

NOTICE
GERRISH TOWNSHIP
SPECIAL MEETING
2997 E. HIGGINS LAKE DRIVE
ROSCOMMON, MI 48653
PHONE: (989) 821-9313

WHEN: Thursday, August 3, 2023
TIME: 9:00am
PLACE: Gerrish Township Municipal Center
PURPOSE: Special Meeting Work Session

Call to Order: 9:00am
Pledge of Allegiance

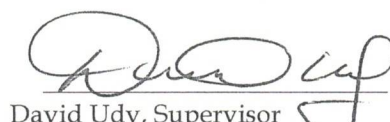
Roll Call: Supervisor Udy, Trustee Oppy, Trustee Newton, Clerk Squires all present. 9 citizens

1. S.A.D. Resolution Vote
2. Police Department Monthly
3. Fire/EMS Monthly
4. Marina Monthly
5. Parks & Rec Monthly
6. Cemetery Update
7. Land Split /Shortt
8. Update Municipal Bld. Project update

Motion by Trustee Newton, Supported by Trustee Oppy, that the Board adjourn at 10:53am


Michelle Squires, Clerk

Approved


David Udy, Supervisor

This notice is posted in compliance with PA 267 of 1976 as amended (Open Meetings Act), MCLA 41.72 (2) (3) and Americans with Disabilities Act (ADA).

The Gerrish Township Board will provide necessary reasonable auxiliary aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting, to individuals with disabilities at the meeting or public hearing upon 15 -day notice to the Gerrish Township Board. Individuals with disabilities requiring auxiliary aids or services should

**Resolution of the Gerrish Township Board
Opposing the Creation of a Special Assessment District at Higgins Lake**

Whereas, it is the responsibility of the Roscommon County Board of Commissioners (RCBOC) to maintain the normal level of Higgins Lake that provides the most benefit to the public, that best protects the public health, safety, and welfare, that best preserves the natural resources of the state and that best preserves and protects the value of property around the lake; and

Whereas, the legal level in Higgins Lake was set by an order issued in 1982 by the Roscommon County Circuit Court, in accordance with the version of Part 307 of Public Act 451 of 1994 as it existed at the time. The statute was amended by Public Act 59 of 1995, including Section 30704, to provide if a county board, based on a preliminary study finds it expedient to have and resolves to have determined and established the normal level of: an inland lake, the county board shall direct [counsel] of the county to initiate a proceeding by proper petition in the court of that county for determination of a normal level for that inland lake and for establishing a special assessment district of the county board determines by resolution that one is necessary as provided in section 30711; and

Whereas, Section 30711 was added by Public Act 59 of 1995 to provide the county board may determine by resolution that the whole or a part of the cost of a project to establish and maintain a normal level for an inland lake shall be defrayed by a special assessment against the following that are benefited by the project: privately owned parcels of land, political subdivisions of the state-, and state-owned lands under the jurisdiction and control of the department; and

Whereas, the Township of Gerrish owns real property on Higgins Lake which will not "benefit" from any lake level project (as that term is considered in special assessments) through the enhancement or increase in value of township property, which may be affected by any proposed special assessment - yet the costs of which can only be defrayed from higher assessments by Gerrish Township against all of the owners of real property throughout the township, effectively creating a double tax for those already located within any special assessment district; and

Whereas, the current Higgins Lake Control Structure (HLCS) was redesigned and reconstructed in 2007, and has been maintained and operated since that date at minimal cost; and

Whereas, the RCBOC commissioned the Spicer Group (Spicer) to complete an engineering analysis of the HLCS. Spicer authored a 2010 report finding the HLCS was in good condition but in need of minor repairs and modifications which would improve the County's ability to comply with the legal lake level as established by Roscommon County Circuit Court; and

Whereas, under Part 307 of Act 451, as amended by Public Act 59 of 1995, an action to establish a legal lake level can be initiated either by a Petition to the County Board of Commissioners of two-thirds of the owners of land abutting the lake, or by Motion of the County Board of Commissioners.

Whereas, according to the Minutes of the Roscommon County Board of Commissioners on December 21, 2022 the RCBOC passed Resolution 2022-12-03 to establish and confirm the boundaries of a Higgins Lake-Lake Level Special Assessment District (SAD).

Whereas, Resolution 2022-12-03 also resolved

- a) the appointment of a delegated authority (MCL 324.30702(2));
- b) approval of annual expenditures of over \$10,000 for activities related to Higgins Lake's normal level, including but not limited to, establishing and confirming a lake level special assessment district including specifying its boundaries (MCL 324.30722(4));
- c) approval of the delegated authority to retain and utilize legal counsel and engineers to perform services related to preparing the boundaries of a recommended Higgins Lake- Lake Level Special Assessment District under Part 307, and any further services that are necessary related to maintaining the lake's normal lake level and to further authorized "retained legal counsel to file a petition in the Roscommon County Circuit Court to take any action necessary to establish and confirm the boundaries of a lake level special assessment district for Higgins Lake (MCL 324.30707(5));
- d) authorizing the delegated authority to direct retained legal counsel to assist the Crawford County Board of Commissioners with passing any resolutions or other activities to perform the actions authorized by the resolution; and
- e) that all costs associated with the activities authorized in the resolution, including retaining all necessary consultants (legal counsel and engineers) shall be reimbursed by the lake level special assessment district to the extent permitted by Part 307.

