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5-16-81

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

IN THE MATTER OF DETERMINATION AND
FIXING OF A NORMAL HEIGHT AND LEVEL
OF THE WATERS OF LAKE LEELANAU,
LEELANAU COUNTY, MICHIGAN.

File No. 78-610-2-PZ

LARRY J. NELSON
Prosecuting Attorney

DECISION OF THE COURT

This matter is before the Court pursuant to provisions of Act 146, of the Public Acts of Michigan for the year 1961, as amended, known as the "Inland Lake Level Act of 1961." Following public hearing the Court took the matter under advisement. The Court now makes its Findings of Fact and Conclusions of Law.

On February 14, 1978, a resolution was adopted by the Board of Commissioners of Leelanau County directing the prosecuting attorney for said County to file a petition pursuant to the Inland Lake Level Act of 1961 requesting the determination of the normal height and level of the waters of Lake Leelanau. MCLA 281.63; MCLA 281.65; MSA 11.300(3); MSA 11.300(5).

In their resolution the Board of Commissioners deemed it expedient to have determined and established normal height and level of the waters of Lake Leelanau, for the purpose of maintaining and promoting the public health, welfare and safety, the conservation of the natural resources of said county and state, and to preserve property values around Lake Leelanau. MCLA 281.62(a) MSA 11.300(2)(a).

Lake Leelanau is an inland lake which is located within the boundaries of Leelanau County, Michigan. MCLA 281.63; MSA 11.300(3).

In their resolution the Board of Commissioners directed the Leelanau County Road Commission to establish a special assessment district for financing costs incident to the determination of the normal height and level of the waters of Lake Leelanau and the maintenance thereof. MCLA 281.65; MSA 11.300(5).

Pursuant to this directive the Leelanau County Road Commission did establish a special assessment district including therein all parcels of land and political subdivisions, and each parcel of land owned by the Department of Natural Resources which the Commission felt would be benefited by the establishment of a lake level. MCLA 281.69; MSA 11.300(9).

The Court finds that the requirements for publication and notice to those persons within the special assessment district as required pursuant to MCLA 281.70; MSA 11.300(10) have been complied with. On August 29, 1978, the fixed day of hearing, the Court heard proofs and allegations from all interested parties as provided for in MCLA 281.70; MCLA 281.62(f); MSA 11.300(10); MSA 11.300(2)(f).

A report dated August 23, 1978, compiled by a consulting firm, Brown & Root, Inc., addressed to the Leelanau County Board of Commissioners, was received by the Court. This report recommended that the water surface be set at its present elevation of 589.21' as established by the Leelanau County surveyor on July 25, 1978, with a maximum fluctuation of plus 0" and minus 2" during the period from April 15 or at ice break-up (whichever is later) to November 15 of each year. Elevation

589.21' corresponds to a reading of 6.55' on the gauge at the existing dam and was the water surface elevation at the time of the public inquiries. During the period from November 15 to April 15 or ice break-up, the water surface elevation should be lowered 12" to 588.21'.

The report made a further recommendation that the narrows section connecting the northern and southern portions of Lake Leelanau should be dredged to allow a freer passage of water.

The reasons for these recommendations as set forth in the report are as follows:

"The present elevation of Lake Leelanau is the most proper because it allows the best use of the lake. Any increase in water surface elevation could result in further erosion and possible flooding and septic tank problems. A decrease in water surface elevation during the summer months would make navigation difficult in some areas of the lake and would also expose muddy lake bottom in some areas. The alternative of lowering the lake for short durations has less impact to properties than raising the water surface, hence, the normal two inch operating range should be established as recommended above.

The reason for lowering the lake during the winter season is threefold. First, it will reduce the effect of ice erosion on the shoreline. This, seemingly, is a major concern of many Lake Leelanau frontage dwellers. Secondly, the lowered water surface will provide a storage pool in the event of a heavy spring runoff making a flood occurrence much less likely. Lastly, the water table elevation in the immediate vicinity of the lake would also be lowered during the winter and early spring. The lower

water table would result in less saturated soil. This may be of some benefit to those residents who have basement flooding or other similar problems.

