrary to Appellants’ claims, the

quality of the frontage is factored into the benefit calculation through the measurement of lake view distances, and lake depth. In addition, what should not be lost in the discussion is the fact that Appellants secured over \$240 Million for the recovery and restoration of the Four Lakes, of which \$182 Million is dedicated to Lake Level Capital Project and represents the public benefit to the Counties and Four Lakes region. Consequently, Appellants' decision to apportion approximately 55% of the remaining costs to property owners that primarily benefit from the existence of the lakes was not contrary to law or arbitrary and capricious.

In the present case, none of the persons/entities presented any substantive information, such as appraisals, at the January 15, 2024 lake level hearing that would support their claims that the methodology for apportioning benefits was arbitrary and capricious. On appeal, Appellants now want to rehash the facts by "cherry picking" 12 parcels and using the values on record with the local assessor to illustrate "property values with the improvement (before the Four Lakes retreated), without the improvement (immediately after the Four Lakes retreated), and today" in order to stake a claim that "the loss of the Four Lakes does not appear to have substantially decrease values within the SAD." (Appellants Br, 16–17). As stated above, this Court should not address Appellants' argument that benefits derived must be measured by fluctuation, if any, in the market value of the property that is created when taking into consideration the lake level project, especially when property owners listed in the caption did not take advantage of the opportunity to submit evidence regarding market value. In any event, the leap in logic is simply absurd, since there are many factors which affect property value, including but not limited to: its location, recent purchases, zoning classification, zoning potential, regional housing supply, environmental aspects (*e.g.*, wetland, floodplain), and whether a parcel is vacant, improved, and type of improvement. In this case, it is simply absurd to suggest that looking at the assessments over a *short* period of time

indicates that proceeding with restoration of the normal level of the Four Lakes does not result in the preservation and protection property values around the lakes or that it will not be a factor in the long-term increase in value of properties around the lake.

Indeed, the information presented by the Appellants is misleading, if not deceptive when compared to similarly situated properties within the FLSAD. Why should a waterfront or backlot owner with an improved lot with the same access as a vacant lot of the same size and with the same access, have to pay more? The apportionment methodology is designed to capture the similarities as well as differences. To illustrate, Appellants identifies Parcel Identification No. 110-230-000-006-00 owned by named Appellants, Robert and Karen Price. It is true that Parcel Identification No. 110-230-000-006-00 is currently vacant and that it is a tributary of the Tittabawassee River. But contrary HCA's claims, this property is waterfront and the apportionment takes into consideration the quality of the access to this property (which is poor). What is also misleading is Appellants' reliance on the SEV to suggest that the special assessment is unlawful. As previously noted, a property's value is influenced by many factors, including the property owners' decisions. For Price, they own several lots within the same subdivision. When you compare the apportionment factors applied to the waterfront vacant lot (*i.e.*, Parcel Identification No. 110-230-000-006-00) to the Price's lot with a home on it (Parcel ID No. 110-230-000-013-10), which is conveniently not listed in the appeal (1619 Maple Point Road), you find that the apportionments are consistent and fair as they reflect the same derived benefit. See **Appellants' Exhibit B**, Appellant Parcel Comparison Data. For illustration purposes, Price's properties are depicted below, pre-2018 as compared today:



(Google Earth, 6-2018)

Compared to this:



(Google Earth, 9/2021)

Additionally, **Appellants' Exhibit C** analyzes the 12 parcels cited by Appellants, and further shows how using SEV is immaterial to the derived benefit. The value of one's land is influenced by the landowners' decisions, as well as recent purchases, zoning classification, zoning potential, regional housing supply, environmental aspects (*e.g.*, wetland, floodplain), and whether a parcel is vacant, improved, and type of improvement. In other words, reliance on recent SEV

data to suggest that the restoration of the lakes will not result in any appreciable increase in value to waterfront or backlot properties is unreliable.

III. Appellants received adequate due process through Part 307's statutorily prescribed notice and public hearing requirements.

A. The Appellees complied with all statutorily prescribed process, which meets the minimal constitutional standards of Due Process.

Lastly, Appellants' due-process claim fails. Due process prescribes the constitutional minimum procedures that the government must provide before depriving a person of life, liberty, or property. US Const. Am XIV. The touchstone of due process is notice and an opportunity to be heard. *Reed v Reed*, 265 Mich App 131, 159; 693 NW2d 825, 843 (2005) ("Procedure in a particular case is constitutionally sufficient when there is notice of the nature of the proceedings and a meaningful opportunity to be heard by an impartial decision maker."). Due process is a flexible concept, the essence of which is fundamental fairness. *Id.*

Part 307 provides just that. MCL 324.30714(2) requires that the delegated authority provide a minimum of 10 days of notice through publication in a newspaper in circulation prior to the public hearing, and notice in the manner required under MCL 211.741–746. Here, notice of hearing was mailed to each property owner and published twice in both the *Midland Daily News* and *Gladwin County Record*.⁹¹ The notice provided that in order to appeal the amount of the operation and maintenance assessment and/or capital improvement special assessment, "any person or entity objecting" shall appear at the special assessment hearing or file their objection in writing with the FLTF "no later than the close of the public hearing; or any such person or entity may file an appearance and

⁹¹ *Id.* and Record #14, Affidavit of Mailing and Positing FLSAD Hearing; Record #15 Affidavit of Publication (*Midland Daily News*); and Record #16, Affidavit of Publication (*Gladwin County Record*).

protest by e-mail to info@fourlakes-taskforce.org with “Objection” in the subject line, or by letter” to the FLTF “in which case, his or her personal appearance at the public hearing shall not be required.”⁹²

There is no dispute that FLTF complied with these requirements.

Next, the delegated authority must have a public hearing to approve the special assessment roll. MCL 324.30714(3). On January 15, 2024, FLTF held the lake level special assessment hearing in connection with the O&M and Lake Level Capital Project special assessment rolls.⁹³ At that time, over 500 people attended the hearing, and there were 109 property owners that spoke and objected to the assessments.⁹⁴ The hearing remained open, until there were no additional property owners desiring to speak, submit evidence, or present objections. In addition, at or before the hearing, the FLTF received 577 written objections.⁹⁵

In addition, although not required under Part 307, prior to hearing date, on December 6, 2023 FLTF held a webinar to inform property owners within the FLSAD of the updated project costs and estimated special assessment amounts for the capital improvements to the lake and costs required for operation and maintenance (“O&M”).⁹⁶ At that time, FLTF introduced a “virtual map” that was posted online which illustrated the estimated capital and O&M lake level special assessment to each individual parcel in the FLSAD.⁹⁷ This “virtual map” allowed any property within the FLSAD to log on and locate their respective property or properties to observe the apportionment benefit factor applied to their

⁹²Record #13, Notice of Public Hearing.

⁹³ Record #13, Notice of Lake Level Special Assessment Hearing.

⁹⁴ Record #19 FLTF Lake Level Special Assessment Hearing Transcript, pp 25–208.

⁹⁵ Record #21 Letters Objecting to Special Assessment.

⁹⁶ See <https://www.four-lakes-taskforce-mi.com/events.html> “December 6, 2023, 5:00–7:00 p.m. | Day of Review Process.”

⁹⁷ Record #13, Notice of Lake Level Special Assessment Hearing; and special assessment maps <https://www.four-lakes-taskforce-mi.com/>

property that was used to calculate the lake level special assessment.⁹⁸ Additionally, although not mandatory, throughout December 2023 through January 15, 2024, FLTF offered and conducted “one-on-one” virtual meetings with landowners to review apportionment benefit factors affecting their specific properties. During these virtual meetings, and through email or written correspondence, landowners had the opportunity to provide additional information and have their parcel reviewed in connection with the apportionment factors that were applied to their property, to calculate its derived benefit, and also to submit written objections.⁹⁹ In the course of the “one-on-one” virtual meetings with landowners, “over 780 adjustments” were made to the roll prior to the January 15 lake level special assessment hearing.¹⁰⁰

Next, Part 307 requires that the project cost and lake level special assessment roll shall be approved by the county board of commissioners by resolution. MCL 324.30714(3). On February 6, 2024 in a joint meeting of the Gladwin and Midland County Board of Commissioners, the projects costs and lake level special assessment rolls were approved.

Clearly, the Appellees met—and, indeed, exceeded—these standards. Notwithstanding Appellants’ jab that such notice took place “during the holiday season,” (Appell Br, p 22), the Counties gave **24 days** prior notice or more than twice what is required under Part 307. Moreover, as early as October 12, 2023, the FLTF held a webinar open to general public and all property owners in the FLSAD, and at that time, property owners were made aware that that a special assessment hearing in connection with the Lake Level Capital Project would be held in January

⁹⁸ *Id.* at <https://www.four-lakes-taskforce-mi.com/>

⁹⁹ *Id.*

¹⁰⁰ Record #19 FLTF Lake Level Special Assessment Hearing Transcript, 20:13–25;

2024 and were also provided updates as to estimated costs of the project and financing.¹⁰¹ Less than two months later, on December 6, 2023, in another webinar again open to the general public and property owners in the FLSAD, property owners were again informed of the special assessment hearing process and specifically, that a special assessment hearing would be held on January 15, 2024.¹⁰² Indeed, the December 6 webinar comprehensively addressed the costs, benefit factors and legal process. Thus, contrary to Appellants' claims, information regarding the timing of the special assessment process was readily available, long before the actual notice of hearing was mailed and published.

Finally, Appellants received a right to judicial review as provided for under both MCL 324.30714(4) and Michigan's Constitution. Const 1963, art 6, § 28. And they availed themselves of that—here. The idea that such processes are constitutionally deficient is devoid of any legal support. And Appellants effectively cite none, failing to identify any case indicating that such procedures are inadequate and conceding that—for most instances—there is no concern with the statutory procedures themselves.

B. Many of the Appellants who now complain of inadequate procedures did not even avail themselves of the opportunity to be heard through public comment or by submitting evidence to support their claims.

Prior to and at the lake level special assessment hearing, the Appellants did not fully avail themselves of the opportunity to be heard or by submitting evidence to the FLTF to support their claims. Indeed, the persons or entities listed in the caption and seeking to set aside the decision of

¹⁰¹ See https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/october_12_2023_webinar_final.pdf, p 15. Appellees' Ex D.

¹⁰² See https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/december_6_webinar_slides.pdf p 21; Appellees' Ex E.

the Appellants either never filed an objection. Or if they did, they did not submit any evidence, and therefore waived their right to contest the procedures under Part 307. Accordingly, Appellants' claim of appeal should be dismissed.

C. *This Court has no authority to rewrite statutory procedures.*

Appellants suggest that *Chappell Dam*'s reference to the "flexible" concept of due process somehow gives the Court the authority to rewrite Part 307 concerning its statutorily prescribed procedures for a public hearing and appeal. Not so. This Court remains bound to simply apply Part 307. The sole question is whether the Legislature's prescribed procedures comply with Due Process. They undoubtedly do.

Again, the basic constitutional minimum is notice and an opportunity to be heard. FLSAD owners were permitted an opportunity to provide comments both in writing and during the hearing addressing the impact of the proposed Special Assessment Roll on their individual property. Nothing prevented them from providing the same information now attached to Appellants' brief and arguing for an adjustment to their assessment. The fact that they did not avail themselves of this opportunity does not condemn the procedures themselves as constitutionally non-compliant.

D. *The fact that construction of the project is underway, is not material to the case.*

Construction has been underway on the four dams since emergency EGLE orders and permits were issued in 2020. Funding for the construction projects continues to be through government grants and not the Four Lakes Special Assessment District. The final phase has computed the costs necessary to complete the Lake Level Capital Project, which is the portion that will need to be assessed. If the lake level special assessment rolls are set aside. Construction will stop, the dams as they currently exist will need to be stabilized, but the state will not permit the lakes to return. Appellants assert that FLTF should not have started construction until special

assessment roll was approved. (Appellants' Br, p 21.) As noted, in this case, there was no need for a special assessment until the final phase of the lake level, especially when it was clear what was needed to complete the Lake Level Capital Project. The state and federal funding and grants received enabled FLTF to begin the restoration of the dams in phases, which requires significant planning, design, environmental study, value engineering and permitting. To have delayed the process would have been unconscionable. The vast majority of the waterfront and backlot property owners have been waiting nearly four years for their lakes to return. This appeal threatens to prevent that from happening with catastrophic results. Any delay will result in higher costs to these homeowners—or worse, the lakes not returning.

CONCLUSION AND RELIEF REQUESTED

While the issues addressed in this brief may appear complicated, they are not. HCA and the individual appellants lack standing to sue, and this matter should be dismissed. Additionally, the Legislature created an appeal process under Part 307 but did not intend for courts to second-guess how a delegated authority arrived at its conclusions. Appellants have not sustained their burden to show FLTF and the Counties' decisions were arbitrary. The FLTF exercised its best judgment and expertise in preparing the lake level special assessment rolls which correctly assesses property on a proportional basis. Finally, property owners' received adequate due process, including notice of a hearing, the opportunity to discuss the special assessment roll and present evidence at a public hearing, a further public hearing before the Gladwin and Midland County Board of Commissioners, and this appeal. Those statutorily prescribed procedures—which FLTF and the County Boards followed—clearly satisfy the minimal standards of due process.

This Honorable Court should affirm the February 6, 2024, decisions of the Gladwin and Midland County Board of Commissioners approving the lake level special assessment rolls for the Four Lakes Special Assessment District.

Respectfully submitted,

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Dated: April 16, 2024

WORD COUNT STATEMENT

In accordance with MCR 7.111(B), this document complies with the word volume limitation under MCR 7.212(B)(1). Specifically, excluding the parts of the document exempted, this brief contains 15,883 words according to the word-processing system used to produce this document.

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Dated: April 16, 2024

EXHIBIT A

PID	Landowner Name	In FLTF Special Assessment District	Provided Objection Prior to or at January 15 Hearing
130-120-002-001-10	Shannon & Jamie Adams	No	No
030-136-000-035-00	Braden Revovable Trust	No	No
070-120-000-064-00	David & Robin Ebendick	No	No
130-130-000-087-10	Keith Foren	No	No
081-600-500-630-00	Sylvia Gilvids	No	No
120-033-200-002-06	GOODWIN ARTHUR L & RHONDA L TRUST	No	No
130-167-000-020-00	HILLIARD GEORGE & LORI	No	No
130-167-000-019-00	HILLIARD GEORGE & LORI	No	No
010-731-500-101-00	JEWETT, PATRICIA	No	No
050-013-300-001-01	KINNE JEFFERY B & SANDY K	No	No
040-131-018-010-00	LONG TIMOTHY & WITTER ROXANN	No	No
110-260-000-003-00	Daniel & Lisa Ovillette	No	No
010-035-300-196-00	Irvin & Rosemarie Potts	No	No
130-170-015-001-00	Andrew & Sharon Gillette Stephenson	No	No
No PID provided	Lopez, Andrea	No	No
No PID provided	Barron, Travis	No	No
No PID provided	Barron, Duane	No	No
No PID provided	Barron, Gail	No	No
No PID provided	Boman, Linda	No	No
No PID provided	Dick, Martha	No	No
No PID provided	Donald, Henry	No	No
No PID provided	Kellan, Robert Yager	No	No
No PID provided	Kellan, Daniel	No	No
No PID provided	Kennedy, Mary	No	No
No PID provided	Morrison, Lisa	No	No
No PID provided	Rau, Lynn Marie	No	No
No PID provided	Russell, Virginia	No	No
No PID provided	Russell, Kelly	No	No
No PID provided	Smith, Ronda	No	No
No PID provided	Werner, Dennis	No	No
No PID provided	Werner, Leyna	No	No
No PID provided	Zemlicak, Michelle	No	No
No PID provided	Sowa, Edward	No	No
130-160-000-014-02	MICHAEL & PATRICEZREPSKEY	No	No
010-023-800-581-00	Tracy Coates	No	Yes,
No PID provided	Rau, Edward	No	Yes,
040-029-201-002-05	ABBS CYNTHIA E & TROIA LENORE	Yes	No
130-055-000-009-00	ABRAHAM BRIAN & JAYNA	Yes	No
030-080-000-001-99	ADER RIC & SALLY	Yes	No
110-200-000-029-00	ADOLPH, MICHAEL & DARLENE	Yes	No
150-035-400-001-04	ALLEN ANDREW & JULIE	Yes	No
030-070-000-154-00	ALLEN NATHAN & FESING JESSICA	Yes	No

110-260-000-007-00	ALLEN, CLIFFORD & PAMELA	Yes	No
040-029-200-002-04	ANTEAU ROGER A	Yes	No
040-029-200-002-03	ANTEAU ROGER A	Yes	No
130-123-000-109-00	ARSENEAULT EDWARD M JR & AIMEE J	Yes	No
030-060-000-016-00	ATHEY DENNIS & PATRICIA	Yes	No
130-177-000-055-00	ATKINSON JERRY R & THERESA	Yes	No
070-241-000-012-00	AUER, BRAD & KRISTY	Yes	No
130-027-200-001-09	BABBITT TERRIE M	Yes	No
010-002-400-203-00	BACON, WILLIAM D	Yes	No
110-015-200-033-00	BALHORN, J & J & BALHORN, C	Yes	No
150-240-000-005-00	BANNON ROBERT LEE	Yes	No
110-185-000-006-00	BARRON, DUANE & FERNANDA	Yes	No
070-120-000-069-00	BARTLETT MICHAEL G	Yes	No
150-200-000-018-10	BARTON RAYMOND & PAMELA	Yes	No
130-125-000-163-00	BAZINET ROBERT & SUSAN	Yes	No
130-165-000-010-00	BAZZLE MICHAEL & AMY	Yes	No
130-114-000-150-00	BECHTEL MARY E &	Yes	No
130-204-000-013-00	BECHTEL MARY E &	Yes	No
130-204-000-014-00	BECHTEL MARY E &	Yes	No
010-450-500-050-00	BEDELL, JAMES L & LINDA L	Yes	No
070-130-000-015-00	BENNETT ROBERT & TAMMY	Yes	No
030-130-000-006-00	BERGER MICHAEL	Yes	No
110-220-000-024-00	BERINGER, JACQUELINE	Yes	No
080-001-200-080-00	BERNIER, GILBERT A	Yes	No
130-105-000-003-00	BERTHIAUME ALYSIA	Yes	No
110-400-000-013-01	BEVERIN REV TRUST	Yes	No
030-105-000-026-00	BEYER SUSAN E	Yes	No
130-010-301-003-00	BISHOP GARY & KRYSTAL	Yes	No
130-010-303-003-00	BOMAN JUDY	Yes	No
010-011-100-151-00	BOMAN, PHYLLIS M	Yes	No
150-016-400-001-01	BOYNTON STACI M & BARRON GAIL A	Yes	No
030-135-000-009-00	BRADEN REVOCABLE TRUST	Yes	No
130-137-000-097-00	BRADY LAWRENCE P & CAROL L ETAL	Yes	No
070-036-200-007-02	BRANCHEAU, ELAINE TRUST	Yes	No
110-375-000-274-10	BRODAK, DANIEL	Yes	No
030-023-200-002-30	BYCE ANDREW & KAREN	Yes	No
070-036-400-011-00	CAIN, JIMMY & CATHY	Yes	No
110-376-000-373-00	CALHOUN, RENEE	Yes	No
030-135-000-010-00	CAMPBELL MICHAEL J & MELANIE L	Yes	No
110-420-001-005-00	CANNING, DAVID & HELEN	Yes	No (Duplicate)
040-031-203-003-00	CARL KIMBERLY & REIS CRAIG	Yes	No
110-300-000-039-01	CARTER, BRUCE & SHERRY	Yes	No
030-246-000-139-00	CASKEY WAYNE M & JOSETTE DIMERCURIO	Yes	No
010-011-100-250-00	COLE, ROBERT C ET UX	Yes	No
110-371-000-072-10	COOK, TIMOTHY	Yes	No
080-700-500-440-00	COON, NICHOLAS L & ANN	Yes	No
130-113-000-117-00	COWGILL FAMILY TRUST	Yes	No
010-450-500-070-00	CRAWFORD, CHAD & BOBBIE	Yes	No

081-720-500-075-00	CURRY, CLEMENT F & SUSAN M H&W	Yes	No
070-120-000-046-00	DANIELS, KEITH & PATRICIA	Yes	No
130-136-000-073-00	DELONG GARY & BELINDA	Yes	No
130-175-000-022-00	DENINGTON BRADLEY P	Yes	No
130-123-000-111-10	DEVUYST KENDALL L & JO E	Yes	No
010-731-500-280-00	DIESBOURG, LISA ET AL	Yes	No
030-155-000-011-10	DINSMORE DAVID & PAMELA	Yes	No
010-001-300-070-00	DIONNE, DANNY	Yes	No
110-014-300-003-02	DISCH, TERRIL	Yes	No
130-113-000-114-00	DONAJKOWSKI TERRY &	Yes	No
030-023-400-002-01	DOWNING RICHARD E	Yes	No
130-126-000-185-00	DUFRESNE TERESA L	Yes	No
110-230-000-065-10	DUNCAN, MICHAEL JR ETAL	Yes	No
130-211-000-034-00	DUNCANSON SCOTT A & CAREY A	Yes	No
040-031-202-003-02	DURANCZYK JOHN T & RIDENOUR ANGELYN	Yes	No
110-004-301-003-00	ECKHARDT, RICHARD	Yes	No
130-120-000-034-01	EICKHOFF DANEIL D & JULIE A	Yes	No
110-015-200-008-00	FARLING, KARI & MANSFIELD, BETH	Yes	No
110-230-000-053-20	FAVREAU, ROBERT D & ALICIA	Yes	No
110-025-203-001-10	FEGREUS, CHARLES & KIM	Yes	No
130-127-000-272-00	FELD PATRICK & TERRY L	Yes	No
030-135-000-004-00	FERGUSON ROBERT & SHARON	Yes	No
080-013-200-300-00	FETTIG, ROXANNE S	Yes	No
030-130-000-002-00	FIELD REBECCA	Yes	No
070-120-000-058-00	FINNERTY, JESSICA & MATTHEW	Yes	No
030-125-000-020-00	FOLLETT LUANN	Yes	No
030-130-000-007-00	FOREN KEITH M [LE]	Yes	No
030-260-000-018-00	FOSGARD MELVIN & CHARLOTTE	Yes	No
030-246-000-119-00	GARLOW JEFFREY K & CANDICE L	Yes	No
130-054-000-027-00	GAWRON KAREN	Yes	No
040-110-000-006-02	GERRIE-HERNANDEZ JUDY R ETAL	Yes	No
080-280-006-010-00	GIEDROZ, ANDREW W & RUTH C H&W	Yes	No
130-055-000-006-00	GNYP GARY A & MARY A TRUST	Yes	No
110-036-201-001-00	GOHEEN, JANET	Yes	No
130-124-000-136-00	GOLDSWORTHY EILEEN J	Yes	No
070-036-400-001-00	GOLL, CURTIS & MARTHA	Yes	No
010-384-600-160-00	GORMLEY, ANN	Yes	No
130-137-000-123-00	GROHMAN ANTHONY ETAL	Yes	No
130-210-000-014-00	GRONAU JEFFREY L & DONNA Y	Yes	No
070-250-000-006-00	GROSSMAN, DOUGLAS & KIMBERLY	Yes	No
030-105-000-007-00	GROVE CONNIE S [LE]	Yes	No
130-114-000-156-00	GUSTINE RONALD & GUSTINE LISA	Yes	No
130-126-000-238-00	HARDY JAMES & TONYA	Yes	No
070-120-000-092-00	HARVEY II, NOLAN & HAMMOND, DIANE	Yes	No
040-110-000-019-00	HARVILLE JOSHUA & MINARD JESSICA	Yes	No
040-031-203-006-00	HARVILLE KENNETH S	Yes	No
030-200-000-084-01	HAWLEY JAMES & KIM	Yes	No
030-235-000-012-00	HEDRICH LORRAINE	Yes	No

030-180-000-001-00	HEROLD GAIL POST	Yes	No
030-140-006-001-00	HESS LESLIE & SABIN STEPHANIE &	Yes	No
130-125-000-164-00	HIGHFIELD JOHN L & JENNIFER	Yes	No
130-046-000-037-00	HILLIKER BRENDA L	Yes	No
130-178-000-084-00	HODGE MARIANN	Yes	No
070-150-000-011-00	HOPKINS, MICHAEL & CHARLENE	Yes	No
070-146-000-017-00	HORNE, GARY & DIANE	Yes	No
050-071-500-580-00	HOWDEN, KENNETH A ET AL	Yes	No
030-126-000-050-00	HUBER MICHAEL J	Yes	No
030-126-000-049-00	HUBER MICHAEL J	Yes	No
030-221-000-051-00	HUCKINS CARRIE	Yes	No
030-070-000-125-00	HUCKINS GORDON & CARRIE	Yes	No
030-100-000-040-00	HUCKINS GORDON J	Yes	No
030-100-000-041-00	HUCKINS GORDON J	Yes	No
130-126-000-217-00	HUTCHINS PAUL D & DEGASPERIS	Yes	No
070-120-000-062-00	IGNACE, DANIEL & DANA	Yes	No
050-051-500-080-00	INMAN, BEVERLY R TRUST	Yes	No
150-223-000-063-00	IRELAND CHARLES III	Yes	No
030-001-300-012-00	JAKUBIEC JOHN	Yes	No
010-734-500-741-00	JERRY, MICHAEL & KATHY	Yes	No
010-731-500-010-00	JEWETT, GORDON	Yes	No
030-026-300-024-00	JOHNS D JOAN	Yes	No
150-240-000-043-00	JOHNSON ROGER L TRUST	Yes	No
030-085-000-031-00	JOHNSTON AARON & SHANDA	Yes	No
130-180-000-121-00	KEDZIOREK RICHARD & DIANE	Yes	No
080-700-500-290-00	KEELEY, NEHIL E & HELEN K TRUST	Yes	No
080-036-400-004-04	KEEN ALBERT & DOROTHY TRUST	Yes	No
010-023-300-034-00	KEHOE, CHARLES & CYNTHIA H&W	Yes	No
030-220-000-009-00	KELLAN ROBERTA K & DANIEL A	Yes	No
150-170-000-004-00	KELLOGG STACIE M & JOEY	Yes	No
110-004-302-003-00	KINGSBURY, DAVID R & RITA C	Yes	No
110-016-100-002-00	KINNER, DANIEL & CHERYL	Yes	No
110-015-202-002-00	KINNER, DANIEL & CHERYL	Yes	No
110-371-000-090-00	KINSEY, FRED & LISA	Yes	No
030-130-000-001-00	KNIEPER JAMES	Yes	No
110-302-000-088-10	KOLANOWSKI, MICHAEL & VICKY	Yes	No
110-300-000-019-00	KOLANOWSKI, MICHAEL & VICKY	Yes	No
110-009-200-019-00	KRATZCO LLC	Yes	No
010-450-500-145-00	KRIEGER, DAVID & KRIEGER, ANDREW	Yes	No
030-165-000-009-00	KRUGER RODNEY E & SHARON K TRUST	Yes	No
040-131-009-001-00	KULA KENNETH P & DONNA J	Yes	No
150-200-000-022-00	KUNDINGER DEREK & ANGIE	Yes	No
030-110-000-033-00	KUPIEC ARTHUR & LOUISE FAMILY TRUST	Yes	No
010-035-100-155-00	LABRENZ, RICHARD A & DONNA TRUST	Yes	No
010-035-100-157-00	LABRENZ, RICHARD A TRUST	Yes	No
070-111-000-014-00	LAI, WILLIAM JR & MARINA	Yes	No
110-080-000-010-00	LANG, JOHN A & BETHANY A	Yes	No
130-160-000-005-00	LAPOINTE RICHARD & CHRISTINE TRUST	Yes	No

