



Smallwood Lake
Association

WIXOM LAKE
ASSOCIATION



Legal Update from Attorney Bruce Townley

Secord Lake Property Owner

Recap / Observations from HCA Appeals Hearing on Wed December 11, 2024

Ironically, this update is more anticipated yet will be the least informative. We just won't know until the Appeals Court gives a decision.

I attended the Court of Appeals Oral Argument, observing the questions and demeanors of the 3 panel of Judges. No questions or statements provided specific insight as to which way the Judges were leaning. Some questions I liked; others were concerning. Some arguments I liked; others were factually inaccurate.

The Court recognized the urgency of the situation and promised to provide a ruling in a very short period. Rather than the typical 5-6 months delay between oral argument and ruling, this could be as short as two weeks to one month.

Additionally, the Judges discussed the parameters of remanding the matter back to the Circuit Court.

The Appellate Court makes one of three decisions on appeal: (1) Affirm the lower Court, (2) Reverse the lower court or (3) Remand it back to the lower Court for additional action.

There is no chance the Court of Appeals will reverse Judge Beale, quashing the assessment roll. Strangely, vocal HCA members posting on Facebook believe that is exactly what will happen. They appear disconnected from what their attorney is actually asking from the Court.

Note...and this is very important. **HCA's attorney agreed there is benefit for the property owners. He agreed with the need for the Special Assessment**—his sole problem is with the benefit methodology, and the extent of public contribution necessary. While there was emotional argument HCA would prefer to not have lakes if the cost is too high, there was no legal argument as to this position.

If the Court of Appeals agrees with Judge Beale's decision, it will affirm it, at which point HCA will have 21 days to apply to appeal at the Michigan Supreme Court. If HCA took no action, 21 days after the decision, this legal appeal would be over, and this delay is over. Unfortunately, HCA members have indicated they will appeal to the Supreme Court within this 21-day period.

So, let's talk about the interesting third option—Remand. If the Court of Appeals remands the matter back to Judge Beale, it will be with specific direction as to what additional steps need to be taken, or what proofs need to be presented, prior to upholding the assessment roll.

The Court itself understood HCA as asking for a remand with certain directions for Judge Beale to utilize in determining the assessment roll.

I strongly recommend you review the question and the answer presented by the Presiding Judge to HCA's attorney at oral argument, beginning at 1:28:44 in this video. (The HCA hearing begins at the 34-minute mark if you want to watch the entire session), <https://www.youtube.com/watch?v=qzruZgmAj2c>

The Court was asking HCA what parameters or direction the Court of Appeals could give Judge Beale to decide whether the assessment is appropriate under the law. What "Bright Line" rule could the Court give? Amazingly, HCA's lawyer said the assessment amount would be appropriate if it is 1.5 times the benefit. Their attorney indicated to the presiding Judge this formula would satisfy his client, HCA.

A remand by the Court of Appeals is only a win if it improves your legal position. If your position stays the same or worsens—it is not a legal win. (If HCA's goal is to delay, delay, delay, then from a pragmatic standpoint—not a legal one—a remand is a win.)

A remand would put HCA in a worse legal position. Very few property owners (and NO HCA members) understand how dramatic this is.

The law requires a special assessment to be "proportionate" to the benefit derived. "Benefit" is a specific legal term defined as the increase in fair market value to the property when comparing the property without the improvement as compared to with the improvement.

A fancy way of saying: the assessment amount incurred for building a dam to create the lake must be equal or less than the increase in value in having lakefront property. To determine this proportionate amount, there are three numbers required: (1) the Assessment amount, (2) fair market value without the lake, (3) fair market value with the lake.

Using actual sales over almost over 5-1/2 years, our Amicus Brief concluded similar non-lakefront property sells for 60% of what lakefront property will sell based on price per square foot.

The same house that sells for \$100,000 on a lake, sells for \$60,000 when not on a lake. In this simple example, if the assessment was \$40,000 or less (because the assessment is less than benefit), then the assessment is proportionate.

But this is not what HCA's lawyer was arguing. No...he said, if the assessment is 150% (1.5 times) the benefit, it would be acceptable to HCA under the law.

This means, in our example, if a \$100,000 house on the Lake has an assessment of \$60,000 (1.5 times the benefit)—this will be acceptable with HCA.

In short...for HCA to be satisfied...a \$100,000 house could have a \$60,000 assessment, a \$150,000 house could have a \$90,000 assessment, and a \$200,000 house could have a \$120,000 assessment!

A \$50,000 lot could have a \$30,000 assessment using the formula proposed by HCA.

Look at the value of your own property. Plug your address into Zillow (not the most reliable test for fair market value, but it is free and fast.) Pull out your calculator, type in the Zillow estimate value number and times it by .6 The difference between the Zillow estimate and the second number is your "benefit."

Take the difference above, and times it by 1.5 This is the amount HCA says is perfectly fine for you to be assessed. I would be very, very interested if anyone has an assessment higher than this amount.

As an example, Zillow says my property is worth \$231,500. $\$231,500 \times .6 = \$138,900$. The difference ($\$231,500 - \$138,900$) = \$92,600. [Remember, I've been saying my assessment could not be higher than \$92,600] What HCA is claiming—what their lawyer is claiming—is that my assessment cannot be higher than 1.5 times that amount ($\$92,600 \times 1.5$) or \$138,900.

The math works out--all you have to do is plug in the value of your property, times .6, and this is the amount HCA says the assessment cannot go over.

Do you see why a Remand to Judge Beale would provide an end to the HCA appeal? How many properties out of 8,170, could ever be higher than this 1.5 benchmark? 5 at most? And any discrepancy would likely be small.

So a remand, where the Court of Appeals states Judge Beale has to determine the assessment is not 1.5 times more than the benefit—just like HCA Asked!—is a complete waste of time. None of our assessments is anywhere near that high.

More to come once we have the decision from the Appeals Court. I am pleased to share our Amicus Brief was mentioned in oral arguments. We plan to take the 4 Lake Associations Amicus Brief to the next court room whether it be the Supreme Court or back to the Circuit Court.

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