Dredging of the narrows is recommended herein because of the influence that that section of Lake Leelanau has over water surface elevation on the Southern portion of the lake. During periods of heavy runoff, the narrows acts as a constriction to flow and raises the water surface of the Southern portion of the lake, possibly adding to flood conditions. Secondly, the dredging of the narrows would aid navigation in that area."

The Court heard testimonies from a number of other interested parties and has also had an opportunity to read and review numerous letters submitted to the Court, all which express opinions as to the correct elevation for the waters. Although there are some differences expressed in these opinions, the Court finds that the overwhelming consensus of those who have expressed an opinion support the recommendations as set forth in the Brown & Root, Inc. report.

A position statement was received at the time of hearing from the Department of Natural Resources. Their position is that they concur in the recommendations as set forth in the Brown & Root, Inc. report.

It is the decision of the Court that the recommendations as to elevation of the water surface for Lake Leelanau shall be established at 589-21 MSL, USGS datum, with a maximum fluctuation of plus 0" and minus 2" during the period from April 15 or at ice break-up (whichever is later) to November 15 of each year. During the period from November 15 to April 15 or ice

break-up (whichever is later) the water surface elevation shall be lowered to 588.21 MSL, USGS datum. The Court adopts as its own the reasons as set forth in the Brown & Root, Inc. report for support of this determination of the water surface elevation.

It appears that a previous lake level was established in a private litigation and resulted in a decree dated December 28, 1923, requiring the Defendant therein to maintain the water level between six feet and seven feet two inches at the forebay of the Leland Dam. The Court is satisfied that such prior determination would not be fatal to the present petition on the principle of res judicata. Missaukee County Board of Commissioners v Nyland, 45 Mich App 307 (1973).

It is clear that under the Act the legislature has empowered the County Board of Commissioners to determine the expediency of, and a method of, financing the initial costs and maintenance of any project, and to direct the Department (County Road Commission) to establish a special assessment district. MCLA 281.65; MSA 11.300(5). The Department has established the special assessment district boundaries to include all properties fronting on or having access to said waters.

The Act further provides that the special assessment district shall include all parcels of land which are benefited by the establishment of a lake level. MSA 11.300(9).

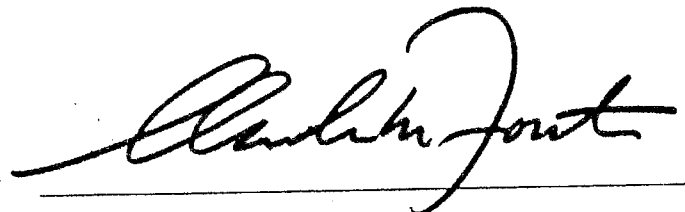
The theory of a special assessment for a public improvement is that a special benefit has been conferred upon the property assessed, over and above that conferred upon the community itself. Johnson v Inkster, 401 Mich 263 (1977). This means that a special assessment district can only be sustained upon the theory that the subject property receives special benefits,

different from the benefits of the general public, and that such benefits are actual and probable benefits. New York Central R Co v City of Detroit, 354 Mich 637 (1958). An assessment, to be valid, has to relate to a benefit which reasonably applies to the subject property. Crampton v City of Royal Oak, 362 Mich 503 (1961); Dix-Ferndale Taxpayers Association v City of Detroit, 258 Mich 390 (1932). The stabilization of a lake level may be of mutual benefit to all abutting property owners, and may be taken into consideration in assessment of evaluation of abutting properties. Rice v Oakland County Drain Commissioner, 16 Mich App 406 (1969).

The Court finds that the establishment and maintenance of specific lake levels does confer a special benefit to those properties included in the special assessment district, that such special benefits are over and above the general benefits conferred upon the public as a whole, and the special assessment district as proposed does include all parcels of land which are benefited as defined by present case law. These benefits are set forth in the report of Brown & Root, Inc. and are hereby adopted as Findings of Fact by the Court.

The Court, therefore, confirms the special assessment district boundaries as proposed by the Leelanau County Road Commission.

The prosecuting attorney shall present to the Court within 10 days a final Order for signature which comports with this decision.



CHARLES M. FORSTER, Circuit Judge

DATED: October 2, 1978