



Setting Up Special Assessment Districts For Lake Management in Townships

Lake associations and riparian property owners have sometimes experienced frustration when attempting to implement lake management programs. Often, in the case of voluntary associations, problems arise when property owners refuse to join or fail to contribute their fair share to the funding. Also, it is normally not possible to force 100% participation through the association itself. These obstacles can severely limit the effectiveness of lake management programs. Nevertheless, there are Michigan statutes, which permit the creation of a special assessment district covering the entire lake involved through the local municipality (i.e., city, village, or township).

The first step in setting up a special assessment district is to obtain signatures of property owners in favor of lake management improvements or approved petitions. Once the signatures are obtained from property owners constituting 51% or more of the land area, the petition is presented to the municipality. Thereafter, public hearings are conducted (usually 2) in order for the municipality to hear property owners' opinions, decide whether to proceed with a special assessment, and determine the monetary assessment per property owner. Notice must be given in a local publication and by mailing a notice to property owners in a proposed assessment area prior to each public hearing.

Once the special assessment district is set up and enacted, the local municipality (usually in consultation with the lake association or riparian property owners) will contract the lake management program, with the cost put on the tax rolls for all benefited properties. The participation is 100%, since each property owner within the special assessment district (usually, all properties abutting a lake, and in some cases, including access properties) will have a share of the cost appear on his/her tax bill. Since the cost is on everybody's tax bill, payment is mandatory.

The cost per lot for lake management pursuant to a special assessment district varies. Typically, such costs range from \$100 to \$250 per lot per year. This figure can vary, however, depending on the nature of the management program (i.e., the type(s) of herbicides used), the size of the lake, how long the special assessment district is set up for and other factors.

COMMONLY ASKED QUESTIONS

- Q Are special assessment districts for lake management programs common in Michigan?
- A Yes. There are many special assessment districts for lake management programs in municipalities throughout the state.
- Q How does a lake association or group of riparian property owners go about prompting a municipality to set up a special assessment district?
- A The statutory requirements are very specific. First, the property owners desiring a special assessment district must circulate a petition. Normally, that would involve getting the property owners owning more than 50% of the land area on the lake to sign the petition. No petition should be circulated, however, until the municipality has approved the form and petition language. Next, the municipality has the option to conduct an informational meeting to determine whether to schedule a formal hearing. If and when a formal hearing is scheduled, everyone in the proposed special assessment district will receive prior notice of the hearing. At the hearing, everyone can express his or her opinion about the proposed special assessment district, both “pro” and “con.” After the hearing, the municipality has the option of either turning down or adopting the special assessment district. If the special assessment district is adopted, a second hearing will be scheduled later to confirm the special assessment roll—that is, to verify which properties will be located within the special assessment district and the cost per property/unit.
- Q The above process seems complicated—is it?
- A It is true that there are very specific statutory requirements which must be met. However, it is normally the duty of the municipality involved to make sure that all procedures are followed after appropriate petitions have been filed. Since not all municipalities are familiar with the special assessment process, it is essential that the municipality employ knowledgeable legal counsel to be actively involved in the process, from beginning to end. If the municipality’s attorney is not familiar with this process, there are attorneys who specialize in this area who can serve as special counsel to the municipality for purposes of creating the special assessment district.
- Q How are the costs of administering the special assessment district and additional costs (hearing costs, attorney fees, etc.) paid for?
- A All such expenses are rolled back into the special assessment district. Quite often, such costs will be spread out over time.
- Q If more than 50% of the property owners involved desire the special assessment district, must the municipality set it up?

A No. Even if most or all property owners petition the municipality to set up the district, it is still within the discretion of the municipality to decline to pursue the special assessment district. Nevertheless, if the municipality refuses to set up the district when the majority of property owners desire the district, the property owners would be justified in petitioning the municipality to pay for lake management out of its general fund pursuant to MCLA 41.418. When given the choice, most municipalities would prefer to pursue the special assessment district process, since then the taxpayers at large will not be paying for lake management programs.

Q How long does it take to set up a special assessment district?

A Even if a municipality moves very quickly and without public opposition, about the quickest that a special assessment district can be finalized from the date the petitions are filed is three months. It is not uncommon for the special assessment process to take between four and six months to complete. Accordingly, it is normally wise to begin circulating the petitions at least eight months to one year prior to the time you desire treatments.

Q What if a property owner objects to having his/her bottomlands treated?

A Usually, if that person notifies the municipality or PLM Lake & Land Management Corp. , that person's bottomlands will not be treated unless it jeopardizes the success of the lake management program or limits management options. PLM Lake & Land Management Corp. will try to fulfill a homeowner's request if possible. There are also legal guidelines which must be followed if a property owner objects.

Q Can a group of interested riparian property owners or a lake association retain legal counsel to advise it regarding this process of dealing with the local municipality?

A Yes. Only the attorney representing the municipality can be paid from the special assessment district, but private riparian property owners or lake associations certainly can consult with their own legal counsel regarding the process.

Q Is it better to utilize a statutory lake board rather than a special assessment district for lake management programs?

A Generally not. Setting up a statutory lake board is usually much more complicated and expensive. Furthermore, lakes tend to lose "local control," since members of the lake board will have to include a representative of the county commission, the county drain commissioner and the MDNRE. Although statutory lake boards might be appropriate where multiple townships are involved or there are large problems which require lake dredging, the installation of a dam or similar large-scale projects, it is usually simpler, quicker and cheaper to utilize a special assessment district where management of aquatic weeds and water quality issues are the only problems involved.

Q What if a water body is divided between two or more municipalities?

A In this situation, each municipality will have to go through the special assessment process if the lake board process is not utilized. However, it is not uncommon for municipalities to work together in adopting a special assessment district. Typically, the smaller municipality will wait for the larger municipality's approval of a special assessment district.

If you have any questions regarding this process, please contact us at PLM Lake & Land Management Corp. , 8865 100th Street SE, Alto, Michigan, 49302. Telephone 1-800-382-4434. Email: jason@plmcorp.net. We will be happy to assist you in any way possible. In the past, the Grand Rapids law firm of Law, Weathers & Richardson, P.C. has assisted many municipalities and riparian property owners regarding this process. For information, please contact: Clifford H. Bloom or Roger A. Swets of Law, Weathers & Richardson, P.C., 333 Bridge Street, N.W., Suite 800, Grand Rapids, Michigan 49504-5360. Telephone (616) 459-1171.

(This pamphlet is for general informational purposes only and is not an exhaustive or authoritative source regarding special assessment districts and related issues. For more information, please contact us at Professional Lake Management or consult with legal counsel of your choice.)