STATE OF MICHIGAN
IN THE SUPREME COURT

HERON COVE ASSOCIATION, *et. al.*,

Appellants

vs.

Michigan Supreme Court No: 168165
Court of Appeals No: 371649
Lwr Crt. No. 2024-2751-AA

MIDLAND COUNTY BOARD OF COMMISSIONERS, GLADWIN COUNTY BOARD OF COMMISSIONERS, and **FOUR LAKES TASK FORCE**

Appellees

_____/

AMICUS CURIAE BRIEF SUBMITTED ON BEHALF OF SECORD LAKE ASSOCIATION INC., SMALLWOOD LAKE ASSOCIATION INC., WIXOM LAKE ASSOCIATION INC., AND SANFORD LAKE ASSOCIATION

Dated: March 5, 2025

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STATEMENT OF INTEREST OF AMICI CURIAE SECOND LAKE ASSOCIATION, INC., SMALLWOOD LAKE ASSOCIATION, INC., WIXOM LAKE ASSOCIATION, INC., AND SANFORD LAKE ASSOCIATION[1]

Secord Lake Association, Inc. is a voluntary association representing over 1,000 individuals invested in the future of Secord Lake, with a mission dedicated to supporting the 1,888 Secord Lakefront Properties by (1) improving, maintaining and protecting our waterways, (2) providing a consolidated voice for the common good of the community, (3) promoting community awareness and concerns regarding the waters, flow-through, shorelines and neighborhoods; and (4) providing a liaison between the Association Community, local township governments and other agencies. (https://www.secordlakeassociation.org/about-us as of February 18, 2025). The members are committed to restoring Secord Lake through the diligent work of the Appellees.

Smallwood Lake Association, Inc. is a voluntary association consisting of 85 households dedicated to the maintenance, safety, preservation, and beautification of Smallwood Lake. As part of this mission, Smallwood Lake Association is dedicated to restoring Smallwood Lake through the ceaseless efforts of the Appellees.

Wixom Lake Association, Inc. is a voluntary association supported by almost 500 household memberships (1,200 individuals) in Gladwin and Midland counties in Michigan. Wixom Lake Association's goal is to improve, maintain and protect the waterways in this lake system by providing a consolidated voice for the common good of the community, and by acting as a liaison between members, county government and Four Lakes Task Force. Wixom Lake

[1] Pursuant to MCR 7.312(H)(5) Amici Curiae Amici Curiae Second Lake Association, Inc., Smallwood Lake Association, Inc., Wixom Lake Association, Inc., and Sanford Lake Association (the "Associations") state neither Appellants' counsel nor Appellees' counsel authored this brief in whole or in part, nor made a monetary contribution intended to fund the preparation or submission of the brief. No person other than the Amici Curiae have contributed money intended to fund the preparation and submission of this brief.

Association supports the efforts of the Four Lakes Task Force and Gladwin and Midland counties to rebuild Edenville and Tobacco Dams and restore Wixom Lake. (https://www.wixomlakeassociation.org/about as of February 18, 2025)

Sanford Lake Association is a voluntary association consisting of 218 households, that serves as a forum for property owners and interested community members to share concerns, implement improvements, and strengthen the community. Known by locals and tourists for its "up north" atmosphere without the "up north drive," Sanford Lake spans 1,489 acres and features 34.5 miles of shoreline. Sanford Lake Association support the efforts of the Appellees to rebuild Sanford Dam and restore Sanford Lake. (https://www.sanfordlakeassociation.org/ as of February 18, 2025)

All four Associations support the Appellees in (1) continuing to manage costs to the lowest level possible in the special capital assessment, (2) seeking additional funding, and (3) restoring all four lakes. By virtue of their missions, locations, and membership explicitly stated goals, the Amici Curiae have an overriding interest in the Four Lakes Special Assessment District, and the Special Assessment Roll. Amici Curiae are firmly resolved the Court of Appeals decision of January 6, 2025 was correct and must be Affirmed.

STATEMENT OF QUESTIONS ADDRESSED

I. Whether the Court of Appeals correctly determined Appellants failed to provide credible evidence challenging the presumption of validity for a special assessment district apportionment determination by failing to cite any evidence comparing the market values before and after the improvement and correctly determined Appellants were not deprived of their Due Process rights, as Appellants received adequate notice and opportunity to be heard.

Appellants say:	No
Appellees say:	Yes
Court of Appeals says:	Yes
Trial Court says:	Yes
Amici Curiae says:	Yes

The vast majority of Property Owners within the Four Lakes Special Assessment District support the Appellees, requesting this court reject the delaying, disruptive tactics of Appellants.

Concise Statement of Material Proceedings and Facts

The Appellees, using the Four Lakes Special Assessment District (FLSAD) have worked laboriously and progressively toward the re-establishment of the four dams and four lakes since the tragedy of May 19, 2020. Appellees' accomplishments have sustained the hope of the dams return, maintained property values solely due to the expectation of water's return, and generated substantial community involvement throughout the Tittabawassee River. Amici Curiae, and additional property owners within the FLSAD joined effort with Appellees in these efforts.

The end was in sight…until Appellants threw a continually failing roadblock of litigation obstruction and delay, including this frivolous appeal. Appellants resoundingly lost at the Circuit Court. Appellants lost even more decisively at the Court of Appeals. With nothing but delay and obstruction as their goal, Appellants filed this application for leave to appeal on the very last day possible. Amici Curiae Second Lake Association, Inc., Smallwood Lake Association, Inc., Wixom Lake Association, Inc., and Sanford Lake Association refer this court to the facts and procedural history recounted in the brief of Defendants-Appellees.

Argument

The Appellants are a small group of people organized solely to fund and file litigation. Their arguments and lack of evidence on appeal at the Circuit Court completely fail to rebut the presumptive validity for a special assessment apportionment determination. This lack of legal position continued in the decisive and firm opinion expressed by the Court of Appeals. In contrast, the Appellees' position is supported by the majority of property owners and is based upon

substantial, competent and material evidence. Pursuant to *In Re Project Cost and Special Assessment Roll for Chappel Dam*. 282 MichApp 142; 762 NW2d 192 (2009), this Court must affirm the Court of Appeal's Affirming the Circuit Court's order denying Appellant's seeking relief from the FLTF Special Assessment District Apportionment and allow these communities to restore their lakes and communities.

> The Court of Appeals correctly determined Appellants failed to provide credible evidence challenging the presumption of validity for a special assessment district apportionment determination by failing to cite any evidence comparing the market values before and after the improvement and correctly determined Appellants were not deprived of their Due Process rights, as Appellants received adequate notice and opportunity to be heard.

