

Aquatic Special Assessment Districts — Mass Confusion?

By: Clifford H. Bloom, Esq.
Bloom Sluggett Morgan, PC
Grand Rapids, Michigan
www.bsmlawpc.com



The proliferation of exotic and invasive aquatic weed species in Michigan inland lakes is becoming an increasingly significant problem. In general, there are two ways of funding aquatic weed eradication or control efforts – voluntary funding by riparians or lake associations or mandatory special assessments by a local governmental unit. Naturally, the problem with the voluntary program is that many property owners on or adjacent to an inland lake benefit from aquatic weed control programs but refuse to contribute monies. A mandatory special assessment district solves that problem but also comes with its own set of headaches.

What is a special assessment district? Special assessments in Michigan are authorized only by specific statutes. In the absence of statutory authority, municipalities may not impose special assessments. Various statutes authorize municipalities and local government agencies (including cities, villages, townships, drain commissioners, and statutory lake improvement boards) to create a special assessments district, i.e., a geographic district within which the properties are subject to an annual special assessment or “quasi-tax” which can only be used for certain improvements within that district. When a special assessment district is created, the special assessments are placed on the landowners’ annual property tax bills. (Even though special assessments are placed on property tax bills, they are technically not taxes and not typically deductible from the landowner’s income taxes).

Special assessment districts are normally created only for a specific number of years. Some of the improvements that can be funded by a special assessment district include not only aquatic weed control but also paving and maintenance of public or private roads, watershed management, improvements for sidewalks and public trails, street lighting, the installation, maintenance and repair of dams or other impoundment structures, lake dredging,

the installation of municipal water and sewage systems, and the creation and maintenance of public parks.

The most common statute used by townships in Michigan to fund special assessments regarding inland lakes is Public Act No. 188 of 1954 as amended, being MCL 41.721 et seq. (the “Act”). Unfortunately, setting up a special assessment district tends to be a somewhat complicated and paper intensive process. It is surprising that the Michigan Legislature has not seen fit to streamline and simplify the process. Furthermore, the requirements of the statute must be followed precisely, or the special assessment district could be challenged after it is set up. Accordingly, the municipality involved

The most common statute used by townships in Michigan to fund special assessments regarding inland lakes is Public Act No. 188 of 1954 as amended, being MCL 41.721 et seq. (the “Act”).

should utilize legal counsel (either the municipality’s regular attorney if he or she is well-versed in special assessments or by hiring special outside legal counsel) for the special assessment district creation process.

It should always be kept in mind that special assessments and special assessment districts are a government function. Although individuals, lake associations and other groups can have input into the process, ultimately, a special assessment district must be approved and administered by a local governmental unit. However, all costs associated with creating and administering a special assessment district (including the municipality’s attorney fees, public hearing

notice costs, contractor costs, annual billings, etc) can be “rolled into” the district and charged to the individual property owners as part of the special assessment.

Typically, special assessments are initiated by property owner petition. Under the Act, a municipality can proceed without property owner petitions but if petitions are filed opposing the special assessment district by the owners of twenty percent or more of the area of the lands involved, then a “pro” petition representing the owners of more than fifty percent of the area of the lands involved must be filed before a municipality can proceed. Accordingly, some municipalities, in an attempt to avoid dueling petitions, require a “fifty percent plus” petition to initiate the process. Before any petitions are circulated, however, the wording and form should be approved by the municipality involved (including the municipality’s attorney). Many groups have spent countless hours circulating self-drafted petitions, only to have them be rejected later by the municipality when the completed petitions are turned in.

In general, it requires three separate meetings of the municipality involved to approve a special assessment district, including two public hearings and two notices of public hearings (with newspaper and mailed notices). At the first meeting, the legislative body of the municipality determines whether or not to tentatively proceed with the special assessment district. The second meeting involves a public hearing to determine whether to formally approve the special assessment district. The third and final meeting (i.e., the second public hearing) actually confirms the geographical limits of the special assessment district itself and the assessments.

In most cases, a special assessment involving inland lakes is imposed by either

Continued on page 14

Aquatic Special Assessment Districts — Mass Confusion?

Continued from page 13

a municipality (typically, a township) as a “standard” special assessment district or, where one exists, by a statutory lake improvement board created pursuant to MCL 324.30901 et seq.