110-275-000-111-00	LATHROP MICHAEL	Yes	No
110-023-100-001-02	LATHROP, TYLER	Yes	No
130-206-000-057-00	LAY PAUL G & SANDRA M	Yes	No
130-205-000-016-00	LEACH EDWARD & SHARON	Yes	No
040-020-303-001-01	LEE KIMBERLY J	Yes	No
030-046-000-093-00	LEICH HENRY E JR & CHERYL A LE	Yes	No
030-130-000-045-00	LEONARD ALLAN D	Yes	No
030-130-000-012-00	LEONARD ALLAN D	Yes	No
070-036-400-010-00	LESTER, LARRY- GARY	Yes	No
040-090-000-027-00	LEVENICK FRANK	Yes	No
040-110-000-021-00	LEVENICK FRANK & MICHELLE	Yes	No
040-090-000-029-00	LEVENICK FRANK & MICHELLE	Yes	No
040-090-000-030-00	LEVENICK FRANK C & MICHELLE A	Yes	No
010-014-100-106-00	LEWIS, DENNIS & ANEDRA, H&W	Yes	No
110-230-000-007-10	LINDBERG, WILLIAM ETAL	Yes	No
110-230-000-070-10	LINDBERG, WILLIAM ETAL	Yes	No
130-054-000-012-00	LONG TIMOTHY A & WITTER ROXANNE	Yes	No
110-430-004-001-00	LOVE, CATHERINE	Yes	No
030-105-000-001-00	LYONS KRISS J	Yes	No
010-738-600-920-00	LYONS, FREDERICK T & NANCY B H&W	Yes	No
130-045-000-001-00	MAKOWSKI STEVEN M & JANINE L	Yes	No
130-165-000-004-00	MALONEY MARY	Yes	No
070-150-000-020-00	MANNINO, MELESSA	Yes	No
110-110-000-011-10	MARICK, KEVIN & TERRY	Yes	No
070-120-000-036-00	MARKO, BRENT	Yes	No
110-250-000-016-00	MARR, DAVID G	Yes	No
010-001-200-010-00	MARSH, PRESTON L *TRUST*	Yes	No
150-290-000-016-00	MARTIN DENZEL & SHARON TRUST	Yes	No
030-185-000-036-00	MATTHIAS BRIAN G & CYNTHIA J [LE]	Yes	No
080-120-500-260-00	MAXWELL, ROBERT J	Yes	No
080-011-400-400-00	MAXWELL, ROBERT J	Yes	No
080-120-500-240-00	MAXWELL, ROBERT J II & PENNY M H&W	Yes	No
030-140-011-035-00	MCATEER PATRICIA	Yes	No
030-140-011-021-00	MCATEER PATRICIA & JAMES B	Yes	No
070-111-000-018-00	MCCANN JOHN & MARY	Yes	No
030-070-000-023-00	MCDONALD FLOYD & CAROL	Yes	No
030-246-000-133-00	MCDONALD RANDALL T	Yes	No
030-246-000-135-00	MCDONALD RANDALL T	Yes	No
030-100-000-018-00	MCDONALD RENEE	Yes	No
110-273-000-054-00	MCEOWN, SHELLY	Yes	No
110-376-000-377-00	GOWAN, GERARD JR & CHERYL ETAL	Yes	No
110-376-000-378-00	MCGOWAN,GERARD JR & SHANNON,K	Yes	No
150-200-000-030-00	MCPMAHAN CRYSTAL	Yes	No
050-081-500-021-00	MEALBACK, ARICKA A	Yes	No
130-122-000-081-01	MERTZ HAROLD JR & DIANE	Yes	No
130-123-000-107-00	MEYLAN GARY L TRUST	Yes	No
110-377-000-392-00	MIKOLAJEWSKI, MICHAEL & NICOLE	Yes	No
150-100-000-018-00	MILLER CHRISTOPHER & TERRY	Yes	No

030-222-000-058-00	MILLER CHRISTOPHER & TERRY LEE	Yes	No
030-222-000-071-10	MILLER CHRISTOPHER & TERRY LEE	Yes	No
150-120-000-055-00	MILLER RICHARD & JUDY TRUST	Yes	No
150-120-000-012-00	MILLER RICHARD & JUDY TRUST	Yes	No
030-026-300-017-00	MILLS CARLTON N [LE]	Yes	No
030-165-000-011-00	MILLS JULIE	Yes	No
110-230-000-041-00	MORZINSKI, RANDALL & CONNIE	Yes	No
130-212-000-047-00	MURPHY TIMOTHY & OLIVER KRAIG	Yes	No
110-023-100-001-03	MURPHY, MICHAEL & ALEXANDRA	Yes	No
110-360-000-005-00	MURRAY, FREDERICK & ROSEMARIE	Yes	No
030-065-000-026-00	NEIENDAM ROBERT & JENNIFER	Yes	No
040-031-203-001-00	NELSON GREGORY J & ANNETTE E	Yes	No
070-191-000-001-00	NELSON, GREGORY & ANNETTE	Yes	No
070-200-000-026-00	NIENHAUS ROBERT & SHERYL	Yes	No
030-023-200-002-02	NIKKI'S PROPERTY SERVICES LLC	Yes	No
030-023-200-004-00	NIKKI'S PROPERTY SERVICES LLC	Yes	No
030-221-000-049-11	OARD Y TINA	Yes	No
010-735-600-010-00	ODELL, WAYNE L & JILL A	Yes	No
030-135-000-002-00	OKONIEWSKI DANNY & ANN	Yes	No
130-124-000-144-01	OLIVER DIONE & SIGOURNEY WENDI	Yes	No
110-360-000-016-00	OLSON, JAMES	Yes	No
110-036-200-005-00	OLSON, JAMES & KAREN	Yes	No
110-036-200-006-00	OLSON, JAMES & KAREN	Yes	No
110-360-000-018-00	OLSON, JAMES & KAREN	Yes	No
110-360-000-017-00	OLSON, JAMES & OLSON JANET	Yes	No
070-250-000-019-00	OSTASZEWSKI AARON & ERIKA	Yes	No
110-230-000-035-00	OTTO, JEFFREY & MARY JANE TRUST	Yes	No
110-260-000-026-00	OUILLETTE, DANIEL & LISA	Yes	No
110-260-000-034-00	OUILLETTE, DANIEL & LISA	Yes	No
110-260-000-027-00	OUILLETTE, DANIEL & LISA	Yes	No
110-260-000-033-00	OUILLETTE, DANIEL & LISA	Yes	No
030-105-000-011-00	PALMATEER DONALD R TRUST	Yes	No
030-050-000-033-00	PARSONS HAZEL M [LE]	Yes	No
040-132-039-006-00	PARTRIDGE DAVID E & CINDY D	Yes	No
130-054-000-028-00	PAULSEN BRYCE A	Yes	No
010-731-500-290-00	PAVONE, ANTHONY A	Yes	No
030-162-000-041-10	PEER MATTHEW & TERI	Yes	No
150-310-000-005-00	PEIL NANCY	Yes	No
130-070-000-017-00	PETERSON DOUGLAS & CHRISTINE	Yes	No
030-140-003-003-00	PETHERS SCOTT N	Yes	No
010-734-500-621-00	PHILLIPS, LAWRENCE & ROCHELLE A	Yes	No
070-035-300-009-02	PINKSTON EDWARD & LENA	Yes	No
040-045-000-002-00	PITTS JEFFERY & JUDITH	Yes	No
130-178-000-086-00	PORTER RICKY A & JAN	Yes	No
030-220-000-005-00	RAMER MARK L	Yes	No
050-065-500-160-00	RAMIREZ, TERRY M & CHERYL L H&W	Yes	No
010-450-500-010-00	RANDALL, DAVID	Yes	No
150-200-000-068-00	RAUSCH BRADLEY & TRISHA	Yes	No

030-023-201-037-00	RAYMOND LORRAINE	Yes	No
130-105-000-014-00	REX DOUGLAS S & LORI J	Yes	No
130-105-000-015-00	REX DOUGLAS S & LORI J	Yes	No
130-176-000-046-00	RHYNARD KATHLEEN & SULLIVAN LATASHA	Yes	No
070-291-000-045-10	RICE, LAWRENCE & PETRINA	Yes	No
070-036-401-003-00	RIGHETTINI, DONALD & BETTY	Yes	No
030-050-000-029-00	RILEY C & UMPHREY ROBERT	Yes	No
130-211-000-044-00	RIVAS ADAM & WHITEHOUSE	Yes	No
030-045-000-036-00	ROBINSON WILLIAM & REBECCA	Yes	No
050-071-500-600-00	ROESE, JACOB	Yes	No
030-235-000-018-00	ROSS NEIL J	Yes	No
130-123-000-118-00	ROSSI TINA & WOZNIAK DANIEL	Yes	No
070-120-000-070-00	ROWLEY, CYNTHIA	Yes	No
070-120-000-071-00	RYMAS, DAVID & AMY	Yes	No
070-150-000-010-00	SARACINO, PETER & MAURA	Yes	No
110-230-000-060-00	SAROS, WILLIAM & LAURA	Yes	No
150-100-000-007-00	SCHAEDING MATTHEW J & CRYSTAL A	Yes	No
110-375-000-260-00	SCHAFFER, JEFFERY	Yes	No
110-375-000-259-00	SCHAFFER, JEFFERY	Yes	No
050-071-500-590-00	SCHARBONEAU, GREGORY & MARY ANN	Yes	No
150-223-000-077-00	SCHMIDT LARRY & SHARON	Yes	No
150-223-000-078-00	SCHMIDT LARRY & SHARON	Yes	No
110-350-000-001-00	SCHMIDT, RONALD & PAMELA	Yes	No
110-360-000-011-10	SCHMIDT, RONALD & PAMELA	Yes	No
010-014-200-070-00	SCHNEIDER, MARK E	Yes	No
010-382-500-480-00	SCHOOLEY, ROBERT ET UX	Yes	No
010-382-500-490-00	SCHOOLEY, ROBERT ET UX	Yes	No
030-170-000-014-00	SCHOWALTER GREGORY P & TAMARA S	Yes	No
130-022-201-001-24	SCHULZ GARY & KRISTEN L	Yes	No
130-136-000-065-00	SCHUMACHER FRANCIS JOHN	Yes	No
130-126-000-245-00	SCHUTT EDWARD F & JUNE E	Yes	No
070-200-000-006-00	SEIBERLING, ROBERT & ERIKA	Yes	No
030-045-000-051-00	SEIGLA JAMES & CAROL	Yes	No
030-203-000-001-00	SERRELL LARRY & BARBARA	Yes	No
030-203-000-002-00	SERRELL LARRY & BARBARA	Yes	No
010-700-500-310-00	SHATTUCK, KEITH P ET UX	Yes	No
040-131-014-005-00	SHOWEK TORY	Yes	No
030-200-000-036-20	SIMS ROBERT & TRACY	Yes	No
030-200-000-083-00	SIMS ROBERT & TRACY	Yes	No
110-377-000-385-00	SISK, DAWN	Yes	No
030-070-000-157-00	SMITH TRAVIS L	Yes	No
050-071-500-120-00	SNEED, LILA M & GARLAND C	Yes	No
070-112-000-047-00	SPARBECK, JAMES & JEFFREY	Yes	No
070-200-000-007-00	SPECKHARDT, EDWIN & MONICA	Yes	No
030-200-000-049-00	SPENCER WILMER & PATRICIA	Yes	No
010-450-500-161-00	SPERLING, JAMES V ET UX	Yes	No
130-212-000-058-00	STALDER DEAN & ZEMLICKA MICHELLE	Yes	No
050-053-500-890-00	STANKEWICZ, DENNIS & MERRILEE	Yes	No

130-110-000-006-00	STOCK MARIE L	Yes	No
070-241-000-014-00	STOCKER, MICHAEL & STOCKER DENVER	Yes	No
030-046-000-105-00	STOINSKI LARRY & RUTH TRUST	Yes	No
130-095-000-010-00	SUWINSKI LAWRENCE & DEBORAH	Yes	No
150-023-300-007-00	SYDENSTRICKER JOHN & TERESA	Yes	No
070-111-000-026-00	TAYLOR, DAVID & COLLEEN	Yes	No
130-075-000-018-00	THIBODEAU D & L & BECKWITH S & J	Yes	No
010-035-300-211-00	THIBODEAU, BRUCE W & TONI C H&W	Yes	No
030-170-000-014-02	THOMAS DAVE & VICKI	Yes	No
030-026-200-005-06	THOMAS LOWELL G TRUST	Yes	No
040-040-000-012-01	THOMSON THOMAS & LINDA	Yes	No
040-040-000-012-00	THOMSON THOMAS R & KELLY M	Yes	No
010-670-500-050-00	THORP, ARLENE L	Yes	No
110-320-000-031-10	THORP, NANCY	Yes	No
070-036-400-007-00	TITABAWASSEE RESORT LLC	Yes	No
070-025-300-001-00	TOMS FAMILY TRUST	Yes	No
150-240-000-058-10	TORREY JANICE	Yes	No
150-100-000-005-00	TRACY JOHN & LORRAINE	Yes	No
030-045-000-037-00	TRELFY GARY F	Yes	No
030-046-000-106-00	TRINKLEIN SCOTT & KRUGER DOUG	Yes	No
030-205-000-011-00	TROMBLEY DAVID G & CORNMAN KRISTIE	Yes	No
110-371-000-065-00	TROYANEK, GORDON DUANE	Yes	No
080-013-200-242-00	TURVEY, ROBERT R & MARY A H&W	Yes	No
110-023-100-001-09	VANCE, MARYANN & MARKO	Yes	No
030-246-000-138-00	VANHORN JAMES E & DEBRAH C	Yes	No
030-200-000-034-00	VASICEK WILLIAM	Yes	No
030-200-000-035-00	VASICEK WILLIAM	Yes	No
030-200-000-082-00	VASICEK WILLIAM M	Yes	No
030-105-000-022-00	VERELLEN MICHAEL L	Yes	No
030-023-200-009-00	VERKENNES VERNON & COLLEY BO	Yes	No
030-105-000-053-00	VOGT SUSAN & JAMES R	Yes	No
030-185-000-015-00	WAGNER HARRY & MELISSA	Yes	No
030-107-000-019-10	WALDING CHERYL	Yes	No
110-360-000-013-00	WALLACE, JOSHUA & ANDREA	Yes	No
130-126-000-241-00	WALRATH MICHAEL D & TERESA A	Yes	No
150-200-000-053-00	WARNER MICHAEL & KELLY	Yes	No
030-150-000-013-10	WASCHER RONALD & MARY	Yes	No
030-135-000-018-00	WAZNY JAMES	Yes	No
110-420-003-002-00	WEIRMIER, PAMELA G	Yes	No
150-016-100-003-00	WEST GENE & WANDA	Yes	No
130-122-000-096-00	WESTLAKE KEVIN P JR & SARA	Yes	No
030-222-000-229-00	WHEATLEY DOUGLAS & LUANN	Yes	No
030-222-000-230-00	WHEATLEY DOUGLAS & LUANN	Yes	No
130-137-000-107-11	WHITE FAMILY TRUST	Yes	No
030-026-300-019-00	WIESKE NORMAN A TRUST	Yes	No
130-175-000-018-00	WILLIAMS JEFFERY J & ANGELA L	Yes	No
110-230-000-055-01	WILLIAMS, SAMANTHA	Yes	No
110-230-000-057-00	WILLIAMS, TIMOTHY J	Yes	No

040-132-031-004-00	WING RICHARD E & THERESA	Yes	No
030-130-000-019-00	WIRTZ BARBARA J & FREDERICK S	Yes	No
030-130-000-023-00	WIRTZ FREDERICK & BARBARA	Yes	No
150-260-000-015-00	WIRTZ FREDERICK S & BARBARA	Yes	No
130-137-000-113-00	WOODS LEROY & GLENDA	Yes	No
110-340-000-012-00	WORPELL, STEVEN & TERRI	Yes	No
130-002-200-008-00	WYRYBKOWSKI RALPH JR	Yes	No
030-045-000-049-00	YANKO TED	Yes	No
130-123-000-105-00	YEAGER KENNETH F & CATHRYN J	Yes	No
070-250-000-008-00	YOMBOR-REEDY, MAUREEN	Yes	No
040-031-100-005-00	ZASTROW EDWARD F LIVING TRUST	Yes	No
040-031-200-009-01	ZASTROW EDWARD F LIVING TRUST	Yes	No
010-734-500-750-00	ZAWISLAK, JOSEPH & BONNIE	Yes	No
130-212-000-059-01	ZEMLICKA MAURICE & MORSE ELIZABETH	Yes	No
030-215-000-001-00	ZUNIGA ORLANDO	Yes	No
030-075-000-001-99	ADER RIC & SALLY	Yes	No
110-200-000-028-00	ADOLPH, MICHAEL & DARLENE	Yes	No
150-016-400-001-10	BARRON GAIL & DUANE L &	Yes	No
030-130-000-084-10	BERGER MICHAEL S	Yes	No
110-230-000-034-00	BRUNGER, LOREN & GLENDA	Yes	No
110-420-001-005-00	CANNING, DAVID & HELEN	Yes	No
030-155-000-025-00	COX CAROLYN S & HEISER BRIANT D	Yes	No
130-114-000-151-00	DICK SHERRY A	Yes	No
130-114-000-151-00	DICK SHERRY A	Yes	No
070-120-000-063-10	EBENDICK, D & EBENDICK, R	Yes	No
070-120-000-041-00	GREEN, MICHAEL	Yes	No
110-004-301-008-00	HARTFIELD, HARRY TRUST	Yes	No
040-110-000-019-00	HARVILLE JOSHUA & MINARD JESSICA	Yes	No (Duplicate)
050-051-500-080-00	INMAN, BEVERLY R TRUST	Yes	No (Duplicate)
050-051-500-080-00	INMAN, BEVERLY R TRUST	Yes	No
010-731-500-010-00	JEWETT, GORDON	Yes	No
030-220-000-010-00	KELLAN ROBERTA K & DANIEL A	Yes	No
030-220-000-003-00	KELLAN DANIEL A & ROBERTA K	Yes	No
030-221-000-012-00	KELLAN ROBERTA K & DANIEL A	Yes	No
050-071-500-270-00	KELLEY, ROBERT & FABER, WENDY	Yes	No
070-080-000-018-00	KLINE, JEFFREY	Yes	No
110-302-000-088-10	KOLANOWSKI, MICHAEL & VICKY	Yes	No (Duplicate)
040-090-000-027-00	LEVENICK FRANK	Yes	No (Duplicate)
040-110-000-021-00	LEVENICK FRANK & MICHELLE	Yes	No (Duplicate)
110-230-000-070-10	LINDBERG, WILLIAM ETAL	Yes	No (Duplicate)
130-176-000-029-00	LOPEZ ANDREA & ALLIE ELISE	Yes	No
080-012-300-400-00	MAXWELL, ROBERT J	Yes	No
080-011-400-410-00	MAXWELL, ROBERT J	Yes	No
110-350-000-006-00	STICKNEY, BRENDA LEE	Yes	No
110-350-000-007-00	MURRAY, FREDERICK & ROSEMARIE	Yes	No
040-031-203-001-00	NELSON GREGORY J & ANNETTE E	Yes	No (Duplicate)
030-130-000-048-00	NORRIS HUNTER & JERMAN NICKLAS	Yes	No
110-377-000-390-10	RAMM, KEVIN A	Yes	No

030-140-002-001-00	REGINEK AMY L & JAMIE T	Yes	No
150-016-104-001-01	RITTER DANIEL J & ETOILE L	Yes	No
110-300-000-040-10	ROBINSON, CYNTHIA	Yes	No
110-260-000-020-00	ROGERS, THOMAS	Yes	No
040-045-000-055-00	RYBAK MICHAEL & CHRISTINE	Yes	No
130-022-201-001-33	SCHULZ GARY & KRISTEN	Yes	No
070-060-000-042-00	SESTO, KENNETH & CATHERINE	Yes	No
070-060-000-043-00	SESTO, KENNETH & CATHERINE	Yes	No
070-036-400-015-00	TITTABAWASSEE RESORT LLC	Yes	No
150-050-000-011-00	VARDUKYAN ALBERT & VARDUKYAN DAVID	Yes	No
030-200-000-081-00	VASICEK WILLIAM M	Yes	No
030-120-001-005-00	VERELLEN MICHAEL J & COURTNEY	Yes	No
150-023-300-008-05	YORK TERRY & DENISE	Yes	No

EXHIBIT B



Evaluation of Parcels Listed in Appellants Brief on Appeal

The Appellants Brief on Appeal provides twelve (12) parcels examples starting on page sixteen (16) of the brief. Four Lakes Task Force (FLTF) has examined these parcels and created a summary table, referenced as the Parcel Comparison Table (Table 1). This table compares the parcels listed in the Appellants Brief, shown highlighted orange, with other parcels in the district to illustrate the impact of location and illustrate the variation of State Equalized Value (SEV) throughout the special assessment District (SAD).

A summary was prepared for each of the twelve (12) parcels illustrating the landowner information, general location, evaluation of the benefit assigned to that parcel per the FLTF SA methodology, and gives a simple comparison to other parcels in the district. Those summaries can be seen in subsequent pages. A summary of the columns of Table 1 can be seen below. The numbers represent each column of the table.

1. Reference number used to correlate the parcel data between Table 1 and the summary document.
2. **PID** – Parcel Identification Number unique to each parcel.
3. **Landowner** – Landowner Name, only those listed in the Appellants Brief are provided.
4. **Lake** – Provides the lake the parcel is located on.
5. **Location** – Provides a general location of the parcel on the given Lake listed in Column 4.
6. **Parcel Type** – Provides if the parcel is a front lot (direct water access Parcel) or back lot (indirect water access through plat dedication or easement. Also provides if the parcel is vacant or has a house.
7. **Frontage (Feet)** – Provides the water frontage collected from the recorded plat or metes and bounds description or GIS data for the parcel. This was used to calculate the frontage factor.
8. **Area (Acres)** – Provides the acreage of the parcel per the tax records.
9. **Frontage Factor** – Provides the frontage factor assigned to the parcel as shown on the final assessment roll. Please see the individual parcel summary document for a breakdown on how this was calculated.
10. **Base Factor** – Provides the base factor assigned to the parcel as shown on the final assessment roll. Please see the individual parcel summary document for information.
11. **Water View Factor** – Provides the water view factor assigned to the parcel as shown on the final assessment roll. Please see the individual parcel summary document for information.
12. **Water Depth Factor** – Provides the water depth factor assigned to the parcel as shown on the final assessment roll. Please see the individual parcel summary document for information.
13. **Total Benefit Factor** – Provides the total benefit factor assigned to the parcel as shown on the final assessment roll. This is the product when the other benefit factors are multiplied by one another.
14. **Total Principal Assessment** – Provides the total principal assessment amount shown on the final assessment roll.
15. **2023 SEV** – Provides the 2023 SEV amount for each parcel based on data provided by the County Equalization Department
16. **Percentage of MV (2x SEV)** – Provides the percentage of the total principal amount compared to the Market Value (MV) which was taken as two (2) times the SEV value.
17. **Parcel Listed in Appeal** – States if the PID shown in the Appellants Brief was listed in the overall appeal document.

Brief Summary Table Line Number :1

Property Owner: Robert & Karen Price

PID(s): 110-230-000-006-00

Parcel(s) Type: Platted waterfront parcel located in the Maple Point Subdivision

Parcel Location:

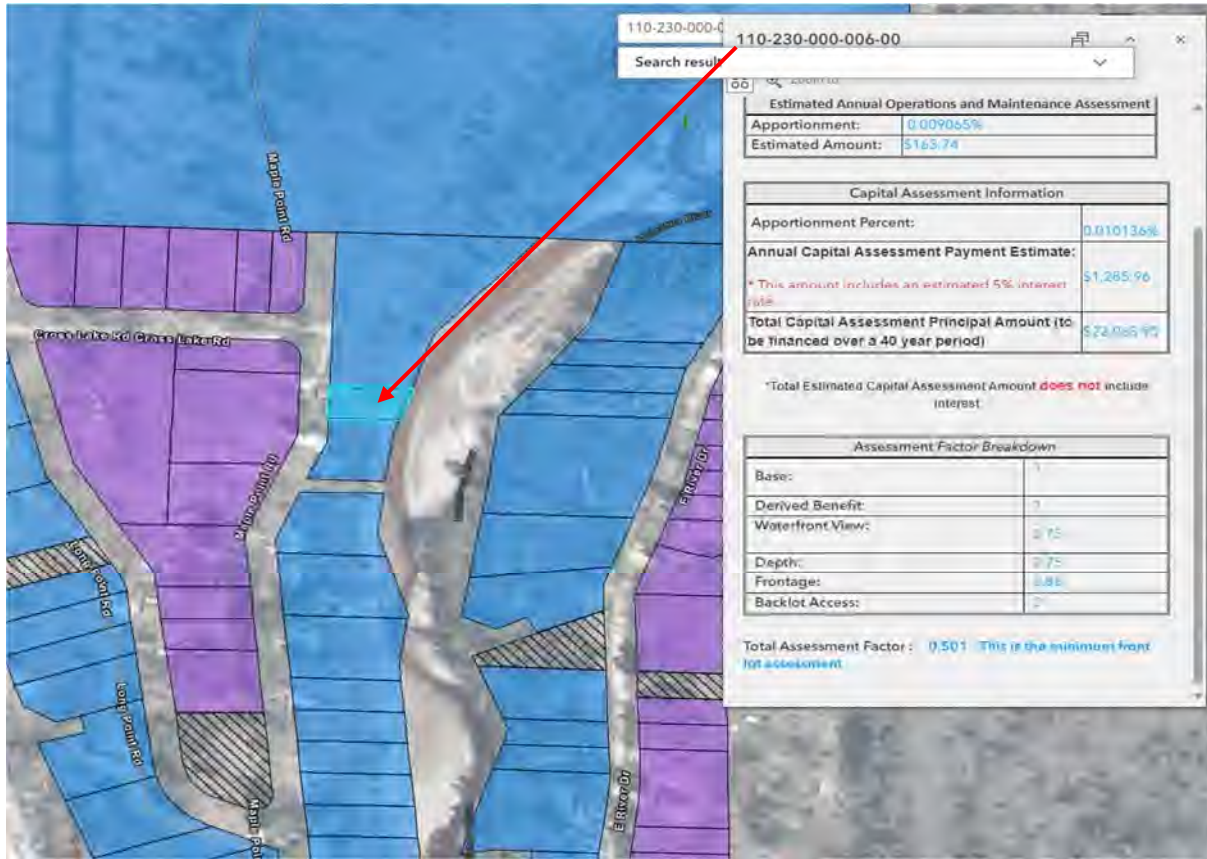


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Molasses River Tributary to Wixom Lake approximately 9.54 miles upstream of the Edenville Dam. The parcel is platted as part of the Maple Point Subdivision and has approximately 79 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 0.75 as the depth of water is less than 2 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.88 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 79 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 31 feet (79 feet – 48 feet) are weighted at 1
 - i. $31 \times 1 = 31$ feet
 - d. Sum of weighted frontage = 69.4 (38.4 feet + 31 feet)
 - e. Frontage Factor = 69.4 feet / 79 feet = 0.88
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district. Please note that the parcels located within this area were reviewed numerous times early in the development of the assessment methodology and from that review resulted in a change to the methodology in 2021 which removed the previous Headwater Factor and replaced it with water depth and water view to consider parcels located on a tributary or canal. This waterfront parcel has the lowest total benefit factor of any waterfront parcel in the district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 1A and 1B represent two other parcels in the district which have similar acreage and water frontage. These parcels however have a higher factor for water view of 1, as these parcels are located on a wide portion of the lake system with greater water depth. Since the view and depth is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Price parcel.

