



MICHIGAN WATERFRONT ALLIANCE

NEWSLETTER

November 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

Please be sure to read our Lobbyist Report in this newsletter. I think you will agree that your Michigan Waterfront Alliance is providing a valuable contribution to the protection of Michigan’s Lakes and Streams. We might not be as loud voice as we would prefer but we are a voice in Lansing.

There is a risk to not following through to support important cases similar to this one. In this regard please read the following history of a sad case at Higgins Lake:

In 1976 a group of lake front property owners at Higgins Lake started a court action to determine the extent of their riparian and beach rights. The case is commonly referred to as McCardel v Smolen. The plaintiffs in McCardel, like the plaintiffs in the Baum matter, all owned platted lots that were separated from the water by a lakeside boulevard. The boulevard had not been developed as a roadway but had been used by the public as a beach and mooring area. The plaintiffs advanced their cause through the circuit court and the court of appeals. The matter proceeded to the Supreme Court and then back to the trial court. After a second visit to the trial court, the case went to the appeals court a second time too. Through the entire process, the lake front owners protected their riparian rights but were unsuccessful in precluding beach uses on the lake side boulevard. The plaintiffs elected not to file a second application to the Supreme Court and accepted the fact that there was going to be a public beach between their houses and the water. McCardel is the only case in Michigan common law to come to such a poor conclusion. Twenty years later the case continues to create great difficulties for the lake front owners in that subdivision. Furthermore, McCardel is almost always the first case cited by attorneys wishing to advance the cause of backlot owners to engage in beach activities on an area designed as a road. The case is a classic example of how important it is to fully litigate an issue, and not drop the "legal ball"

You, through your MWA Board funded an Amicus Brief at the Appellate Court and you are funding an Amicus Brief at the Supreme Court in the Charlevoix 2000 Baum case. On Nov 5 there was a motion put before the MWA board (and it has been seconded) to "create an MWA Legal Assistance Fund to provide financial assistance to member organizations who are party to significant legal cases relevant to the mission of MWA. Funds would be disbursed in a manner consistent with MWA bylaws." The motion will be voted on at our December Board meeting. December may be too late.

Like I said North Charlevoix Lakefront Owners Association who are the Riparians in the Baum Case are feeling very much alone. They have spent over \$71,000 and have met only defeat. My last plea for financial support resulted in a less than broad resounding supportive response. The Association has asked the MWA membership for financial help to cover at least some of their legal expenses in taking this case to the Michigan Supreme Court.

I would hope each MWA Individual member and each Lake Association member would at least send something to help keep the hope alive at Lake Charlevoix. Please make your check out to; North Lake Charlevoix Property Owner Association and send to:

North Charlevoix Lakefront
Property Owners Association
c/o Charlevoix State Bank
111 State Street
Charlevoix MI 49720

It is my hope that our MWA board will approve the motion and establish a MWA Legal Assistance Fund. It may be hard to believe, but I really dislike asking for money.

Sincerely,
Bob Frye, President MWA

Michigan Waterfront Alliance - Legislative Update - November 2009

By Scofes & Associates Consulting, Inc.

Now that the budget fiasco is over, Lansing can return to normalcy-okay, 'normalcy' may be stretching it a bit, but the Legislature and the various state departments have been given their marching orders, and with that, it's time to move forward. Below, provided by your S&A team, is a detailed account of budgetary and legislative activities that are relevant to the interests held by the Michigan Waterfront Alliance.

