



MICHIGAN WATERFRONT ALLIANCE

NEWSLETTER

February 2009

www.mwai.org

MWA Mission Statement “This corporation is formed to protect, preserve and promote the wise use of inland waters – lakes, streams, rivers, creeks and the waters and bottomlands of the state of Michigan.

Presidents’ Corner

By Bob Frye

Dear Michigan Waterfront Alliance Individual and Lake Association Members,

I have asked Attorney Cliff Bloom to report on this very important legal case whose outcome could affect a great many waterfront owners. It is a good thing that MWA exists, especially in cases like this. Here is his report.

SUMMARY OF THE LAKE CHARLEVOIX-PARALLEL ROAD CASE

Pending before the Michigan Court of Appeals is a very troubling decision from the Charlevoix County Circuit Court regarding parallel roads along lakes. That case is *2000 Baum Family Trust, et al. v Babel, et al.* (Michigan Court of Appeals Case No. 284547). For over a century, based on Michigan appellate case law, it has been presumed that where a public road runs parallel along a lake (and there was no intervening land between the road right-of-way and the lake when the road was created), the “first tier” of lots fronting on the road are deemed riparian or waterfront properties, subject to the parallel road right-of-way as an easement for travel purposes only. That assumption was based on *Croucher v Wooster*, 271 Mich 337 (1935) and *McCardel v Smolen*, 71 Mich App 560 (1976), and 404 Mich 89 (1978). However, in the *2000 Baum Family Trust* case, the Charlevoix County Circuit Court Judge held that county road commissions generally hold title to (not just an easement) a road which runs parallel with a lake. The implication is that the local county road commission would be the riparian property owner, not the owners of first tier lots.

The Michigan Waterfront Alliance (together with the Higgins Lake Property Owners Association) has requested permission from the Michigan Court of Appeals to file an amicus brief in support of the first tier lot owners and in opposition to the Charlevoix County Road Commission. The implications of the final appellate decision in this case are huge. A statewide county road commission group is supporting the Charlevoix County Road Commission’s position that first tier lot owners are not riparian

and that the fee simple title and riparian rights to such parallel roads and shorelines belong to local road commissions.

It is somewhat perplexing that the county road commission groups would be supporting the Lake Charlevoix judge's decision other than based on a desire for more power or control. This certainly is a "be careful what you wish for ..." proposition for the county road commission group. If they ultimately prevail in the Michigan appellate courts, the resulting battles will make the perpendicular road end cases look like child's play. There are many more riparian lots on lakes in Michigan which are directly affected by the parallel road situation than perpendicular road ends. If the county road commission group ultimately prevails in this case, most if not all of the "first tier" lots on any lake in Michigan where there is a parallel road present created by dedication under some or all of the earlier plat acts would no longer be riparian or lakefront. Presumably, the local road commission could tell the formerly-riparian lot owners to remove their docks, boats, "shorestations", etc. from the lakefront. Or worse, the local road commission could decide who is able to put in a dock, boat, or boat hoist and where—that might result in a situation where backlot property owners are able to install docks and boat moorage in front of the first tier lots but some of the first tier lot owners are not able to do so! Some of these first tier lots (and cottages or homes thereon) are currently worth hundreds of thousands of dollars and in some cases, even more than that. Can you imagine the litigation explosion which will occur against local road commissions if the lower court decision stands? In some situations, it will likely result in recall elections against elected county road commissioners. There will also be a huge number of property tax appeals as the first tier lot owners seek reduction of their taxes since they would no longer be riparian properties. Can you imagine the emotionalism that would result if the trial court decision stands?

Thank you for your continued support,

Bob Frye
Michigan Waterfront Alliance, President

Michigan Waterfront Alliance - Legislative Update - February 2009
By Scofes & Associates Consulting, Inc.

Your Scofes & Associate lobbyists are working hard to protect MWA interests. Last quarter we were instrumental in killing HB's 4463 and 4464, bills that would have allowed backlotter to erect marinas at the end of road ends so long as they fit into certain specifications. Scofes & Associates was successful in articulating MWA's position to Senator Bishop and was able to garner Bishop's commitment that he

would not have the bills heard in committee. As a result, HB 4463 and HB 4464 died last legislative session. As of now, there has been no reintroduction of the bills. However, given the fact that there was a major push from the other side last session, in having the two-bill package heard, there is a strong likelihood that the bills could resurface. Scofes & Associates will continue to monitor legislative activity and keep you apprised should the legislation be reintroduced.

Last Quarter, MWA expressed an interest in tracking and drafting legislation that would prohibit and protect Michigan waters from the invasion of invasive species. As a result, Scofes & Associates Consulting invited Nikki McCord and Emily Finnell with the Department of Environmental Quality (DEQ) to present to the Board the Departments goals and objectives in addressing the issue. Many of the Board members expressed an interest in working with the Department to strengthen policy, either through legislation or through the administrative rules. As you may be aware the following link furnishes information regarding public involvement in DEQ activities, "http://www.michigan.gov/deq/0,1607,7-135-3306_30305---,00.html".