In addition, line 1C on Table 1 illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$65,300 higher. Please note this parcel is also owned by the Price's and is listed in the overall appeal. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and could invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 2

Property Owner: Robert & Karen Price

PID(s): 110-230-000-015-00

Parcel(s) Type: Platted waterfront parcel located in the Maple Point Subdivision

Parcel Location:

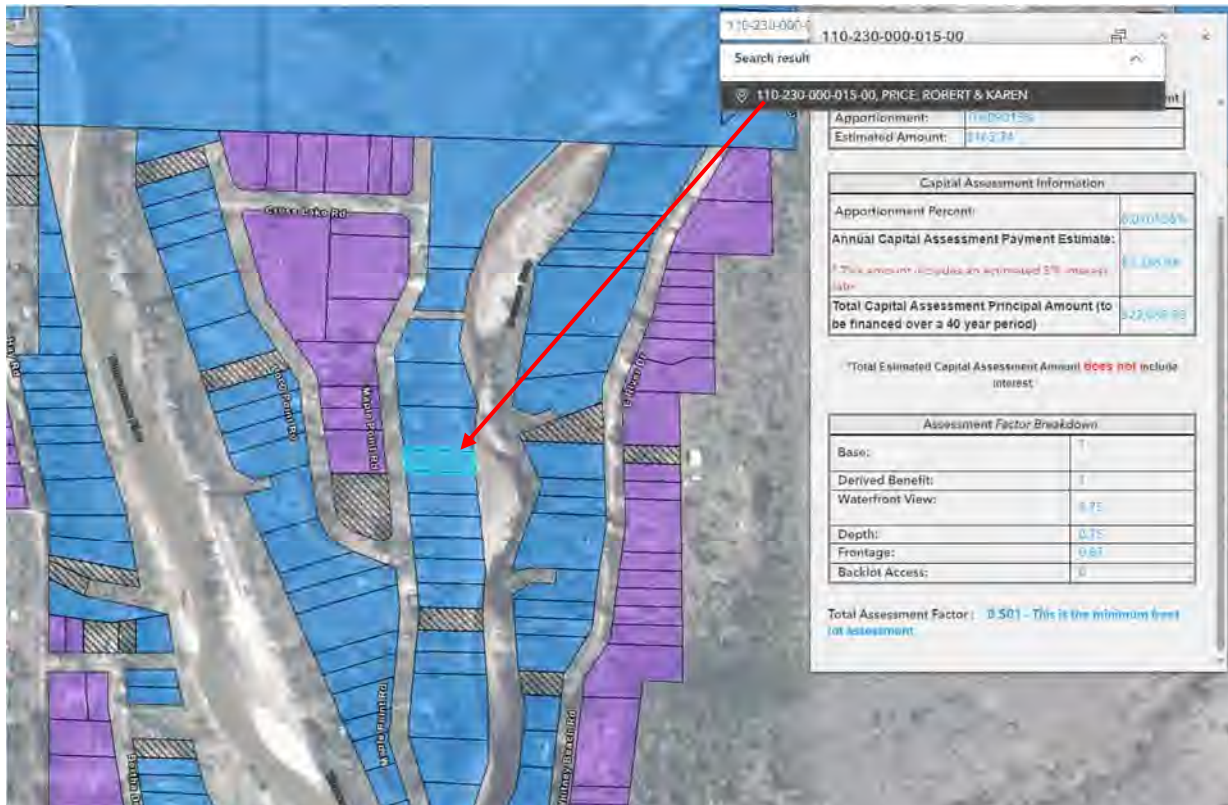


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Molasses River Tributary to Wixom Lake approximately 9.41 miles upstream of the Edenville Dam. The parcel is platted as part of the Maple Point Subdivision and has approximately 76 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 0.75 as the depth of water is less than 2 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.87 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 76 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 28 feet (76 feet – 48 feet) are weighted at 1
 - i. $28 \times 1 = 28$ feet
 - d. Sum of weighted frontage = 66.4 (38.4 feet + 28 feet)
 - e. Frontage Factor = 66.4 feet / 76 feet = 0.87
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district. Please note that the parcels located within this area were reviewed numerous times early in the development of the assessment methodology and from that review resulted in a change to the methodology in 2021 which removed the previous Headwater Factor and replaced it with water depth and water view to consider parcels located on a tributary or canal. This waterfront parcel has the lowest total benefit factor of any waterfront parcel in the district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 2A represents another parcel in the district which has similar acreage and water frontage. This parcel, however, has a higher water view and depth factor, as this parcel is on a wider section of the lake. Since the view and depth are greater, the benefit parcels 2A receives are slightly greater, resulting in a slightly larger assessment when compared to the Price parcel.

In addition, 2C on Table 1 illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$56,900 higher. Please note this parcel is also owned by the Price's and is listed in the overall appeal. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and has the ability to invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 3

Property Owner: Woodrow L and Earl D Wilson

PID(s): 030-175-000-021-41

Parcel(s) Type: Platted back lot parcel located in the Maxson Subdivision

Parcel Location:

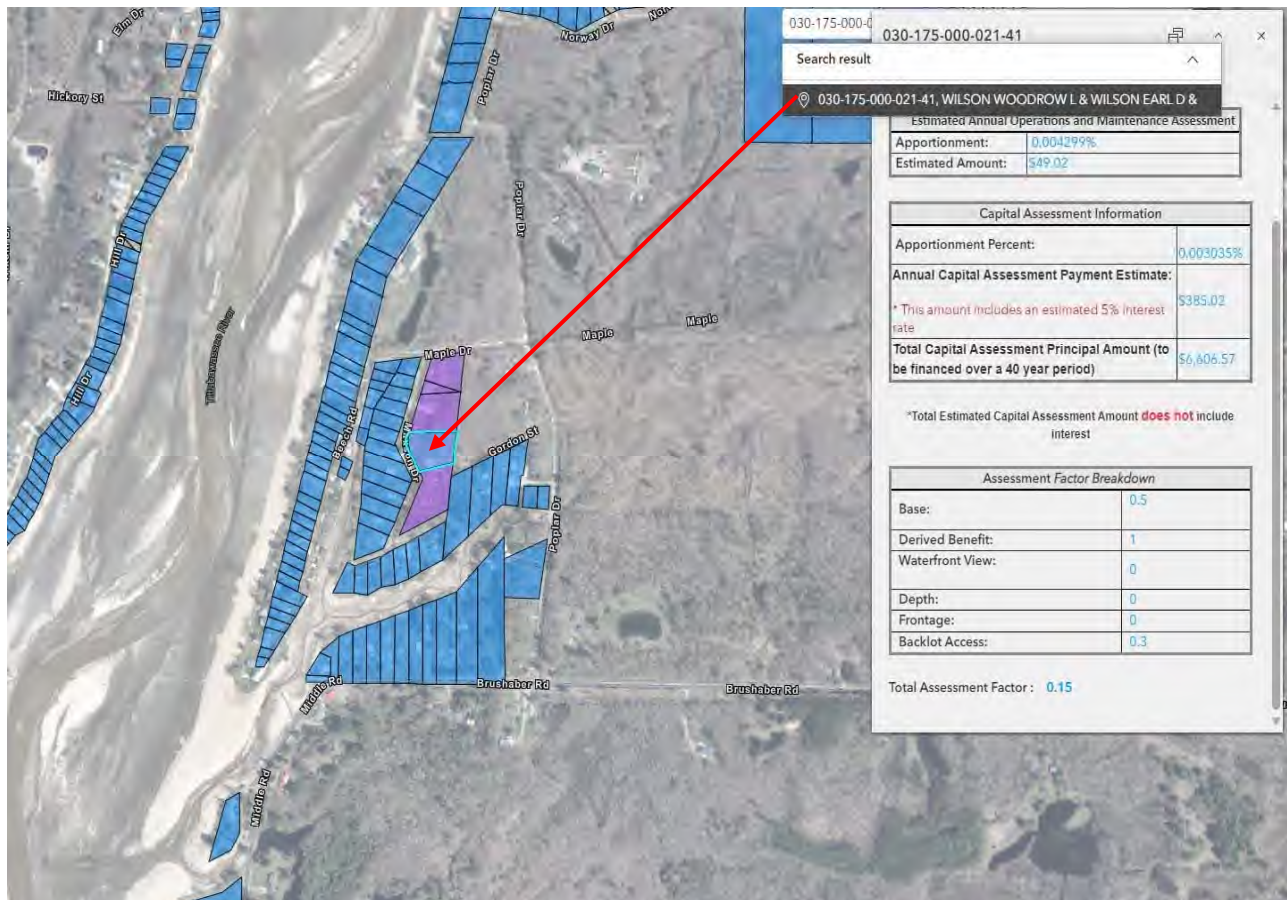


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Canal to Wixom Lake approximately 3.41 miles upstream of the Edenville Dam. The parcel is platted as part of the Maxson Subdivision and is a back lot parcel meaning it has indirect access to the water as dedicated in the subdivision plat. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 0.5 as this is not an assessable waterfront parcel



2. Derived Benefit is 1 as this is a residential parcel
3. Waterfront View is 0 as this parcel is a backlot
4. Water depth is 0 as this parcel is a back lot
5. The frontage factor is 0 as this parcel is a backlot
6. The backlot access factor is 0.3 which is based on the quality of the backlot access locations.

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 1,000 back lot parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 3A and 3B represent two other backlot parcels in the district. The parcels, however, have a higher access factor due to the higher quality access location which results in a higher overall assessment amount.

In addition, line 3C on the Brief Parcel Summary Table illustrates another backlot parcel, however the SEV is approximately \$29,400 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 4

Property Owner: Woodrow L and Earl D Wilson

PID(s): 030-175-000-014-00

Parcel(s) Type: Platted front lot parcel located in the Maxson Subdivision

Parcel Location:

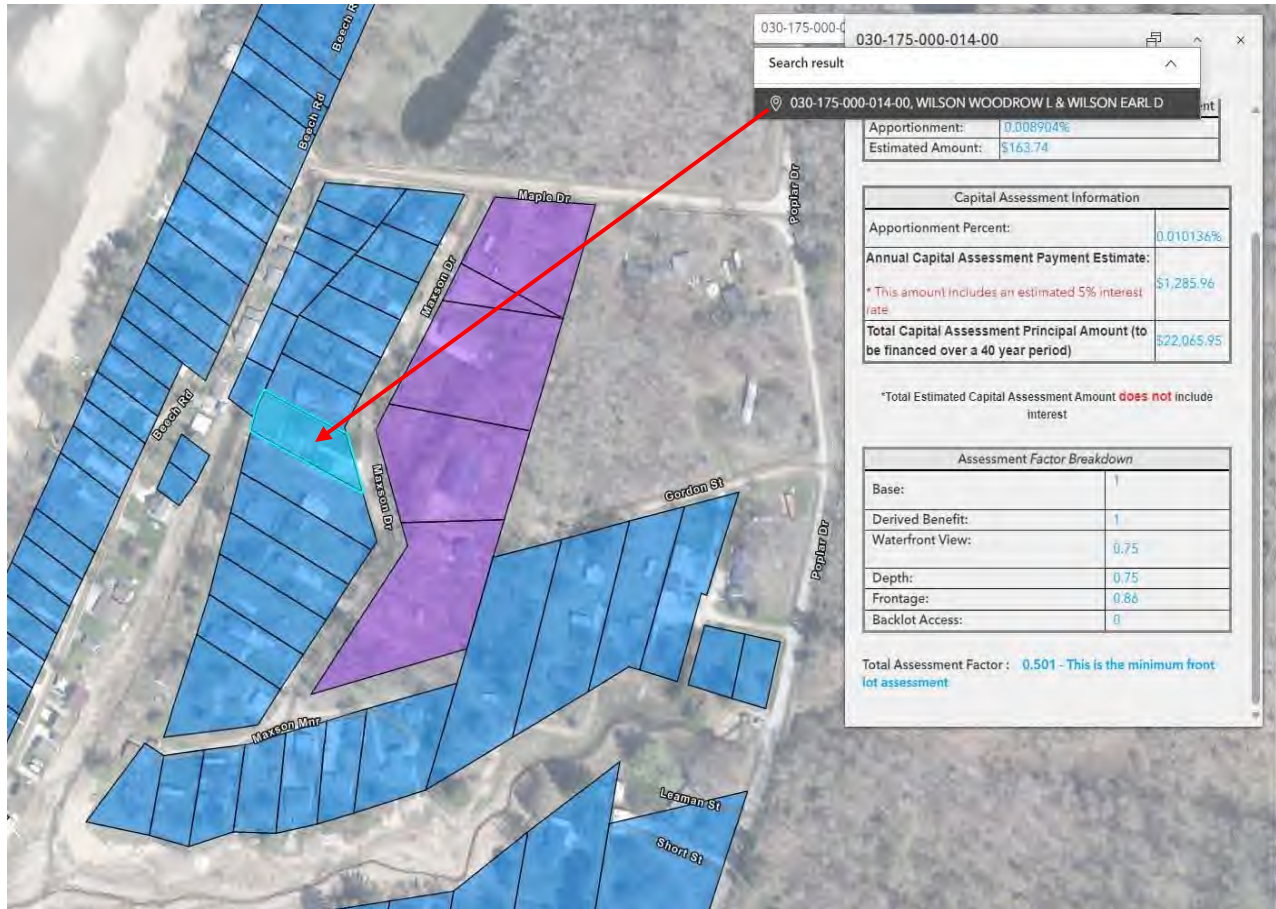


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Canal to Wixom Lake approximately 3.36 miles upstream of the Edenville Dam. The parcel is platted as part of the Maxson Subdivision and has approximately 70 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 0.75 as the depth of water is less than 2 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.86 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 70 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 22 feet (70 feet – 48 feet) are weighted at 1
 - i. $22 \times 1 = 22$ feet
 - d. Sum of weighted frontage = 60.4 (38.4 feet + 22 feet)
 - e. Frontage Factor = 60.4 feet / 70 feet = 0.86
6. As this parcel is not a backlot, the backlot access factor is not applied

The methodology factors applied to this parcel is consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district. Due to the parcel locations, this parcel has the lowest total factor for a front lot parcel in the district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 4A and 4B represent two other parcels in the district which have similar acreage and water frontage. These parcels however have a higher factor for water view of 1, as these parcels are located on a wider portion of the lake system. Since the view is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Wilson parcel.

In addition, line 4C on Table 1 illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$65,200 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 5

Property Owner: Michael & Kelly Warner

PID(s): 150-200-000-053-00

Parcel(s) Type: Platted waterfront parcel located in the Oakridge Subdivision

Parcel Location:

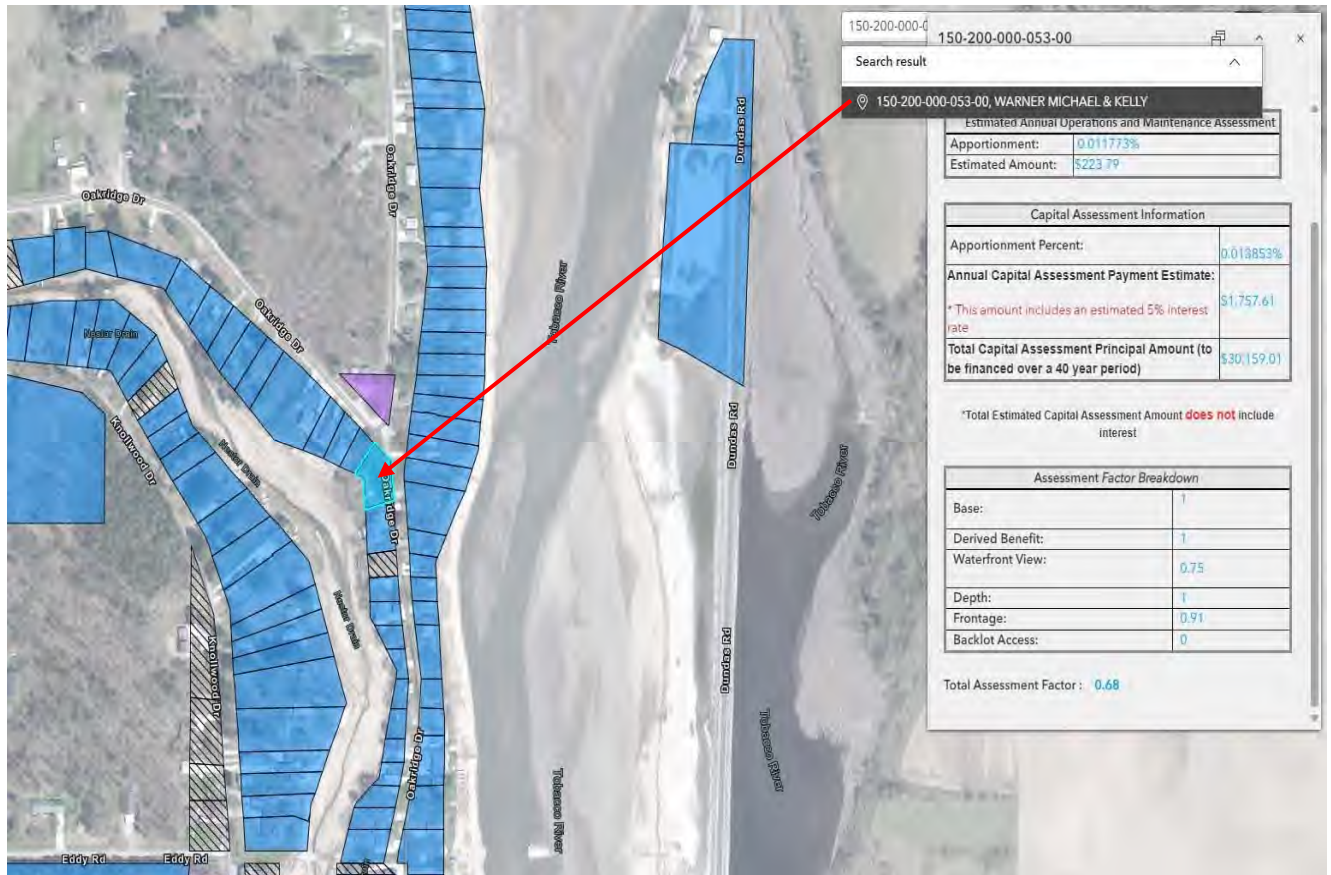


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Nester Drain/Canal to Wixom Lake approximately 1.01 miles upstream of the Edenville Dam. The parcel is platted as part of the Oakridge Subdivision and has approximately 110 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 1 as the depth of water is greater than 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.91 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 110 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 62 feet (110 feet – 48 feet) are weighted at 1
 - i. $62 \times 1 = 62$ feet
 - d. Sum of weighted frontage = 100.4 (38.4 feet + 62 feet)
 - e. Frontage Factor = 100.4 feet / 110 feet = 0.91
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel is consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 5A and 5B represent two other parcels in the district which have similar acreage and water frontage. These parcels however have a higher factor for water view of 1, as these parcels are located on a wide portion of the lake system. Since the view is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Warner parcel.

In addition, line 5C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$100,600 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 6

Property Owner: Terry Charles Lasceski

PID(s): 150-200-000-060-00

Parcel(s) Type: Platted waterfront parcel located in the Oakridge Subdivision

Parcel Location:

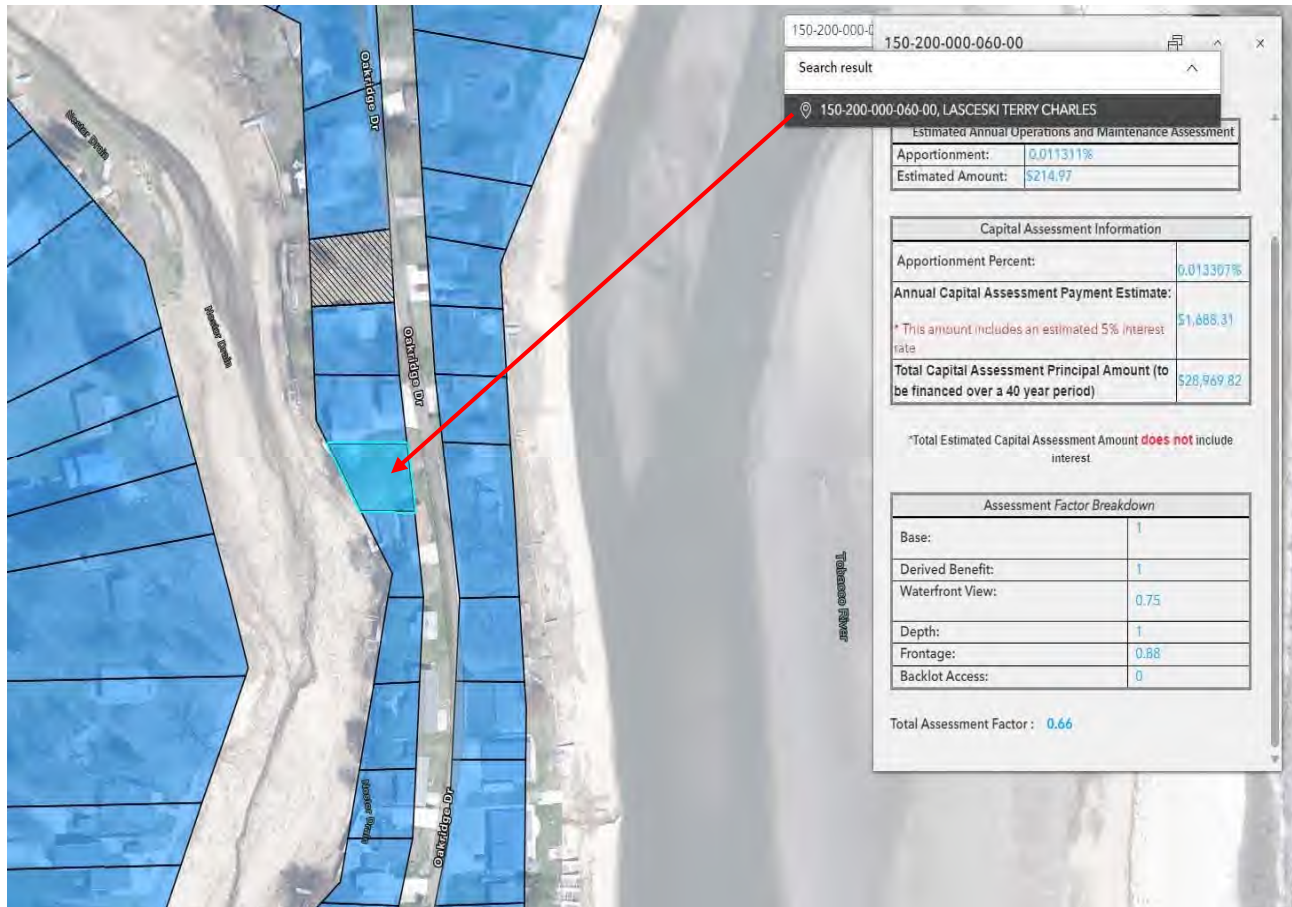


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel Evaluation:

The parcel in question is located on the Nester Drain/Canal to Wixom Lake approximately 0.91 miles upstream of the Edenville Dam. The parcel is platted as part of the Oakridge Subdivision and has approximately 78 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 1 as the depth of water is greater than 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.88 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 78 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 30 feet (78 feet – 48 feet) are weighted at 1
 - i. $30 \times 1 = 30$ feet
 - d. Sum of weighted frontage = 68.4 (38.4 feet + 30 feet)
 - e. Frontage Factor = 68.4 feet / 78 feet = 0.88
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 6A and 6B represent two other parcels in the district which have similar acreage and water frontage. These parcels however have a higher factor for water view of 1, as these parcels are located on a wide portion of the lake system. Since the view is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Lasceski parcel.

In addition, line 6C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$54,500 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.



Brief Summary Table Line Number: 7

Property Owner: David J & Linda F Valice

PID(s): 130-124-000-137-00

Parcel Type: Platted waterfront parcel located in the Pinecrest Point No.5 Subdivision

Parcel Location:

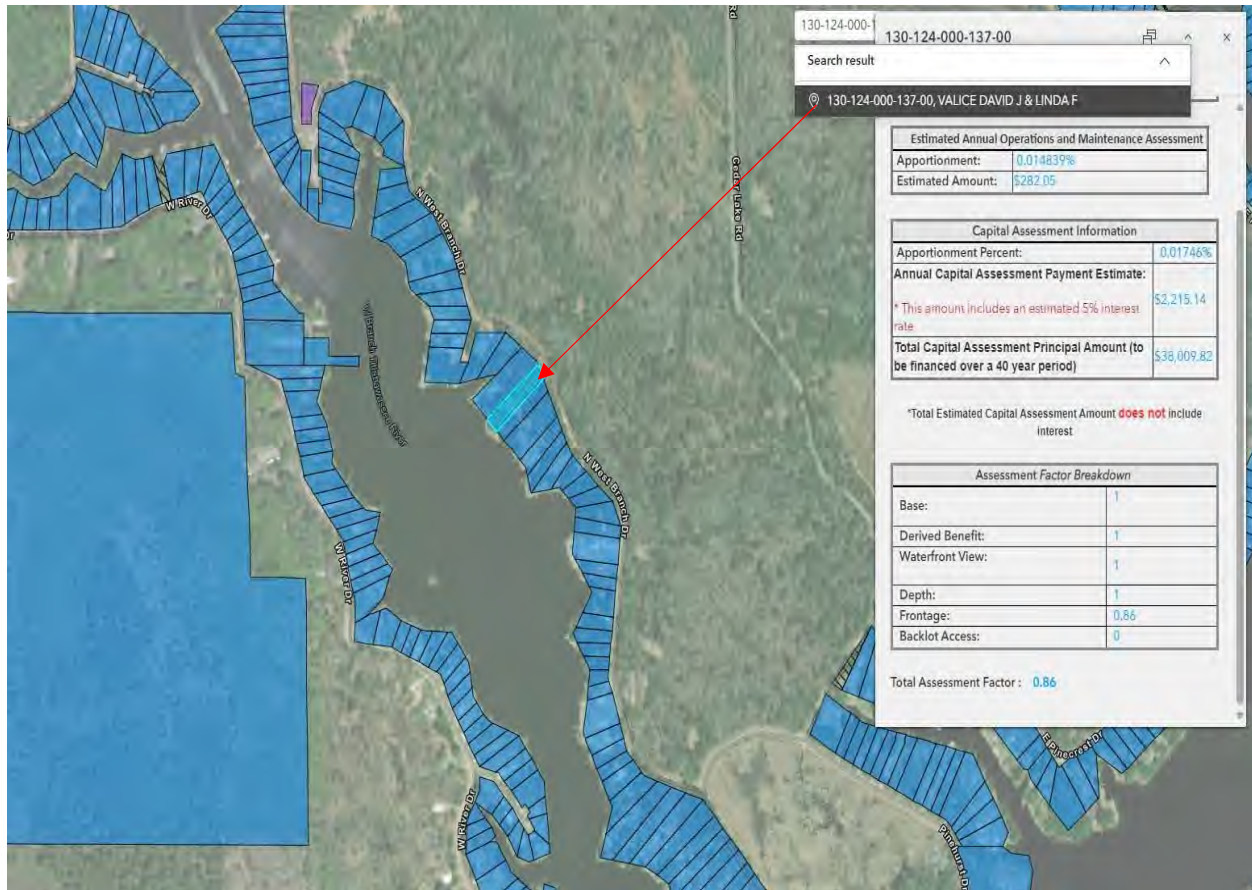


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Benefit Evaluation:

The parcel in question is located on the West Branch of Second Lake approximately 2.2 miles upstream of the Second Lake Dam. The parcel is platted as part of the Pinecrest Point Subdivision No. 5 and has approximately 70 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 1 as this parcel has greater than 500 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 1 as the depth of water is greater than 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.86 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 70 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 22 feet (70 feet – 48 feet) are weighted at 1
 - i. $22 \times 1 = 22$ feet
 - d. Sum of weighted frontage = 60.4 (38.4 feet + 22 feet)
 - e. Frontage Factor = 60.4 feet / 70 feet = 0.86
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 7A and 7B represent two other parcels in the district which have similar acreage and water frontage. These parcels however have a lesser factor for water view of 0.75, as these parcels are located on a narrow portion of the lake system. Since the view is less, the benefit those parcels receive is lesser, resulting in a smaller assessment when compared to the Valice parcel.

