

ATTORNEY WRITES

by: Clifford H. Bloom
Law, Weathers & Richardson, P.C.
Bridgewater Place
333 Bridge Street, N.W., Suite 800
Grand Rapids, Michigan 49504-5360

Weed Control

An increasing number of lake associations are pursuing special assessment districts as a method for funding aquatic weed control efforts. Lake associations across the state have faced the inevitable problem of how voluntary associations can collect money for weed control. Absent mandatory dues pursuant to deed restrictions, lake associations cannot force anyone (members and nonmembers alike) to pay dues or to contribute to weed control costs. Indirectly, however, lake associations and riparian property owners can prompt aquatic weed control and 100% mandatory participation for paying the costs thereof by persuading the local municipality to adopt a special assessment district for weed control purposes.

Any municipality can set up a special assessment district. Since most lakes in the state of Michigan are located within townships (as opposed to cities or villages), I will address only township special assessment districts in this column, although the procedure for cities and villages is virtually identical. There are several state statutes which permit townships to utilize special assessment districts for aquatic weed control, but Public Act 188 of 1954, as amended (MCLA 41.721 *et seq.*) is the most frequently used statute. The special assessment district process is initiated by either the Township Board on its own motion or by property owner petitions. Procedurally, the process involves at least two hearings, public notices and various resolutions. Due to the somewhat peculiar and technical requirements associated with creating a special assessment district, the township attorney should be actively involved in the process. Without active involvement by the township attorney, the process can be extremely confusing and subject to court challenge.

Ultimately, the final decisions regarding whether or not a special assessment district will be authorized, and if so, which properties will be included, rests with the township board. The township board must also decide the total amount of cost to be assessed, as well as how the assessment will be apportioned (that is, will it be assessed against properties on a per-lake frontage foot basis, a per-lot basis, an acreage basis, or based on the assessed tax valuation of the properties), and the time duration of the special assessment district.

Once the special assessment district is set up and the matter is put on the tax rolls, the annual amount will become part of each property owner's tax bill. Payment is mandatory. Thus, participation is 100% within the district.

Although most taxpayers do not realize it, the amount paid on property tax bills for special assessments for weed control is probably not deductible as an itemized deduction on federal income taxes, since such assessments are done for the benefit of the property. If in doubt, property owners should consult with their accountant or tax attorney.

An alternative to utilizing a special assessment district is a statutory lake improvement board (*see* MCLA 324.30901 *et seq.*). While statutory lake boards sometimes have advantages in particular situations over special assessment districts for weed control purposes, those instances are fairly uncommon. The process for setting up a statutory lake board is virtually identical to that of special assessment districts. Statutory lake boards tend to have advantages over special assessment districts where fairly large projects are involved (for instance, the dredging of a lake or where there is a severe weed problem), where a lake straddles two or more townships, or where there is a problem which requires extensive engineering work or studies. Absent such unusual circumstances, special assessment districts normally make much more sense than statutory lake boards for simple weed control purposes. Once set up, statutory lake boards tend to involve greater expenses and a loss of local control since the decision making is removed from the local township board and put into the hands of a committee comprised of the county drain commissioner, a county commissioner, a DNR/DEQ representative, a representative of each local government involved and a riparian owner.

Attorney fees and any other professional fees and costs associated with setting up and administering the special assessment district normally tend to be relatively modest and can be rolled right back into the special assessment district.

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Since my column in a recent issue of *The Riparian* regarding incorporating of lake associations, several readers have inquired about the legal costs for incorporation. While legal costs certainly vary depending upon the type of lake association involved, the number of redrafts of documents (often due to disagreement among members) and other factors, most lake associations can be incorporated for legal costs in the range of \$400-\$800. Once incorporation occurs, the association normally does not have to reincorporate again thereafter if it remains active. Periodically, bylaws and other corporate documents will have to be updated.