



Smallwood Lake
Association

WIXOM LAKE
ASSOCIATION



HCA OBJECTS TO LAKE ASSOCIATIONS' AMICUS BRIEF

This is the second time HCA has objected to input to the courts

When the 4 Lake Associations filed the amicus brief with the MI Appellate Court of Appeals, we fully expected the HCA would protest and ask the court to deny the amicus brief.

This is not the first time HCA has suppressed input to the courts. After Federal Judge Ludington filed his opinion to recuse himself at HCA request, HCA filed a motion to strike his opinion. HCA did not like some of the legal cases / theories used by Judge Ludington in his recusal opinion. They also indicated the Judge is biased as he and his family own a home on one of the 4 Lakes. The court has not yet ruled on the HCA request. You can read Judge Ludington's opinion here: <https://preview.mailerlite.com/n7f8x6r3m9>

4 Lake Associations' Amicus Brief - - As a reminder, an amicus brief, often referred to as "friend-of-the-court" brief, is a legal document filed by a person or group that is not a party to a case but has a strong interest in the matter. The purpose of an amicus brief is to provide the Court with information to assist the Court in reaching a decision, and to provide additional perspective from interested parties that are not the named parties in the case. You can read a 3-page summary along with the amicus brief here:

https://www.restorethelakes.org/files/ugd/cd86dd_9c3d1042c70345999791abf2dfc7cc0a.pdf

The Lake Associations have always agreed the statute provides property owners an opportunity to appeal their special assessment to the Circuit Court. After having their appeal **DENIED** at the Midland Circuit Court due to "lack of credible evidence," HCA chose to appeal the court's decision to the Michigan Court of Appeals.

From their objection to the 4 Lake Associations amicus brief, here are the things HCA highlights:

- 1) HCA claims the Lake Associations are biased because the Lake Associations do not support the HCA positions.
- 2) HCA claims the lawyers representing the Lake Associations are biased as they own property on the lakes.
- 3) In an interesting twist, HCA claims lead Lake Association lawyer—Bruce Townley-- may not express his legal clarification to others via Facebook or other platforms even before the amicus brief. HCA is offended by this attorney's 1st Amendment Right of Free Speech he has exercised to express his perception of HCA's position in colorful metaphors.
- 4) HCA falsely states the amicus brief presented by the Lake Associations expresses disappointment in the FLTF.

Ironically, the Circuit Court DENIED the HCA appeal due to “lack of credible evidence,” yet now HCA wants the evidence presented by the Lake Associations suppressed. HCA did not reject, question, challenge, or deny any of the information presented by the Lake Associations.

Here is a list of information in the amicus brief that the HCA seeks to restrict from the Court:

- 1) The 2021 FLTF Survey of property owners where 88% indicated the need to restore the lakes to retain property values.
- 2) The increased costs to property owners caused by the suspension of construction. This includes the estimated \$20 million coupled with the additional costs to property owners and others to manage nuisance trees for an extended period of time.
- 3) The affidavit of a real estate expert and documentation of close to 300 property sales over almost 5 years in the townships of Secord, Clement and Bourret that debunk the HCA claim that restoration of the lakes will have no impact on property values. The real estate sales data indicates buyers place a 62.5% premium on price per square foot for lake front property vs non-lakefront property.
- 4) The affidavits of local business owners (one a marina owner, the other operates a lake pier maintenance company) regarding the impact to their businesses and families caused by the construction suspension.
- 5) HCA continues to use SEV to determine property values. HCA seeks to eliminate documentation that illustrates the difference between SEV and actual property values as one of their Appellants is used as an example by the Lake Associations.

HCA had their day in court, and their appeal is DENIED due to “lack of credible evidence.” Now they seek to have the voices of the Lake Associations silenced to the Appellate Court, which would exclude evidence the HCA does not want the Court to consider. This information has always been in the public space, but HCA believes “their version of facts” is all the Court should consider.

In terms of next steps, unfortunately the appellate court system does not allow the Lake Associations to respond to the allegations made by HCA in their objection. At this point everyone must wait for the Court of Appeals to render a decision.

In closing, both situations where HCA has filed objections in order to suppress facts and information to the courts, is reminiscent of the statements made by HCA in their initial motion to the Midland Circuit Court: HCA is organized “to promote the general welfare of its members.” Meaning the HCA has no regard for how their behavior or outcome impacts their neighbors in the FLSAD.

One needs to ask, if HCA is so confident in their case, why are they filing motions to suppress an opinion from a Federal Judge and to deny the Lake Associations the ability to share their perspective with the Court of Appeals? What in this information does the HCA not want the court to see?

[LINK to the HCA RESPONSE IN OPPOSITION TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF BY SECORD LAKE ASSOCIATION, INC.; SMALLWOOD LAKE ASSOCIATION, INC.; WIXOM LAKE ASSOCIATION, INC.; AND SANFORD LAKE ASSOCIATION, INC](#)

For HCA members:

We agree property owners have the opportunity to appeal their individual assessment as described by the laws of the special assessment district as outlined by the Midland Circuit Court. **HCA had their appeal with the trial court and the judge rendered a ruling regarding all the issues the HCA attorney presented.**

The HCA leadership team has communicated NO plan to restore Secord Lake. Their actions are designed to further derail efforts to restore the lakes while increasing costs to all property and business owners. The increased cost will be felt by your friends, neighbors and in your own capital assessment. The delay in time cannot be measured as time is a non-renewable resource. Once time is gone, it is lost forever.

In the event any appellants want to be removed from the appeal, this is permitted by providing an email directly to Michael Homier at mhomier@fosterswift.com. A client has the legal right to terminate their attorney at any time. (Michigan Rules Professional Conduct 1.16). Provide a statement to the law firm Foster Swift such as the following:

“I wish to immediately withdraw from the appeal filed in the Michigan Court of Appeals, Case No. 371649 along with the separate filings in U.S. Federal Court, Eastern District of Michigan, being *Heron Cove Assoc v Midland County*, Case No. 2024-cv-11458 and *Heron Cove Assoc v Gladwin County*, Case No. 2024-cv-11473. Please file a dismissal on my behalf and provide me with email confirmation. I will no longer be responsible for any legal costs and request a return of any unused retainers at this time.”

< END >