In addition, line 7C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$10,100 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number : 8

Property Owner: Mark D & Perri R Lindenmuth

PID(s): 070-120-000-059-00

Parcel(s) Type: Platted waterfront parcel located in the Engelhardt Resort Subdivision

Screenshot:

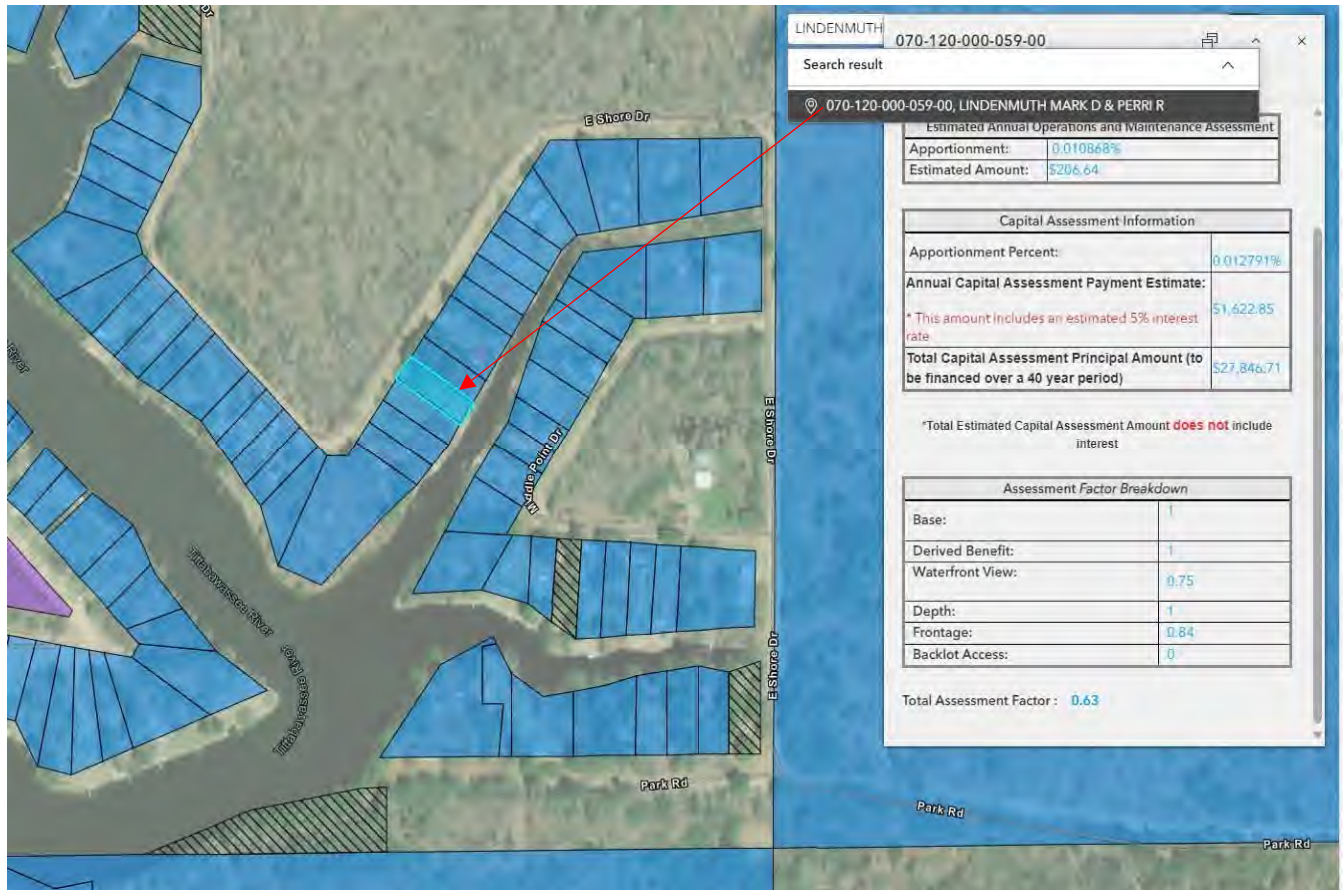


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Canal to Secord Lake approximately 4.82 miles upstream of the Secord Lake Dam. The parcel is platted as part of the Engelhardt Subdivision and has approximately 61 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 1 as the depth of water is greater than 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.84 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 61 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 13 feet (61 feet – 48 feet) are weighted at 1
 - i. $13 \times 1 = 13$ feet
 - d. Sum of weighted frontage = 51.4 (38.4 feet + 13 feet)
 - e. Frontage Factor = 51.4 feet / 61 feet = 0.84
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 8B represents another parcel in the district which has similar acreage and water frontage. This parcel, however, has a higher water view factor, as this parcel is on a wider section of the lake. Since the view is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Lindenmuth parcel.

In addition, line 8C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$28,800 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 9

Property Owner: James & Kelly Stadtnr

PID(s): 130-160-000-008-00

Parcel(s) Type: Platted waterfront parcel located in the Rivers-Jennings Subdivision

Parcel Location:

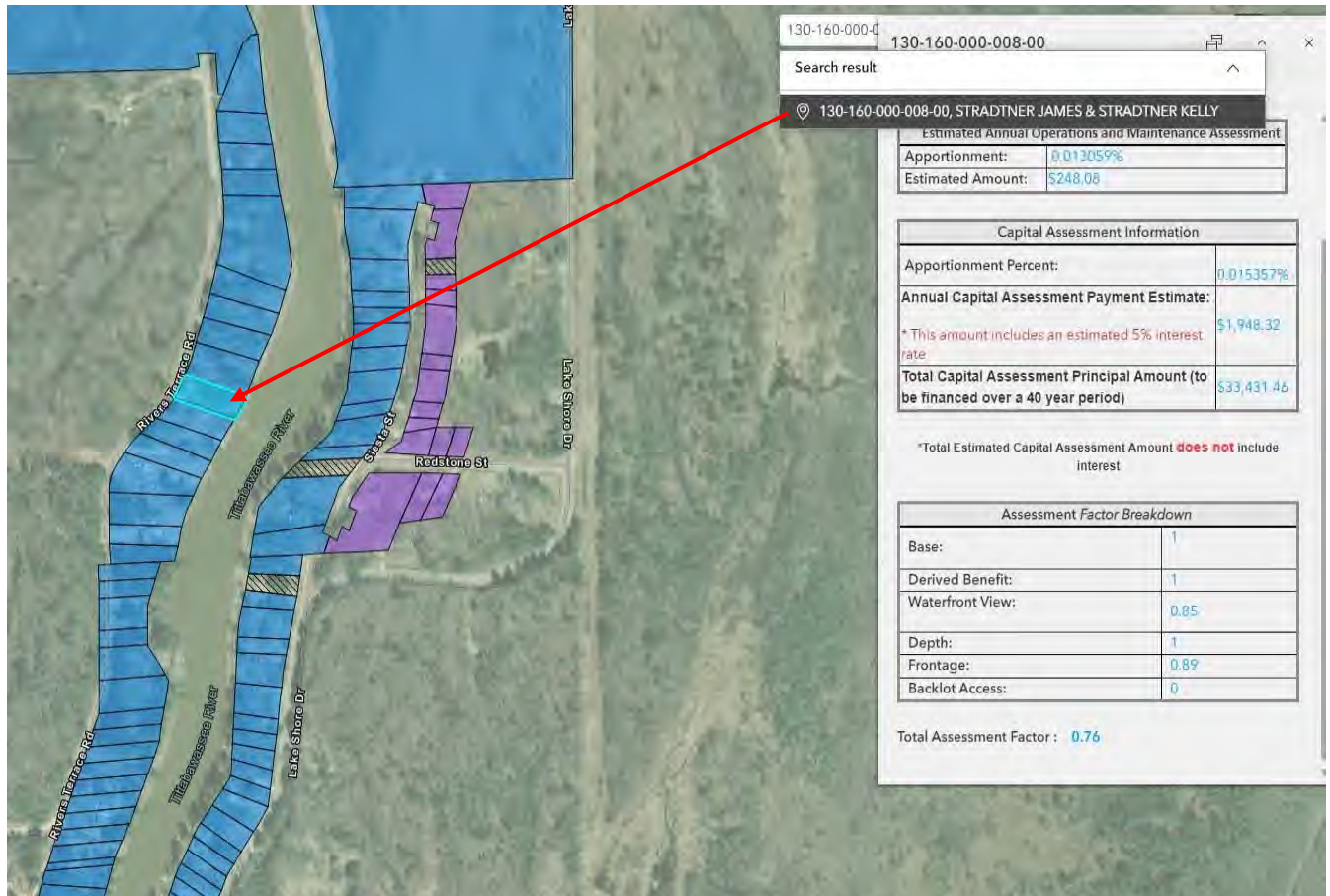


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question located on the Upper portion of Smallwood Lake approximately 2.78 miles upstream of the Smallwood Lake Dam. The parcel is platted as part of the River-Jennings Subdivision and has approximately 90 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel



2. Derived Benefit is 1 as this is a residential parcel
3. Waterfront View is 0.85 as this parcel has between 230-500 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 1 as the depth of water is greater than 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.89 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 90 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 42 feet (90 feet – 48 feet) are weighted at 1
 - i. $42 \times 1 = 42$ feet
 - d. Sum of weighted frontage = 80.4 (38.4 feet + 42 feet)
 - e. Frontage Factor = 80.4 feet / 90 feet = 0.89
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 9B represents another parcel in the district which has similar acreage and water frontage. This parcel, however, has a higher water view factor, as this parcel is on a wider section of the lake. Since the view is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Stradtner parcel.

In addition, line 9C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$8,300 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 10

Property Owner: Dawn Sisk

PID(s): 110-377-000-385-00

Parcel(s) Type: Platted waterfront parcel located in the Whitney Beach No. 7 Subdivision

Parcel Location:



Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the Canal and Lake on the upper portion of Wixom Lake approximately 9.3 miles upstream of the Edenville Dam. The parcel is platted as part of the Whitney Beach No. 7 Subdivision and has approximately 100 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel



2. Derived Benefit is 1 as this is a residential parcel
3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 0.9 as the depth of water is between 2 and 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.9 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 100 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 52 feet (100 feet – 48 feet) are weighted at 1
 - i. $52 \times 1 = 52$ feet
 - d. Sum of weighted frontage = 90.4 (38.4 feet + 52 feet)
 - e. Frontage Factor = 90.4 feet / 100 feet = 0.9
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 10B represents another parcel in the district which has similar acreage and water frontage. This parcel, however, has a higher water view factor, as this parcel is on a wider section of the lake. Since the view is more, the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Sisk parcel.

In addition, line 10C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$25,000 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.



Brief Summary Table Line Number: 11

Property Owner: Edward & June E Schutt

PID(s): 130-126-000-245-00

Parcel(s) Type: Platted waterfront parcel located in the Pinecrest Point No. 7 Subdivision

Parcel Location:

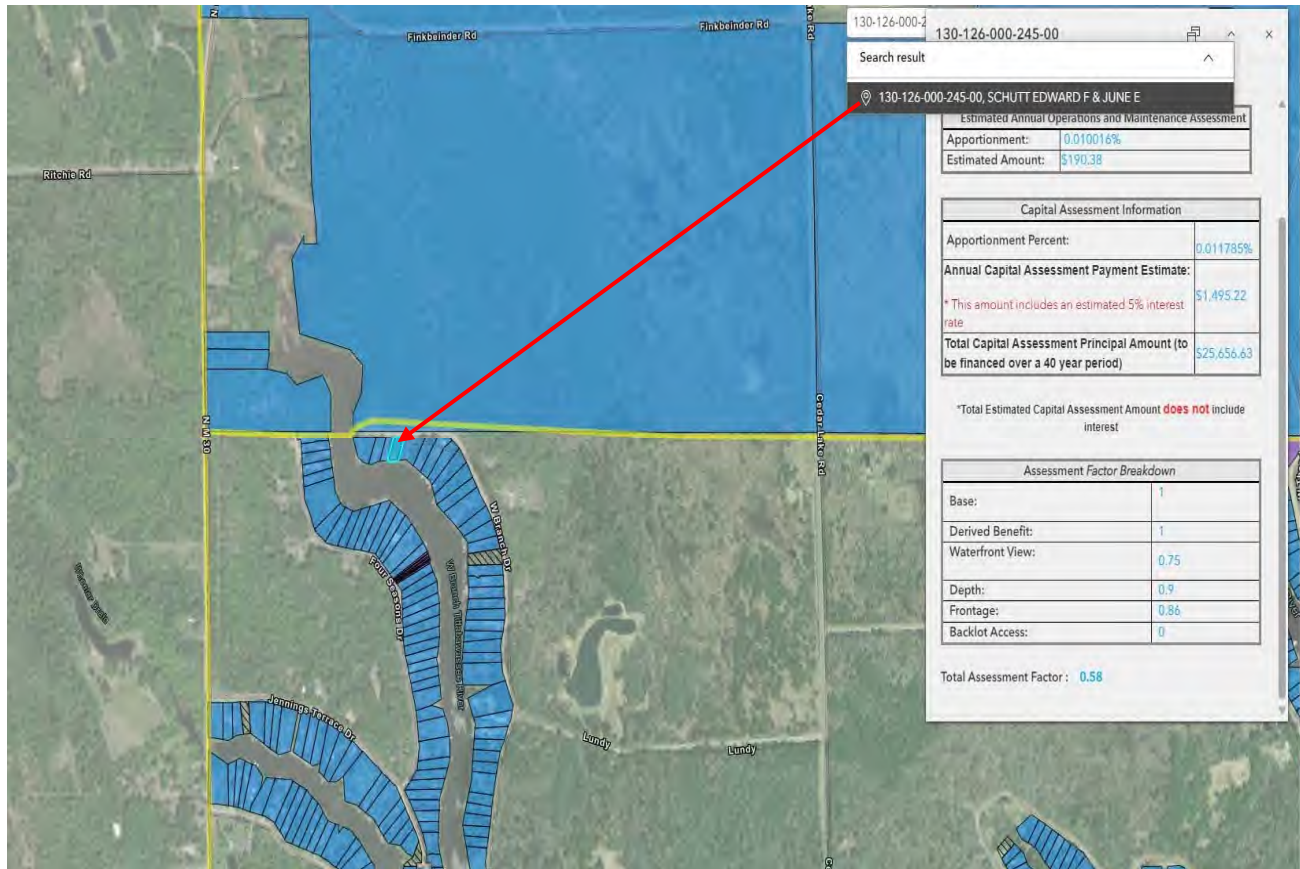


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is located on the West Branch of Tittabawassee River approximately 3.1 miles upstream of the Secord Lake Dam. The parcel is platted as part of the Pinecrest Point Subdivision No. 7 and has approximately 70 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 0.75 as this parcel has less than 230 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 0.9 as the depth of water is between 2 and 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.86 as calculated per the weight frontage calculation seen below
 - a. Frontage per plat is 70 feet
 - b. First 48 feet are weighted at 0.8
 - i. $48 \times 0.8 = 38.4$ feet
 - c. Next 22 feet (70 feet – 48 feet) are weighted at 1
 - i. $22 \times 1 = 22$ feet
 - d. Sum of weighted frontage = 60.4 (38.4 feet + 22 feet)
 - e. Frontage Factor = 60.4 feet / 70 feet = 0.86
6. As this parcel is not a backlot, the backlot access factor is not applied

The assessment methodology factors applied to this parcel are consistent with the methodology used for the approximately 6,000 assessable waterfront parcels in the special assessment district.

Comparative Analysis:

A comparative analysis was completed of this parcel to illustrate that location does affect the apportionment percentage and total assessment amount. Line item 11A and 11B represent two other parcels in the district which have similar acreage and water frontage. These parcels however have a higher factor for water depth of 1, as these parcels are located on a deeper portion of the lake system. With more water depth the benefit those parcels receive is higher, resulting in a larger assessment when compared to the Schutt parcel.

In addition, line 11C on the Brief Parcel Summary Table illustrates a parcel with similar geometry and frontage, however the SEV is approximately \$29,500 higher. The purpose for this comparison is to show that the development of the parcel is dependent on that landowner. If the landowner chooses and can invest in the property, the SEV will be greater. This can change frequently and as such does not provide a good metric for lake level special assessments. The assessment needs to be based on the benefit that the land or parcel derives from the Part 307 Legal Lake Level.

Brief Summary Table Line Number: 12

Property Owner: Gregory & Tamara Schowalter

PID(s): 030-170-000-014-00

Parcel(s) Type: Platted waterfront parcel located in the Lou-Anna Resort Subdivision

Parcel Location:

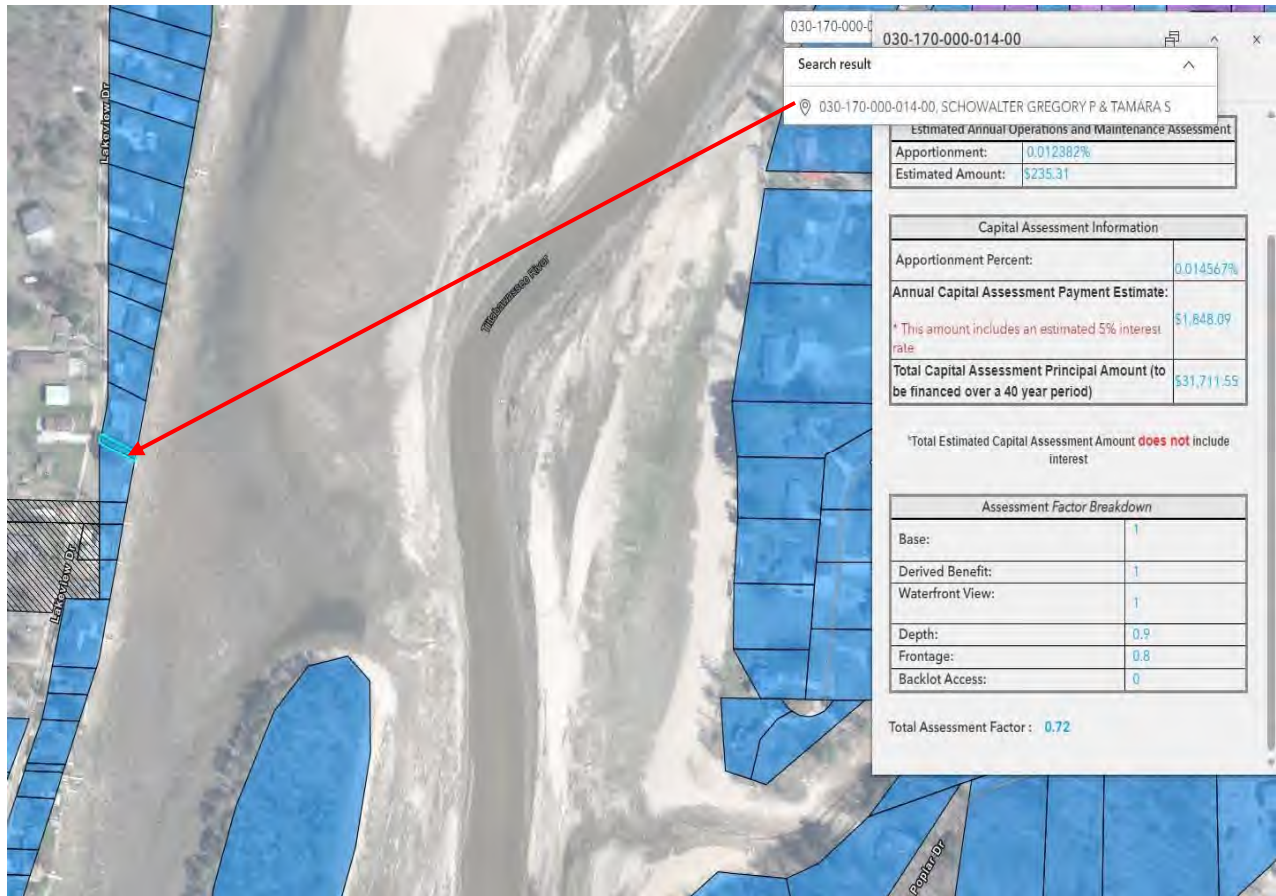


Figure 1: Screenshot from FLTF Special Assessment District Map

Parcel/Brief Evaluation:

The parcel in question is a narrow access location of Wixom Lake approximately 3.78 miles upstream of the Edenville Dam. The parcel is platted as part of the Lou-Anna Resort Subdivision and has approximately 12 feet of water frontage. The general location of the parcel can be seen above in Figure 1.

The benefit factors for the parcel per the Four Lakes Task Force Methodology is as follows:

1. Base Factor is 1 as this is an assessable waterfront parcel
2. Derived Benefit is 1 as this is a residential parcel



3. Waterfront View is 1 as this parcel has greater than 500 feet of water view, when that measurement is taken perpendicular to the water ward parcel line
4. Water depth is 0.9 as the depth of water is between 2 and 4 feet, taken 40 feet from the shoreline
5. The frontage factor is 0.8
6. As this parcel is not a backlot, the backlot access factor is not applied

Upon review of this parcel, the derived benefit of the parcel should be noted as 0.8 for an unbuildable parcel. This parcel could not be developed however serves as the access to the parcel across the street which is not in the assessment district and is also owned by the Schowalter's. There were other parcels in the district which when brought to the FLTF attention were updated according. The other factors are consistent with the methodology.

Comparative Analysis:

This parcel is unique as it serves as access to a backlot parcel and is very small in size. Similar parcels in the lake system such as that shown in 12A has zero benefit as it is tied to adjacent parcel. Again, if this was brought to our attention during one of the numerous public engagement periods, it could have been addressed.

EXHIBIT C

Table 1 - Four Lake Task Force
Parcel Comparison Table

	PID	Landowner	Lake	Location	Parcel Type	Frontage (Feet)	Area (acres)	Frontage Factor	Base Factor	Water View	Water Depth Factor	Total Benefit Factor	Total Principal	2023 SEV	Percentage of MV/2x SEV	PID Listed in Appeal
8	070-120-000-059-00	Mark D & Perri R Lindemuth	Secord	Canal to Secord Lake	Front lot with house	61	0.248	0.84	1	0.75	1	0.63	\$27,846.71	\$83,700.00	17%	Yes
8a	070-120-000-069-00	-	Secord	-	Front lot with house	61	0.24	0.84	1	0.85	1	0.72	\$31,559.60	\$55,200.00	29%	-
8b	070-151-000-035-00	-	Secord	-	Front lot with house	65	-	0.85	1	0.85	1	0.723	\$31,896.53	\$87,300.00	18%	-
8b	070-151-000-029-00	-	Secord	-	Front lot with house	60	0.26	0.84	1	0.85	1	0.714	\$31,447.29	\$112,500.00	14%	-
9	130-160-000-008-00	James & Kelly Stradner	Smallwood	Upper portion of Smallwood Lake	Front lot with house	90	0.497	0.89	1	0.85	1	0.76	\$33,431.46	\$60,000.00	28%	Yes
9a	110-271-000-004-00	-	Smallwood	-	Front lot with house	90	0.378	0.89	1	0.85	1	0.757	\$33,431.46	\$179,100.00	9%	-
9b	110-290-000-015-00	-	Smallwood	-	Front lot with house	85	0.32	0.89	1	1	1	0.89	\$39,086.87	\$51,100.00	38%	-
9c	110-271-000-015-00	-	Smallwood	-	Front lot with house	92	0.4	0.9	1	0.85	1	0.765	\$33,543.77	\$68,300.00	25%	-
10	110-377-000-385-00	Dawn Sisk	Smallwood	Canal/lake on upper portion of Wixom Lake	Front lot with house	100	0.603	0.9	1	0.75	0.9	0.61	\$26,875.54	\$51,600.00	26%	Yes
10a	110-377-000-386-00	-	Smallwood	-	Front lot with house	100	0.56	0.9	1	0.75	0.9	0.68	\$26,875.54	\$74,562.00	18%	-
10b	110-371-000-015-00	-	Smallwood	-	Front lot with house	101	0.26	0.91	1	0.85	0.9	0.689	\$30,492.64	\$61,200.00	25%	-
10c	110-220-000-008-00	-	Smallwood	-	Front lot with house	100	0.42	0.9	1	0.85	1	0.765	\$33,843.27	\$76,600.00	22%	-
11	130-126-000-245-00	Edward & June E Schluett	Secord	West Branch Tittabawassee River to Secord Lake	Front lot with house	70	0.236	0.86	1	0.75	0.9	0.58	\$25,656.63	\$61,100.00	21%	Yes
11a	130-137-000-103-00	-	Secord	-	Front lot with house	71	0.346	0.87	1	0.75	1	0.645	\$25,573.43	\$96,600.00	15%	-
11b	130-105-000-020-00	-	Secord	-	Front lot with house	72	0.27	0.87	1	0.85	1	0.74	\$32,458.09	\$105,800.00	15%	-
11c	130-125-000-146-00	-	Secord	-	Front lot with house	71	0.34	0.87	1	1	1	0.86	\$38,097.90	\$90,600.00	21%	-
12	030-170-000-014-00	Gregory & Tamera Schowalter	Wixom	Wixom Lake	Front lot, narrow access location	12	0.22	0.8	1	1	0.9	0.72	\$31,711.55	\$4,200.00	378%	Yes
12a	150-260-000-018-02	-	Wixom	-	Front lot, narrow access location	10	0.02	0.8	0	1	0.75	0	\$0.00	\$2,500.00	0%	-

Listed in Appellants Brief on Appeal

EXHIBIT D

Four Lakes Task Force

Gladwin and Midland Counties' Delegated Authority
of the Four Lakes Special Assessment District

October Informational Webinar: Project Financing & Timing

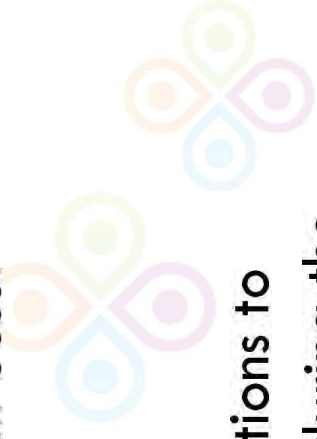
October 12, 2023



This is an Information Session

2

- This meeting is being held virtually to accommodate as many people as possible
- This is not a board meeting or hearing – no formal action will occur
- Please use the Q&A feature in GoToWebinar or email questions to info@fourlaketaskforce.org and we will answer questions during the meeting and at the end



Communication Meeting Format

3

- These meetings are focused on keeping the community informed and providing an opportunity to ask questions
- Today's subjects:
 - **STATUS UPDATE BY LAKE**
 - **NEWLY PUBLISHED SCHEDULES AND COSTS**
 - **SPECIAL ASSESSMENT TIMETABLE AND ESTIMATES**
- At the end, we will leave time to answer questions on other topics



Agenda



- Status update on each dam
- Updated schedules and estimates
- Project cost estimates
- Assessments
- Additional funding opportunities
- Summary
- Q&A

Lake Restoration Objectives and Risks

5

- Four Lakes Task Force restoration objectives:
 1. Return all four lakes to the normal (legal) lake levels
 2. Put in place a sustainable structure to manage and maintain the four dams to ensure a sustainable lake system
 3. Establish an environmental and recreational plan that can be managed by each lake's community

Requires the Four Lakes to be managed as one system

Lake by Lake updates



Secord Dam – Behind Schedule

7

- Significant issues with mobilization, dewatering and bracing to ensure safe excavation, significantly delayed the project
- The low-level outlet construction is complex; still ongoing and now making good progress
- Concrete pours on the auxiliary spillway and stilling basin continue
- Permit approved for diversion of water through auxiliary spillway reduce time but does not bring the project back to target



