



Some Key Points regarding Special Assessment Districts for Lakes in Michigan

As every year goes by, there are an increasing number of special assessment districts created for lakes in Michigan for aquatic weed treatment and other purposes. I wrote fairly in-depth articles in the Fall, 2010, Winter, 2014 and Spring, 2016 issues of *The Michigan Riparian Magazine* about special assessment districts. This article addresses some of the nuanced aspects of special assessments.

Most riparian property owners in Michigan know that a municipality (whether it be a township, city or village) can establish a special assessment district for a lake or river to eradicate or control nuisance or invasive aquatic plant species. What many riparians do not know is that special assessments can be used for other lake-related purposes as well. For example, a special assessment district can fund the installation and operation of a lake augmentation well, the construction and maintenance of a lake dam, a lake watershed report and remediation program, the installation and operation of street lights along lake-area roads and provide for the maintenance, snowplowing and potential upgrade of private roads near lakes. As with all special assessments, assessments for such purposes are placed on the tax roll, such that every landowner within the special assessment district pays the special assessment.

Special assessment districts are a government function. Accordingly, the local government must set up the special assessment district, collect the special assessments via tax bills, hire any contractors to implement the special assessment project and oversee the spending of all special assessment funds. That function cannot be delegated by the local government to lake associations, property owner associations or other private entities or individuals. Nevertheless, some municipalities will appoint a citizen advisory committee comprised of lake or river property owners to advise and make recommendations to the municipality regarding the spending of special assessment funds. Rarely will a

municipality spend special assessment funds contrary to the wishes of the local riparians.

Can a municipality set up a special assessment district without the assistance of legal counsel? That is not recommended. Creating a special assessment district, especially for a Michigan township pursuant to Public Act No. 188 of 1954, can be a complex, document intensive and time-consuming process. In order to “get it right,” it is usually best for Michigan municipalities to utilize expert legal counsel to assist with the special assessment proceedings.

What are some of the benefits of creating a special assessment district rather than having the local lake association or property owners simply collect monies voluntarily for aquatic weed treatment purposes or other lake improvements? There are a number of advantages. First, a special assessment ensures that every property owner who is benefited by the program or improvement pays their fair share. Second, given that governmental units generally have governmental immunity, the potential for liability to a municipality administering a special assessment district is minimal. Finally, collecting the assessment becomes more or less “automatic” once established so that the local property owners need not worry about raising voluntary funds, spending the monies, etc.

Should backlot or off-lake properties be included in the special assessment district? Legally, those properties can be included to the extent that they are benefited by the project or improvement. However, practically, it is often prudent not to include those properties within the special assessment district. Why not? First, it is often difficult to ascertain by how much such off-lake or backlot properties are benefited. Should the owners of such a lot or parcel pay a one-half assessment? One-third assessment? What fraction? Second, including backlot or off-lake property owners can often

(Continued on page 30)

(Continued from page 29)

More on Some Key Points regarding Special Assessment Districts for Lakes in Michigan

“sink the district.” Those property owners may even be able to block the special assessment district altogether by protest petitions or by simply convincing the local municipality not to pursue the special assessment. Finally, including backlots typically makes the process more negative and frustrating.

In some cases, the advocates of a special assessment district will propose a new district for a limited period of time (for example, two years, four years or six years). They assume that a special assessment can be extended by the local municipality fairly easily or with a simple vote of the legislative body or in the municipality. Unfortunately, however, that is not the case. There is no easy extension process for an expiring special assessment district. Instead, the whole process must be started over again as if a new special assessment were involved. Accordingly, the advocates of a special assessment district should think twice about recommending a special assessment district that will exist for too short a period of time.

Can a special assessment be challenged in court? In Michigan, the only way that a property owner can challenge a special assessment or the creation of a special assessment district is via an appeal to the Michigan Tax Tribunal. In order to challenge the creation of a district, the property owner would have to prove that there was some procedural defect in the enactment process. To successfully challenge the amount of the special assessment itself, a property owner would have to demonstrate that there is a substantial or unreasonable disproportionality between the amount assessed and the value which accrues to the land as a result of the improvements. *Kadzban v City of Grandville*, 442 Mich 495, 502; 502 NW2d 299 (1993).

If you or your lake association intend to pursue a special assessment district, you should plan ahead. It usually takes a municipality between three to six months to start and complete the special assessment district establishment proceedings. Most municipalities put special assessments on the winter tax bill (which is typically mailed to property owners in early December). In order to be on a winter tax bill, a special assessment district must be fully created at least several months prior to December 1. Accordingly, if a group wishes to have a special assessment district established so as to be able to be on the upcoming winter tax bill, the group really should get started during the prior spring. A new special assessment can be placed on the summer tax bill (generally mailed to property owners in late June), but that will not generate any funds for the new special assessment prior to July.

Can a municipality decide in a given year not to collect the full special assessment levied? Yes. It is better for the municipality to simply lower or not collect the full special assessment for a given year (and to have proper documentation for the same) rather than to permanently lower the special assessment. Can special assessments be increased from year to year? Typically, the documents creating the special assessment district originally will indicate that the assessments can be increased from year to year by not more than 10% without a formal public hearing. If such language is included in the original special assessment district approval documents, an assessment may be increased by more than 10% over the prior year if a formal public hearing is held (which generally involves a municipality publishing the appropriate public hearing notice in the newspaper twice and also sending every property taxpayer in the district a public hearing notice through the mail).

As you can see, there typically are many issues and potentially unanswered questions regarding special assessments and the process for establishing a special assessment district. 