The Inland Lake Level Act (ILLA) of MCL 324.30701 *et seq* provides for the control and maintenance of inland lake levels for the benefit and welfare of the public. *In re Martiny Lakes Project,* 381 Mich. 180, 187, 160 N.W.2d 909 (1968); *Lenawee Board of Comm'rs v. Abraham*, 93 Mich.App. 774, 779, 287 N.W.2d 371 (1979). "Read as a whole, the act essentially authorizes counties to make policy decisions as to the levels of their inland lakes and build and finance dams as necessary to maintain the desired lake levels. It cannot reasonably be argued that the purpose of the act is to also create or protect individual rights as to inland lake levels. The focus of the act is clearly on the public welfare and not on individual riparian rights." *In Re Van Ettan Lake* 149 Mich.App 517; 368 NW2d 572 (1986)

In *Yee v. Shiawassee Co. Bd. of Comm'rs,* 251 Mich.App. 379, 393, 651 N.W.2d 756 (2002), the appellate court determined the purpose of the ILLA is "to provide for the determination and maintenance of the normal height and level of the waters in inland lakes of this state, for the protection of the public health, safety and welfare and the conservation of the natural resources of this state.'" *Yee v supra* at 396, 651 N.W.2d 756 (citation omitted). "By enacting such a

comprehensive scheme for the establishment and maintenance of legal lake levels, including the maintenance of dams, the Legislature has signified its intent to give the Circuit Court sole authority to review such a proceeding". See *id.* at 395-396, 398, 651 N.W.2d 756. *In Re Chappel Dam. Supra.*

Property Owners Want and Need the Lakes to Return

The overwhelming majority of property owners impacted by the capital special assessment recognize the Four Lakes Special Assessment District's necessity for the dams' repair. This majority understands the lakes are created by the dams. It is no surprise of the 8,170 properties assessed, less than 500 property owners are appealing the lower court's decision. (This is not the actual number of properties, as many Appellants are multiple owners of a single property, and some Appellants own more than one property). In fact, this total is exaggerated by Appellant Heron Cove Association (hereinafter "HCA") as the true number has been purposely opaque, along with their true intentions as an Appellant. At the May 29, 2024 hearing before the Circuit Court. (Appellee Appendix Volume 25, pg 2632) and in Appellants' Court of Appeals brief in footnote 1, HCA admits there are less and less persons appealing the capital special assessment, yet Appellants persistently refuse to provide an updated number.

Curiously and significantly, in the Application for Leave to appeal to this court, Appellants **added** names of individuals who had no knowledge of filing appeal in the Circuit Court and were not listed in the Court of Appeals. It is completely unknown how Appellants can arbitrarily add people to the appeal, who were not part of the trial court process. Indeed, some of the people added have never supported HCA, and vigorously oppose HCA! (Amicus Appx Exhibit 14 – Affidavit of Michael Chriss)

Property owners favor the proposed capital special assessment created pursuant to MCL

324.30711 recognizing the need for the lakes to return to obtain a pecuniary and social benefit for their properties. In May of 2021, the FLTF published the results of a survey provided to all property owners within the FLSAD. The survey found that 88% of those surveyed agreed the dams needed to be rebuilt. (Amicus Appx Exhibit 1 – Survey Summary) The survey also divulged those in favor of the assessment recognized rebuilding the dams maintained the properties' increased value as waterfront properties. This is supported by Deb Stover, a real estate agent who specializes in the sale of real estate on each of the four lakes involved in this litigation. (2 – Affidavit of Deb Stover)

Without the dams and lakes, all FSLAD owners' properties would overlook a marsh of saplings, weeds and mud to a small stream, much as the owners on what was formerly Wixom Lake and Sanford Lake[2] see today:

Pic One - Charles Hudler of Hay Township sits on his dock for a photo by Wixom Lake. Junfu Han, *Detroit Free Press* article June 3, 2020.

Pic Two – Wixom Lake Association Facebook July 11, 2024. (https://www.facebook.com/wixomlakeassociation.org/posts/pfbid0fXKZN8zopQdcxK12h6vJgaerwkV87GPDRjzQGpk6uh8gcBdobcUCGwP8qnn8C2NY1 as of February 18, 2025)

[2] Many Appellants display confusion as to the status of the lakes without dams. Because Secord Dam and Smallwood Dam did not breach, currently there is a drawdown lower than the normal lake levels on Secord and Smallwood Lakes, whereas without any dams, what were once Wixom and Sanford Lakes now consist of the Tittabawassee River in a natural state, with waters barely navigable by manually powered boats. Appellants do not understand without the capital assessment, Secord and Smallwood Lake would also be returned to river status, and waters non-navigable by boats with motors.

Given this commonsense recognition, (Circuit Court Opinion at 12, Amicus Appx Exhibit 15 at 120) fifty percent (50%) of respondents indicated they would consider selling their properties if the lakes were not restored. (Amicus Appx Exhibit 1 – Survey Results) But for the plan installed by FLTF over the past 5 years, along with on-going construction on the four dams[3], the values of said properties would have severely plummeted, being sold for drastically reduced prices. The owners purchased their homes and lots as lakefront properties at a premium over non lakefront properties, based on the inherent advantages of living on the lake including aesthetics, family, community, water sports, and engaging in various water dependent activities. These qualities provide value to the properties that can only be replicated with water, which is dependent on the dams.

The overwhelming support for the capital special assessment is also evident from a Restore The Lakes Campaign initiated to assist property owners in obtaining funds to recover the dams. (See https://www.restorethelakes.org/) The campaign resulted in lakefront property owners and members of the Amici Curiae, sending over 23,000 letters requesting funding for the FLSAD; the project was key in obtaining $200 Million from the State of Michigan.

Following the February appeal by Appellants, Amici Curiae generated a petition of support stating:

> **Petition for Support of the Four Lakes Task Force**
>
> We support the Four Lakes Task Force in its capacity under Part 307 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (MCL 324.30701 et seq) ("Part 307") as Midland and Gladwin Counties delegated

[3] The construction has been solely funded by the $200 Million grant supplied by the State of Michigan. No work performed to date will be paid by the special assessment. Appellants repeatedly misstate this fact.

authority to aquire, repair and operate the Secord, Smallwood, Wixom and Sanford dams.

We support the path forward and the plan of financing proposed by the Four Lakes Task Force and approved by the Gladwin and Midland County Commissioners on February 6, 2024.

We support the Four Lakes Task Force in their efforts to:

- **Continue to manage costs to the lowest level possible,**
- **Seek additional funding,**
- **Restore the lakes.**

We recognize the appeals by the Heron Cove Association will cause delays to the restoration of all 4 lakes and will increase costs beyond 2024 estimates due to the delay in financing which will lead to a halt in restoration construction.

We advocate for a prompt review and denial of the Heron Cove Association appeal. This is in the best interest of the majority of the 4 Lakes Special Assessment District, to avoid further cost increases on the district or delays to lake restoration.

(See https://www.secordlakeassociation.org/ as of February 18, 2025). The Petition has garnered 1,770 signatures confirming the overwhelming support of property owners to the FLTF plan approved by the counties of Midland and Gladwin. (Amicus Appx Exhibit 3, List of Names signing Petition)

Supporters of the Appellees and FLSAD hold a vast majority of the voices, and now lakefront owners can express their approval of Appellees actions within this legal process,

Appellants' Position fails on both Legal and Equitable Grounds.

The Appellant Heron Cove Association is an organization solely formed to file litigation in both appealing the special assessment roll through the Michigan appellate Court system and sue

the Appellees in Federal District Court.[4] HCA is a disgruntled Facebook page grown to hideous proportions.

The Appellant originated in late January 2024 as a Facebook page titled "Four Lakes Strong," providing a social media forum for individuals to air grievances about the capital special assessment. Any posts commenting on the Four Lakes Strong Facebook page in support of the special assessment or any questions regarding alternative solutions to FLTF's proposals were quickly deleted and the authors banned from the Facebook page.

In early-February, the page changed its name to "Heron Cove Association[5]"; the non-profit company was formed on February 12, 2024, to file the Claim of Appeal with the Midland Circuit Court. (Amicus Appendix Exhibit 4 – Retainer Letter for representation with Heron Cove Association). The Facebook page was made private and is not publicly available.[6]

Appellant HCA has no public website, no office, no storefront. HCA has not issued a single publication, webinar, posting, letter, advertisement or any public information whatsoever. HCA has never offered a solution, coordinated relief, held a public meeting, or provided charity to any entity needing assistance within the FLSAD. There is no list of membership, no hierarchy

[4] *Heron Cove Association, et. al. v Midland County Board of Commissioners and Four Lakes Force,* United States Federal District Court, Eastern District of Michigan, Case No. 24-cv-11458-MFL-PTM. *Heron Cove Association, et. al. v Gladwin County Board of Commissioners and Four Lakes Force,* United States Federal District Court, Eastern District of Michigan, Case No. 24-cv-11473-MFL-PTM. (See Appellee's Appendix at 2905-2918)

[5] The spokesperson for Four Lakes Strong is Janis Colton who lives on an area of Wixom Lake known as "Heron Cove," providing the etymology of the association name.

