



Smallwood Lake
Association

WIXOM LAKE
ASSOCIATION



HCA OBJECTS TO LAKE ASSOCIATIONS' AMICUS BRIEF AGAIN

This is the third time HCA has objected to input to the courts

This provides a legal update to property owners within the Four Lakes Special Assessment District (FLSAD).

The Lake Associations have always agreed the statute provides property owners an opportunity to appeal their special assessment to the Circuit Court. After having their appeal DENIED at the Midland Circuit Court due to "lack of credible evidence," HCA chose to appeal the court's decision to the Michigan Court of Appeals.

FIRST TIME: The first time HCA sought to suppress input to the courts, after Federal Judge Ludington filed his opinion to recuse himself at HCA request, HCA filed a motion to strike his opinion. HCA did not like some of the legal cases / theories used by Judge Ludington in his recusal opinion. They also indicated the Judge is biased as he and his family own a home on one of the 4 Lakes.

On November 7th the Federal Court DENIED HCA request to strike Judge Ludington's remarks.

You can read Judge Ludington's' opinion here: <https://preview.mailerlite.com/n7f8x6r3m9>

The Federal hearing is scheduled for December 12, 2024.

SECOND TIME: When the 4 Lake Associations filed the amicus brief with the MI Appellate Court of Appeals, we fully expected HCA would protest and ask the court to deny the amicus brief.

Lake Associations' Amicus Brief - - The purpose of an amicus brief is to provide the Court with information to assist the Court in reaching a decision, and to provide additional perspective from interested parties that are not the named parties in the case. You can read a 3-page summary along with the amicus brief here:

https://www.restorethelakes.org/files/ugd/cd86dd_9c3d1042c70345999791abf2dfc7cc0a.pdf

From their objection to the 4 Lake Associations amicus brief, here are the things HCA highlights:

- 1) HCA claims the Lake Associations are biased because the Lake Associations do not support HCA positions.
- 2) HCA claims the lawyers representing the Lake Associations are biased as they own property on the lakes.
- 3) In an interesting twist, HCA claims lead Lake Association lawyer—Bruce Townley-- may not express his legal clarification to others via Facebook or other platforms even before the amicus brief. HCA is offended by this attorney's 1st Amendment Right of Free Speech he has exercised to express his perception of HCA's position in colorful metaphors.
- 4) HCA falsely states the amicus brief presented by the Lake Associations expresses disappointment in the FLTF.

Here is a list of information in the amicus brief that HCA seeks to restrict from the Court:

- 1) HCA actions deny FLTF the ability to issue bonds or secure loans - - causing construction to suspend.
- 2) The increased costs to property owners caused by the suspension of construction. This includes the estimated \$20 million coupled with the additional costs to property owners and others to manage nuisance trees for an extended period.
- 3) The affidavit of a real estate expert and documentation of close to 300 property sales over almost 5 years in the townships of Secord, Clement and Bourret that debunk the HCA claim that restoration of the lakes will have no impact on property values. The real estate sales data indicates buyers place a 62.5% premium on price per square foot for lake front property vs non-lakefront property.
- 4) The affidavits of local business owners (one a marina owner, the other operates a lake pier maintenance company) regarding the impact to their businesses and families caused by the construction suspension.
- 5) HCA continues to use SEV to determine property values. HCA seeks to eliminate documentation that illustrates the difference between SEV and actual property values as one of their Appellants is used as an example by the Lake Associations.

After reviewing the HCA Objection, on October 21st the Appellate Court indicated the motion to file the Amicus Brief by the 4 Lake Associations is **GRANTED**.

THIRD TIME: On November 5th, HCA filed another motion with the Appellate Court seeking “This Court should give no weight to the Lake Association’s amicus brief. The brief merely presents a political view that does not aid this Court’s review of the law. Additionally, the new “evidence” presented should be disregarded because it is outside the record.”

HCA had their day in court, and their appeal is DENIED due to “lack of credible evidence.” Now they seek to have the voices of the Lake Associations silenced to the Appellate Court, which would exclude evidence the HCA does not want the Court to consider. This information has always been in the public space, but HCA believes “their version of facts” is all the Court should consider.

The Court of Appeals is scheduled for oral arguments on December 11, 2024. The judges will not make a ruling during this session. They will listen to both parties, ask questions, and issue their opinion or order at a later date. There is no time limit for issuing their opinion or order.

In closing, there are three situations where HCA has filed objections to suppress facts and information to the courts. This is reminiscent of the statements made by HCA in their initial motion to the Midland Circuit Court: HCA is organized “to promote the general welfare of its members.” Meaning HCA has no regard for how their behavior or outcome impacts their neighbors in the FLSAD.

One needs to ask, if HCA is so confident in their case, why are they filing motions to suppress an opinion from a Federal Judge and to deny the Lake Associations the ability to share their perspective with the Court of Appeals? What is in this information HCA does not want the court to see? < END >