



Meeting Recap from Saturday, August 24, 2024

We appreciate the attendance at Secord Township Hall for the August meeting. The Q&A session was robust with thoughtful questions, comments and suggestions. We appreciate the professional manner in which our Members participated in the Q&A as we had guests express alternate points of view. Here is a recap of key points from the meeting.

Committee Reports

Phil confirmed our association is interested in coordinating and helping to fund the annual Goose Roundup at Secord Lake. Volunteers are needed to join the committee being formed to explore options for next year.

Brent reported this year's golf outing is sold out. He shared the need for volunteers is filling up nicely - - anyone wanting to help or attend to participate in the fun or dinner should contact Brent.

Paul indicated the chili cookoff will be at the Eagles on October 12th, as Lost Arrow did not have dates available until into the month of November due to weddings and other events. There is still time to enroll your chili. The Eagles will have live music following the chili cookoff - - - the day at the Eagles is open to all.

Mike mentioned the "booze raffle" has historically been a popular raffle event. We seek donations for this.

We seek volunteers to help with these fun events. Please let us know how you can help at SecordLakeAssociation@gmail.com

Elections

Thank you to Paul Gorans and Marti Drabing for continuing in their leadership roles on the board. We welcome Ken Wells to the board. The board has 9 positions, each with 3-year terms with 3 seats being renewed yearly to keep consistency with the board.

Legal Update

Please review this legal update provided prior to the meeting as it will provide context to the Q&A session. https://www.secordlakeassociation.org/files/ugd/cd86dd_2008da6f5ef0423e8b46ed226ec51a63.pdf

As mentioned, the Q&A session was robust with thoughtful questions, suggestions and opinions. We had guest with alternate views and we applaud the entire audience for the professional manner in which an exchange of ideas took place.

Following is a summary of the key learning from the Q&A session. **This is not legal advice. For legal advice we suggest you speak with your attorney.** This recap is based on statements / opinions expressed at the Secord Lake Association meeting during the Q&A session where there was an exchange of views, questions, opinions and insight from Members and guests.

Michigan Appellate Court Claim of Appeal

When people hear the term “appeal”, most refer to the Midland Circuit Court appeal hearing where Judge Beale’s opinion said in part, HCA “have failed to carry their burden and show the special assessments are not supported by competent, material and substantial evidence due to lack of credible evidence”. He went on to rule “the Appellants' appeal seeking relief from the FLTF Special Assessment District apportionment is DENIED."

After this ruling, HCA decided to ‘appeal’ Judge Beale’s opinion to the State Appellate Court. In this process, a panel of judges is asked to review the decision by Judge Beale. There is no new evidence presented, it is simply a review of how Judge Beale applied the law to the ruling. It is not a “do over” of the trial.

The facts will remain the same in the Appellate Court with no further evidence considered other than what is placed in the record at the trial court.

The briefs by both HCA and FLTF are due over the course of September. Once the briefs are filed, the Appellate Judges will review to determine a path forward. There is no timeline available for resolution.

Based on comments, here is what people may believe the HCA appeal will do:

- A judge will rule the special assessment district is illegal.
- A judge will rule the state or federal government will pay to repair the dams.
- A judge will rule the citizens and businesses in Midland and Gladwin counties must pay to repair the dams.
- A judge will rule grant money is allocated in a different manner.
- A judge will rule the dams are for flood control so the US Army Corps of Engineers will do the repairs.
- A judge will rule that Dow will pay for the repairs.

If this is what people believe, the court does not have the jurisdiction or authority to grant these things. These desired outcomes cannot be gained by the courts, with most only by changing the laws at the state level. For instance, the judge cannot dictate the US Army Corps of Engineers do the repairs. Think about it for a moment, some of the things people think or were told the HCA legal action will deliver are not reality.

HCA is not arguing the special assessment district is illegal, in fact they agreed in court it is legal. HCA is not asking the government to pay, not questioning grants, not asking for a county wide millage, not questioning flood control, or asking Dow to pay. So, what is HCA asking for in the court documents?

This is from the HCA brief submitted to the Midland Circuit Court: “For the reasons stated above, Appellants request that this Court vacate the special assessment rolls, order a reapportionment of the special assessment roll so that the assessments are proportional to the increase in market value derived from the Project, or order additional discovery related to the same, and any other relief the Court finds just and equitable.”

In simple terms, what HCA is seeking is to modify the methodology focused on the “apportionment” of the assessment. They want to start over with creating the special assessment district and the methodology used to determine assessments. This would take several years to accomplish at a cost of millions of dollars. Should this take place, construction is halted, time marches on and costs to rebuild continue to escalate.