[6] The Facebook page is currently titled "Heron Cove Association Stand Strong" and remains private. (https://www.facebook.com/groups/800547032028340 as of February 18, 2025)

of decision makers, and no means whatsoever to determine the size of the organization.[7]

Even HCA does not know its own membership, forcing it to file an Amended Application for Leave to appeal at 9:00 p.m. on February 18, 2025, modifying the list of names. Two people, Michael and Sharon Chriss, where originally listed as HCA members and clients of Appellant counsel, but three (3) days later, were no longer appellants, yet still listed as HCA members, despite never signing up, never paying to become members, and never signing a retainer. (Exhibit 14). A further demonstration of the complete disregard for who or who is not an appropriate party—**after one year**—Appellant counsel lists two (2) additional members, Michael Criss and Sharon Criss. A misspelling of Michael and Sharon Chriss. This pathetic charade of barely going through the legal motions, warrants appropriate sanctions.

The goals of HCA are contradictory and ill-defined. HCA is not attempting to eliminate the special assessment, as it recognizes the special assessment must occur to comply with the Inland Lake Level Act (MCL 324.30711) and the Order of the Circuit Court of May 2019. (Exhibit C of Appellant's Brief, Appendix, pg 11.) In its pleadings, HCA demanded a trial-like hearing to provide additional evidence regarding the proportionality test of *Dixon Road Group v City of Novi,* 426 Mich 390; 395 NW2d 211 (1986) and *Kazaban v City of Grandville,* 442 Mich 495; 502 NW2d 299 (1993).

The Court of Appeals decision recognized this short-sighted request, stating:

> Contrary to the assertions made by the appellants, they were not entitled to a process that closely resembles a judicial trial or comprehensive evidentiary hearing. The appellants seem to contend that the Legislature ought to have established an alternative process that would have been more satisfactory to their preferences.

[7] Appellant HCA admits the membership and quantity of persons appealing is continually shrinking as multiple members request removal. HCA refuses to provide any updated membership or appellant information unless forced by this court to do so. See Appellee's Appendix at 2632; Footnote 1 of Appellant's Brief on Appeal in the Court of Appeals

(Appellee's Appendix pg. 2926, Court of Appeals Opinion at 8)

Despite this request, HCA and its members failed to provide evidentiary support with any analysis necessary under the *Dixon Road* proportionality test at either the January 15, 2024 protest, the February 6, 2024 meeting of the Commissioners, or even by the May 29, 2024 hearing on appeal in the Midland Circuit Court. HCA fails to provide any argument as to how any additional evidence (which it does not present) would overcome the presumption of validity.[8]

In its amended application for leave to appeal, HCA grumbles about an alleged limited time to obtain evidence—specifically appraisals. The Court of Appeals recognized the error in this claim, noting the appellants had over two (2) years to obtain appraisals:

> The record indicates that the process for establishing the special assessment commenced in 2021, with opportunities for public commentary and engagement beginning in 2022. This process culminated in a public hearing on January 15, 2024, during which property owners were afforded the opportunity to articulate their objections to the special assessment and present supporting documents.

(Appellee's Appendix pg. 2925, Court of Appeals Opinion at 7) As the record clearly indicates, the public began engaging with the special assessments in 2022 and had years to accumulate any documentation to support an objection, including appraisals, if desired. HCA fails to recognize what was evident to the lower courts.

This Court stated:

> [O]ur decision in Dixon Rd. did not modify the well-settled principle that municipal decisions regarding special assessments are presumed to be valid. *See In re Eight and One-Half Mile Relief Drain, 369 Mich. 641, 649, 120 N.W.2d 789 (1963); Crampton v. Royal Oak, 362 Mich. 503, 514-516, 108 N.W.2d 16 (1961).* We said in Dixon Rd., and we reiterate here, that the decisions of municipal officers regarding special assessments "generally should be upheld." *Id., 426 Mich. at 403, 395 N.W.2d*

[8] In the Court of Appeals, the Appellants objected to the amicus curiae brief as an attempt to expand the record, yet hypocritically, Appellants fully admit their entire statement of facts is based upon *Krieger v Dep 't of Environment, Great Lakes, and Energy,* __ Mich App __ ; __ NW3d __ (Docket No. 359895), and brazenly confess *Krieger* is not part of the record of this case! See footnote 3 of Appellants Amended Application for Leave to Appeal.

> *211.* Moreover, our decision did not alter the degree of deference that courts afford municipal decisions. When reviewing the validity of special assessments, it is not the task of courts to determine whether there is "a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit...." *Id. at 402-403, 395 N.W.2d 211.* Rather, a special assessment will be declared invalid only **when the party challenging the assessment** demonstrates 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." *Id. at 403, 395 N.W.2d 211* [emphasis added]

Kazaban at 302-303, supra.

For a special assessment to be valid, "there must be some proportionality between the amount of the special assessment and the benefits derived therefrom." *Dixon Road. at 401, 395 N.W.2d 211.* The proportionality analysis requires three numbers: (1) the amount of the special assessment, (2) the fair market value of the property without the improvement, and (3) the fair market value of the property with the improvement.

In the present matter, the amount of the assessment was provided by the Appellee Four Lakes Task Force. The other numbers necessary are the fair market value of the property without the improvement—without the lakes--compared to the fair market value of a property with the lake. If the difference between the market values is greater than the assessment, then under *Dixon Road*, the assessment is valid. Only if the improvement—a lake—does not increase the fair market value of the property more than the assessment would a court begin to look at whether the assessment was proportionate.[9]

Not a single appraisal was provided by the Appellants at the January 15 or February 6, 2024 meetings. **Nor was a single appraisal presented at the May 29, 2024 appeal before the**

[9] As *Dixon Road* states, "While we certainly do not believe that we should require a rigid dollar-for-dollar balance between the amount of the special assessment and the amount of the benefit, a failure by this Court to require a reasonable relationship between the two would be akin to the taking of property without due process of law." (*Dixon Road* at 403)

Circuit Court. This point must be emphasized. Appellants fully understand the necessity to bring appraisals. To avoid this responsibility Appellants repeatedly make unsubstantiated excuses, both in the Circuit Court, the Court of Appeals and this court, there was not enough time to obtain appraisals. As recognized by the Court of Appeals, the Appellants had years to obtain documentation. The Appellants fail to provide credible, substantial, or material evidence as to the reason behind the lack of appraisals. Appellants recognize presenting appraisals would completely undercut any argument for disproportionality.

Instead, in their Circuit Court appeal, Appellants attempted to show disproportionality by providing twelve (12) examples of the State Equalized Value ("SEV") of the parcels. After reviewing the SEV's, noting the discrepancies along with missing data, the Circuit Court stated, "At best, Appellant's data, **which is presumably the best they have to offer for purposes of this appeal,** is inconclusive and does not show the special assessments are disproportionate as presented for the record on appeal." [emphasis added] (Circuit Court Opinion at 10, Amicus Appx at 118)

The Court of Appeals equally noted the use of SEV's as inappropriate evidence:

> [T]he appellants only discuss the state-equalized value for property tax purposes of 12 selected properties out of the approximately 800 properties involved in this appeal. This evidence measures the impact of time rather than the impact of the improvements as previously explain by this Court in greater detail….