Smallwood Dam – Slightly Over Planning Target

8



- Concrete pouring:
 - Low-level outlet walls
 - Upper chute stilling basin and baffle blocks
 - Upper spillway chute (pictured top)
 - End still (pictured bottom)

Edenville Dam – Embankment Underway

9

- Embankment work and installation of the soil-cement-bentonite (SCB) seepage prevention wall is now on the dam embankment west of the M-30 bridge
 - ▣ After this phase, the final restoration of the embankment will continue through next summer
- Final phase construction (auxiliary and two primary spillways) will start in the spring
- Continuing to maintain compliance with soil erosion and sediment control permits



M-30 ROAD CLOSURE

Wednesday, October 18th –
November 1st

Traffic will be routed around the closure via Curtis Road, M-18 and Dale Road

Sanford Dam – No 2023 Construction Progress



- Submitted permit – waiting for approval from Michigan Department of Environment, Great Lakes, and Energy (EGLE) and the Environmental Protection Agency (EPA)
- Construction agreement is complete
- Spence Brothers and Fisher Contracting are preparing the job site (i.e., trailers and laydown yard)
- All parties understand the need to start the project this month

Lake Improvement Projects Required for Permits

Sanford

- Fish habitat downstream of Sanford Dam
- Fish habitat in areas of the lake
- Native vegetation buffers
- Natural shoreline projects throughout lakebottoms
- Wetland monitoring

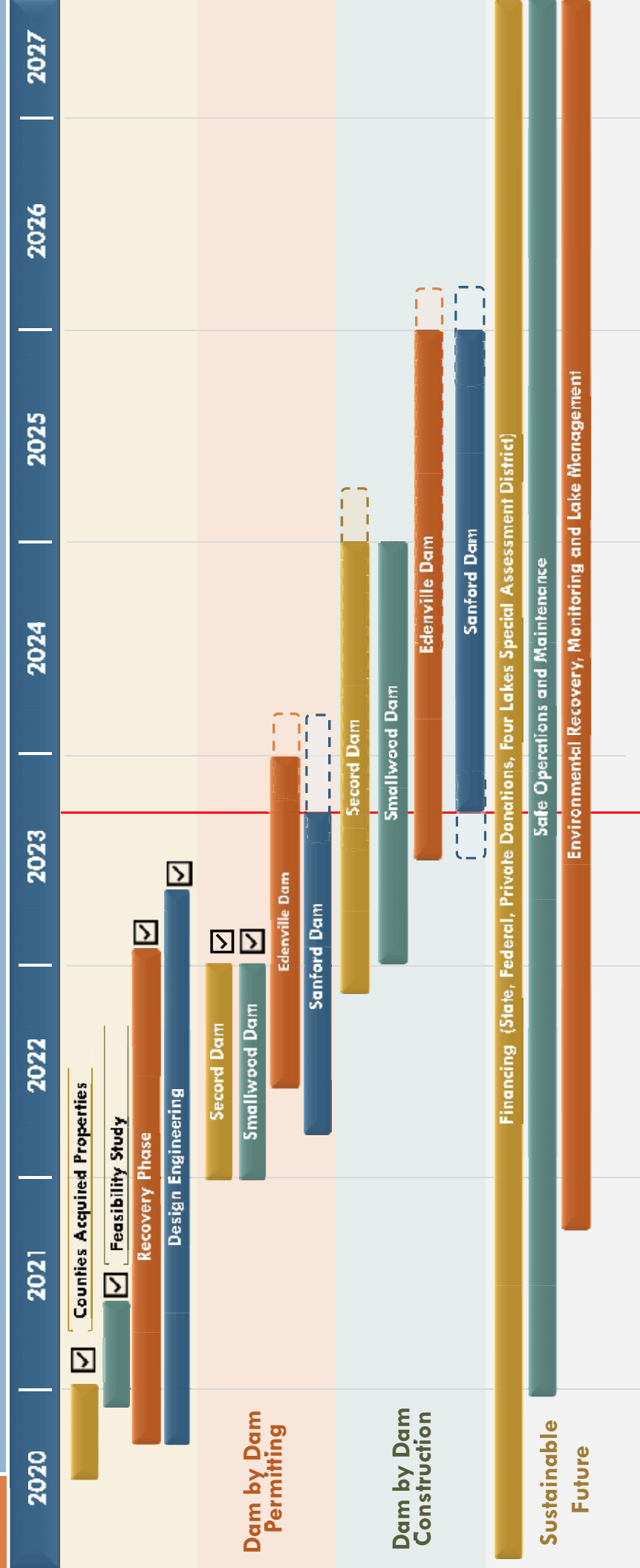
Wixom

- Projects are still under review with EGLE but we anticipate a similar list of mitigation projects to be required

Updated Schedule and Estimates

- **Schedule estimates**
 - The estimates are outside the 2022 range
- **Key messages:**
 - Unforeseen conditions on Secord created a slower start
 - We lost most of the summer for construction on Sanford
 - We were unable to get a firm quote on Edenville, putting the project in phases

Dam Restoration Timeline – July Webinar



— Where we are now



Shaded rectangle indicates uncertainty in permitting and contracting

October 2023 – Estimate of Lake Use

Lake	Estimated Start Date	Prior Published July Estimate	Estimated Substantial Completion Date	Target Date for Lake Use	Comments
Secord	February 2023	January to April 2025	September 2025 +/-3 months	After Memorial Day 2025	Start up issues On track for new dates
Smallwood	January 2023	December 2024	March 2025 +/-3 months	Before Memorial Day 2025	On track for new dates
Wixom	April 2024 for spillways	January to April 2026	August 2026 +/-6 months	After Memorial Day 2026	Still high degree of uncertainty
Sanford	October 2023	January to April 2026	April 2026 -3/+8 months	Before Memorial Day 2026	Very dependent on 2024 construction season

- Secord and Smallwood reflect the current contracted construction schedules
- Wixom is an estimate until bids are received
- Sanford is contracted, but conditional based on permitting
- Next estimates to publish will be early December of 2023

Project Cost Estimates

Project estimates

- ▣ Current estimates are outside the 2022 planning range
- ▣ Very significant construction market cost escalations
- ▣ Formal planning number in December

Funding

- ▣ Financing is required in mid-2024 to complete the project
- ▣ Capital Assessment hearing planned for January 2024
 - ▣ For winter 2024 taxes
 - ▣ As well as Operation and Maintenance Assessment

What is Happening in the Market

16

2022 Estimates

- ▣ \$250 million project estimate
 - \$230 to \$270 million range
 - This range was based on design estimates when we hadn't received any bids
 - Range was +/-25%
- ▣ Financing assumed
 - 30-year municipal financing at 3 to 3.5%

2023 Realities

- ▣ \$350 million project estimate
 - \$330 to \$380 million range
 - Increased certainty in range, $\frac{3}{4}$ dams are under contract
- ▣ Last two years
 - Year-over-year construction costs increased by ~15% each year
 - 2023 ~ 6%
- ▣ Bi-partisan infrastructure bill
- ▣ Financing USACE Loan 35-year at ~5%

Updated Project Estimates – \$350 Million (+9/-6%)

as of October 10, 2023

Secord ↑

\$66 million

- +5/-5%
- Secord is under contract with Fisher. Construction began in February 2023

Additional all lakes costs ~\$5M includes site safety, booms, Consumers EFA and electrical services, and tree removal

Smallwood ↑

\$49 million

- +5/-5%
- Smallwood is under contract with Fisher. Construction began in February 2023

Edenville ↑

\$140 million

- +10/-10%
- Edenville Phase III and Phase IV are under contract
- Phase V costs are an estimate until bids are received in December

Sanford ↑

\$90 million

- +10/-5%
- Sanford under contract with Spence Brothers and bids have been awarded
- Estimate dependent on starting this month and 2024 momentum

Capital Assessment Estimate is \$145 to \$195 million

Illustrative Example

Current Assessment Estimates are +15/-20%

Assessment	Principal Payment	Median Annual Assessment
High End of Range (1)	\$32,000	\$1,800
Average Assessment (.75)	\$24,000	\$1,400
Low End of Range (.25)	\$8,000	\$450

Median Annual Assessment	Percent of Properties
\$1,800 or Greater	7%
\$1,500 to \$1,800	21%
\$1,000 to \$1,500	52%
\$500 to \$1,000	8%
Under \$500	12%

Example is a Capital Assessment of \$170 million with an Army Corps 35-year financing 5% interest loan, assuming median annual assessment with principal and interest

Flexibility with the US Army Corps Loan

- The US Army Corps Water Infrastructure Financing Program (CWIFP) allows for flexibility with timing of principal payments
 - Lower interest rates than municipal financing
 - Deferral of principal for up to 4 years in Michigan
 - Options to shape the principal payment and to draw funds as needed
 - Principal paydown without penalty
- This allows for:
 - Lower payments in first 3 years, the time prior to lake fills
 - As new funding sources are identified, principal can be paid down
 - Refinancing in the future



\$100 Million Needed to Return to 2022 Assessment Estimates

- Current focus is cost reductions (without compromising on safety) and ensuring we get approved for US Army Corps Financing

Are we pursuing grants, donations or other sources of funding?

YES!

This will be a major effort as we complete lake restoration

- FLTF will pursue funding opportunities with state and federal governments and private grant programs
- Currently an application is pending for a \$5M Community Development Block Grant from the US Dept. of Housing and Urban Development
- We are in discussion with DNR on an additional grant opportunity

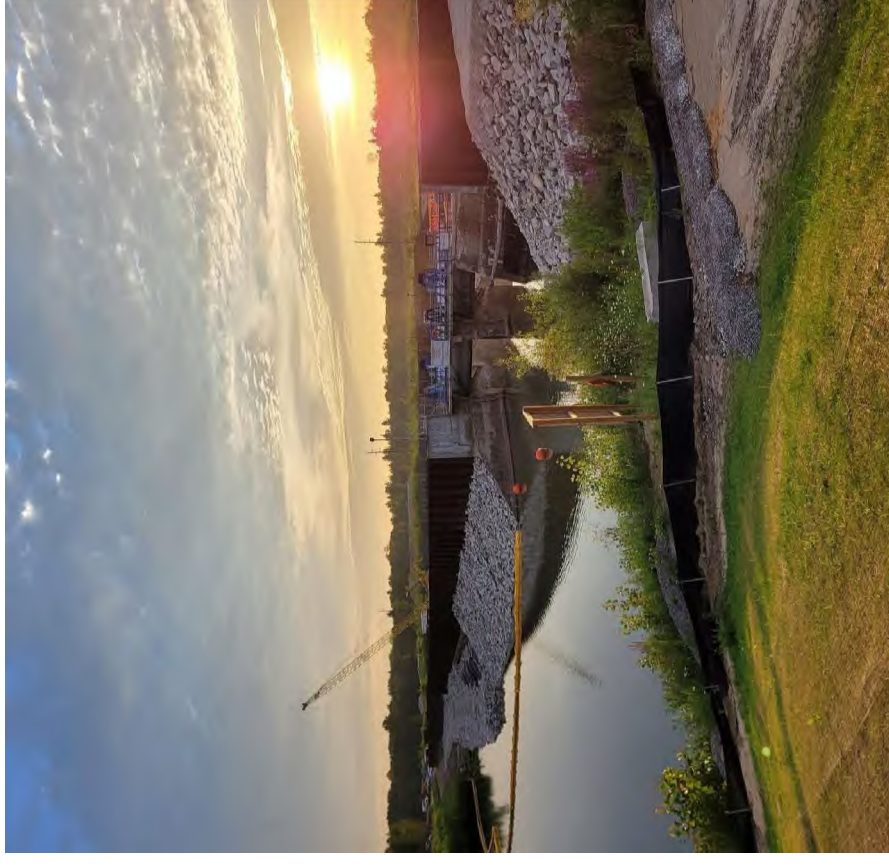
Upcoming Milestones

	October	November	December	January	February	Spring
CONSTRUCTION	<ul style="list-style-type: none"> Sanford permit Mobilize for Sanford restoration Notice of FEMA Conditional Letter of Map Revision (CLMOR) Start Sanford construction 	<ul style="list-style-type: none"> Complete cutoff wall on Edenville Dam Start Edenville embankment restoration Complete Smallwood auxiliary spillway 	<ul style="list-style-type: none"> Computation of project costs 	<ul style="list-style-type: none"> Receive Bids for Edenville 	<ul style="list-style-type: none"> Expect Edenville permit by March 	<ul style="list-style-type: none"> Complete Second auxiliary spillway (April 2024) M-30 bridge construction (March-October 2024)
MEETINGS & COMMUNICATIONS	<ul style="list-style-type: none"> Board Meeting Oct. 30th 	<ul style="list-style-type: none"> Communication on assessment process and timing 	<ul style="list-style-type: none"> Expect Army Corps loan application submission approval Webinar - Day of Review Dec. 6th Board Meeting Dec. 12th 	<ul style="list-style-type: none"> Conduct public hearing for Capital Assessment 	<ul style="list-style-type: none"> Request board approval of assessment 	



Summary

- Computation of cost for Capital Assessment to come in December
 - Webinar on Day of Review December 6
 - Hearing in January 2024
 - County Board review in February 2024
- We understand the schedule and cost are disappointing, but FLTF is exploring all avenues to improve the schedule, reduce costs and seek additional funding
 - We will keep you informed on progress



General Questions and Answers

Please use the Q&A feature in GoToWebinar or email questions to info@fourlaketaskforce.org and we will address as many questions as we can

EXHIBIT E

Four Lakes Task Force

Gladwin and Midland Counties' Delegated Authority
of the Four Lakes Special Assessment District

Community Information Session

The Purpose and Process for the January 15th Public Hearing
On the
FLTF Operations and Maintenance Special Assessment Roll
&
FLTF Capital Special Assessment Roll



Informational Communications Meeting

2

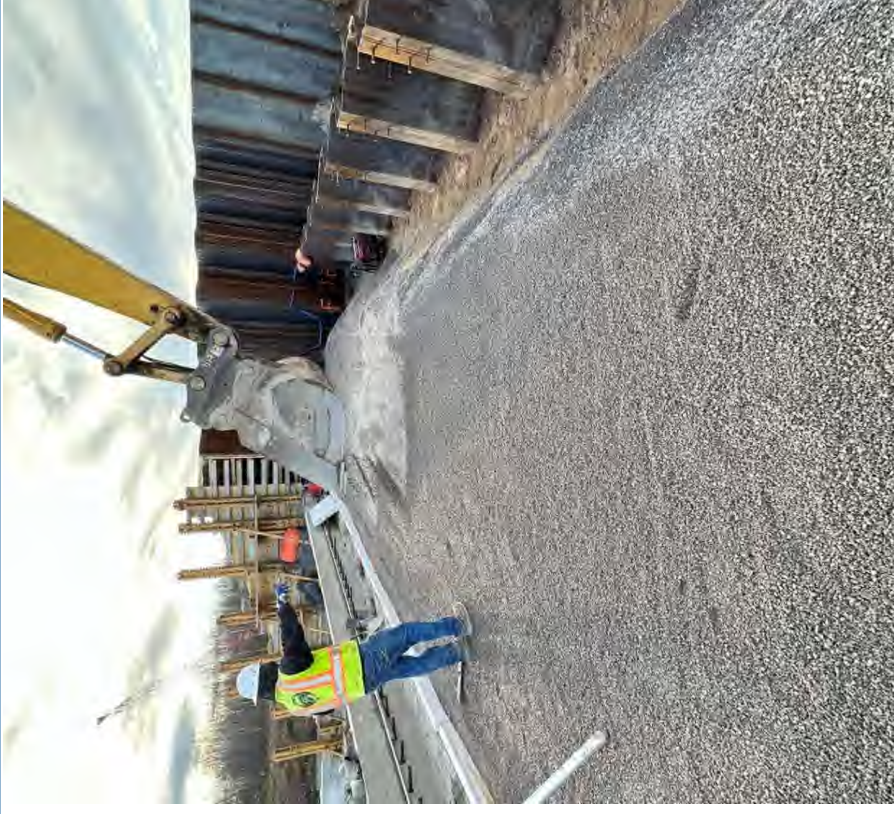
- This is an information session
 - This meeting is being held virtually to accommodate as many people as possible
 - This is not a board meeting; no formal action will occur
 - If you have questions, please send them to info@fourlaketaskforce.org
 - At the end of the meeting, we will respond to questions sent to the email address related to the communications session
 - If they are specific questions on your property, we will reply to the email, but it may not be during the session



Agenda

3

1. Overview of County and Four Lake Structure
 - Roles, Responsibilities, Authorities
 - Purpose of the Public Hearing
2. Assessment Methodology and Estimation
 - Assessment Methodology and Benefit Factors
 - Operations and Maintenance Assessment Estimates
 - Capital Assessment Current Estimates
3. Day of Hearing Details
4. Resources:
 - Next Steps
 - Preliminary Property Reviews
 - Online Resources
5. Questions and Answers



County and Four Lakes Structure

Under Part 307, inland lakes, of the Natural Resources and Environmental Protection Act

Counties

- Gladwin and Midland counties are owner of the dams and bottomlands
- They have a joint county agreement with Four Lakes Task Force

The dams and lakes are regulated by Part 307, Inland Lakes, of the Natural Resources and Environmental Protection Act (Part 307)

Four Lakes Task Force

- A 501(c)(3) non-profit with a charitable purpose that includes lessening the burden of government by serving as the Part 307 Delegated Authority
- May accept donations and grants

Part 307 Delegated Authority for restoring and maintaining the lake levels, dams and bottomlands

Authority over the Four Lakes Special Assessment District (SAD)

Four Lakes SAD

- An established geographic boundary of waterfront properties along or near the four lakes and “backlot” properties with dedicated (private easement) access

Under Part 307, a county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments

Community Responsibilities

- FLTF can support via its status as a non-profit
- Many of these activities cannot be funded by Four Lakes SAD:
 - Vegetation/Weed Control
 - Dredging
 - Parks and Recreation
 - Shoreline Protection

Funding responsibilities fall to other authorities such as lake improvement boards or township-led special assessments

Lake associations and FLTF as non profits can help

Part 307, Section 11 of the Natural Resources & Environmental Protection Act for Special Assessment

- The county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by special assessments against the following that are benefited by the project:
 - privately owned parcels of land
 - political subdivisions of the state
 - state owned lands under the jurisdiction and control of the department

Gladwin and Midland counties made this determination and petitioned the Gladwin and Midland district courts for the legal lake levels for the Four Lakes and the Four Lakes Special Assessment District were established.

Special Assessments

- Operations assessments and capital assessments are separate assessments
 - Will be listed separately on your tax bill and do not include other assessments related to the lake such as weed assessments
- Operations (and Maintenance) Assessment
 - Covers annual expenses to maintain the lake levels such as administration, operations and dam maintenance
- Lake Level Capital Assessment costs to restore normal lake levels
 - Includes engineering, construction, legal, surveys and studies, cost to form the SAD, financing costs
 - The apportionment of the principal financed is a lien placed on the property that can be paid off at any time once established, but defaults to be paid off annually with payments over the length of the loan



Purpose of the January 15th Public Hearing

- 1. Review Operations and Maintenance Computation of Cost**
 - 5-year expenses for administration, operations and maintenance of the four lake levels for the years 2025, 2026, 2027, 2028 and 2029
- 2. Review a 5-year Operations and Maintenance Special Assessment**
 - **Ball** for the years 2025-2029 starting in the winter of 2024
 - NOTE: The last 2022-2024 Operations and Maintenance Assessment payment will be in the winter of 2024
- 3. Review the dam/lake restoration costs**
 - Also approve a total project computation of cost for the restoration of the Four Lakes
- 4. Review a Capital Assessment Roll**
 - Financed at and currently planned at 35 years in length

This Public Hearing is NOT

8

- For legal challenges to the lake levels or the special assessment district
- For arguments on property boundaries, subdivisions or titles



2022 vs. 2024 SAD Hearing – What’s New?

Purpose of 2022 Hearing

- Approved computation of cost for 3-year Operations and Maintenance Assessment (for 2022, 2023 and 2024)
- Established Operations and Maintenance Assessment roll for 2022-2024
- Approved a project cost

Purpose of 2024 Hearing

- Approve computation of cost for 5-year Operations and Maintenance Assessment (for '25, '26, '27, '28 and '29)
- Establish Operations and Maintenance Assessment Roll for 2025-2029
- Approve computation of cost for total Capital Assessment and revised project costs
- Approve Capital Assessment Roll

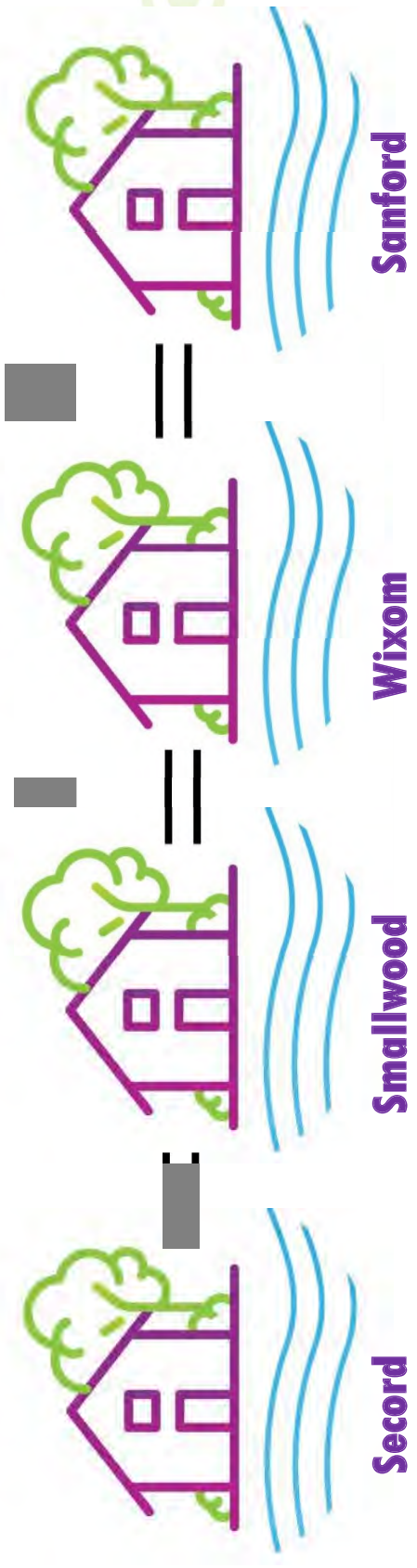


Assessment Methodology and Estimates

Pictured above: Smallwood Dam setting of stub flanges for siphon system on Dec. 4, which will be used to divert flow during the primary spillway construction

Benefit Factors Establish Assessment Apportionments

IF A PROPERTY ON ONE LAKE HAS THE SAME BENEFIT FACTOR (for allocation) AS A PROPERTY ON ANOTHER LAKE → BOTH PROPERTIES HAVE THE SAME ASSESSMENT



There was no feasible alternative for a township(s) or lake associations to acquire or provide the legal, financial or regulatory oversight to repair, restore or maintain these dams. The dams are hydraulically linked in their design and management. The counties took ownership of the dams to protect the lakes and the benefit and there are significant funds being applied that lower the financial burden to property owners in the SAD. The assessment methodology is applied so that when comparing two houses with same benefit, either in the same lake community or two different, they will have the same payment, which includes the disbursement of costs offset by grants.



Special Assessment Benefit Factors (BF)

- Benefit factors are multiplied to get final benefit
 - Base
 - Derived
 - Frontage
 - Water View
 - Water Depth
 - Public Access

- Base Benefit Factor
 - Base BF = 0 for:
 - Exempt parcels per Part 307 statute – schools, cemeteries
 - Municipal owned property not used for access
 - Parcels without private access
 - Road right of way with PIDs
 - Receiving no benefit
 - Base BF = 1 for:
 - All other waterfront parcels
 - Base BF = 0.5 for:
 - All other private easement access parcels (backlots)

<https://bit.ly/FLTFSAD>



Operations Assessment – Computation of Costs

	Total 5 Year	2025	2026	2027	2028	2029
1	Expense of Maintenance of the Lake Level Structure					
	Program Office (Finance, Admin, Communications, Legal)	\$370,000	\$390,000	\$145,000	\$150,000	\$155,000
	Dam and Lake Operations	\$1,220,000	\$1,280,000	\$1,325,000	\$1,395,000	\$1,465,000
2	Establishment of Special Assessment District	\$50,000	\$25,000	\$25,000	\$25,000	\$25,000
	Preparation of Assessment Roll and Levying Assessments					
	Estimated Cost of Mailing, Publishing, Notices					
	Estimated Legal Fees					
3	Estimated Cost of Appeal	\$25,000				
	Gross Sum of Expenses	\$8,070,000	\$1,695,000	\$1,495,000	\$1,570,000	\$1,645,000
	Contingency 10%	\$806,000	\$170,000	\$150,000	\$157,000	\$164,000
	Assessment Total Sum	\$8,876,000	\$1,865,000	\$1,645,000	\$1,727,000	\$1,809,000
	Annual Assessment Amount	\$8,876,000	\$1,775,200	\$1,775,200	\$1,775,200	\$1,775,200

*2022-2024 O&M normalized annual assessment amount was \$1,564,000

Operations Assessment Examples

EXAMPLE 1 – Front Lot

- Residential lakefront property
- 100 ft. of frontage
- Water view less than 230 ft.
- Water depth greater than 4 ft.

Est. annual assessment: \$2

Depending on the factors outlined above, front lots will range from \$180-300



EXAMPLE 2 – Backlot

- Residential backlot property
- Deeded lakefront access location (i.e., lot with access)

Est. annual assessment: \$7

Depending on the factors outlined above, backlots will range from \$65-165



Planning Level Operations Assessments

- **Estimated Operations Assessment each year for five years**
- 2025-2029 Operations and Maintenance Assessment estimates

Assessment	Yearly Assessment
High End of Range (1)	\$300
Average Assessment (.75)	\$225
Low End of Range (.25)	\$70

Yearly Assessment Range	Percent of Properties
\$300 or Greater	9%
\$225 to \$300	52%
\$70 to \$225	39%

For specifics on your property visit <https://bit.ly/FLIFSAD>



Lake Level Capital Assessment

Pictured above: Stone backfill and pipe installation at the right embankment of the Edenville Dam

Updated Project Estimates - \$350 Million

(\$335-\$380M range)

Secord ↑

\$66 million

- +5/-5%
- Secord is under contract with Fisher. Construction began in February 2023

Additional all lakes costs ~\$5M includes site safety, booms, Consumers EFA and electrical services, and tree removal

Smallwood ↑

\$50 million

- +5/-5%
- Smallwood is under contract with Fisher. Construction began in February 2023

Edenville ↑

\$143 million

- +10/-10%
- Edenville Phase III and Phase IV are under contract
- Phase V costs are an estimate until bids are received in December

Sanford ↑

\$90 million

- +10/-5%
- Sanford under contract with Spence Brothers and bids have been awarded
- Estimate dependent on starting this month and 2024 momentum

Capital Assessment Estimate

- **The computation of cost for the actual assessment will likely fall within the range of \$150M-\$202M**
 - We have submitted a \$202 million loan request to USACE
 - The project costs submitted in January will have a “not to exceed” number for county approval
- **Remaining uncertainties to get to a final computation of costs:**
 1. Edenville bids need to be received before the January 15 hearing
 2. Edenville has not received an EGLE permit or a USFWS Mussel take permit
 3. US Army Corps loan preapplication decision is expected in December
 4. Determination on environmental mitigation costs for Sanford and Wixom lakes
 5. Future grants or donations that may occur are not included

Planning Level Capital Assessment Example

- For illustration purposes, the below shows a **\$170M assessment** using an **Army Corps 35-year financing 5% interest loan, assuming median annual assessment with principal and interest**

Assessment	Principal Payment	Median Annual Assessment
High End of Residential Range (1)	\$32,000	\$1,800
Average Assessment (.75)	\$24,000	\$1,400
Low End of Range (.25)	\$8,000	\$450

Median Annual Assessment	Percent of Properties
\$1,800 or Greater	7%
\$1,500 to \$1,800	21%
\$1,000 to \$1,500	52%
\$500 to \$1,000	8%
Under \$500	12%



Public Hearing Details

Pictured above: Secord Dam auxiliary spillway on Dec. 4

Public Hearing Date and Time

Beaverton Activity Center
106 Tonkin St., Beaverton, MI
Monday, January 15, 2024

9:00 a.m. - 12:00 p.m. and 1:00 p.m. - 3p.m.

