The Great (Inland) Lakes State

Township Inland Lake Improvements

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Goals

✓ Discuss reasons why a township may want to facilitate lake improvements

✓ Understand the various lake improvement statutes including how they operate and common mistakes

✓ Develop a “checklist” to facilitate a lake improvement project

✓ Answer questions!

This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation. Please contact an attorney if you need assistance related to a specific legal issue.
Inland Lake Improvement Projects

• Michigan is home to over 11,000 inland lakes!

• Most of those lakes are located in Michigan’s townships as townships make up 96% of the state’s land area.

• Lakes offer many benefits to townships: (1) recreational opportunities; (2) tax base and economic development; and (3) attract visitors.

• Most importantly, township residents will live on lakes!
Why Lake Residents May Approach a Township

- Lakes throughout Michigan generally have reoccurring improvement projects including: (1) aquatic weed control; (2) dredging; and (3) lake level control.
  - Sometimes a property owner’s (or lake) association may administer such projects but are reliant on voluntary dues.
  - For dredging and lake level control projects, costs may necessitate some form of municipal financing (e.g., bonds).
  - Private lake and property owner’s associations are having difficulty insuring lake level control structures after the Midland dam failures.
The Three Main Lake Improvement Statutes

1. Act 188
   Township Special Assessments

2. Part 309
   Lake Improvement Board Special Assessments

3. Part 307
   County Lake Level Special Assessments
Special Assessments: The Basics

- **Special Assessments**: A specific levy designed to recover the costs of a specific improvement. *Kadzban v City of Grandville*, 442 Mich 495, 500; 502 NW2d 299 (1993).

- **Special Assessment District**: A group of properties that will be benefitted by a particular improvement and are subject to special assessments. *Id.*

  - *Lakes often have multiple special assessment districts!*

- **Assessment Roll**: Typically, a spread sheet or similar document that lists properties within a special assessment district and lists their: (1) apportionments; and (2) annual assessment amounts.

  - **Apportionment**: Percentage of benefit from a particular project. For lakes, think: (1) lakefront lots; (2) backlots; (3) commercial marinas/boat launches.

- **Most, if not, special assessment statutes will allow a public entity to assess costs with ensuring permissible assessments (e.g., notice costs, legal costs, engineering/plans costs) to property owners within a special assessment district.**
Act 188 - Township Special Assessments

- **The Township Statute**: Act 188 of 1954, MCL 41.721 et seq.

- **Scope of Improvements**: The most expansive of the three statutes and includes: (1) aquatic weed management; (2) building/maintaining dams/lake level control structures; (3) dredging; and (4) general “improvements.” See MCL 41.722.

- **Project Process**:
  - 1) Optional property owner petition
  - 2) Development of proposed costs and plans
  - 3) Public Hearing #1 of #2 (review plans and costs, outline special assessment district)
  - 4) Develop proposed special assessment roll
  - 5) Public Hearing #2 of #2 (consider special assessment roll)

- **Advantages**:
  - 1) Township control
  - 2) Authorizes many improvements
  - 3) Flexible plans and costs requirements

- **Disadvantages**:
  - 1) Township control 😐
  - 2) Objection petitions. See MCL 41.723.
  - 3) Assistance from County for financing
Act 188 – Common Mistakes (1/2)

- **Following the Process:**
  - Admittedly, the process is very nuanced requiring separate public hearings and numerous approvals.
  - Sometimes this leads to current Act 188 districts being approved by motion at one meeting (without a roll etc.)
  - Recent case law discusses special assessments not being valid if defects with the special assessment process. See *Village of Sparta v Clark Hill, PLC*, unpublished opinion of the Court of Appeals, issued December 22, 2020 (Docket No. 352837).
  - There are ways to “fix” districts that may have been formed with procedural defects (MCL 41.733).
Act 188 – Common Mistakes (2/2)

• Forgetting the importance of thinking strategically and forward thinking:
  ○ A township should think about the below before creating assessments and districts:
    ◦ 1) How long do we want this district to last?
    ◦ 2) What ways can we involve residents in this process?
    ◦ 3) Have we looked at plans, costs, and proposed assessments from a lake association to ensure consistency with Act 188?
    ◦ 4) Did we prepare a schedule?
Part 309 – Lake Improvement Boards

- **Lake Improvement Boards**: Act 451 of 1994, MCL 324.30901 et seq.