(Appellee's Appendix pg. 2923, Court of Appeals Opinion at 5) The Court of Appeals correctly concluded, "[T]he appellants fail to cite **any** evidence from the record that compares the market

value of the assessed property before and after the improvements."[10] [emphasis added] (Opinion at 5)

Appellants simply brush away this well-settled law as articulated by the lower courts by claiming this situation is not "normal." (Appellants' amended application for leave to appeal at 46), yet the Appellants fail to develop this argument in any way, with the statement left hanging, no legal support or direction for this court to make determinations regarding what is "normal," what is "abnormal" or what different law would apply in each situation.

The Circuit Court Opinion equally recognized the glaring failure to present actual evidence in stating, "There is a dearth of credible evidence provided within the numerous objections filed with the FLTF how the methodology is disproportionate to the benefit derived from the restoration of the water level for the four lakes affected." (Opinion and Order on Appeal at 10, Amicus Appx at 118)

Appellants do not provide any differing method the counties would use to comply with the law. Again, there is no public statement, no webinar or meeting, and no public forum to determine what method the Appellants claim is appropriate. There is no means to determine if the HCA Method (if it exists) is proportionate or would comply with their own legal theory. Not a single homeowner within the Four Lakes Special Assessment District can determine whether their capital assessment would increase, decrease or stay the same under any proposed HCA Method.

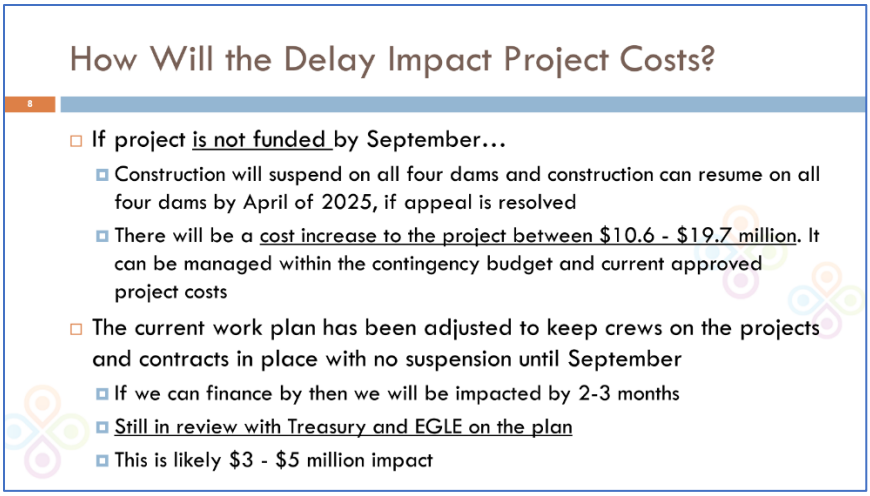
In discussing the special assessment with HCA members, both in-person and on social media, it is clear the members' beliefs as to the efficacy of the appeal are disconnected from the

[10] Considering the context of the court's argument, the more accurate language would have been "[T]he appellants fail to cite any evidence from the record that compares the market value of the assessed property *with* and *without* the improvements."

actual appeal itself. For example, in the January 15, 2024 hearing, it was stated numerous times people on limited or fixed incomes would be unable to pay this assessment, and therefore it must be set aside. (Exhibit H to Application for Leave to Appeal Brief, Ex H at 95, App at 266; Ex H at 144, App at 314; Ex H at 146, App at 316; Ex H at 148, App at 318; Ex H at 194-196; App at 364-366; Ex H at 198, App at 368) Yet income is not mentioned by HCA in its Brief on Appeal, nor is it a factor to be considered in determining special assessments. Many HCA Members believe the State of Michigan, or the United States Army Corps of Engineers should be responsible for the replacement of the dams, yet again, this is not requested by HCA in its appeal and is outside the purview of this court.

Many of the Appellants do not understand what their own organization—Heron Cove Association—is asking for. These very same Appellants and landowners concerned about paying the capital assessment on limited or fixed incomes do not realize they will continue to be responsible for the capital assessment at the same or even higher amount under HCA's presumptive method.

In contrast to the confusion of HCA, there are concrete financial costs caused by this appeal. The delay caused by this appeal has ***thus far*** resulted in $20 million in additional construction costs, which will increase the longer the HCA's abuse of process continues.



Slide 8 from FLTF informational webinar dated May 15, 2024 https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/may_14_webinar_slides.pdf

These additional costs will be incurred by HCA and non-HCA members alike. Given the contradictions, lack of proposed alternative, and clear determents caused by this appeal, amici curiae assert the singular reason for the existence of HCA is to delay the capital special assessment through the abuse of process as long as possible.

The vast majority of persons in the Four Lakes Special Assessment District[11] along with the four lake Associations filing this Brief recognize the necessity of a capital special assessment utilizing the factors as derived by Appellees to repair the dams, and restore Secord, Smallwood, Wixom and Sanford Lakes. The benefit of improvement in fair market value in having lake property far outweighs the cost of the special assessment, even under HCA's proposed weighing of proportionality.

From the beginning of rebuilding the dams, property owners' objective is to own property with a fair market value of lakefront or lake access property. And as progress continued, the property values maintained on the hope of the return of the lakes. It is clear and common sense

[11] HCA and the other Appellants comprise less than 6% of the properties

that a lake front property has a higher market value than the same property no longer on a lake. (Circuit Court Opinion at 12; Amicus Appx at 120)

To illustrate the waterfront premium, the chart below illustrates MLS properties sold over 6 years sorted by 'non-waterfront' and 'waterfront" located in the three townships of the Secord Lake community. (Amicus Appx Exhibit 5 – data for real estate sales) A focused analysis of 300 properties sold provides meaningful perspective to the court for the difference in fair market value between property with the lake, and property without the lake.

Using "price per square foot" as an accepted benchmark in the real estate industry, there is a 62.5% premium buyer's price on waterfront property.

MLS Properties Sold in the 3 Townships Surrounding Secord Lake - Bourret, Clement and Secord**

	Non Water Front					Water Front					Waterfront vs Non Water	
Calendar Year	# Properties Sold	TOTAL SALES $	Average	TOTAL SQ FT SOLD	Price Per Sq Ft Sold	# Properties Sold	TOTAL SALES $	Average	TOTAL SQ FT SOLD	Price Per Sq Ft Sold	Difference Price per Sq Ft	% Difference
2019	7	$960,000	$137,143	10,930	$87.83	40	$8,173,100	$204,328	55,924	$146.15	$58.31	66.4%
2020	10	$1,577,800	$157,780	15,692	$100.55	16	$2,915,000	$182,188	20,425	$142.72	$42.17	41.9%
2021	27	$3,614,100	$133,856	31,440	$114.95	55	$13,035,001	$237,000	76,532	$170.32	$55.37	48.2%
2022	25	$2,858,411	$114,336	25,848	$110.59	38	$9,712,000	$255,579	53,219	$182.49	$71.91	65.0%
2023	16	$2,480,402	$155,025	22,122	$112.12	36	$10,074,455	$279,846	46,691	$215.77	$103.64	92.4%
2024*	10	$1,180,011	$118,001	10,712	$110.16	18	$4,715,800	$261,989	22,982	$205.20	$95.04	86.3%
	95	**$12,670,724**	**$133,376**	**116,744**	**$108.53**	**203**	**$48,625,356**	**$239,534**	**275,773**	**$176.32**	**$67.79**	**62.5%**

* January 1 to September 16, 2024
** The northern section of Smallwood Lake is within Secord Township. All properties sold during this timeframe within Secord Township are included in this analysis.