The “pros” and “cons” of utilizing a standard special assessment district by the local municipality versus the creation and implementation of a statutory lake improvement board (with special assessment powers) is beyond the scope of this article. For those issues, please see the article entitled “Weed Whacker” in the winter 2009 issue of the Michigan Riparian Magazine. As a generalization, if a special assessment district is to be created for simple aquatic weed control purposes and the lake is located entirely within one municipality, a special assessment district imposed by the local municipality is typically the most cost effective, simple and straightforward fashion in which to proceed. However, if a lake straddles two or more municipalities, the problem involves more than simple aquatic weed issues, or a “whole watershed” approach is needed, a statutory lake improvement board is often preferable. The drawback of a statutory lake improvement board is that its special assessments tend to be higher and there is generally a loss of local control.

Contrary to popular myth, special assessment districts cannot be renewed or extended in a summary fashion once the end of the initial term of the special assessment district is reached. Rather, the process must start all over again. Hence, if a proposed special assessment district has widespread support, it is better to approve it for a longer period of time (for example, seven to ten years or even longer) than a shorter period of time (under seven years). Most special assessment districts can be approved for up to twenty years.

Once a district is created, all functions of the special assessment district must be administered by the municipality involved. A municipality must send out any public hearing notices, take bids for aquatic weed treatment purposes (and sign a contract with the successful bidder), collect the

special assessments annually via property tax bills and generally administer the district. Lake associations or individuals cannot perform these functions. However, most municipalities are fairly deferential to lake associations or similar groups regarding their desires and some townships have even appointed advisory committees comprised of riparian owners and lake association representatives to advise the legislative body of the municipality regarding matters pertaining to a special assessment district.

Even though there are dozens (if not hundreds) of special assessment districts currently in effect throughout Michigan in townships relating to inland lakes, township officials in parts of the state where special assessment districts have not been utilized are often reluctant to create a special assessment district. Why? There are typically many different reasons. First, local government officials who have not been involved in special assessment districts in the past sometimes need to be educated since they often do not understand the function or process of a special assessment district. Second, some local government officials do not want to take on the extra work associated with a special assessment district, even though all costs associated therewith can be rolled into the special assessment district. Third, local government officials are sometimes susceptible to pressure from groups who oppose chemical treatment of aquatic weeds. The response to local municipal officials should be that the special assessment process has been recognized and endorsed not only by state statute but also by many municipalities (including numerous townships) throughout Michigan. It is a government function and a service to a majority of the property owners where the support for the creation of a special assessment district exceeds fifty percent. It is not some exotic or rare process. Furthermore, it does not cost the general fund or the taxpayers of the municipality at large one dime because all costs associated with the special assessment district can be charged to that district.

If the legislative body of a municipality determines to proceed with a special

assessment for a lake, the assessment can be levied in one of five different ways – on a per lot, taxable parcel, lake front footage, lot or parcel size, or taxable value per parcel basis. It is most common to assess on a per taxable parcel basis (using the permanent parcel number assigned for property tax purposes). Should off-lake or back lot properties with easement, park or other lake access privileges be included? They can be, but often, it is more trouble than it is worth and can sometimes effectively “kill” a special assessment district (due to controversy, protest petitions, etc.). It is also frequently difficult to determine how an off-lake parcel should be assessed (should off-lake properties be assessed at one hundred percent, two-thirds, fifty percent, one-third, etc. of a lakefront parcel?), as well as which off-lake parcels should be included in the district.

Another advantage of a special assessment district is that with certain chemicals for aquatic weed treatment, the Michigan Department of Environmental Quality will allow their use only if one hundred percent of the property owners on a lake agree or a special assessment district has been set up for the entire lake.

In summary, special assessment districts are often the most equitable and effective way of treating or controlling invasive aquatic weed species in Michigan inland lakes. Such districts are commonly used by many townships throughout Michigan. In general, they do not cost taxpayers anything because all the costs and expenses of a special assessment district are charged only to the property owners directly benefitted. Finally, given that setting up a special assessment district can be a somewhat complicated and exacting process, governmental units should utilize a municipal attorney who is well-versed in this area. ●●●