As the court has already ruled the special assessment district was established correctly, the methodology is legal and there was proper notice (due process) provided to property owners, getting this change in the courts appears to be extremely difficult. In fact, out of all the property owners in the appeal, HCA did not present a single appraisal to support their claim. Not one. Understandably, the circuit court judge DENIED the HCA legal argument citing lack of evidence.

What do the *Chappel Dam* and *Dixon Road Cases* have to do with it?

Today, the assessment amount is not tied to the property value. Let’s take two lots next to each other, with the same “total assessment factor”. Each parcel is assessed the same amount, \$30,000. One lot is vacant, one has a \$250,000 house on it. Both will pay the same amount. In this case, both lots used the same method to determine the assessment, based on location and size on the lake. This methodology was utilized in the *Chappel Dam* case.

What HCA is seeking is to use a different approach. They seek to tie the assessment amount to the increase in value of the property. For our example we will assume the difference in the value of a property on the water versus not on the water is 40% (meaning the same property on the water is worth 40% more).

In the example above, the vacant property has a market value of \$40,000 and the property with the home has a market value of \$250,000. The assessment for each is \$30,000. In this example, for the \$250,000 home on the water, the same home may be worth \$150,000 off the water representing a fair market value difference of \$100,000. The \$100,000 benefit is greater than the \$30,000 assessment, the assessment is appropriate.

For the vacant lot, the market value of \$30,000 on the water is reduced to about \$18,000 representing a difference of \$12,000. The \$12,000 benefit is less than the assessment of \$30,000, hence the vacant property assessment is not proportionate. Meaning the assessment is reduced from \$30,000 to \$12,000 resulting in the difference of \$18,000 needing to be reapportioned to another property in the special assessment district. In this simple example, the difference moves to the property with the house. This methodology is referred to as *Dixon Road Group* case.

In the example above, the current *Chappel Dam* methodology has both properties with the same assessment of \$30,000 each representing \$60,000 total. If HCA is successful, using the *Dixon Road Group* methodology, the same \$60,000 in assessments will be spread \$18,000 to the vacant lot and \$42,000 to the lot with the home.

NOTE: In the *Dixon Road* methodology, if the vacant lot has a future \$500,000 home built on it, the assessments remain the same. The \$500,000 home is assessed \$12,000 and the \$250,000 home \$42,000.

How many properties across the 4 lakes would the HCA methodology change impact?

If a property has a home on it, it is highly unlikely that the assessment would change. In fact, it is most likely it will go up. This is a key point to understand and explore - - it is highly unlikely if you have a home (or cabin) on the property the assessment will be reduced by the *Dixon Road Group* methodology.

If there is a vacant buildable lot, the *Dixon Road Group* methodology may result in a downward impact with respect to some of the vacant properties with the difference having to be absorbed by other property owners. The number of properties like this within the special assessment district is limited.

In closing, the things people may think the HCA legal challenge will deliver, are simply not true. Please review the list at the top of this summary.

For people with homes or cabins on your property, the HCA may be funding a legal exercise that will only benefit barely a handful of vacant, unbuildable properties to eventually incur a higher assessment for retirees and people on fixed incomes.

We are not providing legal advice, if you are in the HCA you should talk to your lawyer.

JUDGE LUDINGTON RECUSES HIMSELF FROM FEDERAL LAWSUITS

As mentioned in past updates, Federal Judge Ludington recused himself from hearing the federal lawsuits brought by HCA. This judge wrote a 14-page opinion to recuse himself. A Member mentioned the HCA has filed a motion to remove Judge Ludington's recusal opinion.

A guest at our meeting indicated the opinion has been removed and is no longer available.

FACT CHECK, while the HCA did file a motion to modify the opinion of Judge Ludington to Federal Judge Matthew F. Leitman on August 16, as of Friday morning August 30th the judge has not ruled on the motion.

You can read the opinion here to determine why the HCA seeks to remove an opinion by a judge that recuse himself. https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/doc_013_gladwin_-_opinion_and_order_granting_motion_to_disqualify_judge_ludington_7.17.2024.pdf

We recognize there are more questions than answers available now. Look for more informational updates from the FLTF and Secord Lake Association. Our next gathering is the golf outing on Saturday, September 21st. Our last meeting of the season is scheduled for Saturday, October 19th at 10 AM – Secord Township Hall.

www.SecordLakeAssociation.org