A 1,000- square foot home with similar number of bedrooms, baths, outbuildings and features would sell for $176,320 with the improvement (lake) as compared to $108,530 without the improvement (lake). This is the reason the Appellants refuse to provide any appraisals, as the appraisals would demonstrate the capital assessment is not disproportionate under their own legal theory, but rather there is a reasonable relationship between the capital assessment amount, and the benefit or increase in fair market value.

This 6-year analysis, encompassing 300 properties in the same community (Secord Lake)

puts to rest any argument by HCA there is little to no benefit to the improvement of the four lakes in determining proportionality under *Dixon Road Group, supra.*

Amazingly, at oral argument before the Court of Appeals, Appellants' counsel conceded an assessment 1.5 times the amount of the benefit would be proportionate and acceptable to HCA's position. This would mean a lake house with an appraised value of $150,000 could have a $84,375 assessment and it would be proportionate according to HCA! To reemphasize, this is the reason HCA refuses to obtain appraisals or provide any evidence, as it would completely undercut their legal position.

Appellants' claim regarding being denied due process is not true.

The Heron Cove Association Appellants allege a lack of opportunity to be heard and being denied due process, despite Appellees fully complying with MCL 324.30714. This allegation is baseless as the property owner were fully informed, had an opportunity to be heard regarding the special assessments in the FLSAD, utilized the process, and understood the necessity of a capital special assessment.

The Appellants of *In Re Chappel Dam*, *supra* made the same claim of lack of due process:

> Petitioners also assert, citing *Westland Convalescent Ctr. v. Blue Cross & Blue Shield of Michigan,* 414 Mich. 247, 268, 324 N.W.2d 851 (1982), that the review process used in this case deprived them of their constitutional right to due process of law, in that they should have had an opportunity to develop facts and to cross-examine the drain commissioner about the decision she made.

The Court of Appeals stated:

> This Court has determined that the hearing contemplated under the ILLA does not require a full trial. In *In re Van Ettan Lake, supra* at 526-527, 386 N.W.2d 572, this Court determined that the interests being protected by a hearing under the ILLA are those of the public being apprised of governmental actions and having an opportunity to present opposing viewpoints.
>
> This Court explained that the focus of the act is clearly on the public welfare, and not on individual riparian rights, because its purpose is to authorizes counties to

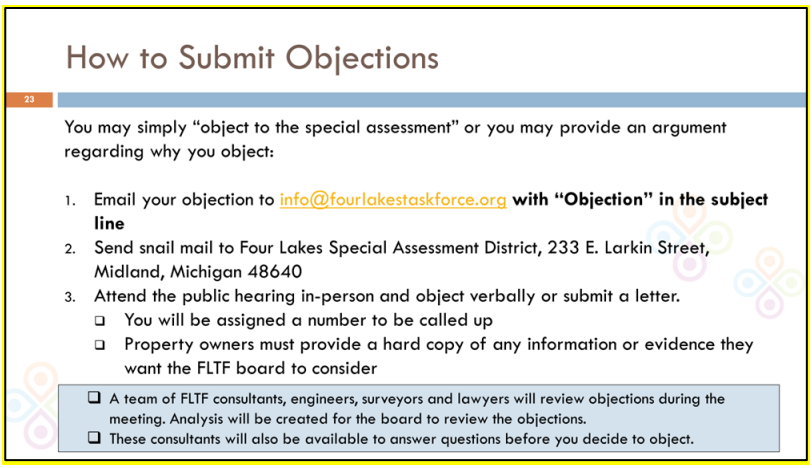
> make policy decisions about inland lake levels, and build and finance dams as necessary to maintain the desired lake levels. *Id.* at 525-526, 386 N.W.2d 572
>
> For purposes of the ILLA, a sufficient hearing is one that (1) allows the Circuit Court to ensure that the county has considered the varying public interests in reaching its policy decision and (2) protects the public against arbitrary governmental action. *In re Van Ettan Lake, supra* at 526-527, 386 N.W.2d 572. Here, all interested persons were properly notified of the hearing regarding the special assessment roll. A hearing was held at which petitioners registered their protests and the reasons for protesting, and the commissioner explained and took questions about her apportionment. The petitioners then had an opportunity to be heard at the county commissioners' meeting in which the roll was approved.

In Re Chappel Dam, supra at 140. The Court of Appeals, in the present action, confirmed the validity of *In re Chappel Dam*, relying upon the well-established legal reasoning.

Appellee FLTF made painstaking efforts, providing all property owners with an opportunity to be heard regarding the planned special assessments. Throughout October, November and December of 2023, and January of 2024, FLTF gave notice to property owners of three separate methods to appeal their assessment:

1. To appeal in writing via U.S. Mail;
2. To appeal via email directly to the FLTF; and
3. To appeal in-person at the January 15, 2024 public hearing.

Source: FLTF Public Webinar December 6, 2023 – Slide 23 of 28 (https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/december_6_webinar_slides.pdf as of February 18, 2025)



In addition, FLTF encouraged property owners to meet with an engineer to discuss their specific parcel's conditions to determine whether adjustments would be necessary in determining the special assessment amount. This process was in place for **two (2) years**, from January 2022 through the January 15, 2024-FLTF Public Appeals Hearing.[12] (Amicus Appx Exhibit 6 – Letter to Co-owners regarding upcoming operations & maintenance special assessment.)

On October 12, 2023, a public webinar announced a Day of Review would be provided in terms of the proposed special assessment on December 6, 2023, with an appeals hearing in January of 2024. It was also communicated the respective Counties boards would review the roll in February of 2024.

[12] The Court of Appeals recognized the often-overlooked point, is the maintenance and operation special assessment already in place, established July 2022 for the entire FLSAD. The same method and process was used to provide notice, hold meetings, and file objections as the capital special assessment. Homeowners had an opportunity to object to the same FLTF methodology for many years and very few chose to do so. Humorously, Appellant Karen Price is referred to in Appellants' application as a person having confusion regarding the special capital assessment appeal, yet Appellant Price previously filed a timely appeal of the maintenance and operations special assessment! See *Price v County of Gladwin,* Gladwin Circuit Court No. 2022-11448-AA, Michigan Court of Appeals No. 363327 , Midland Circuit Court No. 22-01401-AA The Circuit Court also noted this in its Opinion at 11. (Appellees' Appx at 2903)

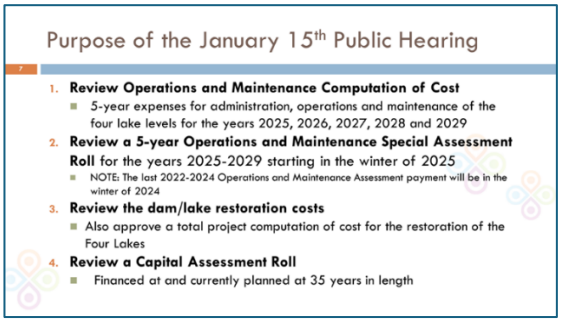
Source: FLTF Public Webinar October 12, 2023 – Slide 22 of 23 (https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/october_12_2023_webinar_final.pdf as of February 18, 2025)

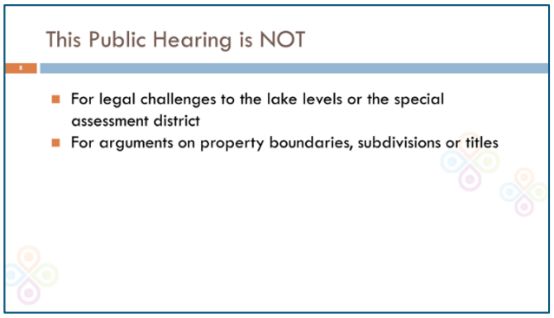
On November 8, 2023, the FLTF sent an e-mail to property owners further expounding on the December 6, 2023 Day of Review, including additional information about the proposed assessment, as well as the upcoming public hearing.[13] (Exhibit 7 – E-mail to property owners) On November 17, 2023 the FLTF followed up with a first class mailing to property owners. (Amicus Apps Exhibit 8 – Letter to property owners.)