- The state departments of Natural Resources and Environmental Quality under Governor Jennifer Granholm's Executive Order 2009-45 will merge to create a Department of Natural Resources and Environment (DNRE) in an ongoing effort to streamline services as a cost-saving measure for the government. In a press release issued in October, the Governor stressed the mission of the new department will be one to "conserve, manage, protect and promote Michigan's environmental, natural resources, and related economic interests for current and future generations." Bruce Rasher was named by the Governor to be the department's transition manager until a DNRE director is appointed January 17. For more information on the DEQ and DNR merge, please consult your S&A team.
- The Michigan's Wetlands Program will remain regulated through the state for another three years under legislation that was signed by the Governor. As you may recall, Governor Granholm in her Executive Order called for handing over the protection of the wetlands to the federal government as a cost-cutting measure, just eight months ago. The Legislature agreed to draw \$6 million from a soft drink bottle and can deposit kitty as a measure of keeping the program alive for the additional three years. The status of the Wetlands Program after the three-year period is questionable and will probably once again get placed on the chopping block.
- Senator Ray Basham introduced Senate Bill 736, a newer version of the "road end" legislation we defeated last year. The bill was referred to Government Operations, chaired by Senator Mike Bishop. The introduction of this bill was motivated by Senator Basham's constituents, namely the "backlotter" on Higgins Lake. Senate Bill 736 includes language, exclusively for Higgins Lake, to establish a pilot program that will allow residents on the lake to apply for a permit to have one marina built at a road end for one year as a compromise for those who oppose the building of marinas at road ends. In understanding, the language inserted in the bill is not a compromise, but is a vehicle for the "backlotter" to get their foot in the door, thereby shaping public policy that project their interests and their interests only, MWA has conveyed to S&A their disapproval of the bill. To protect interests of MWA, your S&A lobbyist contacted Senator Bishop's office to convey that MWA is in strong opposition to the bill. Again, Bishop and his office stressed that Senate Bill 736 will not get a hearing in his committee. Your S&A lobbyist will keep you updated regarding this issue.
- Your fight to get House Bill 4199 passed, paid off. Your MWA board has served your organization well. MWA along with Scofes & Associates Consulting urged for the passing of House Bill 4199 sponsored by Representative Mike Lahti. Governor Granholm signed the bill into law in September. The new act, Public Act 91 of 2009, will assess a civil fine, of not more than \$100, to persons who are in violation for launching boats with invasive aquatic plants attached to the vessel. The Act also mandates that the department make copies available to owners of public boating access sites, and place the notice in relevant department publications and on the department's website.

Your S&A lobbyist will continue to fight on your behalf to protect the interest that matter to the Michigan Waterfront Alliance. For additional details regarding topics discussed above, please feel free to contact our office at (517) 485-5536 and ask for S&A consultant Teresa Edwards.

Lake Management and the Land Ethic

By Pam Tynning

The Michigan Chapter of the North American Lake Management Society (McNALMS) recently held a conference regarding the use of special assessment districts for managing inland lakes. The keynote speaker was Howard Wandell, Executive Director of McNALMS and retired from Michigan DNR and DEQ, and from MSU Extension. Howard's address was entitled "Lake Management and the Land Ethic," slides of which can be found on mcnalms.org, along with presentations from most of the other speakers as well. "The Land Ethic" portion of Howard's title comes from Aldo Leopold's essay of the same name. Howard walked the audience through one quote from the essay which read like so:

There is a clear tendency in American conservation to relegate to government all necessary jobs that private landowners fail to perform. Government ownership, operation, subsidy or regulation is now widely prevalent in forestry, range management, soil and watershed management, park and wilderness conservation, fisheries management, and migratory bird management, with more to come. Most of this growth in governmental conservation is proper and logical, some of it is inevitable. That I imply no disapproval of it is implicit in the fact that I have spent most of my life working for it. Nevertheless the question arises: What is the ultimate magnitude of the enterprise? Will the tax base carry its eventual ramifications? At what point will governmental conservation like the mastodon, become handicapped by its own dimensions? The answer, if there is any, seems to be in a land ethic, or some other force which assigns more obligation to the private landowner.

These words of Leopold's were published in 1949, but 60 years later they seem prophetic. By the middle of the last century, much of the work in conservation, which Leopold called the "land ethic," was entrusted to government agencies. As Leopold noted, this was largely "proper and logical." His questions following that statement may have been rhetorical, but they do demand an answer: How much conservation and resource protection can be undertaken by the government, i.e., the tax base? At what financial cost to the tax payers? Some would argue that Michigan government is the mastodon to which Leopold referred. Politics aside, the last sentence that Howard quoted is the key point: The obligation for natural resources conservation and management eventually falls to private landowners.

This concept of a private "land ethic" for protection of inland lakes is inescapable. Along with the rights that riparians enjoy go the responsibilities for protecting lakes and streams. Which brings us back to Leopold and a description of his thinking from the Aldo Leopold Foundation?

