STATE OF MICHIGAN
IN THE SUPREME COURT

HERON COVE ASSOCIATION, et al, Appellants, v MIDLAND COUNTY BOARD OF COMMISSIONERS, and GLADWIN COUNTY BOARD OF COMMISSIONERS, and FOUR LAKES TASK FORCE, Appellees.	Supreme Court No. 168165 Court of Appeals No. 371649 Midland Circuit Court No. 24-2751-AA

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
Keith T. Brown (P84193)
FOSTER, SWIFT, COLLINS & SMITH, PC
Attorneys for Appellant
1700 E. Beltline Ave. NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2200
mhomier@fosterswift.com
lgenovich@fosterswift.com
kbrown@fosterswift.com

Joseph W. Colaianne (P47404)
Zachary C. Larsen (P72189)
Lauren K. Burton (P76471)
CLARK HILL PLC
Attorneys for Appellees
215 S. Washington Square, St. 200
Lansing, MI 48933
(517) 318-3100
Jcolaianne@clarkhill.com
zlarsen@clarkhill.com
lburton@clarkhill.com

APPELLANTS' ANSWER TO APPELLEES' MOTION TO EXPEDITE REVIEW OF APPLICATION FOR LEAVE TO APPEAL

Appellants, by and through their attorneys, FOSTER, SWIFT, COLLINS & SMITH, P.C., hereby submit their response to Appellees' Motion to Expedite Review of Appellants' Application for Leave to Appeal. Appellants concur in the request for expedited review, but do not support Appellees' reasoning.

Statement of Facts

The present Application arises from what is believed to be the largest special assessment in Michigan's history.

On February 6, 2024, the Midland County Board of Commissioners and the Gladwin County Board of Commissioners (the "Counties") approved the 5-year operation and maintenance special assessment rolls and the 40-year capital improvement special assessment rolls for the Four Lakes Special Assessment District, which are intended to fund a project to rebuild dams and restore Wixom Lake, Sanford Lake, Smallwood Lake, and Secord Lake (collectively the "Four Lakes") following the failure of the Edenville Dam. In 2019, prior to the failure of the Edenville Dam, Appellee Midland County and Appellee Gladwin County, through their delegated authority, Appellee Four Lakes Task Force ("FLTF"), petitioned the Midland and Gladwin Circuit Courts to set a normal lake level for the Four Lakes and to approve the boundaries of a special assessment district, pursuant to Part 307 of the Natural Resources and Environmental Protection Act, Act 451 of 1994, as amended, MCL 307.30701 *et seq* ("Part 307"). On May 28, 2019, the Midland County Circuit Court entered an order in both Counties setting normal lake levels for the Four Lakes and establishing the boundaries of the Four Lakes Special Assessment District.

Then, in May 2020, the Edenville Dam failed and the Sanford Dam overflowed, resulting in devasting floods that destroyed properties and decimated communities and industries across the Counties. Upon information and belief, in the aftermath of the Edenville Dam failure, the Counties lost substantial tax revenue and tourist traffic. What started as a maintenance assessment then shifted to Appellees' new objective: rebuilding the Secord, Smallwood, Sanford, and Edenville Dams, and restoring the Four Lakes.

More than three and a half years later, on February 6, 2024, Appellees confirmed the special assessment rolls. Following a timely appeal, the Midland County Circuit Court affirmed the special assessment rolls. The Court of Appeals affirmed in an unpublished opinion issued January 6, 2025.

Appellants timely submitted the present Application. Appellees now move to expedite consideration of the Application. Appellants do not object to expedited consideration. But Appellants do not support Appellees' reasoning and now highlight the meaning of Appellees' arguments.