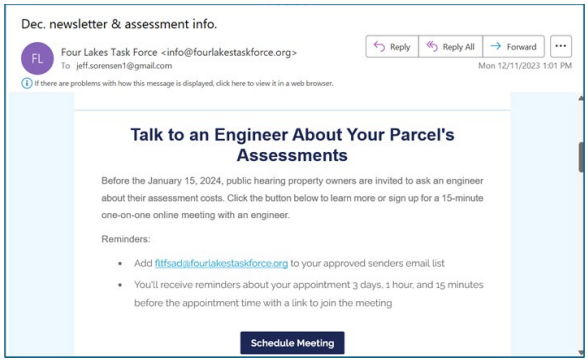
On December 6, 2023, the FLTF held a public webinar to explain "The Purpose and Process for the January 15th Public Hearing". During this session, FLTF explained the "Operations and Maintenance Special Assessment Roll & Capital Special Assessment Roll". This included a public meeting explaining to property owners the purpose and objective of the January 15, 2024 public hearing. In response to feedback from the meeting, the FLTF sent another e-mail to property

[13] Throughout the four years since the dams' failures, anyone could subscribe to FLTF and receive e-mails as to updates, webinars, information, and documents presented. The considerable information is also available on their website: https://www.four-lakes-taskforce-mi.com/

owners offering additional opportunities to discuss their parcels with an engineer to better understand the methodologies of the assessment.







Beyond the public webinars and e-mails, the FLTF sent out two additional mailings by the United States Postal Service to property owners with the addresses on file with the local tax authority. These letters were mailed in November and December of 2023. (Amicus Appx Exhibit 8 & Exhibit 9 – Letter sent December 22, 2023)

On January 10, 2024, an e-mail was sent to over 6000 property owner subscribers giving a detailed explanation as to the process for the Public Hearing on January 15, 2024. (Exhibit 10 – E-mail of January 10, 2024) At the January 15, 2024 public hearing, all attendees were given an opportunity to be heard. To further ensure this and conduct an organized hearing, a form was provided to all attendees wishing to speak. (Exhibit J to Appellants Application for Leave to

Appeal, Appendix at 467)

These efforts resulted in over 84 hours of one-on-one meetings with engineers to assist property owners in understanding their assessments. Further, FLTF hosted two additional separate webinars on financing and assessments. The Notice was published in the Midland and Gladwin County Newspapers, as well as the FLTF website. The Circuit Court recognized the length to which FLTF provided notice under the ILLA (MCL 324.30714):

> "Appellees not only followed the procedures enacted by the legislature to protect the due process rights of Appellants, but did more through the holding of public webinars, the creation of the virtual map for property owners to view, and posting notice of the hearing in more places than was required…."

(Circuit Court Opinion at 6-7, Amicus Appx at 114-115)

The Court of Appeals acknowledged the efforts of FLTF to provide notice:

> The record indicates that the process for establishing the special assessment commenced in 2021, with opportunities for public commentary and engagement beginning in 2022. This process culminated in a public hearing on January 15, 2024, during which property owners were afforded the opportunity to articulate their objections to the special assessment and present supporting documents. The records demonstrate that a minimum of 780 adjustments were made to the special assessment roll based on public input, predominantly reflecting the benefits accrued by individual properties.

(Appellee's Appendix pg. 2925, Court of Appeals Opinion at 7).

The supreme irony regarding Appellants' complaints about the written objections, and conduct of the January 15, 2024 hearing, is Judge Beale's determination no objection—written or verbal—was necessary to appeal the special assessment roll to the Circuit Court. Judge Beale ruled:

> "Appellees conceded at oral argument an objection is required to perfect an appeal to the Michigan Tax Tribunal under MCL 211.741, but not required for an appeal of the special assessment roll to the Circuit Court under MCL 324.30714(4)….Consequently, landowners within the SAD who failed to appear at the January 15th hearing or file a written objection still have standing to file an appeal with this Court under the ILLA, and if they are members of HCA then HCA has standing as well on their behalf."

(Circuit Court Opinion at 4-5, Amicus Appx at 112-113)

The Court of Appeals agreed with the Circuit Court's analysis, stating the question is whether Appellees complied with the ILLA in the notices required under the act:

> "Appellants were afforded all of the protections contained within the ILLA and affirmed by the Court of Appeals in *Chappel Dam*. Appellants have not alleged any deficiency on the part of the Appellees regarding the notice requirements as mandated by statute."

(Circuit Court Opinion at 6, Appellees' Appx at 2897)

The Appellants repeatedly and persistently assert some undefined greater due process is necessary, due to the extent and cost of the entire project.[14] The capital assessment is substantial in totality, but the annual payments are no more than many Homeowners Association Fees or Condominium Assessments, common on lakefront properties throughout Michigan. HOA and Condominium Assessments continue in perpetuity, whereas the capital assessment may be pre-paid earlier with less total interest, or in full without interest. Despite the overall amount of the project, at 56% of the total cost, the Property owners in the FLSAD will be responsible for less percentage of the total cost than *In Re Chappel Dam*—95%, or *Kazaban —72%,* both of which were upheld as providing due process.

The Appellants have failed to delineate or provide any legal rationale for this "greater due process." Appellants have provided no case law, statute, court rule, opinion, or support for what monetary level, percentage amount, or any other criteria whereby "greater due process" becomes necessary. Appellants have failed to provide any legal substantiation as to what the additional notice

[14] The very first line of Appellant's application for appeal starts with "This case involves what is believed to be by far the largest single special assessment in Michigan history." (Appellant's application for leave to appeal at 3). For fear this court may be slow on the uptake, Appellants repeat this unsupported suggestion at pages 2 and 47.

would consist of, or what additional steps are necessary.

This obstructionism by a small group of property owners does not offer any alternative to the current FLSAD but nurtures a grudge for the Four Lakes Task Force for perceived injustices.

The Cost of Delay impacts every property owner and business in a negative manner.

The May 2021 FLTF survey to property owners in the FLSAD had a 49% response rate. Survey respondents overwhelmingly favored rebuilding and restoring the dams to restore the lakes. 88% of those surveyed agreed the dams need to be rebuilt. (Exhibit 1)

After the flood in 2020 the Secord Lake real estate market faced uncertainty. With two Lakes in drawdown, real estate values on the lakes were expected to decrease. The buyer uncertainty of 2020 became short lived because in 2021 FLTF announced a strategy to rebuild the dams with resources to execute the plan. Sales in 2021 of waterfront property became brisk and property values increased despite lower and non-existent water levels. Buyers were confident in the Appellees' plan and ability to restore Secord, Smallwood, Wixom and Sanford Lakes, maintain property values, and continue enjoying all the lakes have to offer to the property owners.

Throughout 2022 and 2023 waterfront sales continued and new neighbors realized their dream of owning a waterfront home. Buyer confidence in the FLTF plan escalated as construction progress was seen on each dam funded by over $225 million in grants obtained by the FLTF with support from the community.

In February 2024, the commissioners approved the FLSAD roll. While no one likes an assessment, buyers accepted the assessment as a necessary expenditure in having a home on an all-sports lake within easy driving distance of metropolitan Detroit.

Then came the Appellant's Circuit Court appeal of February 2024. The Lakefront market struggled to weather this obstacle and home sales reduced. When the appeal was denied on June

20, 2024 sales picked up quickly as buyer confidence returned.