Central to Leopold's philosophy is the assertion to "quit thinking about decent land use as solely an economic problem." While recognizing the influence economics have on decisions, Leopold understood that ultimately, our economic well being could not be separated from the well being of our environment. Therefore, he believed it was critical that people have a close personal connection to the land. "We can be ethical only in relation to something we can see, feel, understand, love, or otherwise have faith in."

Leopold went on to say:

This sounds simple: do we not already sing our love for and obligation to the land of the free and the home of the brave? Yes, but just what and whom do we love? Certainly not the soil, which we are sending helter-skelter downriver. Certainly not the waters, which we assume have no function except to turn turbines, float barges, and carry off sewage. Certainly not the plants, of which we exterminate whole communities without batting an eye. Certainly not the animals, of which we have already extirpated many of the largest and most beautiful species. A land ethic of course cannot prevent the alteration, management, and use of these 'resources,' but it does affirm their right to continued existence, and, at least in spots, their continued existence in a natural state. In short, a land ethic changes the role of *Homo sapiens* from conqueror of the land community to plain member and citizen of it. It implies respect for his fellow-members, and also respect for the community as such."

I don't think we have any shortage of love for our lakes and streams. Indeed, we love them too much. Instead, we must learn to live alongside our lakes and streams in a manner which ensures we can enjoy them, but not at their peril.

For more information about Aldo Leopold and the Aldo Leopold Foundation, visit aldoleopold.org.

ML&SA Update

S. Brown, ML&SA Executive Director, thanks the ML&SA Board for the great progress of the organization and its' new office. Michigan Lake and Stream Associations, Inc. is moving forward!

MWA wants to publicly thank ML&SA for their much appreciated donation to further MWA toward its mission.

Have you contacted your State legislator?

Use the noted web sites below to let your legislator know your concerns.

To access your state representative: http://house.mi.gov/find_a_rep.asp

To access your state senator: <http://senate.michigan.gov/>

The Future of The Michigan Waterfront Alliance

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
Sept. 18, 2009 – RAM Center**

Minutes (unapproved)

1. Meeting called to order at 2:07 pm Present were Brown, P. Bonnell, R. Carey, Frye, Highfield, Sharp, along with S. Brown P. Nowak and J. Nowak. Excused was P. Tynning, W. Carey & D. Winne.
2. Minutes of regular Board meeting of May 27, 2009, were reviewed and accepted.
3. The Financial Report was accepted as presented.
4. B. Frye reviewed the mailing to Charlevoix residents for funding, the high return rate and the suggestion for another mailing that would hopefully have a better result. A motion was approved for this mailing not to exceed \$290. Bob also reviewed the symposium this morning. W. Carey will represent the Charlevoix residents for the appeal process.
5. Legislative issues were reviewed. HB 4199 (invasive species), HB 5055 (marina permits) and SB 785 (wetlands) status was updated. Moved and supported to direct lobbyists to oppose SB 736 (road ends).
6. ML&SA Report: S. Brown reported on MLSA continue progress and talked about the need to fix problems in the current Great Lakes Withdrawal legislation.
7. D. Brown reported on the membership status, noting MWA was slightly ahead of last year. Authorization for a year renewal of Fenton PO

Box was passed. Additionally, funds for printing membership return envelopes and mailing for renewal memberships were authorized.

8. Motion was approved for funds not to exceed \$1000 to file an Amicus Brief regarding Lake Charlevoix in conjunction with MLSA and/or HLPOA. Funds were also approved for Court documents and fees not previously approved.
9. MWA Legislative agenda was update and the domain name renewal was authorized.
10. Future meeting was set for December 10, 2009 in Lansing at 10: am.
11. Meeting adjourned at 3:36 pm

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Nov 2009

**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 individual membership in MWA is VERY CHEAP; it costs just \$50 a year, your lake Association is only \$100. 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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For more information, contact Editor Dick Brown



Membership Application

(Dues for 2010 are due January 2010)

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

Please Print:

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

_____ City State Zip Code Email Address

_____ Township Lake or Stream Association if established

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

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