- **Scope of Improvements**: Dredging, weed control, and lake improvements other than lake level control.

- **Process**:
  - 1) Optional property owner petition *(but see for private lakes!)*
  - 2) Formation of lake improvement board
    - Typically consists of county commissioner, two township board appointees, drain commissioner, and property owner representative
  - 3) Report or study for proposed improvements
  - 4 ) Public Hearing #1 of #2 (practicability of project and plans and costs)
  - 5) Public Hearing #2 of #2 (confirmation of special assessment roll)
  - 6) Lake Improvement Board then self-governs and administers (for the most part) future projects

- **Advantages**:
  - 1) Mix of control and stakeholder buy-in
  - 2) Also has county involvement for financing
  - 3) Provides some shelter to a township related to lake disputes

- **Disadvantages**:
  - 1) Engineering report for improvements. MCL 324.30909.
  - 2) Townships can sometimes be the “middle-man”
  - 3) Still requires quite a bit of township involvement such as preparing the assessment roll. MCL 324.30914.
Part 309 – Common Issues

1) Membership Quarrels

Ironically, one of the most common issues with Part 309 Boards is selecting who serves on a board.

- A township board (in a lake within one township) will select two representatives. MCL 324.30903(1)(a).

- If there is a property owner’s or lake association on a lake, they can submit three persons (individuals with a property interest in a lakefront parcel) to a lake improvement board to select its property owner representative.

- Sources of conflict include: (1) multiple associations and (2) names not being shared with the board.

- Solutions: Plan a process for nominations and do not hesitate to take time.

2) Private Lake Project Initiation

- Part 309 and case law infers that all improvement projects under Part 309 on private lakes need to be initiated by a petition of 2/3 of property owners on a lake. MCL 324.30904; see also Crane v Dir of Assessing for Charter Twp of W Bloomfield, unpublished opinion of the Court of Appeals, issued April, 19, 2012 (Docket No. 301878).

- Private lakes are any lakes other than those “public by publicly owned lands or highways contiguous to publicly owned lands or by the bed of a stream, except the Great Lakes and connecting waters.”
Part 307 – Inland Lake Levels

- **Inland Lake Levels (Lake Level Control):** Act 451 of 1994, MCL 324.30701 et seq.

- **Scope of Improvements:** Lake level control (dams, lake level control structures, augmentation wells, etc.)

- **Process:**
  - 1) Optional property owner petition
  - 2) Lake level study
  - 3) Petition to circuit court
  - 4) Circuit court public hearing
  - 5) Circuit court enters order establishing: (1) lake level elevations and (2) special assessment district boundaries
  - 6) Projects approved after assessment hearing

- **Advantages:**
  - 1) Court ordered special assessment district
  - 2) Has county involvement for financing
  - 3) Assessments handled by county drain commissioner and county
  - 4) Township involvement

- **Disadvantages:**
  - 1) Township involvement
  - 2) Lake level study
Although Part 307 is generally drafted to give counties responsibilities for inland lake levels, there are various ways that townships can help facilitate such projects including:

• 1) Agreements to operate infrastructure
• 2) Assistance with preparing a proposed special assessment district
• 3) Facilitating communication between property owners and a county
• 4) Indicating support of a project at a court hearing
• 5) Contributing towards improvements and applying for grants
• 6) Authorizing use of land for lake level improvements
Lake Improvement Project Checklist

1. Identify the type of improvement

2. Think about what statute would facilitate the improvement. Consider:
   A. The duration of the improvement
   B. How the township would like to be involved
   C. The institutional knowledge of property owners

3. Gauge stakeholder support

4. Consider retaining consultants
   A. Project plans
   B. Financing
   C. Legal process

5. Strategically plan the project
   1. Schedule / time needed
   2. The length/reoccurrence of assessments
   3. Property owner petitions

6. Begin the assessment process
Questions

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