With the appeal filed to the Court of Appeals, buyer uncertainty returned. Potential lakefront buyers have shown acceptance of the special capital assessment; they will not accept the uncertainty caused by the HCA court delay, withdrawing to the sidelines due to the HCA legal action.

Since July 2024, showings and offers have dropped. People are worried about not only the return of the lakes, but the largest investment for most--their home--will have significantly lower market value.

Appellants continue to exploit the message "People will lose their homes!" An unintended consequence of the short-sighted HCA legal action is the inability of seniors and those wishing to sell their homes for income necessary due to changes in circumstances.

Buyers of lake front properties tend to be in their 50's to early 60's seeking a retirement dream. Most worked their entire lives with a lakefront home as a goal. These people decided to purchase property on the lake as an investment in their future. It is common for people to invest retirement savings into lake homes for two reasons: (1) the immediate investment and enjoyment of lake life, and all that means to each individual, (2) the long-term investment appreciation in their property value.

Many retirees later come to the point of selling mostly due to health or age related reasons--they enter the real estate market again. Their objective is straight forward: to recoup the initial investment along with the appreciation to pay for the next life phase, whether living closer to family for senior care, assisted living, or sadly, in some cases, a nursing home.

Until the HCA appealed to the appellate court, lake retirees were able to move forward with this phase of their lives. Now that buyers are on the sidelines as of July 2024, these senior

sellers have limited buyers and are unable to sell.

The market now has more senior sellers needing to sell for income. Other people are selling due to the uncertainty. The law of supply and demand is cruel in uncertain times, with both buyers and sellers challenged by the uncertainty, resulting in fear how this may impact future income. HCA legal delays are devastating for the entire community.

The sad irony of the HCA appeal is, despite their feigned battle cry of helping the elderly, or those on fixed incomes, these actions are crippling these very same people from selling their lake home to fund the next chapter. HCA would rather these people lose money on their homes or not be able to sell at all. (Exhibit 2, Affidavit of Deb Stover)

Scott Gratopp owns Secord Lake Marina of Gladwin, Inc., a family-operated marina celebrating 40 years in business:

> The business was started by my father, and I am proud to have my daughter joining us to make 3 generations. My wife and I also own a home on Secord Lake. For us, Secord is more than our business, it is our family and friends.
>
> Since the drawdown of Secord Lake, the need for the business services and merchandise we provide has curtailed. The chart illustrates the devastation to my business over the past 4 years:

	Before	Past 4 Years
Annual Boat Sales	60 – 70 / YR	8 – 15 / YR
Annual Winterization of Boats for Customers	600 +	Less than 300
Annual Winter Storage for Customers	350 +	Less than 150
Boat Repairs	XX	Down 75%
Boating Merchandise & Supplies	XX	Down 60%
Employees	8 Full Time / 4 Part Time	Me as owner plus 2 Full Time

> Historically our business thrived through 10-hour days, 6 days a week for the months of April to November. Since May 2020, the challenges to our small business have taken a toll on my family, our savings, our retirement savings, my employees, and we have liquidated assets to keep our business.

Yet, we seek the lakes return as soon as possible so we can recover. While we will be strapped with an assessment for our business of $133,506 and $53,497 on our home, I would rather have the lake and the opportunity to rebound my business than to be in the state of purgatory for years to come.

With the lakes' return I can thrive again. There will be adjustments, but after what we have endured the past 4 years, I look forward to a new challenge.

The HCA legal appeal and lawsuits are delaying the return of the lake and hence the return of my business. It is delaying my ability to rehire my former employees who are a big part of my success.

My business is also our future retirement investment. We have built this with our sweat equity and with the support of hundreds of customers. I am confident my team can rebuild our business with the lakes' return. We still have our most valuable asset, our customers, to help us.

However, should the HCA be successful in further delaying the return of Secord Lake, my business (my retirement investment) may be worthless. For my family, we are at the tipping point. We seek the return of Secord Lake as soon as possible. I respectfully ask the Court to dismiss the HCA appeal and lawsuits.

(Amicus Appx Exhibit 11 – Affidavit of Scott Gratopp)

Michael Byler purchased Secord Hoist Service in 2017:

I purchased Secord Hoist Service as an existing business in 2017, I purchased this existing business back in 2017 with hopes of working hard to save enough money to retire and enjoy my golden years with my wife. When I purchased this business, we acquired approximately 200 customers who all were property owners here on Secord Lake. Within 6 months of learning this trade and working hard, I more than doubled my customer base to approximately 500 property owners.

After a lot of trials and tribulations over the next few years, I finally had this business fine-tuned! Then the flood of 2020 hit. What a disaster!! Before the "power's that be" opened the flood gates, my crew and I were able to help fellow property owners in securing their hoists, docks and even rescued multiple boats and jet skis before our water was not navigable.

We assisted as many folks as possible – at no charge – before we had to remove our own equipment from the water before we lost it all. We had a hard working and very loyal crew that made sure to carry the same values as me. I was able to provide them and their family a more-than-fair wage to ensure their return each season.

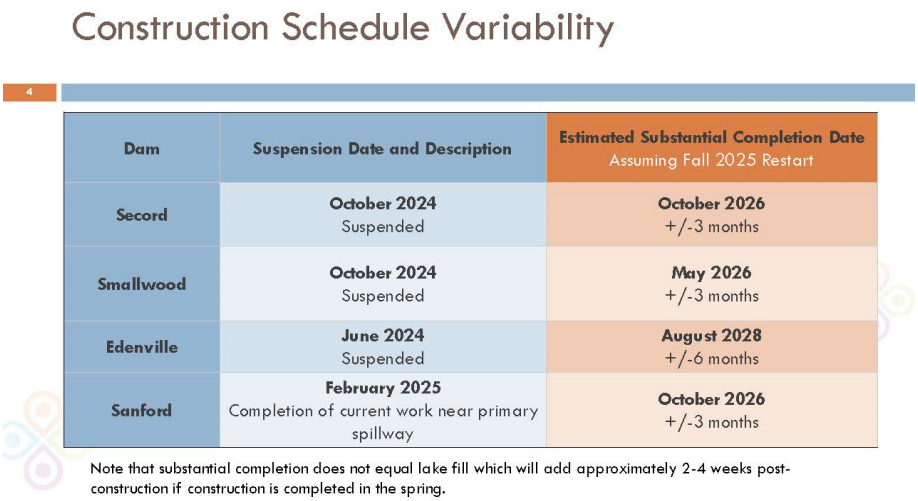
> After the flood event, and the resultant draw down of Secord Lake, my wife and I planned to weather the storm by tapping into our savings and retirement plans and delaying our retirement until the return of our lake. I was hopeful my business would survive given the involvement of the Four Lakes Task Force and their planned assessment which detailed a reasonable plan to restore Secord Lake.
>
> My hopes have been shattered after the formation of Heron Cove Association which is not a majority voice of the property owners on the lakes, but rather a fringe minority of people who took it upon themselves to challenge the Four Lakes Assessment. This small group of people have no plans to restore the lakes which makes this situation tragic and intolerable.
>
> The Appellants tactics of delaying and obstructing the voice of the majority of property owners has forced both my wife and I to obtain employment elsewhere. elsewhere. Unfortunately, the only employment we could find near this area was only part time help. Sadly, the positions we hold don't even pay minimum wage. I paid my employees MORE per hour than my wife and I make per hour currently. My fear is that Secord Hoist Service is now in jeopardy of losing everything.
>
> I pray that this Court resolves this matter quickly so that Secord Lake can return and I can retain my workers.