Hearing Agenda

Open to the Public

Session 1 (9am-12pm)

- I. Call to Order
- II. Pledge of Allegiance
- III. Roll Call
- IV. Introduction
 - a. Scope of Hearing
 - b. Summary of Methodology Development
 - c. Review of Data for Approval
 - i. Capital Computation of Cost
 - ii. Operations Computation of Cost
 - iii. Assessment Roll
- V. Opening of Session for Public
Comments/Objections on the Assessment Roll and
Project Cost
- VI. Call to Recess

Recess (12pm-1pm)

Session 2 (1pm-3pm)

- I. Call to Order
- II. Roll Call
- III. Opening of Session for Public
Comments/Objections on the Assessment Roll and
Project Cost
- IV. Adjourn

A FLTF Board meeting will follow the hearing.

Recess (3pm-4pm)

FLTF Board Meeting (4pm-5pm)

- I. Call to Order
- II. Roll Call
- III. Public Comment for Matters Not Related to the Hearing
- IV. Review of Hearing
 - a. Minutes
 - b. Engineers' Report
 - c. Legal Update
- V. Board Decision Regarding Approval of:
 - a. O&M 5-year Costs
 - b. O&M 5-year Assessment Roll
 - c. Capital Improvement Project Costs
 - d. Capital Improvement Assessment Roll
- VI. Next Steps
- VII. Next Meeting
- VIII. Adjourn



How to Submit Objections

You may simply “object to the special assessment” or you may provide an argument regarding why you object:

1. Email your objection to info@fourlakestaskforce.org with **“Objection” in the subject line**
2. Send snail mail to Four Lakes Special Assessment District, 233 E. Larkin Street, Midland, Michigan 48640
3. Attend the public hearing in-person and object verbally or submit a letter.
 - └ You will be assigned a number to be called up
 - └ Property owners must provide a hard copy of any information or evidence they want the FLTF board to consider

- A team of FLTF consultants, engineers, surveyors and lawyers will review objections during the meeting. Analysis will be created for the board to review the objections.
- These consultants will also be available to answer questions before you decide to object.

Next Steps

Preliminary property review meetings with Spicer engineers to discuss specific property issues are available Wednesdays and Fridays December 6 – January 15

Event	Date
Estimated Assessment Amount and Apportionment Mailed to Property Owners	December 21, 2023
Public Hearing for Operations and Maintenance and Capital Assessment Roll	January 15, 2024
Joint County Board of Commissioners' Meeting	February 6, 2024
Appeal Period Ends	February 21, 2024
Final Assessment Roll Given to Midland and Gladwin Counties	September 2024
Assessments Appears on Tax Bill	Winter 2025*

*Note: O&M assessment from 2022 hearing will be on Winter 24 tax bill. New assessments begin Winter 2025

Preliminary Property Reviews

- Virtual preliminary property reviews for the Capital Assessment
- 15-minute meetings with Spicer engineers regarding **ONLY** the Capital Assessment on homeowner properties
- Sign up by scanning the QR code or going to <https://bit.ly/FLIFSAD>
 - You will need to enter your property ID to allow the engineers to look at your property prior to the meeting
- Once your appointment is booked, you will receive a meeting invite from fltifsad@fourlaketaskforce.org (add to your approved list as it may go to spam) with Zoom details for your meeting
- You will receive a reminder email with your meeting details three days prior to the appointment
- Meetings are available during the below dates and times:

Scan the QR code to book!



- Fri., Dec. 8th – 8am-12pm
- Fri., Dec. 20th – 1pm-5pm
- Tues., Dec. 12th – 5pm-8pm
- Thurs., Dec. 21st – 5pm-8pm
- Wed., Dec. 13th – 1pm-5pm
- Fri., Dec. 22nd – 8am-12pm
- Fri., Dec. 15th – 8am-12pm
- Wed., Jan. 3rd – 1pm-5pm
- Fri., Jan. 5th – 8am-12pm



Resources on Communications

- Report: “Construction Cost Increase Summary” | <https://bit.ly/inc-sum>
- Webinar regarding construction cost increases | <https://register.gotowebinar.com/recording/1428525523692323417>
- Aug. 10, 2023 Webinar: Project Costs and Financing | <https://bit.ly/Aug10-webinar>
- Special Assessment Page <https://www.four-lakes-taskforce-mi.com/special-assessment-district.html>
- Assessment map with estimates
- Benefit explanation
- FAQs



Questions and Answers

Please use the Q&A feature in GoToWebinar or email questions to info@fourlaketaskforce.org and we will address as many questions as we can



Thank you for joining us!

Pictured above: Secord Dam on Dec. 1

EXHIBIT F

Four Lakes Task Force

Gladwin and Midland Counties' Delegated Authority
of the Four Lakes Special Assessment District

Communications Session

December 6, 2021



Informational Communications Meeting

2

- This meeting is being held virtually to accommodate as many people as possible
- This is an information session. It is not a board meeting; no formal action will occur
- If you have questions, please send them to info@fourlakestaskforce.org
- At the end of the meeting, there will be time for public questions and comment



Agenda

3

- I. Introduction
- II. Restoration Plan Status update
- III. Special Assessment Methodology Update
- IV. Closing Comments
- V. Public Comments
- VI. Adjourn

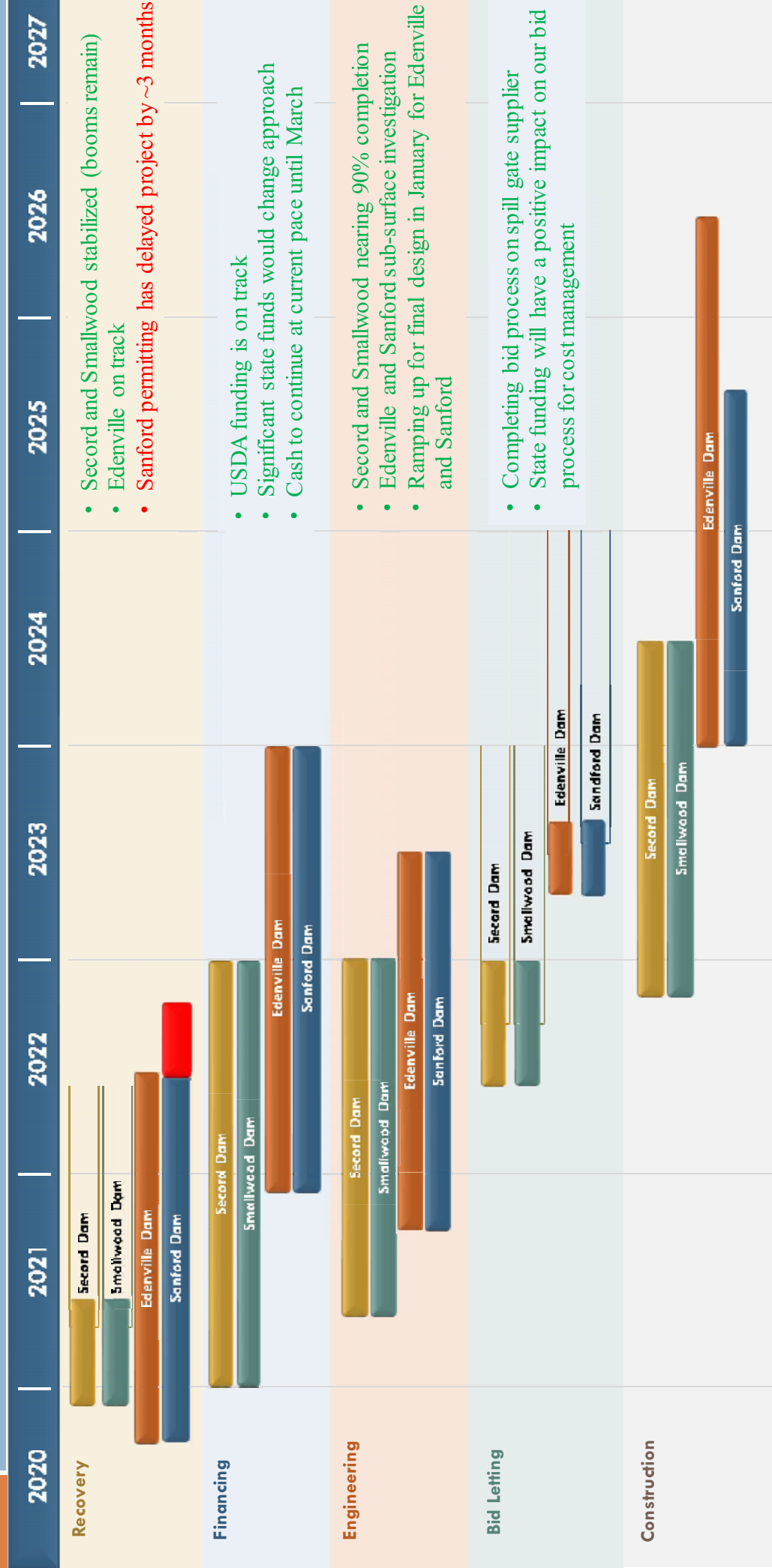




Status Update

Dave Kepler
Four Lakes Task Force

Lake Restoration Status Progress



Restoration Plan Critical Issues



- 1. In the next three years, approximately \$250 million will need to be funded for restoration.**
 - SB 565 budget appropriation bill passed Senate
 - Still to go through House and Governor will then need to approve
- 2. Environmental recovery on Wixom and Sanford lakes is significant, and FLTF is engaged with EGLE to get state acceptance of the restoration plan, and then identify funding sources.**
 - Wetland modeling and monitoring underway, mussel survey, and other
 - Dam environmental permitting for all four systems is proceeding
 - Multi-year Restoration Plan, with Lake Plans will be completed by end of 2022
- 3. A fair and consistent methodology for the assessment of property owners of the Four Lakes Special Assessment District (SAD).**
 - Cost, timeline and methodology completed this year, process to start with December board meeting
- 4. Flood studies must be completed, and capacity designs must be acceptable to the state.**
 - Hydraulic modelling and risk assessment are moving forward with EGLE & other agencies engaged
 - Challenge is becoming more around the modelling of flood plains

Capital Assessment Estimates

7

- Updated capital assessment estimates after notification on Michigan state funding grant size. We need to ground to major factors.
 - Funding from the state for restoration
 - Spending Estimates versus May planning estimates
- If state funding is over \$100 million
 - There would not be a capital assessment on the dams before 2023
- If the \$250 million grant goes through
 - This would meet our current restoration estimate
 - Then the focus would be on managing costs to current estimates



Tentative At-Large Assessment

- Lake benefits the governments
 - We recognize FLTF and county contract excludes funds for the lakes coming from the general funds of the counties without their approval
- In general, for the first 3 years for Operations and Maintenance at-large we are suggesting:
 - 15% to counties (estimated \$115,000-\$120,000/yea
 - 7.5% to Gladwin County at-large
 - 7.5% to Midland County at-large
- 15% split proportionally to 9 townships and 1 Village
 - Determined by sum of parcel benefit factors within a given entity

Adjacent Parcel Methodology Change

- Adjacent lots associated with the same landowner will be assessed with new methodology
- Benefit is associated to parcel not landowner
- Landowner may have ability to combine / split their parcel and it is their option to configure property
- There will still be some exceptions on a case-by-case basis
 - Parcels where taxes have been historically assessed with another
 - Lots where home spans two lots which cannot be combined



Computation of Cost

	Total 3 year	2022	2023	2024
1	Expense of Maintenance of the Lake Level Structure			
	Program Office (Finance, Admin, Communications, Legal)	\$1,140,000	\$380,000	\$400,000
	Dam and Lake Operations	\$2,370,000	\$790,000	\$830,000
2	Establishment of Special Assessment District	\$465,000	\$20,000	\$20,000
	Preparation of Assessment Roll and Levying Assessments			
	Estimated Cost of Mailing, Publishing, Notices			
	Estimated legal fees			
3	Acquisition	\$80,000		
4	Estimated Cost of Appeal	\$25,000		
	Gross Sum of Expenses	\$4,080,000	\$1,190,000	\$1,250,000
	Contingency 15%	\$612,000	\$178,500	\$187,500
	Assessment Total Sum	\$4,692,000	\$1,368,500	\$1,437,500
	Annual Assessment Amount	\$4,692,000	\$1,564,000	\$1,564,000



Assessment & Benefit Updates

Warren Miller
Spicer Group

Special Assessment District Breakdown

8,442* parcels within SAD	
6,520 Front lots	1,922 Back lots
	61 subdivision with private access locations
	113 access locations (some subs have multiple lots for access)
Second Lake 2,114 parcels	Smallwood Lake 111 parcels
	Wixom Lake 3,661 parcel
	Sanford Lake 1,856 parcels

*Number of parcels within SAD changes based on parcel splits and combinations



Special Assessment Benefit Factors (BF)

- Benefit Factors are multiplied to get final benefit
 - Base
 - Derived
 - Frontage
 - Water View
 - Water Depth
 - Public Access

- Base Benefit Factor
 - Base BF = 0 for:
 - Exempt parcels per Part 307 statute – schools, cemeteries
 - Municipal owned property not used for access
 - Parcels without private access
 - Road right of way with PIDs
 - Others still to be determined
 - Base BF = 1 for:
 - All other Waterfront parcels
 - Base BF = 0.5 for:
 - All other private easement access parcels (Back lots)



Average Operations Assessment by Lot Type

Residential front lots: \$90-\$325

EXAMPLE 1

- Residential lake front property
- 40 ft. of frontage
- Located on a canal
- Water depth less than 4 ft.

Est. annual assessment: \$90

EXAMPLE 2

- Residential lake front property
- 100 ft. of frontage
- Water view greater than 500 ft.
- Water depth greater than 4 ft.

Est. annual assessment: \$16



Average Operations Assessment by Lot Type

Residential front lots: \$90-\$325

EXAMPLE 3

- Residential lake front property
- 250 ft. of frontage
- Water view greater than 500 ft.
- Water depth greater than 4 ft.

Est. annual assessment: \$275

EXAMPLE 4

- Residential lake front property
- 100 ft. of frontage
- Located on a canal
- Water depth less than 4 ft.

Est. annual assessment: \$110

EXAMPLE 5

- Residential lake front property
- Over 1,000 ft. of frontage
- Water view greater than 500 ft.
- Water depth greater than 4 ft.

Est. annual assessment: \$325



Average Operations Assessment by Lot Type

Residential back lots: \$50-\$80

EXAMPLE 1

- Residential back lot property
- Lowest quality access location (i.e., narrow walkway)

Est. annual assessment: \$50

EXAMPLE 2

- Residential back lot property
- Highest quality access location (i.e., large lot with park or boat launch)

Est. annual assessment: \$80



Tentative Benefit Factors – Derived

Parcels can derive more or less benefit from the lake

More Derived Benefit

- Non-residential parcels
 - Rental properties, marinas, RV parks
 - Others TBD

Less Derived Benefit

- Non-buildable lots or easements
 - Regulations which prohibit building
 - Conservation easements
 - Other TBD

Typical Derived Benefit

- Residential parcel that can or is developed



Challenge:

Determining which lots are deemed unbuildable



Tentative Benefit Factors – Frontage

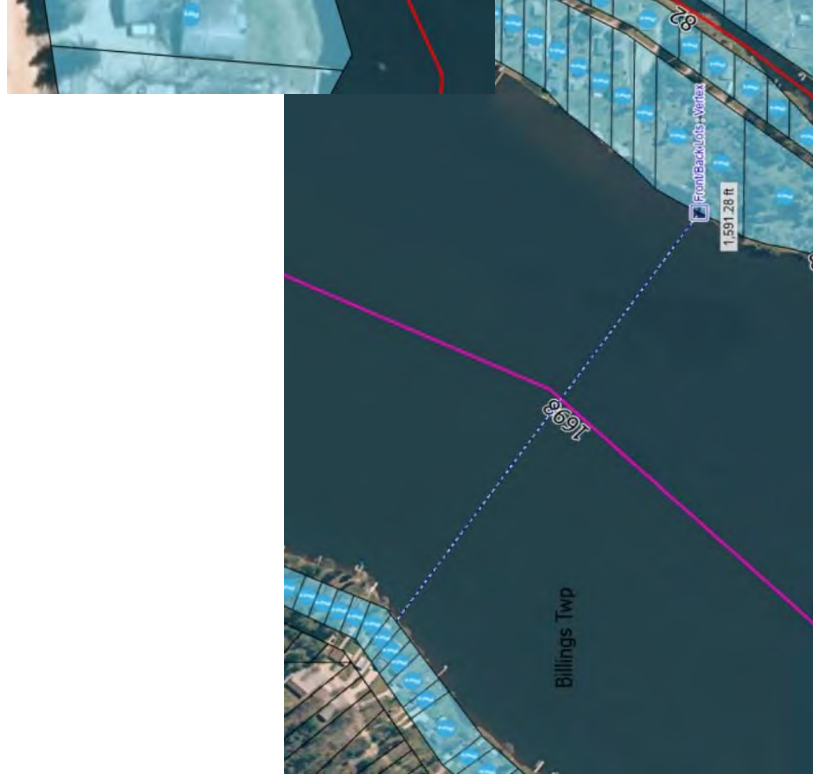
- Developed frontage lengths (in order of priority)
 - Platted width (\approx 4,700 parcels)
 - Meets and bounds descriptions (\approx 1,050 parcels)
 - GIS measurements (\approx 750 parcels)

- Frontage factor
 - Average frontage is 90 ft., benefit factor (BF=1)
 - Parcels with frontage below average has lower BF
 - Parcels with frontage above average has higher BF
 - Over 1,000 feet of frontage BF = 2



Tentative Benefit Factors – Water View

- Evaluate width of waterway perpendicular to shoreline frontage of lot
- Factors determined based on average widths taken through similar reaches of lake
- Benefit a parcel receives based on view
 - More lake view has higher water view BF
 - Canals and tributaries have lower BF
- Replaced existing headwater factor

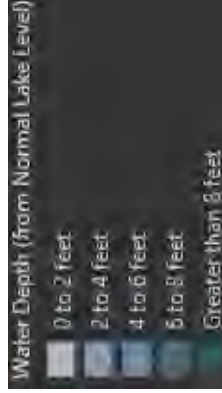


Parcel in wide portion of Wixom Lake (most benefit)

Parcel with canal, less than 230 feet of view (least benefit)

Tentative Benefit Factors – Water Depth

- Mapped lake bottom elevation to determine water depths when Part 307 levels are restored
- Properties with less than 4 feet of water depth, from 40 feet of shoreline have lower BF
- Replaced the existing headwater factor

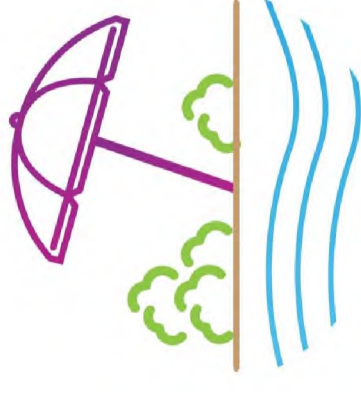


Sanford Lake - Depth data from 2020 Q1 LIDAR, captured June 1, 2020.

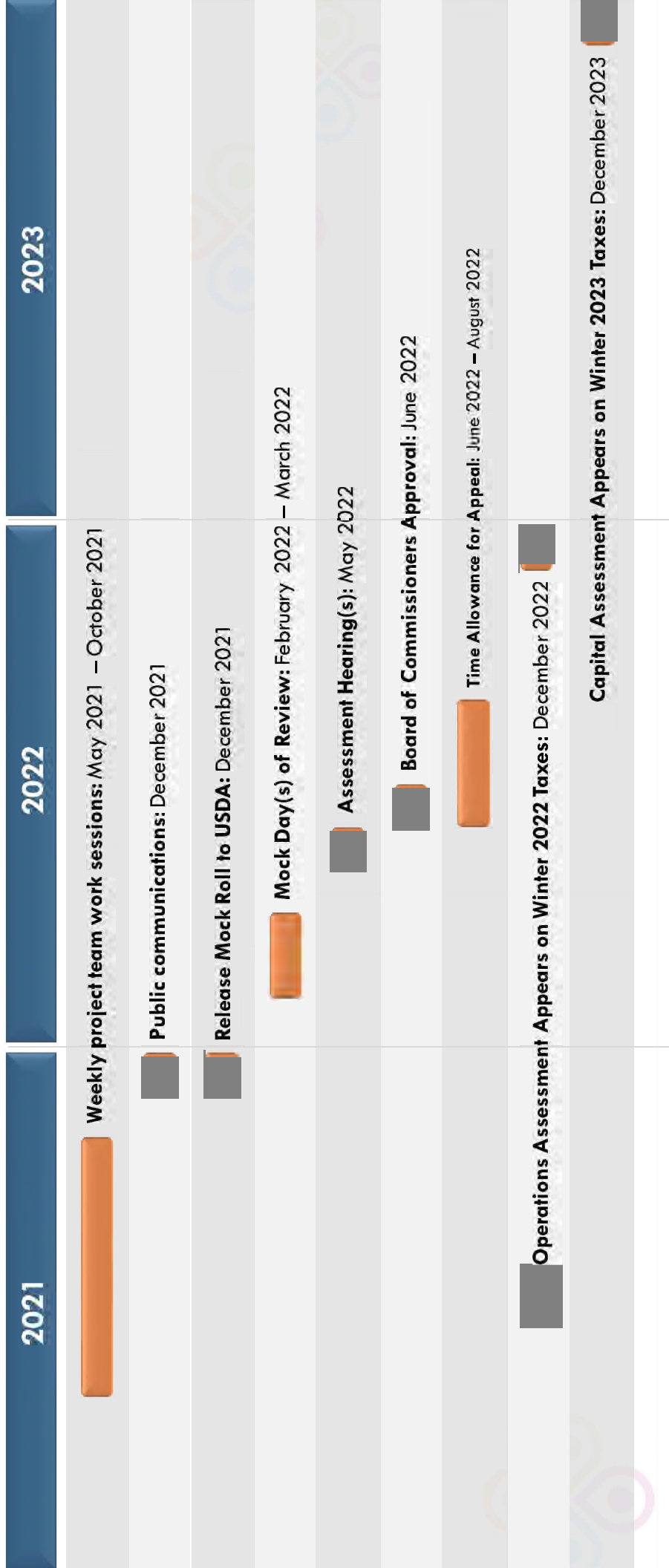


Tentative Benefit Factors – Public Access

- Public lands that allow access owned by either the state, county or township
- Benefit Factor for public access features
 - Unimproved public access parcel (i.e., walk trails, overlooks, general foot access to water)
 - Improved public access parcel (i.e., boat launch, beach, parks)

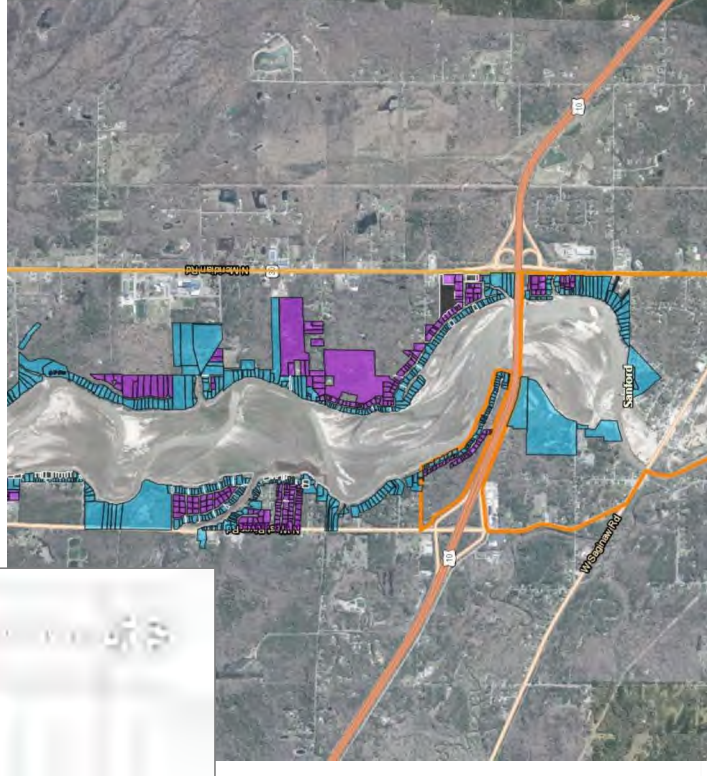


Tentative SAD Schedule



Web Map Introduction

- Web map application to be published and available to view December 8th, 2021
- Landowners will have ability search for parcel and see benefit factor and estimated operations and maintenance assessment range
- Factors and estimated cost a subject to change
- Modifications to any parcel factor change all other factors





Closing Comments

Dave Kepler
Four Lakes Task Force

“State of the Four Lakes”

- Legislation is being moved through the Senate and House, that in all scenarios would create an affordable plan for the community. **“Its not over until it is over.”**
- A Special Assessment will be needed for the long-term operations of the Lakes.
- There is still much bottomland transition recovery work to do on erosion, debris removal and we management. **Not all this can be funded by state money or the Special Assessment District**
- Environmental recovery on Wixom and Sanford lakes is significant
 - Will be multi-year, with lake plans likely for all lakes, require investment beyond the state grant and property assessments.
- This is a **VERY LARGE DAM RESTORATION PROJECT** and will continue to be managed under one program to meet cost and time schedules
- Flood studies must be completed, and capacity designs must be acceptable to the state to move forward with the completion of engineering.
- There has been a continued increase in proactive community support to bring the project to its current state;*

A critical point in the project.

A Critical Point

- The Community is close to:
 - Recovering and stabilizing itself after a major disaster
 - Creating a legal and regulatory framework that supports the project
 - Addressing financing that is affordable
 - Establishing a path to return to a safe and sustainable economic, environmental and improved quality of life in the Four Lake System

We can successfully restore the lakes!

If the community works together, stays positive, and focused.