On February 6, 2009, Rep. Lahti introduced House Bill 4199, a bill to establish a fine to individuals for launching boats with an aquatic plant attached.

In her quest for making government more efficient and more economically astute, Governor Granholm in her State of the State Address delivered February 3rd talked about the cuts she plans to make in the Fiscal Year 2010 budget proposal. The top cuts include dissolving the Department of History, Arts and Libraries, the State Fair, three more state prisons and the state's water protection division. She also stated that Lieutenant Governor John Cherry will be the lead on a "comprehensive effort to dramatically change the shape and size of government" by reducing the number of state departments from 18 to 8, reforming the state's civil service system, creating a public/private partnership and infusing technology everywhere." Granholm's proposal also calls for the elimination the DEQ's oversight of wetlands protection and to combine the DEQ and DNR into one department. MWA has the opportunity to influence the Governor's proposition by recommending your members to send letters directly to the Governor with their concerns.

Bills that have been introduced so far this legislative session that may be of interest to MWA are as follows: HB 4145, HB 4153, HB 4204, SB 0034 and SB 0187

Teresa Edwards
Scofes & Associates

Presentations on Management of Exotic Species

By Pam Tynning

The Michigan Chapter of the North American Lake Management Society (McNALMS) held its annual luncheon on October 31 at Michigan State University. Three presentations focused on state, regional, and local management of exotic species.

The first presentation was by John Magnuson, Emeritus Professor with the Center for Limnology at the University of Wisconsin-Madison and was entitled, "Do We Have to Manage for Exotics 'One Lake at a Time'." Dr. Magnuson discussed the fact that species' invasions and extinctions are naturally-occurring phenomenon, but human intervention—accidental or otherwise—can hasten invasions and extinctions. Dr. Magnuson recommended that strategies be developed to deal with exotics before they arrive. Such strategies should involve: thinking globally, regionally, and locally; determining whether the exotic is a problem; predicting probably dispersal routes;

increasing isolation around the potential point of entry; then, if it's not possible to keep out the invasive, then prepare for its arrival. Dr. Magnuson discussed the concept of what he calls "choice points," or moments and places in history when we can choose to stop species invasions. Examples he used included the choice point in 1988 when zebra mussels were first found in the Great Lakes waterways, and more recently, the invasion of the Asian carp in the Missouri River. These are choice points at which action could be taken to stop the species' spread. Dr. Magnuson also recommended that battles be carefully chosen, since not all invasive species pose significant threats, and because resources to fight invasives are limited. Finally, Dr. Magnuson discussed the importance of education since humans are often the vector for the spread of invasives.

Roger Eberhardt of the DEQ's Office of the Great Lakes presented a talk entitled "Status and Needs of Michigan's Aquatic Invasive Species Management Plan." Mr. Eberhardt described the Michigan Great Lakes Plan and the Great Lakes Regional Collaboration Strategy that is due to be finalized at the end of 2008. The plan will stress that the health of the Great Lakes is dependent on the health of the waters that feed the lakes, and the near-shore areas that buffer the lakes. An Implementation Team will be developed to assist state and local efforts to implement the recommendations of the Michigan Plan. Priorities include: water management/diversions; aquatic invasive species; habitat/species; coastal health; areas of concern/sediments; nonpoint source; toxic pollutant; indicators and information; and sustainable development (including sustainable energy and assuring a strong economy). For aquatic invasives, recommendations include: Establishing a screening process for organisms proposed for trade by classifying species into three lists—prohibited, accepted, and conditionally accepted by permit, whereby the burden of proof of non-injuriousness would be on the importer; establishing an early detection and rapid response program for invasives new to the state including a \$1 million revolving fund for rapid response actions and collaborating with an interagency Great Lakes Federal Rapid Response Team; working with the Michigan legislature to develop a viable, long-term funding source for invasives prevention and control actions; and continuing to develop a comprehensive invasives education program for prevention and control.

The final speaker, Pam Tynning of Progressive AE, discussed how special assessment districts (SADs) can be used by lake residents to manage invasive species in their own lake. SADs have been formed on many lakes in Michigan in order to provide the funding and organizational mechanisms to manage exotic species such as Eurasian milfoil and curlyleaf pondweed. Lake residents and SADs can be effective as the local partner in a regional or statewide effort to manage aquatic invasive species.

It is time for another citizen effort to add water and other non-carbonated beverages to the Bottle Law.