(Amicus Appx Exhibit 12 – Affidavit of Mike Byler)

Amici Curiae, lakefront businesses, and other lakefront property owners have worked to obtain additional fundings toward the entire four lakes project and this additional funding could potentially reduce the assessments levied in the FLSAD—including for the Appellants. Yet the Appellants are strangling these efforts through this appeal. At the State level, Michigan Representatives Mike Hoadley and Bill Schuette have shared the lawsuits "tied my hands." Their counterparts in Lansing have little interest in discussing additional financial support for the residents of Gladwin and Midland Counties while this appeal disrupts the ability to move forward. This is illustrated by the defeat of a motion by Representative Schuette to allocate $50 Million from the EGLE dam safety budget in committee and on the State of Michigan House of Representatives' floor the motion for $50 Million by Representative Hoadley was not heard as they debated the State of Michigan budget. (Amicus Appx Exhibit 13)

FLTF, with assistance from the lake associations, townships, and Appellee counties are working closely with local state and federal elected officials seeking additional funds to lessen the burden of the costs. FTLF previously secured over $200 Million in funds from the State of Michigan, demonstrating the ability to obtain grants. However, to responsibly receive a grant or government allocation, a common requirement is that the organization must not be encumbered with a lawsuit. The Appellants place the Appellees in a position where grant funds are unlikely to be obtained or distributed until this appeal is resolved.

Construction projects on three of the four dams are suspended to ensure stability at the current state of construction. Construction on the fourth dam—Sanford—will equally soon be suspended. The FLTF estimates the cost of construction suspension caused by this appeal to be up to $20 Million, assuming a restart by April 2025.



Construction Schedule Variability

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Dam	Suspension Date and Description	Estimated Substantial Completion Date Assuming Fall 2025 Restart
Secord	**October 2024** Suspended	**October 2026** +/-3 months
Smallwood	**October 2024** Suspended	**May 2026** +/-3 months
Edenville	**June 2024** Suspended	**August 2028** +/-6 months
Sanford	**February 2025** Completion of current work near primary spillway	**October 2026** +/-3 months

Note that substantial completion does not equal lake fill which will add approximately 2-4 weeks post-construction if construction is completed in the spring.

Slide 4 from FLTF informational webinar dated February 26, 2025, https://www.four-lakes-taskforce-mi.com/uploads/1/2/3/1/123199575/feb_26_webinar.pdf

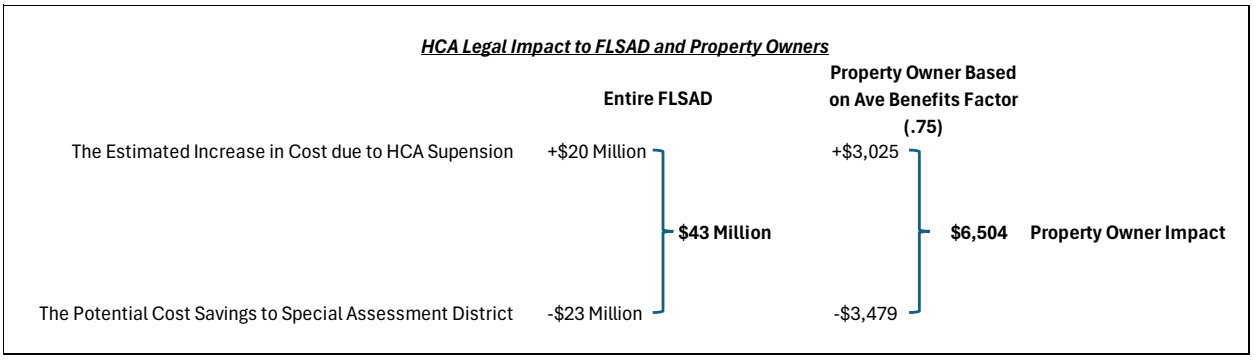
The delay will add at least a year and more likely two years to the overall timeline, assuming the legal matters are resolved in months. **As time is a non-renewable resource, this**

extension is extremely painful to property owners, families, and local businesses who have been waiting since May 2020 for the lakes to be restored.

The $20 Million cost of delay will be paid by all properties in the special assessment district—including Appellants. Using the assessment methodology, for the average property (benefits factor .75) this means the share to each lakefront property owner in the FLSAD of the $20 Million estimated increase is about $3,025.

The other consequence of the HCA delay strategy is the inability of FLTF to pass along cost savings to property owners in the special assessment district. In July 2024, FLTF indicated cost savings with the Edenville project of $15 Million and the federal appropriations requests of approximately $8.3 Million. Collectively, this amounts to approximately $23 Million in cost reductions to the special assessment district. Using the same assessment methodology, the $23 Million cost savings share to each lakefront property owner in the FLSAD could reduce the average assessment (benefits factor .75) approximately $3,479.

The increased costs and lost opportunities created by Appellants will result in greater capital assessments for all.[15]



[15] Appellants repeatedly verbally claim to be lowering everyone's assessment, yet the actions of Appellants are directly raising the assessment.

An aftereffect of the water loss is the emergence of nuisance trees and weeds on the lakebeds. The nuisance vegetation, primarily composed of Poplar and Willow trees, grow 6-8 feet per year. These nuisance trees must be constantly managed or cut down to maintain a safer environment for swimmers, boaters, pets, and children if the water returns.

While there has been considerable cost investment in time and money to date in clean-up efforts, these costs will increase by another year of delay due to the HCA's unfounded and unsupported appeal.

Property owners have taken responsibility to manage the first 40 feet from the historical shore in front of their properties. To manage the nuisance trees, maintenance or cutting is required about 10 times per year. Assuming a conservative cost of $20 per cutting, the annual cost to a property owner is $200. With 6,278 waterfront properties in the FLSAD, this amounts to $1,255,600 annually. Whether a property owner opts to hire out the cutting or do it themselves, there is still a cost in terms of time, energy, and equipment as the lake beds tend to be sloped making them difficult to cut.

In addition, the Amici Curiae, Lake Improvement Boards and Townships spend money to manage nuisance trees on the balance of the lake beds. For Sanford and Wixom Lakes, this area includes the entirety of the lakebed. For Secord and Smallwood Lakes, this includes public areas like sand bars, boating areas and other identified areas of the lake. The table below captures the estimated annual cost of management for nuisance trees:

Lake Associations, Lake Improvement Boards and Townships		
Sanford	$333,000	Estimate from Sanford Lake Association
Wixom	$410,000	Estimate from Wixom Lake Association
Smallwood	$20,000	Estimate from Secord Township
Secord	$10,000	Estimate from Secord Township
	$773,000	

To recap, there is a cost of delay for property owners, townships and others as the nuisance trees require annual maintenance. This cost is conservatively estimated at $2,028,600 annually.

Conclusion and Relief Requested

This court is tasked with determining whether the Court of Appeals correctly affirmed the Circuit Court's ruling the Appellants utterly failed to present credible and substantial evidence to rebut the presumption of validity for a special assessment apportionment determination. Amici Curiae submit the special assessments are supported by substantial, competent and material evidence; Appellants presented no credible evidence—only excuses—to demonstrate otherwise.

The delay, harm to the community, and costs caused by Appellants' reckless approach to the appeal process must end.

WHEREFORE, Amici Curiae Second Lake Association, Inc., Smallwood Lake Association, Inc., Wixom Lake Association, Inc., and Sanford Lake Association request this honorable court DENY Appellants application for leave to appeal, because this court is not persuaded the questions presented should be reviewed by the Michigan Supreme Court.

Word Count Verification

This brief contains 10,041 words according to the word-processing program used to prepare this document in compliance with MCR 7.312 (A) and MCR 7.212 (B).

Dated: March 5, 2025

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