Law & Argument

Before the circuit court, the Court of Appeals, and now before this Court, Appellees claim that the appeal process, built into Part 307 by the Legislature and governed by the rules established by this Court, "delays" construction of the dams. Appellees continue to maintain that the appellate process "will throw a wrench into" FLTF's "ability to operate, maintain, repair, and reconstruct four high-hazard dams if not processed promptly." (Appellees' Motion to Expedite, 3/2/2025, 4.) Appellees point to having already received construction bids for the new Edenville Dam, claiming that the appellate process has and will lead to increased costs. Appellees represent that the "appeal has already required complete suspension of the reconstruction of all four high-hazard dams." (*Id.* at 6.) They claim "no one wins" this case because delay will increase costs to the affected property owners, including Appellants. In particular, Appellees claim that the appellate process has *caused* the loss of the 2024 and potentially the 2025 construction season and that the "delays" are "expected to cost property owners in the [FLSAD] between $10,000,000 to $20,000,000 in increased construction cost and untold millions more if financing (i.e., municipal bonds) of the projects is delayed past June 2025." According to Appellees, this appeal is "counterproductive." (Appellees' Motion to Expedite, 6.)

Put another way, Appellees' entire argument for expedited consideration of the Application supports granting the Application or otherwise vacating the special assessments. First, Appellees openly admit that their methodology allows them to assess any and all costs associated with the new dams and maintaining the legal lake levels, irrespective of the benefits conferred on each parcel of private property. This violates the federal and state constitutions, countless decisions of this Court, and the limits on special assessments that were clearly established well before the time of Justice COOLEY's seminal works on the subject. In short, the methodology is not authorized by law.

Moreover, while Appellees' "concede" that Appellants have a right to petition this Court for review (Appellees' Motion to Expedite, 2), this "concession" is wrapped-up in a large-scale public blame-game that seeks to divert attention and blame Appellants for Appellees' errors.

This is a model case as to why in Part 307 the Legislature required that construction not begin until the (entirely optional) special assessment rolls are confirmed: otherwise, counties could (as Appellees did here) accept bids for contracts and begin construction without the necessary funding secured, and then (as Appellees do here) claim that opponents of the plan, not their own backwards process and misunderstanding of the law, cause "delays" and "increased costs." See MCL 324.30714(3).

As this Court explained in *Dixon Road Group v City of Novi*, 426 Mich 390; 395 NW2d 211 (1986), and *Kadzban v City of Grandville*, 442 Mich 495; 502 NW2d 299 (1993), municipal legislative decisions are merely entitled to a presumption of validity, and that presumption must give way when governments effectively take property without due process of law because the assessment imposed is substantially or unreasonably disproportional to the benefit conferred to the assessed property and more generally benefits the public. Yet Appellees' entire argument is based

upon an idea that they ***must*** apportion 100% of the unfunded costs of the project to the FLSAD irrespective of the benefits conferred to private property and without any regard to the public benefit. According to Appellees, there is no legal or constitutional limit on special assessments. In short, the core premise of Appellees' argument and methodology is simply incorrect and not authorized by law.