Here's why:

- ***Michigan's bottle bill was revolutionary in 1976 but now it's outdated.*** The sale of water and other noncarbonated beverages will soon surpass the sale of pop in Michigan. Michigan voters demanded a strong beverage recycling program when they overwhelmingly approved the Bottle Law in 1976, but bottled water and other sport and juice drinks that are popular today just weren't around.
- ***Recycling makes \$ense!***
 - o The 5.5 billion bottles and cans recycled each year under Michigan's Bottle Bill saves energy. The energy alone saved from recycling containers is equivalent to 450,000 barrels of oil. That's enough to fuel 150,000 cars per month.
 - o More recycling also creates more jobs for Michigan. The processing of recyclable materials generates nearly \$2 billion in revenue from the sale of recycled commodities each year. This industry employs more than 5,000 people at the total rate of \$137 million per year!
 - o Michigan tax payers pay \$5.5 million per year to clean up water bottles and other trash from Michigan's roadways – there is no reason why hard earned tax dollars should be used to pick up trash that can easily be recycled under our effective Bottle Bill law. With an expanded bottle bill, Michigan taxpayers will also save money on garbage disposal fees and will pay less for litter pickup and recycling.

• **The bottle bill reduces litter.** Pop and beer cans have virtually disappeared from Michigan's roadsides and beaches since the Bottle Bill was passed. Michigan consistently has the lowest percentage of container litter along its beaches nationwide, accordingly to the Center for Marine Conservation. If there is a deposit, people will pick up bottles...for free! Michigan's bottle law has already proved this fact. While Michigan recycles 97% of the containers that fall under the Bottle Bill, 80% of non-carbonated containers are **not** recycled. Unfortunately as we all know, those containers are either thrown into a landfill or are littered into our streams and lakes, on our beaches, or along roadsides. No one recognizes this more than Michigan's hunters and anglers.

Call your State Senator and State Representative and tell them you want water bottles and other non-carbonated beverage containers added to the "bottle bill"

From the Lake George Property Owners newsletter

To access your state representative: http://house.mi.gov/find_a_rep.asp
To access your state senator: <http://senate.michigan.gov/>

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For more information, contact Editor Richard Brown

The Future of The Michigan Waterfront Alliance

The MWA board adjusted their dues structure in December of 2007. We have also solicited corporate sponsors and sent over 2100 letters to potential individual members. It will be up to the many Riparians of the lakes and streams that do not have representation in Lansing to step up "to the plate".

For the MWA to operate we estimated our annual budget to be about \$22,000 a year. With some ML&SA assistance, reduced lobbyist activity, new members (individuals, lake associations and corporate sponsors), we are planning for an improved financial position very soon.

If you are not currently a member, please join by filling out the membership application at the back of this newsletter. Also encourage your Lake or Stream Association to join.

Scofes & Associates continues to work on and monitor issues for the MWA. Please do not hesitate to contact us if you have any questions.



SUMMARY MWA MEETING(S)

MICHIGAN WATERFRONT ALLIANCE, INC. REGULAR BOARD MEETING Dec. 10, 2008 – Lansing, MI

Minutes (unapproved)

1. Meeting called to order at 10:00 am Present were Bonnell, Brown, R. Carey, Frye, Highfield, Sharp, Tyning, along with T. Edwards and G. Scofes Excused were W. Carey & D. Winne.
2. Minutes of regular Board meeting of September 22, 2008, were reviewed and accepted.
3. The Financial Report was accepted as presented.

4. T. Edwards shared the list of recently elected representatives indicating the need to further educate as to MWA issues.
5. A paper from MUCC regarding the "Bottle deposit Bill" was shared. E. Highfield will write an article for next MWA Newsletter and B. Frye will send a letter to MUCC supporting this issue.
6. MLSA Reports were given by Bonnell that Three Rivers office is being closed and plans that it will move to Stanton.
7. B. Sharp reported that a group on Higgins Lake may apply for a Marina permit as a means to bypass current road end laws.
8. Membership Committee reported on current status. The 2009 membership dues renewal letter and related funds were discussed and approved.
9. An organizational policy regarding doing business with a Board member was discussed, set and approved. A procedure for email Motions and Resolutions being included in minutes was reviewed and established.

10. New Business- N. McCord & E. Finnell for DEQ shared the draft of MI Great Lakes Plan. Positive discussion followed.
11. Next meeting set for February 12, 2009, 10:00am in Lansing, MI.
12. Meeting adjourned at 1:25 pm

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**MICHIGAN WATERFRONT
 ALLIANCE,
ONLY THROUGH
 YOUR ACTIVE INVOLVEMENT,
 IS YOUR LAKE PROTECTED.**

**Your Support Does
 Make a difference!
 It's an investment that pays off!**
 Lobbyists are NOT FREE, but annual membership in MWA is VERY CHEAP; it costs just \$50 a year. Think of it as an insurance policy against the erosion of the value of your riparian rights of your valuable property.

**Michigan Waterfront Alliance
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Membership Application

(Dues for 2009 are due January 2009)

The annual dues for individual membership In Michigan Waterfront Alliance are \$50. Lake Association Membership is \$100. Commercial and Individual Donations Are Appreciated.

Please Print:

_____ () _____ - _____ () _____ - _____
 Last Name First Name Day Phone Evening Phone

_____ _____ _____ _____ _____
 Street Address City State Zip Code Email Address

_____ _____ _____
 County Township Lake or Stream Association if established

Make Checks payable to: **Michigan Waterfront Alliance**
 Mail to: **MWA, P.O. Box 369**
Fenton, MI 48430

Feb 2009