2022 Board Meeting Schedule

- Thursday, February 24th 5:00pm-7:00pm
- Thursday, March 31st 5:00pm-7:00pm
- Tuesday, July 26th 5:00pm-7:00pm
- Tuesday, October 11th 5:00pm-7:00pm
- Tuesday, December 13th 5:00pm-7:00pm

- Will have periodic communications webinars in addition to board meetings - details to follow



Questions and Public Comment

Ground rules:

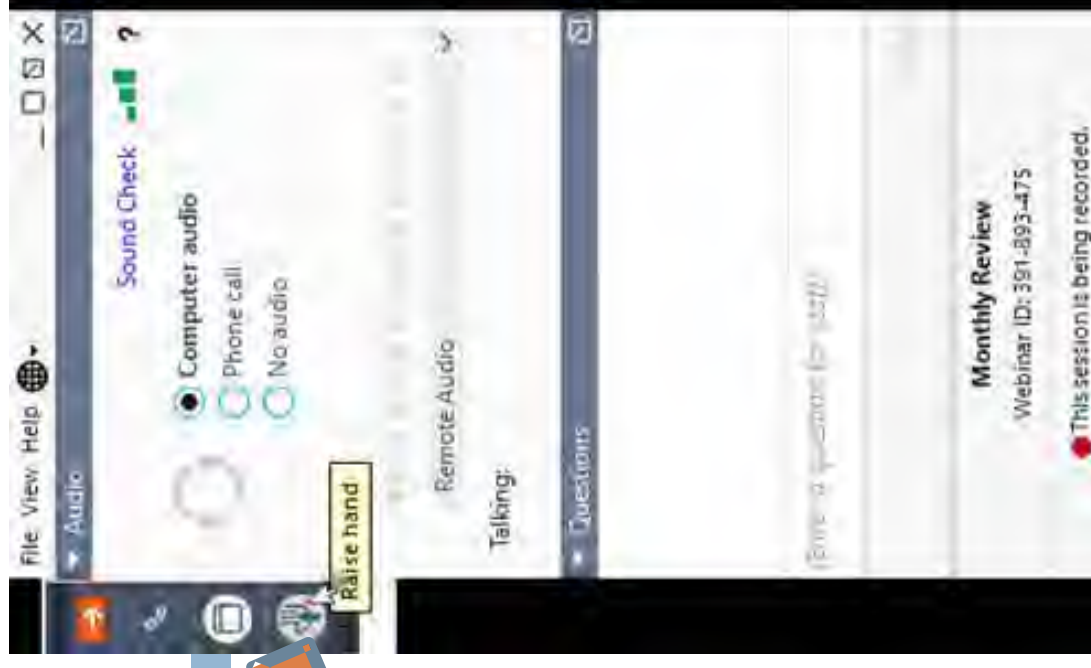
1. Questions and public comment will be taken using the hand raise feature.
2. Because of time restrictions we will only allow individuals to make one comment. If time allows, we will give people additional opportunities at the end.
3. Any commenter who is disrespectful, slanders another, is in any way inappropriate or otherwise refuses to follow the protocol will be muted

Please send questions to info@fourlaketaskforce.org

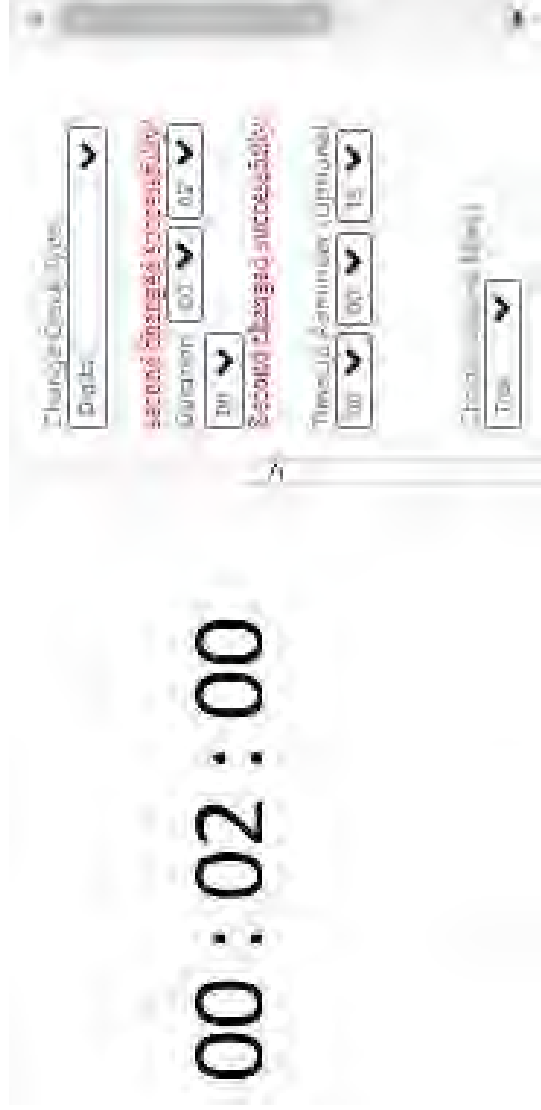
Public Comment

To comment:

1. “Raise your hand” by clicking on the icon
2. Comments will be taken in the order received as determined by the GoTo Webinar platform
3. When it is your turn, your name will be called and your microphone will be unmuted
4. **Please state your name and lake**
5. You have 2 minutes
6. A timer will indicate how much time you have left
7. Individuals running over their time will be asked to quickly conclude before their microphone is muted



Comment Timer



Thank you for joining us!



TAB 1

USL Improvement Assoc v Oceana County Drain Commissioner,
unpublished per curiam opinion of the Court of Appeals issued Mar 13, 2012
(Docket Nos 297157 & 298080)

2012 WL 832622

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

USL IMPROVEMENT ASSOCIATION,
Plaintiff–Appellant,
v.
OCEANA COUNTY DRAIN COMMISSIONER,
Oceana County, and Oceana County Board of
Commissioners, Defendants–Appellees.

Docket Nos. 297157, 298080.
|
March 13, 2012.

Oceana Circuit Court; LC No. 09–008200–CC.

Before: **METER**, P.J., and **FITZGERALD** and
MARKEY, JJ.

Opinion

PER CURIAM.

*1 In Docket No. 297157, plaintiff appeals as of right from the trial court’s order granting defendants’ motions for summary disposition. Plaintiff challenges the portion of the order dismissing its inverse condemnation claims against the Oceana County Drain Commissioner (the “Drain Commissioner”). In Docket 298080, plaintiff appeals by leave granted from the same order, challenging the portion of the order that dismissed its “claim of appeal” from a special assessment for the Holiday Lake Dam in Oceana County, as determined by the Drain Commissioner and approved by the Oceana County Board of Commissioners (the “Board of Commissioners”) in November 2009. We affirm.

I. BACKGROUND

Lake Holiday is a private lake located in Oceana County;

the lake was created in the 1970s through the construction of a dam to impound water of the Golden Drainage District. The water flows from Lake Holiday into Upper Silver Lake and then to Silver Lake and Lake Michigan. Lake Holiday is regulated pursuant to the Inland Lake Level Act (ILLA), which is contained in current Part 307 of the Natural Resource Environmental Protection Act (NREPA), [MCL 324.30701 et seq.](#)¹ In addition, the dam is subject to the Dam Safety Act, which is contained in current Part 315 of the NREPA, [MCL 324.31501 et seq.](#)²

Responsibility for maintaining the Holiday Lake Dam rested with certain property owners, including plaintiff, until 1999, when the trial court determined in a prior action that responsibility for the repair and maintenance of the Holiday Lake Dam shall be with “Oceana County through its Lake Holiday Assessment District.” Earlier in 1997, the Board of Commissioners petitioned the trial court for a determination of the normal water level for Lake Holiday and a special assessment district to pay for repairs to the dam. The trial court ordered and adjudged the normal height of Lake Holiday to be 637 feet, which level would be allowed to fluctuate and vary seasonally. The trial court also established a special assessment district, which was ordered to include all parcels having frontage on Lake Holiday and plaintiff’s parcel, which was described as the “[s]outh side of the dam as one parcel in the district.”

In July 2009, the Michigan Department of Environmental Quality issued an emergency order to the Oceana County Drain Commission and dam owners, including plaintiff, requiring that action be taken to address an imminent danger of the Holiday Lake Dam failing. The order required an immediate draw down of the impoundment of the Holiday Lake Dam to the maximum extent possible to minimize leakage, which was contributing to the erosion of the dam. The impoundment was to remain drawn down until the dam was repaired to a point where it was safe to restore water levels within the impoundment.

In October 2009, the Drain Commissioner determined that repair costs would amount to \$404,116. The Drain Commissioner also filed a motion in the prior 1997 action to confirm, for purposes of clarification, the specific parcels included in the Lake Holiday Lake Level District. In addition, plaintiff was given notice that a public review of the Drain Commissioner’s proposed apportionment of a special assessment for the repairs would be conducted on November 10, 2009.

*2 Plaintiff filed this action on November 30, 2009, and filed a four-count “Amended Complaint and Claim of

Appeal” on December 21, 2009. Counts I and II raised challenges to the Board of Commissioners’ alleged approval of the special assessment roll, as determined by the Drain Commissioner in November 2009. Plaintiff relied on Part 307 of the NREPA, [MCL 324.30701 et seq.](#), as the basis for its “claim of appeal.” In counts III and IV, plaintiff alleged that the Drain Commissioner’s entry onto its property and that excavation work involved in the repair of the dam established claims for inverse condemnation and a taking of its property for which it was entitled to compensation.

On March 2, 2010, the trial court entered an order granting defendants’ motions for summary disposition and dismissing plaintiff’s “Complaint and Claim of Appeal” with prejudice. Thereafter, on March 23, 2010, plaintiff filed a claim of appeal in this Court in Docket No. 297157. On that same day, plaintiff filed a motion for reconsideration of the March 2, 2010, order in the trial court, and also requested an opportunity to amend its “claim of appeal” with respect to the special assessment decision. The trial court denied both motions. Plaintiff subsequently filed an application for leave to appeal, which this Court granted in Docket No. 298080.

II. STANDARD OF REVIEW

We review de novo a trial court’s application of legal doctrines, such as *res judicata*, and its interpretation of court rules and statutes. [Estes v. Titus](#), 481 Mich. 573, 578–579; 751 NW2d 493 (2008). A trial court’s ruling on a motion for summary disposition is also reviewed de novo. [Coblentz v. City of Novi](#), 475 Mich. 558, 567; 719 NW2d 73 (2006). Further, “[i]nterpreting the meaning of a court order involves questions of law that we review de novo on appeal.” [Silberstein v. Pro-Golf of America, Inc.](#), 278 Mich.App 446, 460; 750 NW2d 615 (2008). But decisions concerning the meaning and scope of pleadings are reviewed for an abuse of discretion. [Dacon v. Transue](#), 441 Mich. 315, 328; 490 NW2d 369 (1992). “A trial court abuses its discretion only when its decision results in an outcome falling outside the range of principled outcomes.” [Lockridge v. Oakwood Hosp.](#), 285 Mich.App 678, 692; 777 NW2d 511 (2009).

III. DOCKET NO. 297157

Plaintiff argues that the trial court erred in dismissing its inverse condemnation and taking claims, which were based on the Drain Commissioner’s entry onto plaintiff’s property and the excavation work in connection with the repair and maintenance of the dam. We disagree.

The trial court did not state the subrule under which it granted defendants’ motions with respect to the inverse condemnation and taking claims. But because the court considered documentary evidence submitted by the parties and took judicial notice of its files and records from prior actions in granting defendants’ motions, we review the trial court’s decision under [MCR 2.116\(C\)\(10\)](#). [Spiek v. Dep’t of Transp.](#), 456 Mich. 331, 338; 572 NW2d 201 (1998); [Healing Place at North Oakland Med Ctr v. Allstate Ins Co.](#), 277 Mich.App 51, 55; 744 NW2d 174 (2007). A motion under [MCR 2.116\(C\)\(10\)](#) tests the factual support for a claim based on substantively admissible evidence. [MCR 2.116\(G\)\(6\)](#); [Maiden v. Rozwood](#), 461 Mich. 109, 120–121; 597 NW2d 817 (1999). The motion should be granted if the evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. [Allison v. AEW Capital Mgt, LLP](#), 481 Mich. 419, 424–425; 751 NW2d 8 (2008). “There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.” [Id.](#) at 425.

*3 In an inverse condemnation action, a plaintiff must establish that governmental actions amount to a constitutional “taking” of property. [Dep’t of Transp v. Tomkins](#), 481 Mich. 184, 203; 749 NW2d 716 (2008). The Fifth Amendment of the United States Constitution and [Const 1963, art 10, § 2](#), prohibit the taking of private property for public use without just compensation. [Cummins v. Robinson Twp.](#), 283 Mich.App 677, 706; 770 NW2d 421 (2009). Both temporary and permanent takings require compensation. [Id.](#) at 716–717. But there must be a causal connection between the government’s actions and the alleged damages. [Id.](#) at 708. Although a physical taking is not required, in cases involving physical takings required acquiescence is at the heart of the claim. [Yee v. City of Escondido](#), 503 U.S. 519, 527; 112 S Ct 1522; 118 L.Ed.2d 153 (1992). “[T]he Takings Clause requires compensation if the government authorizes a compelled physical invasion of property.” [Id.](#)

There is no dispute that the Drain Commissioner entered onto plaintiff’s property to repair the dam. Nonetheless,

plaintiff has failed to establish any basis for disturbing the trial court's determination that its prior May 25, 1999, order relieved various parties, including plaintiff, of any responsibility for repair or maintenance of the dam by transferring that responsibility to Oceana County. While the trial court interpreted the prior order as implying the creation of an easement for the county's Drain Commissioner to carry out its responsibilities, our determination that summary disposition was appropriate under MCR 2.116(C)(10) is not dependent upon whether the order created an "implied easement" as that phrase is understood in the context of general property law.

"An easement represents the right to use another's land for a specified purpose." *Matthews v. Dep't of Natural Resources*, 288 Mich.App 23; 792 NW2d 40 (2010). In contrast to a license, which constitutes mere permission to do some act or series of acts on property, the easement is a limited property interest. *Dep't of Natural Resources v. Camody-Lahti Real Estate, Inc*, 472 Mich. 359, 378; 699 NW2d 272 (2005); *Kitchen v. Kitchen*, 465 Mich. 654, 659; 641 NW2d 245 (2002). Plaintiff also correctly asserts that an "implied easement" is understood as arising by necessity. In the context of property law, it is understood to arise "only when the land on which the easement is sought was once part of the same parcel that is now landlocked." *Tolksdorf v. Griffith*, 464 Mich. 1, 10; 626 NW2d 163 (2001).

But whether an "easement" in the formal sense could be implied from the trial court's May 25, 1999, order, such as to grant the Drain Commissioner a limited property interest in plaintiff's land to access and repair the dam, is not material in determining whether a compelled physical invasion of plaintiff's property occurred. It is sufficient that the Drain Commissioner was granted permission to enter plaintiff's property to perform certain acts. This is an obvious implication of the trial court's May 25, 1999, order relieving plaintiff of any responsibility for repairing or maintaining the dam, and transferring that responsibility to Oceana County.

*4 If plaintiff did not want to be relieved of that responsibility, it should have appealed the May 25, 1999, order or taken steps to restore that responsibility. Given the lack of evidence that plaintiff did anything to reacquire responsibility for repairs and maintenance, we conclude that plaintiff failed to demonstrate a genuine issue of material fact regarding whether the Drain Commissioner's entry onto its property, or use of the property for repairs and maintenance of the dam, was a compelled physical invasion.

The doctrine of acquiescence relied upon by the Drain

Commissioner supports this conclusion. The doctrine, which is a form of estoppel, has been described as follows:

"It may be stated as a general rule that if a person having a right, and seeing another person about to commit, or in the course of committing, an act infringing upon that right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This, it has been said, is the proper sense of the term 'acquiescence,' which, in that sense, may be defined as quiescence under such circumstances as that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct." [*Sheffield Car Co v. Constantine Hydraulic Co*, 171 Mich. 423, 450; 137 NW 305 (1912), quoting 11 Am. & Eng. Enc. Law (2d ed), p 428.]

The doctrine was applied in *Lenawee Co Bd of Comm'rs v. Abraham*, 93 Mich.App 774; 287 NW2d 371 (1979), to preclude property owners from denying access to their land for repairs and improvements, where they failed to contest or appeal proceedings under the former ILLA to determine and maintain lake levels. We similarly conclude that it is appropriately applied here, given that no genuine issue was shown by plaintiff with respect to its acquiescence to the Oceana County Drain Commissioner taking over responsibility for repair and maintenance of the dam.

In sum, while the trial court might have misused the term "easement" when describing the Drain Commissioner's permission to enter plaintiff's property for maintenance and repairs, as clearly implied in the prior May 25, 1999, order, the court reached the correct result in finding no factual support for plaintiff's inverse condemnation and taking claims involving whether there was a compelled physical invasion. This Court will affirm a trial court's decision where the trial court reaches the right result.

Taylor v. Laban, 241 Mich.App 449, 458; 616 NW2d 229 (2000).

The other arguments presented by plaintiff with respect to the inverse condemnation and taking claims also do not establish any basis for relief. Contrary to what plaintiff argues, the record does not indicate that the trial court relied on the doctrine of res judicata to conclude that plaintiff was precluded from challenging the entry onto its property,³ and that doctrine is immaterial to our determination that the trial court reached the right result in granting defendants' motions for summary disposition.

And to the extent that plaintiff suggests that a question of fact existed regarding whether the Drain Commissioner caused a physical taking by exceeding the scope of its responsibilities, we note that [MCR 2.116\(C\)\(10\)](#) requires the party opposing a motion for summary disposition to “set forth specific facts at the time of the motion showing a genuine issue for trial.” [Maiden](#), 461 Mich. at 121. Here, plaintiff showed only that the current repair work is greater than past repair work. This was insufficient to establish a genuine issue of material fact with regard to whether the work being performed exceeded the scope of the Drain Commissioner’s repair and maintenance responsibilities.

*5 Lastly, we reject plaintiff’s argument that summary disposition was premature. Plaintiff failed to show that further discovery stood a fair chance of uncovering factual support for its position. [Marilyn Froling Revocable Living Trust v. Bloomfield Hills Country Club](#), 283 Mich.App 264, 292; 769 NW2d 234 (2009); [Davis v. Detroit](#), 269 Mich.App 376, 379–380; 711 NW2d 462 (2006); see also [MCR 2.116\(H\)](#); [Coblentz](#), 475 Mich. at 570–571. Therefore, we affirm the trial court’s summary disposition ruling with respect to both “taking” counts in plaintiff’s “Amended Complaint and Claim of Appeal.”

IV. DOCKET NO. 298080

In Docket No. 298080, plaintiff challenges the trial court’s dismissal of the “claim of appeal” that, according to the allegations in count I of the “Amended Complaint and Claim of Appeal,” was based on Part 307 of the NREPA.



Before considering plaintiff’s arguments, we briefly consider the joint argument of Oceana County and the Board of Commissioners regarding the trial court’s subject-matter jurisdiction to consider the appeal. Defects in subject-matter jurisdiction may be raised at any time. [Electronic Data Sys Corp v. Flint Twp](#), 253 Mich.App 538, 544; 656 NW2d 215 (2002). But contrary to the argument of Oceana County and the Board of Commissioners, subject-matter jurisdiction over plaintiff’s appeal does not rest with the Michigan Tax Tribunal. [MCL 324.30714\(4\)](#) provides that “[t]he special assessment roll with the assessments listed shall be final and conclusive unless appealed in a court within 15 days after county board approval.” “Court” means “a circuit

court, and if more than 1 judicial circuit is involved, the circuit court designated by the county board or otherwise authorized by law to preside over an action.” [MCL 324.30701\(c\)](#). Because the trial court in this case is the Oceana Circuit Court, it had jurisdiction to consider plaintiff’s appeal.




Nonetheless, a court is not bound by a party’s choice of labels for its actions because this would place form over substance. [Johnston v. City of Livonia](#), 177 Mich.App 200, 208; 441 NW2d 41 (1989). The gravamen of an action is determined by considering the entire claim. [Maiden](#), 461 Mich. at 135. As a whole, plaintiff’s “Amended Complaint and Claim of Appeal” purports to combine multiple constitutional claims and a claim of appeal from a Board of Commissioners decision in a single action, notwithstanding that a civil action and an appeal each require a filing fee to invoke the trial court’s jurisdiction. See [MCL 600.2529\(1\)](#); cf. [McIntosh v. McIntosh](#), 282 Mich.App 471, 483; 768 NW2d 325 (2009) (filing of claim of appeal and entry fee is necessary to vest this Court with jurisdiction in an appeal, and merely arguing that a trial court erred in awarding postjudgment attorney fees, which themselves are appealable as of right, in an appeal from the judgment is insufficient to invoke this Court’s review of the attorney fees).


*6 Indeed, the “summons and complaint” document filed by plaintiff with the original “Complaint and Claim of Appeal” was based on the rules governing pleadings for civil actions. A claim of appeal is not a “pleading” under the rules governing civil action in [MCR 2.101 et seq.](#) See [MCR 2.110](#); [Houdini Props, LLC v. City of Romulus](#), 480 Mich. 1022; 743 NW2d 198 (2008). The “Amended Complaint and Claim of Appeal” itself contains a demand for “trial by jury on all counts in this matter.” Plaintiff made this demand, notwithstanding its allegation that it was claiming an appeal under Part 307 of the NREPA.


Examined as a whole, the trial court did not err in ruling that plaintiff failed to properly file an appeal. We reject plaintiff’s argument that dismissal was inappropriate because [MCR 7.105](#) does not apply to an appeal from the Board of Commissioners’ approval of the special assessment roll. In reaching this conclusion, we disagree with the Drain Commissioner’s argument that plaintiff’s concession in its response to defendants’ motions that [MCR 7.105](#) applies constitutes a judicial admission. A judicial admission is a formal concession in pleadings or stipulations that have the effect of withdrawing factual issues in a case. [Radtke v. Miller, Canfield, Paddock & Stone](#), 453 Mich. 413, 420; 551 NW2d 698 (1996). Here, plaintiff conceded only the applicability of a

procedural rule, with the exception of the service requirement for the Attorney General.⁴ But while a party is generally precluded from seeking redress in an appellate court “on the basis of a position contrary to that taken in the trial court,”   *Phinney v. Perlmutter*, 222 Mich.App 513, 544; 564 NW2d 532 (1997), plaintiff has not established any basis for relief even if we were to ignore plaintiff’s concession.

We agree with plaintiff that MCR 7.105 is not explicitly applicable to an appeal under Part 307 of the NREPA. But considering that there is no applicable rule in MCR 7.101 *et seq.* and this Court’s determination in *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich.App 142, 149–150; 762 NW2d 192 (2009), that MCR 7.105 is the “most applicable court rule” for an appeal to the circuit court under Part 307 of the NREPA, use of the procedures contained in that rule are appropriate. However, a court should take care in evaluating the applicability of particular provisions of the rule.

We agree with plaintiff that MCR 7.105(D), the provision providing for service on the Attorney General, would not be applicable to an action under Part 307 of the NREPA. Court rules are construed under legal principles applicable to statutes. *In re KH*, 469 Mich. 621, 628; 677 NW2d 800 (2004). “When the language is unambiguous, we must enforce the meaning expressed, without further judicial construction or interpretation.” *Id.* Here, the service requirement in MCR 7.105(D) is directed at the specific agencies covered by the rule. MCR 7.105(D) provides, in part, that “[p]romptly after filing the petition for review, the petitioner shall serve true copies of the petition for review on the agency, the Attorney General, and all other parties to the contested case in the manner provided by MCR 2.107, and promptly file proof of service with the court.” The required service on the Attorney General is consistent with the Attorney General’s duty to provide legal services to the state of Michigan and its agencies, boards, commissions, officials, and employees. See generally  *Attorney General v. Pub Serv Comm*, 243 Mich.App 487, 496; 625 NW2d 16 (2000). While the Attorney General is also authorized to intervene in any action necessary to protect the rights or interests of the state under  MCL 14.101,  *In re Certified Question*, 465 Mich. 537, 544–545; 638 NW2d 409 (2002), because the amount of a special assessment is a matter of local concern under Part 307 of the NREPA and the Attorney General does not provide legal services to the Board of Commissioners, the trial court erred as a matter of law in determining that MCR 7.105(D) should be applied to require service on the Attorney General in an appeal governed by MCL 324.30714(4).

*7 Nonetheless, MCR 7.105(J)(2)(b) provides for dismissal of an appeal when it is not taken or pursued in conformity with the rules, and the deficiencies in plaintiff’s “Amended Complaint and Claim of Appeal” go beyond the dispute concerning  MCR 7.215(D). Here, plaintiff did not file with its “Complaint and Claim of Appeal” a copy of the Board of Commissioners’ decision for which review was sought, or explain why it was not attached. MCR 7.105(C)(3). And given plaintiff’s concession during the motion proceedings that MCR 7.105 applies, one could have expected plaintiff to at least attempt to file a petition for review that complied with MCR 7.105, separate and apart from the civil action, with the appropriate filing fee. Plaintiff’s presentation of a “claim of appeal” as simply counts of a civil action was insufficient to invoke the trial court’s appellate jurisdiction. Therefore, we uphold the trial court’s decision to dismiss the “claim of appeal.”

We are also not persuaded that plaintiff has established any basis for disturbing the trial court’s decision denying plaintiff’s motion to amend the “claim of appeal” in order to bifurcate it from the inverse condemnation claims and present it as a separate proposed “petition for review.” The trial court relied on multiple grounds to deny the motion, including its lack of jurisdiction to consider the motion in light of the appeal filed in Docket No. 297157. Because plaintiff failed to properly invoke the trial court’s appellate jurisdiction and the order appealed in Docket No. 297157 disposed of the entire civil action, we agree with the trial court that it lacked jurisdiction to consider the motion.  MCR 7.208(A); *Wiand v. Wiand*, 205 Mich.App 360, 369–370; 522 NW2d 132 (1994). Furthermore, considering plaintiff’s failure to file an appeal under any rule, we reject plaintiff’s argument that it should have been allowed to “amend an appeal” using the procedure in MCR 7.105(B)(2). Accordingly, even if the trial court had jurisdiction to consider the motion, we find no basis for reversing its decision denying the motion.

Lastly, considering that plaintiff does not argue that it had a cause of action to set aside the special assessment independent of the appeal, we decline to consider plaintiff’s argument that it was denied due process. Had plaintiff filed a proper appeal from the Board of Commissioners’ approval of the special assessment roll, the trial court could have conducted a formal review of the proceedings, including whether the amount of its assessment was arbitrarily determined. *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich.App at 151. While the trial court nonetheless gave some consideration to this matter for plaintiff’s benefit

during the proceedings, absent a proper appeal we have nothing to review.

Affirmed.

All Citations

Not Reported in N.W.2d, 2012 WL 832622

Footnotes

- ¹ The ILLA was repealed in 1994 and reenacted without substantive change as Part 307 of the NREPA. See *In re Project Cost & Special Assessment Roll for Chappel Dam*, 282 Mich.App 142, 145; 762 NW2d 192 (2009).
- ² See *Yee v. Shiawassee Co Bd of Comm'rs*, 251 Mich.App 379, 395 n 21; 651 NW2d 756 (2002) (discussing the reenactment of the Dam Safety Act in the NREPA).
- ³ Res judicata bars a subsequent action when “(1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.” *Estes*, 481 Mich. at 585, quoting *Dart v. Dart*, 460 Mich. 573, 586; 597 NW2d 82 (1999).
- ⁴ We recognize that plaintiff challenged the applicability of MCR 7.105 in its motion for reconsideration of the trial court’s decision to dismiss the “Complaint and Claim of Appeal.” Because plaintiff does not address that decision, we shall not consider it. *Prince v. MacDonald*, 237 Mich.App 186, 197; 602 NW2d 834 (1999).

TAB 2

King v Buttbaker,

unpublished per curiam opinion of the Court of Appeals, issued August 9, 2005
(Docket No. 254912)

2005 WL 1877778

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Court of Appeals of Michigan.

Gary L KING, Marla K. King, Robert W. King
and Monica M. King, Plaintiffs-Appellants,

v.

Alan F. BUTCHBAKER, Cass County
Drain Commissioner, Defendant-Appellant.

No. 254912.

|

Aug. 9, 2005.

Before: MURPHY, P.J., and SAWYER and DONOFRIO, JJ.

[UNPUBLISHED]

PER CURIAM.