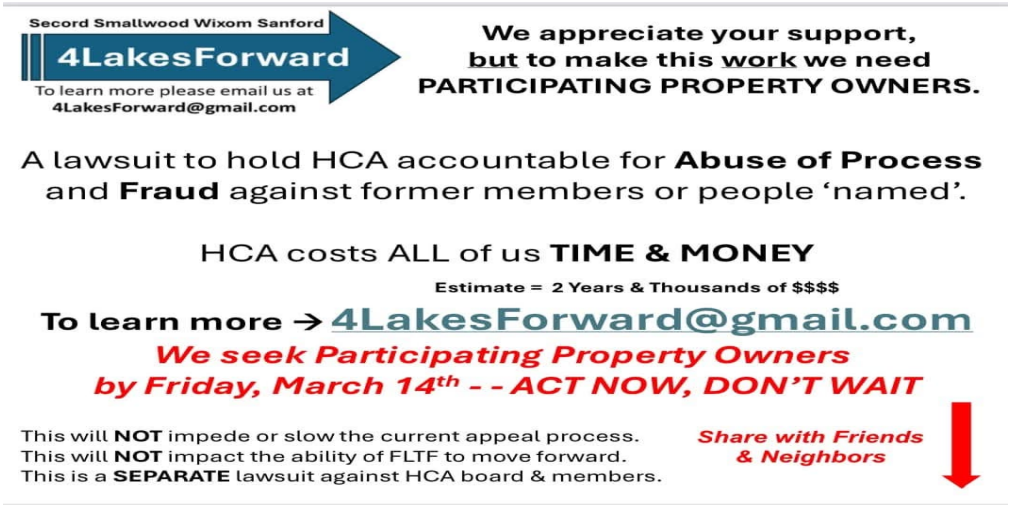
Moreover, Appellees' motion is the latest installment in a larger game of shifting the blame for "delays" to the return of the Four Lakes. Appellees did everything backward: they started with (a substantially and tardily increased) revenue number and now seek to fund the project without regard to constitutional limitations on their authority. Now challenged, Appellees use scare tactics against the twice victimized property owners, who suffered devastating losses from the floods and now are being required to finance the rebuilding of dams they had no hand in the failure of, to rush through their ill-conceived plans in hope that no one will look behind the curtain. It took Appellees nearly four years to confirm the special assessment rolls. Still, now they claim that any "delay" due to the exercise of Appellants' rights to the appellate process invites catastrophe.

Appellees' efforts to shift the blame and point the finger instead of seeking to course correct from their own poor planning has had real-world effects. And while Appellees formally "concede" that Appellants have a right to judicial review, in public they whip up popular sentiment against Appellants by claiming that Appellants are the sole reason for "delays" and "increased costs" to all.

Appellants have been harassed and have had their businesses boycotted. The names of Appellants are shared across social media platforms as part of a large-scale pressure campaign to get Appellants to drop this case and/or to scare individual Appellants into withdrawing from the proceedings and terminating their memberships in the Heron Cove Association. The amicus brief

submitted by the Sanford, Secord, Smallwood, and Wixom Lake Associations (the "Lake Associations," which many Appellants are members of) highlights how well Appellees' blame game has worked, as the Lakes Associations claim that Appellants seek "nothing but delay and obstruction."

These same Lake Associations have also banded together to form what they call "4LakesFoward," a group that has been soliciting donations and seeking willing plaintiffs to sue Appellants for "abuse of process" and "fraud" for exercising their rights to judicial review.



As the Court can see in the image above, Appellees' illegal methodology and public pressure campaign has turned neighbor against neighbor and the victims of the 2020 floods against one another. This is happening because Appellees' methodology asserts that the financing of a lake level project must be done via special assessment and that special assessments are a "zero-sum" game, irrespective of benefits conferred.

In reality, the appellate process is not the only thing "holding up" construction (even if one were to accept such an unconstitutional premise). FLTF has yet to secure the required permits for the Edenville Dam. See Four Lakes Task Force, "Final Construction Hinges on Two Critical Factors," https://www.four-lakes-taskforce-mi.com/updates/final-construction-hinges-on-two-

critical-factors, accessed July 29, 2024. They also lack necessary property rights to finalize the spillway at the Edenville Dam. And again, their desired timeline is entirely of their own making.

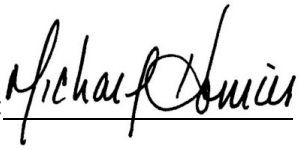
Conclusion

Appellants concur in Appellees' requested relief, but do not concur in Appellees' reasoning.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Appellants

Dated: March 14, 2025

By: 

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FOSTER, SWIFT, COLLINS & SMITH, PC
1700 E. Beltline NE Suite 200
Grand Rapids, Michigan 49525
(616) 726-2200
mhomier@fosterswift.com
lgenovich@fosterswift.com
kbrown@fosterswift.com

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