

Financing Your Lake Project: Lake Boards vs. Township Boards

By Tony Groves, Water Resources Director, Progressive AE

This is the second part of a two-part article about financing alternatives for lake projects. The first article, which appeared in the February 2005 issue of the Michigan Riparian, examined recent amendments to the Lake Board Act. This article discusses the pros and cons of organizing a lake project by establishing a lake board versus using an existing township board.

Part 309 (Inland Lake Improvements) of the Natural Resources and Environmental Protection Act, PA 451 of 1994, as amended, provides for the establishment of lake boards and special assessment districts to finance lake improvement projects. Since 1966, this act has been used extensively to finance a variety of lake projects. Currently, there are over 100 active lake boards in Michigan.

The Township Special Assessment Act, PA 188 of 1954 was amended in 1994 to provide a mechanism to finance lake improvement projects. However, with Act 188, projects are organized under an existing township board.

With respect to process, both Part 309 and Act 188 are similar (Table 1). Both statutes provide for the establishment of a special assessment district to finance lake improvements, and both statutes require a public hearing on 1) the necessity (or practicability) of the project, and 2) a public hearing on the special assessment roll.

Some practical things that should be considered in establishing a special assessment district include:

The Petition: If a project is proposed to be initiated via petition, the petition should clearly state that “a special assessment district will be established and that special assessments will be levied to finance the desired lake improvements.” Space should be provided on the petition for property owners to both sign and print their names. If property is owned jointly, all freeholders should sign the petition. Prior to circulation, the local unit(s) of government involved with the project should review the petition to ensure petition language is acceptable.

Developing the “Plan”: An independent study should be conducted to evaluate the feasibility of lake improvement alternatives and to determine the proposed scope and cost of the project. The preparation of a lake improvement plan is important. You want to make sure that the thousands of dollars that may be invested in a lake project are being spent on improvements that are both environmentally sound and cost effective.

Special Assessments: When establishing a special assessment district for a lake project, care should be taken to ensure the district only includes those properties that directly benefit from the proposed improvement. Typically, this will include all lake front properties and back lots with deeded or dedicated lake access. To avoid legal challenges, assessment should be levied in a fair, consistent, and equitable manner. All similarly situated properties should be assessed the same. Often, a simple assessment apportionment scheme (where, for example, lakefront parcels are assessed one unit of benefit and back lots with access one-half unit of benefit) is easier to defend (and explain) than a more complex assessment methodology.

With respect to procedure, neither statute is superior over the other. However, there are some instances where one act may be preferred over the other. For example, if a lake is located entirely within one township and the township is willing to undertake the project, then Act 188 may be a more expedient way to proceed. If, on the other hand, a lake is located in several townships or political jurisdictions, then Part 309 may be more desirable. (In a situation

where a lake is in several townships, each township involved would need to undertake separate assessment proceedings which could be both time-consuming and cumbersome. In addition, no single entity would be administering the project). Another practical consideration with Act 188 is that township boards often have full agendas and address a myriad of issues at their meetings. (If you have ever sat through a township board meeting, you can attest to this fact.). Often, they have precious little time available to discuss and address lake issues and concerns. By contrast, a lake board is formed to address only the lake in question and thus, focuses only on lake issues.

This article provided an overview of the procedures that must be followed in organizing a project under Part 309 or Act 188. In organizing a lake improvement project, it is important that statutory hearing and notice procedures be followed closely. Lake projects can be time-consuming enough without having a project challenged and prolonged due to a procedural flaw. To help ensure proper steps and procedures are followed, lake residents who are considering pursuing the establishment of a special assessment district for their lake should seek professional assistance or legal counsel before embarking on the process.

Table 1 - An Overview of Part 309 and Act 188 Procedures

Part 309 (Inland Lake Improvements) of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994

- Projects are administered by a lake board that is comprised of a lakefront property owner, a representative of each local governmental unit (if there is only one local unit of government involved, 2 representatives of that local unit are appointed to the lake board), a county commissioner, and the county drain commissioner or his or her designee. (Note that local units of government can appoint lake residents as their representative(s) if they so choose.)
- Projects are initiated by motion of the local unit(s) of government or by petition of 2/3 of freeholders abutting the lake.
- Pursuant to the Act, projects can be implemented that provide the following benefit(s): The elimination of pollution and elimination of flood damage, elimination of water conditions which jeopardize the public health or safety; increase of the value or use of lands and property arising from improving a lake or lakes as a result of the lake project, and the improvement or development of a lake for conservation of fish and wildlife and the use, improvement or development of a lake for fishing, wildlife, boating, swimming or any other recreational, agricultural, or conservation uses.
- Lake board retains an engineer to conduct lake improvement feasibility study, and to determine the scope and estimated cost of project and probable assessments.
- Public hearings are required on the practicability of the project and special assessment roll.

Township Special Assessment Act, P.A. 188 of 1954, as amended

- Projects are administered by the township board.
- For lake improvements, projects can be initiated by motion of the township board or by petition of land owners constituting more than 50% of the land area in the special assessment district.
- Under this Act, assessments can be levied for the eradication or control of aquatic weeds and plants, the construction, improvement, and maintenance of a lake including, but not limited to, dredging, and the construction, improvement, and maintenance of dams and other structures which retain the waters of the state for recreational purposes. (Note that under Act 188, a lake, pond, river, or stream under the jurisdiction of the county drain commissioner cannot be improved without written permission of the drain commissioner.)
- Plans are prepared describing the improvement and estimated costs.
- Public hearings required on the necessity of the project and the special assessment roll.