Whereas, on April 12, 2023, the RCBOC passed Resolution 2023-04-01 authorizing the Fahey Schultz "Burzych Rhodes PLC ("FSPR") law firm which has been advising the County in its efforts to "update" the lake level order for Higgins Lake (including establishing the boundaries of a lake level special assessment district) to also represent the County in other pending litigation involving the County;

Whereas, Part 307, specifically Section 30712, limits the costs of a normal level project to the following:

- a) The preliminary study,
- b) Surveys,
- c) Establishing a special assessment district, including preparation of assessment rolls and levying assessments,
- d) Acquiring land and other property,
- e) Locating, constructing, operating, repairing, and maintaining a dam or works of improvement necessary for maintaining the normal level,
- f) Legal fees, including estimated costs of appeals if assessments are not upheld,
- g) Court costs,
- h) Interest on bonds and other financing costs for the first, year, if the project is so financed,
- i) Any other costs **necessary** for the project which can be specifically itemized.

Whereas, there is a concern that the fees and costs associated with FSPR in representing the County and/or taking all actions in that litigation as requested by the County (as directed by the Delegated Authority for Higgins Lake's Lake level) were and are not necessary for the project and will now possibly be included in the costs of establishing a normal level project in the future and passed on to the property owners in Gerrish Township; and

Whereas, owners of private property in Gerrish Township comprise a substantial majority of land surrounding Higgins Lake and within the proposed SAD boundaries; however, aside from the minutes of a RCBOC meeting held on March 22, 2023 in which it was reported "Phase one approval of creation of SAD through Circuit Court and implementation of preliminary improvement for Higgins Lake is estimated at \$64,000", none of the literature prepared by and presented by the RCBOC or to residents has provided any detail explaining the method of apportionment, the length of time the assessment will be in place, and the total project costs as defined in the act, that the proposed SAD would implement; and

Whereas, the literature prepared by and presented by the RCBOC lists the stated benefit to properties in the proposed SAD is the properties will "benefit from the lake level"; however, there has not been a definite determination of need for modifying the existing normal shore line or natural height and level of Higgins Lake, or that a declaration of a new normal lake level is necessary to improve or maintain navigation, or to promote public health or welfare. Such a determination should be a jurisdictional prerequisite for further proceedings. Niles v Meeker. 219 Mich. 361 (1922); and

Whereas, Gerrish Township has heard from many residents within the proposed SAD boundaries who strongly object to the implementation of the Higgins Lake SAD; and

Whereas, it is presumed substantial legal fees or engineering fees have already been incurred and will be incurred in the future and there is a strong concern those fees will be foisted upon said Gerrish Township, and its property owners for reimbursement through the special assessment.

Whereas, those legal fees already incurred file a Petition in Circuit Court to Establish a Lake Level Special Assessment District and Confirm Special Assessment District Boundaries for Higgins Lake do not benefit Gerrish Township or the property owners of Gerrish Township given there has not been a finding of an exigent need for future studies by Spicer which should not conclude anything different than previously determined. If any new findings are different, the legitimacy of the first report, or for that matter the new report would be highly suspect. Instead, to avoid repetitive legal and engineering costs, implementation of prior recommendations made by Spicer to the RCBOC should first be considered; and

Whereas, Gerrish Township would request alternative financing methods be sought by the Roscommon Board of Commissioners; and

Whereas, the Township of Gerrish recognizes the obligations of the RCBOC regarding the normal levels of Higgins Lake, however, wishes to express its concerns regarding the costs and expenses, including legal fees and future engineering fees associated with any proceeding to establish that which already exists; i.e, a legal lake level established in 1982 and to follow the recommendations of the Spicer Group mentioned below; and

Resolved that the Gerrish Township Board urges the "current" Roscommon County Board of Commissioners to act in the best interests of the property owners in Gerrish Township, Gerrish Township, Roscommon County, and the State of Michigan and rescind the Resolution authorizing the Petition to Create the Higgins Lake Special Assessment District.

Motion by: Trustee Oppy, Seconded by: Trustee Newton

Adopted by a vote of 4 in favor and 0 against, and one absent.

I hereby certify that the foregoing is a Resolution adopted by Gerrish Township at the Special Meeting Work Session held on August 3, 2023.

Clerk: Michelle Squires

MICHELLE SQUIRES