*1 Plaintiffs appeal as of right the circuit court order granting defendant's motion for summary disposition pursuant to [MCR 2.116\(C\)\(10\)](#). This case arises out of a special assessment for the cost of constructing a drain located in the area of Hilltop Road in Cass County (Hilltop Road Drain). The drain project was proposed because water running down from higher elevations, i.e., various parcels owned by plaintiffs, had occasionally caused a roadway to be washed out and had caused the saturation of lower-elevated parcels. The drain would divert rainwater to a nearby lake in such a manner as to alleviate the past drainage problems. Defendant's apportionment of the costs involved in undertaking and completing the project, which costs totaled approximately \$84,000, resulted in plaintiffs' property being assessed a little over \$17,000, with the remainder of the costs being allocated to the township, the county, and other residents of the township. Plaintiffs' position was and is that, under the principle of benefits derived relative to assessing or apportioning the cost of a drain project, their property would receive no benefit from the construction as necessarily and solely reflected by changes in the market value of the property and that the method used by defendant improperly focused on property features that contributed to the need for a drain,

not the benefits derived or received by way of the drain project. Therefore, the assessment was unlawful. Plaintiffs also assert that they were entitled to an evidentiary hearing at the circuit court level on the issue of apportionment of costs and benefits pursuant to their complaint for superintending control and applicable law, making summary dismissal improper. A three-member board of review appointed by the probate court upheld the assessment issued by defendant drain commissioner, and the circuit court upheld the ruling of the board of review. We affirm.

[MCL 280.151](#) and [MCL 280.152](#) clearly and unambiguously indicate that a drain assessment must be based on an apportionment of benefits and that the apportionment of benefits is based on the principle of benefits derived. The concept underlying special assessments to cover the cost of a public improvement, such as a drain, is that the land upon which an assessment is imposed is peculiarly benefited, and thus the property owner does not pay anything in excess of what the owner receives by reason of such improvement. *Blades v. Genesee Co Drain Dist No 2*, 375 Mich. 683, 695; 135 NW2d 420 (1965). We have no quarrel with plaintiffs' argument that the principle of benefits derived must guide a drain commissioner's apportionment and assessment determinations.

We find it unnecessary to address plaintiffs' argument that benefits derived must be measured by fluctuation, if any, in the market value of the property that is created when taking into consideration the drain project. [MCL 280.157](#) provided the board of review the authority "to hear the proofs and allegations of the parties[.]" yet plaintiffs did not take advantage of the opportunity to submit evidence regarding market value. Additionally, when the action was presented to the circuit court under [MCL 280.161](#) (certiorari-now superintending control), plaintiffs failed to present documentary evidence regarding market values or benefits derived in the face of a motion for summary disposition brought pursuant to [MCR 2.116\(C\)\(10\)](#). See [MCR 2.116\(G\)\(4\)](#)(adverse party to (C)(10) motion may not rest upon allegations in the pleadings but must present documentary evidence establishing a genuine issue of material fact). Plaintiffs contend that such evidence was unnecessary because relevant evidence was to be submitted via a mandatory evidentiary hearing under [MCL 280.161](#), which provides in pertinent part that, "[i]f issues of fact are raised by the petition for such writ and the return thereto, such issues shall, on application of either party, be framed and testimony thereon taken under the direction of the court."

Plaintiffs argue that the complaint for superintending control raised issues of fact and thereby gave rise to their right for an evidentiary hearing under [MCL 280.161](#).

*2 Assuming that the circuit court had the authority to address plaintiffs' specific arguments on appeal from the board of review and that the above-quoted language from [MCL 280.161](#) eradicated the general principles governing summary disposition, a review of the complaint reflects that issues of fact were not sufficiently raised. The complaint, while asserting that there must be an increase in market value to support a finding that property will receive a benefit consistent with the assessment, does not reference or speak of any market appraisal that was actually undertaken and which could have created a factual dispute had an appraisal been inconsistent with defendant's assessment as derived from his mathematical formula. Outside the context of market values, the complaint does not set forth reasons with respect to why plaintiffs' property received no benefit.

To effectively challenge a special assessment, a plaintiff must present credible evidence to rebut the presumption that the assessment is valid and reasonably proportionate to the benefits received. *Kadzban v. City of Grandville*, 442 Mich. 495, 505, 508; 502 NW2d 299 (1993)(Griffin, J.)(Boyle, J.). The decisions of officers regarding special assessments are presumed to be valid and should generally be upheld. *Ahearn v. Bloomfield Charter Twp*, 235 Mich.App 486, 493-494; 597 NW2d 858 (1999). Because plaintiffs failed to overcome the presumption of validity and proportionality at the board of review level and in the circuit court for the reasons stated herein, especially considering plaintiffs' "market value" approach, we conclude that there is no basis for reversal.

Affirmed.

All Citations

Not Reported in N.W.2d, 2005 WL 1877778

TAB 3

Charter Twp Of Lansing v Ingham County Drain Commissioner,
unpublished *per curiam* opinion of the Court of Appeals, issued December 2, 2014
(Docket Nos. 316870 and 318446) (2014 WL 6778948)

2014 WL 6778948

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

CHARTER TOWNSHIP OF
LANSING, Plaintiff–Appellant,

v.

INGHAM COUNTY DRAIN
COMMISSIONER, Defendant–Appellee,

and

Groesbeck Park Drain Board of Review, Defendant.

Charter Township of Lansing,
Plaintiff/Petitioner–Appellant,

v.

Ingham County Drain Commissioner,
Defendant/Respondent–Appellee,

and

Drainage District, Intervenor,

and

Granger Waste Management
Company, Intervenor–Appellee,

and

Groesbeck Park Drain Board of Review, Intervenor,

and

Lansing Board of Water and Light,
Intervenor/Respondent–Appellee.

Docket Nos. 316870, 318446.

|

Dec. 2, 2014.

Ingham Circuit Court; LC Nos. 13–000388–CE, 13–000732–
AS.

Before: **RONAYNE KRAUSE**, P.J., and **WILDER** and
STEPHENS, JJ.

Opinion

PER CURIAM.

*1 In this consolidated appeal, the Charter Township of
Lansing, plaintiff and/or petitioner in the two consolidated

cases, appeals by right two separate orders denying it relief regarding a very expensive drain project for which the Township was assessed a substantial portion of responsibility. Generally, the Township contends that it should not be apportioned such a great portion of the project. In LC No. 13–000388–CE/Docket No. 316870, the trial court dismissed for a want of subject-matter jurisdiction the Township's claim that the apportionment constituted a deprivation of property without due process. In LC No. 13–000732–AS/Docket No. 318446, the trial court denied the Township's petition for certiorari review of the Drainage Board of Review's final determination upholding the apportionment. Because the Township has not articulated a legal basis for relief, we must nevertheless affirm.

The Township is essentially the irregularly-shaped, piecemeal, and noncontiguous remains of the northwest corner township of Ingham County left after the City of Lansing began annexing land after its incorporation in 1859. According to the 2012 United States Census, the Township consisted at that time of only 4.93 square miles of land and had a population of 8,126. A portion of the Township lies north of Bancroft Park/Groesbeck Golf Course in the City of Lansing and encompasses a length of Lake Lansing Road, including the Eastwood Towne Center strip-mall next to US–127. The Lansing Board of Water and Light (LBWL) owns property, which it used as a fly ash landfill from 1979 to 1997, within the portion of the Township that lies within the Groesbeck Park Drain district. Granger Waste Management Company (Granger) runs a refuse and recycling operation that is partly located within the portion of the Township that lies within the Groesbeck Park Drain District. The Drain District covers approximately 295 acres, of which 222.77 acres are within the geographical boundaries of Lansing Township, representing approximately 6.6% of the Township's total land area.

The drain at issue, the Groesbeck Park Drain (the Drain), was established by the Ingham County Drain Commissioner in 1985. In 1990, the Township petitioned the Ingham County Drain Commissioner to improve the Drain. In 1999, the Ingham County Road Commission (the Road Commission) petitioned the Ingham County Drain Commissioner to further improve the Drain. Ultimately, the Drain Commissioner held a “day of review” on March 18, 2013, regarding the Drain project. The Drain's estimated cost would be \$12.595 million, of which the Township would be apportioned 62%. However, a few days later, the Township's apportionment was reduced to 49.5%. The Township believes that the approximately \$6.234 million for which it would be liable under the Drain

assessment is excessive and improper. The Township filed objections on March 28, 2013, and a Board of Review was convened and held over the course of four days in April of 2013.

*2 During the pendency of the Board of Review, the Township filed its initial complaint in LC No 13–000388–CE, which in part sought preliminary injunctive relief. The trial court initially issued an ex parte temporary restraining order against the Drainage Board and the Drain Commissioner, precluding them from taking any further action on the Drain project, which interrupted the Board of Review proceedings for a few days until the restraining order was dissolved. The Township filed an amended complaint in LC No 13–000388–CE, asserting violations of its constitutional rights, including, *inter alia*, that the drain petition filed by the Road Commission had been *ultra vires*, so the Drain Commission lacked jurisdiction and the assessment constituted a deprivation of property without due process. On May 3, 2013, the Township voluntarily dismissed all of its claims in LC No 13–000388–CE except for the noted claim of deprivation of due process based on the allegedly *ultra vires* drain petition.




Meanwhile, on April 24, 2013, the Board of Review, among other minor alterations, reduced the Township's apportionment to 23.5% and increased LBWL's apportionment from 30.00% to 56.0846%. LBWL petitioned the Ingham County Circuit Court for a writ of certiorari to appeal the Board of Review's decision, asserting that it had not received notice of the Board of Review and therefore did not have an opportunity to participate, and the Board of Review had increased LBWL's apportionment on the basis of improper considerations. The trial court agreed and ordered the matter remanded to the Board of Review "because the Board of Review's decision was not based on substantial, material and competent evidence on the entire record." The trial court particularly emphasized that the Board of Review had impermissibly considered LBWL's "responsibility" for having created a fly ash pit and LBWL's relative ability to absorb the cost of the Drain, which the trial court noted were "considerations neither relevant nor consequential to the issue of 'benefits derived' from the drain project, as required by the Michigan Drain Code ..."

On June 4, 2013, the trial court issued an opinion and order in LC No 13–000388–CE, nominally prompted by a motion for reconsideration by the Township regarding the dissolution of the temporary restraining order. The trial court



determined that the Township had failed to bring the proper kind of review permitted by the Drain Code after the Drain board's final order of determination, and therefore the trial court lacked jurisdiction to hear the Township's deprivation of due process claim. The trial court recognized that it might have equitable jurisdiction in the event of fraud or a constitutional challenge, and that a deprivation of property without due process was such a challenge. However, the trial court concluded that although the Road Commission's petition did not itself specifically reference highways, the resolution that it incorporated by reference did state a need to provide for drainage involving Lake Lansing Road, so there was no complete lack of authority. The trial court therefore dismissed the Township's amended complaint and closed the case. The appeal in Docket No. 316870 followed.

*3 Thereafter, the Board of Review reconvened for four more days. At the conclusion of the reconvened hearings, the Board of Review reinstated the 49.5% apportionment to the Township and 30.0846% to the LBWL. Thereafter, the Township filed its petition for certiorari in LC No 13–000732–AS. The trial court issued a written opinion and order on August 15, 2013, denying the writ. The trial court noted that it could not substitute its judgment for that of the Board of Review, and the Board of Review's decision appeared to be authorized by law and supported by sufficient evidence. It declined to consider the Township's constitutional arguments because "those claims were previously addressed in Case No. 13–000388–CE and are now pending before the Court of Appeals." The appeal in Docket No. 318446 followed.

Our Supreme Court has recently set forth the relevant standard of review in drain proceeding appeal cases as follows:


We review de novo a trial court's decision to grant or deny summary disposition.  *Debano–Griffin v. Lake Co.*, 493 Mich. 167, 175, 828 NW2d 634 (2013). Whether due process has been afforded is a constitutional issue that is reviewed de novo.  *People v. Wilder*, 485 Mich. 35, 40, 780 NW2d 265 (2010). Likewise, whether a court has subject-matter jurisdiction is a question of law reviewed de novo. *Lapeer Co. Clerk v. Lapeer Circuit Judges*, 465 Mich. 559, 566, 640 NW2d 567 (2002). Questions of statutory interpretation are also reviewed de novo.  *Detroit v. Ambassador Bridge Co.*, 481 Mich. 29, 35, 748 NW2d 221 (2008). Though our review of the issues presented is thus de novo, we are also mindful

of our previous declaration that, in general, “[w]e ... are not inclined to reverse [drain] proceedings ... absent [a] showing of very substantial faults.” *In re Fitch Drain No. 129*, 346 Mich. 639, 647, 78 NW2d 600 (1956). [*Elba Twp. v. Gratiot Co. Drain Comm'r.*, 493 Mich. 265, 277–278; 831 NW2d 204 (2013).]

Additionally, the board of a county road commission is an administrative board established by law. See MCL 224.9. Consequently, it necessarily exercises some quasi-legislative and quasi-executive powers. See  *People ex. rel. Attorney General v. Common Council of Detroit*, 29 Mich. 108, 113 (1874); *In re Macomb Drain Comm'r.*, 369 Mich. 641, 647; 120 NW2d 789 (1963).  *Civil Service Comm. v. Dep't. of Labor*, 424 Mich. 571, 631; 384 NW2d 728 (1986). Giving the maximum benefit of the doubt to the Township, and thereby presuming the road commission's petition to be in the nature of a legislative act, this Court's review would be de novo as on the rough equivalent of either a statute or a contract.

Drain apportionments made by a drain commissioner may be disturbed by a Board of Review upon a finding of “manifest error or inequality.” MCL 280.157. Drain Code proceedings are administrative in nature and are therefore

reviewed by the circuit court to determine whether the decision was authorized by law and supported by competent, material, and substantial evidence on the whole record. Const.1963, art. 6, § 28; *Ansell v. Dep't. of Commerce (On Remand)*, 222 Mich.App 347, 354; 564 NW2d 519 (1997). Substantial evidence is any evidence that reasonable minds would accept as adequate to support the decision; it is more than a mere scintilla of evidence but may be less than a preponderance of the evidence. See *Korzowski v. Pollack Industries*, 213 Mich.App 223, 228; 539 NW2d 741 (1995). This Court's review of the circuit court's decision is limited to determining whether the circuit court “applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings.” *Boyd v. Civil Service Comm.*, 220 Mich.App 226, 234; 559 NW2d 342 (1996). In other words, this Court reviews the circuit court's decision for clear error. *Id.* A decision is clearly erroneous when, “on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made.” *Id.* at 235. [*Michigan Ed. Ass'n. Political Action Committee v. Secretary of State*, 241 Mich.App 432, 444; 616 NW2d 234 (2000).]



*4 In the absence of a readily apparent mistake or abuse of discretion, courts should not attempt to second-guess the administrative board members or municipal officers in whom discretion has been vested and whose expertise inevitably exceeds that of the court. *In re Macomb Drain Comm'r.*, 369 Mich. at 649. There will inherently be a certain amount of arbitrariness in “many honest and sensible judgments” that “express an intuition of experience which outruns analysis and sums up many unnamed and tangled impressions; impressions which may lie beneath consciousness without losing their worth,” but in the absence of fraud or a clear adoption of wrong principles, “[s]omewhere there must be an end,” so boards are deferred to within their jurisdiction. *Id.* at 650, quoting  *Chicago, B. & Q.R. Co. v. Babcock*, 204 U.S. 585, 598; 27 S Ct 326; 51 L Ed 636 (1907).

The Township argues first that it had established a constitutional claim based on the drain petition's allegedly ultra vires status, so the trial court had subject matter jurisdiction in LC No. 13–000388–CE. We disagree.

Any person aggrieved by the establishment and apportionment of a drain may seek review by either certiorari and, with certain specific and limited exceptions, *only* by certiorari. *Elba Twp.*, 493 Mich. at 271–272, 280,¹ citing MCL 280.161. However, the harshness of such finality is tempered by two traditional exceptions: where the proceedings are alleged to have been contaminated by either fraud or constitutional infirmity. *Id.* at 280–281 and 281 n 11. No fraud has been alleged in the instant proceedings. Rather, the Township asserts that the drain petition was an “ultra vires” act by the Road Commission, and therefore it was constitutionally impermissible for the Drain Commissioner to act on it. The Township concludes that, as a consequence, the proceedings were tainted by constitutional infirmity and reviewable notwithstanding the Township's failure to seek certiorari.

Our Supreme Court has made clear that the kind of “constitutional infirmity” that will give rise to a right to review notwithstanding a failure to seek certiorari will not be found if the relevant Commissioner merely fails to comply with all of the statutory requirements dictated by the Drain Code. *Elba Twp.*, 493 Mich. at 284–285. Significantly, our Supreme Court analogized to the difference between “a want of jurisdiction and a mistake in jurisdiction, or an error in the exercise of jurisdiction.” “*Id.* at 285, quoting *Altermatt v. Dillman*, 269 Mich. 177, 182; 256 NW 846 (1934). In

Elba Twp, our Supreme Court held that a failure to meet a statutorily required minimum number of signatures was a mere statutory failure; in contrast, failure to provide notice *could* implicate the Constitution if the notice pertained to “deprivation of life, liberty, or property.” *Id.* at 284–288.

In *Blades v. Genesee Co. Drain Dist. No. 2*, 375 Mich. 683, 692–695; 135 NW2d 420 (1965), our Supreme Court held that equity could provide an opportunity for a landowner to contend that their property derives *no* benefit from a proposed drain project. In *Altermatt*, our Supreme Court observed that equity would be available to challenge a drain commissioner's attempt to construct a sewer, because drain commissioners simply do not have jurisdiction to construct sewers. *Altermatt*, 269 Mich. at 184–186. In contrast, a party could not make use of equity to contest proceedings that were irregular or even allegedly invalid, but where they were within the commissioner's jurisdiction. *Id.* at 187–191. In discussing a drain commissioner's attempt to construct a sewer, which was outside the drain commissioner's jurisdiction, our Supreme Court explained that “[t]he extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority. The rule is that errors and irregularities in drain proceedings must be taken advantage of by certiorari, but an entire want of jurisdiction may be taken advantage of at any time.”  *Lake Twp., Macomb Co. v. Millar*, 257 Mich. 135, 142; 241 NW2d 237 (1932). Similarly, a drain commissioner lacks any authority to take land without condemnation proceedings, so equity may be used to restrain such a taking.  *Patrick v. Colby*, 342 Mich. 257, 264; 69 NW2d 727 (1955).

*5 In all of the above cases, a distinction is drawn between a drain commissioner acting *properly* and a drain commissioner acting *outside what a drain commissioner may do*. Whether or not the petition here was proper, the Drain Commissioner is endeavoring to perform actions that drain commissioners are entirely within their jurisdiction to perform. The Township has not alleged that they were denied adequate notice, and its assertion that its due process rights are being violated is based on the alleged impropriety of the petition. The Township further concedes that it will derive some benefit from the Drain; it disputes only how much of a benefit that will be. In short, the Township's assertion amounts only to an allegation of impropriety, not an allegation that the Drain Commissioner is acting outside his jurisdiction. Whether the

Road Commission acted properly in submitting the petition is irrelevant.

In any event, we do not find the Road Commission's petition to be “*ultra vires*.” The Township argues that, pursuant to MCL 280.327, road commissioners may petition to drain commissioners for drain projects only if “it becomes necessary for the construction or maintenance of any highway to take the surplus water across adjacent lands.” The Township also asserts that road commissions lack the authority to “pursue a drainage project for any other purpose” pursuant to MCL 280.326, but in fact that statute only prohibits road commissions from actually laying out and constructing drains for any other purpose. Even if the Township's interpretation of the relevant provisions of the Drain Code is correct, the Township fails to articulate any legal requirement for road commissions to explicitly say in so many words in their petitions that any such petition is for the purpose of taking surplus water across adjacent lands. The requirement is only that such a need must exist as a prerequisite to making such a petition. The Township only protests that the Road Commission failed to include what amounts to talismanic language in its petition, not that the actual prerequisite did not exist.

We conclude that the trial court properly found no valid constitutional claim asserted in LC No. 13–000388–CE, and it properly concluded that it therefore lacked subject matter jurisdiction.

The Township also argues that its apportioned share of the cost of the Drain is excessive. It must be emphasized at the outset that a considerable portion of the Township's arguments pertain to the absolute dollar amount of the drain assessment and the interplay between that very substantial sum and the unusual physical makeup of the Township, being both geographically small and noncontiguous. The Township points out, reasonably and accurately, that the assessment will have a profound financial effect on the entire Township and that the Drain will physically affect only a small portion thereof. However, none of the above considerations are relevant to the legal issues involved in this matter.

*6 The cost of the Drain is irrelevant, at least insofar as no challenge to that total cost presently exists before this Court. Apportionment of that cost is based on “the principle of benefits derived” and is therefore apportioned “on a percentage basis.” *Elba Twp.*, 493 Mich. at 271, citing and quoting MCL 280.151 and MCL 280.152. There is no

statutory or other authority dictating that apportionments may be based on whether the benefit derived has a dollar value that matches the apportioned portion of the cost of a given drain. It is therefore irrelevant whether the Drain is actually “worth” approximately \$6.234 million, the estimated cost of the Township's assessment, to the Township. Furthermore, the discontinuous nature of the Township is equally irrelevant and at most an unusual “red herring” in this case. We are aware of no requirement that a drain must physically affect water on the entirety of a township's total land area for that drain to benefit the township itself, irrespective of whether any such township is geographically contiguous. The question is only whether the township benefits, not whether all portions of the entire township benefit.

Consequently, the issue before this Court is quite simple: did the trial court clearly err in finding authorized by law and supported by competent, material, and substantial evidence on the whole record the Board of Review's decision that 49.5% of the benefits of the Drain would be accrued by the Township. The Township concedes that it derives some benefit from the drain, but it asserts that the Township itself owns very little property within the drainage district, the development that has increased the flow of storm water downstream is private, and the drain will do little to alleviate flooding in the Township at large. The Township also argues that it was apportioned 14% after the first drain petition. Even though both petitions pertain to the same Drain, the nature of the work they sought to perform differs, so we do not find the two petitions meaningfully comparable. There does not appear to be any reasonable dispute that the instant drain project is not merely a more-expensive version of the prior project, even if the affected geographic area is the same, so the benefits the Township may or may not have derived from the prior project are not necessarily relevant.

The Township's argument that upstream property owners are entitled to discharge their natural storm water runoff, although no additional waters beyond that, onto downstream property is accurate insofar as it goes. See *Emerald Valley Land Development Co. v. Diefenthaler*, 35 Mich.App 346, 347–348; 192 NW2d 673 (1971). The Township argues that all of the property that has been improved in such a way as to cast off unhistoric amounts of water is privately owned and therefore ought to be individually liable for Drain apportionments in lieu of the Township itself. If the instant matter was a civil tort action brought by servient estate owners seeking private damages or injunctive relief against the Township on the basis of flooding on their individual private lands, the Township's

argument would certainly be a highly relevant one. However, unnaturally increasing the historic flow of water onto a lower parcel of property gives right to a cause of action sounding in trespass. See *Wiggins v. City of Burton*, 291 Mich.App 532, 554–557, 563–567; 805 NW2d 517 (2011). No such private lawsuit is apparently contemplated here.

*7 The purpose of the drain is not to relieve any landowner of the threat of such a suit. Rather, “our drain laws have historically served the public purposes of promoting the productive use of the state's land resources and combating the spread of water- and mosquito-borne diseases, such as *cholera* and *malaria*.” *Elba Twp.*, 493 Mich. at 269. Notably absent from any formally established purpose of public drains is the protection of entities from the civil legal consequences of any alterations they may have made to their properties affecting the natural flow of water. Drain apportionments are based on benefits received, not on responsibility for having created a particular situation.

The Township's argument that the Drain will not alleviate any flooding within the Township “at large” involves some measure of poetic license with the record evidence. The Drain Commissioner tacitly conceded that the Drain would not directly and personally affect water on each and every parcel of property anywhere within the Township. The Township consequently pointed out that “the 94 percent of Lansing Township residents that are not in the Drainage District do not [derive benefit from this drain].” As we have discussed, we find no support in the law or any reasonable extrapolation therefrom for the proposition that the Drain must physically affect the entirety of the Township's land area to “benefit” the Township. The Township erroneously conflates a municipality as a discrete entity unto itself with what appears to be some manner of summary of its component parts. The Drain Commissioner drew a reasonable analogy to Yellowstone National Park. To paraphrase, it is not necessary for each and every citizen of the United States to have a view of the Yellowstone River waterfalls from their back yards for the nation *as a whole* to benefit from expending tax money maintaining the park as a national resource.

The gravamen of the assessment appears based on the Drain Commissioner's testimony on the first day of the Board of Review hearing that flooding “occurs everywhere within the district, with maybe the exception of the, maybe, upper part of the watershed; but it's pretty universally problematic throughout the whole district because of a lack of a unified catchment area and collection system, okay, which is

necessary for this drain project.” The example flood provided had occurred after a “quite frequent[]” rainfall of 2.8 inches. As noted above, 222.77 of the 295 acres of the Drainage District lie within the Township, so approximately 75.5% of the Drainage District is within the Township. There is nothing *obviously* irrationally or nonsensically harsh about apportioning 49.5% of the benefits of the Drain to 75.5% of the Drainage District’s geographic area. For the most part, the Township would have this Court second-guess the Board of Review, which is not appropriate for this Court.

The Township has simply not shown that the trial court clearly erred in finding that the Board of Review’s decision was either arbitrary or not based on competent, substantial, and material evidence on the whole record. The fact that there is no precise formula specifying the apportionment is not fatal; a certain amount of subjective “judgment call” is inherent in the operation of a drain commissioner and a board of review. See *In re Macomb Drain Comm’r*, 369 Mich. at 650. The Township provides no evidence tending to show that it would not be benefitted by the Drain; indeed, it concedes the opposite. Rather, the Township’s arguments largely amount to an assertion that the apportionment is disproportionate either because the absolute dollar value is extremely high or because the drain will not directly benefit each individual parcel of property within the Township, neither of which is a valid reason for overturning an apportionment. Courts generally will not reverse drain proceedings “except for very substantial faults.” *Dunning v. Drain Comm’r*, 44 Mich. 518, 519; 7 NW 239 (1880). The Township has not articulated a legally cognizable substantial fault in the apportionment at issue here, so we cannot disturb it, even if the financial burden will be, as seems likely, quite significant.

*8 The Township finally argues that the reconvened Board of Review disobeyed the trial court’s remand order. Specifically, the Township asserts that the remand order precluded the Board of Review from basing its apportionment on benefits LBWL would receive from the drain due to the fly ash pit and other conditions created by LBWL, but the Board of Review inappropriately went further and disregarded all evidence regarding LBWL’s property. We disagree.

The Township relies on somewhat out-of-context statements made by two of the three Board members on the last day of the Board of Review. One stated that “[a]s per the writ of certiorari—excuse my pronunciation—I have again reviewed the facts and the testimony with a clear conscience to disregard my earlier judgment of these matters and reach an unbiased opinion relating only to the facts as presented after the order of May 20th, 2013.” He also stated, however, that he had considered “all the 40-plus hours” of testimony over all eight days and had given considerable attention to LBWL’s fly ash pit, which would tend to work in the Township’s favor. On balance, we are not persuaded that this board member actually disregarded everything from the first four days of the Board of Review proceeding.

The other Board member stated that his original decision “was based, to large [sic] extent, on that fly ash as it’s called ... That troubles me a lot, even today. But that’s for other regulatory bodies, the DEQ, and we have—we’re under a court order not to consider that.” The trial court’s remand order did, in fact, state explicitly that “the Board of Water and Light’s responsibility for a fly ash pit” was an irrelevant and impermissible consideration. Nothing in this Board member’s statement indicates that he totally disregarded any other evidence regarding LBWL’s property, and to the extent he disregarded any consideration of the fly ash pit, he appears to have correctly construed and properly followed the trial court’s remand order. The Township raises no particular objection to any act or omission of the third member of the Board of Review. The Township has not shown that the Board of Review disregarded the trial court’s remand order.

In conclusion, the Township has not shown that the trial court clearly erred in finding the Board of Review’s conclusion to have been based on competent, material, and substantial evidence on the whole record and to have not been a product of an incorrect application of the law. Consequently, it must be affirmed.

All Citations

Not Reported in N.W.2d, 2014 WL 6778948

Footnotes

- 1 Superintending control is the functional equivalent, and our Supreme Court treats them as one and the same. See *Elba Twp.*, 493 Mich. at 272 n 4.

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