



January 25, 2018

To: Carl Druskovich, Hamilton Township Supervisor
Members of the Hamilton Township Zoning Board of Appeals
Derek Haroldson, Environmental Quality Analyst, Michigan DEQ

From: Lake of the Woods Improvement Association Board of Directors

RE: The 40 Dock Permit Application

The Lake of The Woods Improvement Association Board of Directors, (The Lake Board) would like to go on record in strong opposition of the current DEQ and Township Marina request for the lake project referred to as the "The 40 Dock". The Lake Board notes that the applicant, and those he enjoins in this request, have been in violation of Hamilton Township Zoning Ordinances and now seek to expand those violations in several ways:

1. The proposed project location (Parcel 80-10-013-027-25) is an "undivided 1/6th interest parcel" to the water's edge. The attached Land Contract dated 06/18/2013 wherein one of the six parcels of note is sold to Tamara R. Howely specifically states "SUBJECT, HOWEVER, to all valid outstanding easements, **restrictions**, rights-of-way, mineral leases" etc. A second legal description (Liber 1449: Page 420) of the back lot directly across from the shared lot reads "subject to easements, **reservations, restrictions and limitations of record**". There are no legal descriptions of record (subdivision plat or deed) found that allow for the dockage or mooring of boats which would otherwise be controlling in legal access arguments. By its very nature, the 1/6th interest lot is merely an "access easement" for the use and benefit of the six back lots. There is no argument that the 1/6th lot is "riparian" but the courts have upheld that riparian rights are subject to reasonable governmental regulations especially involving minimum frontage for lake-access properties and dockage regulations. There are **restrictions, limitations and regulations** in place that prohibit the requested project. The courts and Hamilton Township Ordinances 16.29 (B) and (C) 1 and 5 are clear that **access, by definition, does not allow the mooring of boats or installation of docks.** Unfortunately, this is currently occurring at this property and effectively keyholing or funneling into the lake contrary to any remedy sought by the proposed project. This makes some of the remaining points mute but we will address them anyway.
2. The proposed dock length is in direct violation of Hamilton Township Ordinance 8.04 (I). This allows for one (1) dock per lot and limits the length of a dock to thirty-five (35) feet unless necessary to reach a water depth of six (6) feet. There are other longer docks on the lake that are in compliance, without the intent to add additional watercraft as requested here. The project drawing, with unverified footages and depths, clearly puts the six (6) foot mark well before the proposed 80 dock end. Further, the proposal seeks to add a 20' pier section thereby constituting a secondary dock. Even if considered a single dock, it would violate the width of six (6) feet as also prescribed in 8.04 (I).

3. The 40 feet wide lot size is under that required for the allowance of any dock. Hamilton Township Zoning Ordinance 16.29 C-1 states that where a parcel of land...abutting a lake...whether such parcel is held in common by virtue of the terms of a plat of record; or providing for common use under deed, easement...**may be used as access property only if the following conditions are satisfied:** said parcel of land...shall contain a minimum of fifty (50) lineal feet of water frontage and a minimum depth of one hundred (100) feet. 16.29 C-5 also states that “not more than one pier or dock may be located on such access property for each fifty (50) lineal feet of water frontage. The 1/6th divided and shared lot is 40 feet wide with an unlisted depth and therefore disqualifies both access and dockage. Ultimately, we have no desire to limit lake access at this lot, but only to gain compliance with the current dockage ordinance and disallow future development as proposed.
4. The proposed location for the dock is at properties edge. Hamilton Township Ordinance 16.29 C-5 stipulates that any pier or dock “shall not be located closer than twenty (20) feet from any other pier or dock. The application doesn’t specify the distance between the requested location and that of the adjacent property dock. Currently, two unlawful piers are being used at the proposed project location and are very close to each other.
5. Hamilton Township Ordinance 8.04 (I) allows for “No more than four (4) watercraft” regularly moored at any dock serving a single residence. Although this shared parcel is not a buildable lot and serves no single residence, the language of the ordinance should be instructive. The project proposes to have six (6) boat slips, this not only being greater than allowed by current ordinance but, as previously noted, where no watercraft should be moored at all.
6. The applicant didn’t complete that part of the DEQ application on page 2, section 8 related to the “established lake board” or “lake association” which would have allowed for the Lake Improvement Association to be notified of the project. Receiving no other notice, the Lake Association was not able to file a proper response in the 20 day required period. We now seek to remedy this by way of this document. In addition, the applicant failed to notify the Township of the project which would require their approval. We can only surmise that this was intentional in an attempt to gain DEQ approval and use it as a shield against any future protest or actions.
7. The property of the proposed requested project was one of several which precipitated the development of a Lake of the Woods Improvement Association Riparian Subcommittee by a vote of the Board to study the matter. Complaints and concerns from members centered around keyholing/funneling, dockage, back lot owner access, safety on the lake, etc. The results of over two years of study and research led to the initiation of proposed ordinance development and revisions consistent with both Hamilton and Decatur Townships. This clearly serves the Purpose of the Lake Association and the stated purposes of the Hamilton Township Lake Residential District and Riparian Lot Use Regulations. These efforts are still ongoing and the proposed “The 40 Dock” project threatens this.
8. The applicant seeks approval for this project to try and create rights in an interest that he currently does not legally enjoy. He has clearly initiated action seeking the approval of those he desires to accompany him in this application. The applicant apparently believes that approval of only those directly around the project area are important without regard to the collateral effects around the entire lake. The lack of objection by adjacent property owners does not correct the current violation or make the proposed project legal. Surely, this can’t be the new standard for legal compliance in Hamilton Township? The project raises great present and future concerns as it affects everyone around the lake. Specifically, there are numerous access sites around the lake making any such approval problematic and having detrimental effects if others attempt to follow suit. This very matter was actually brought before the Association Board by a resident at a recent meeting wherein, a similar keyholing development was being considered at another part of the lake.

9. A specific value is attached to these six (6) back lots by way of their afforded access to Lake of the Woods. However, the project effectively seeks to place the proposed parcel into a higher value category by attaching rights otherwise not afforded. Lake Front parcel owners pay a premium in value and taxes for lakefront property with dockage rights. The applicant has previously expressed his concern related to his back lot property investment value if not allowed the mooring of a boat for a tenant. It appears that the applicant, seeks to protect an investment in an after the fact manner if his current activity is not grandfathered as part of any ordinance revision.

10. Local governments have the authority to regulate keyhole development to minimize the type of negative impacts that this project presents. This statutory authority has continually been upheld. In *Hess v. Bloomfield Township* the Michigan Supreme Court concluded regulation of riparian rights, such as dockage of boats is within the Township's zoning power. In *Square Lake Hills Condominium Association v Bloomfield Township* the Supreme Court concluded "...the delegated police power authority in the township ordinance act enables townships to regulate docking and launching boats for the protection of the health, safety, and welfare of persons and property within their communities." Hamilton Township has the expressed authority to regulate this matter and be stricter than any DEQ regulation approval. The applicants request to the DEQ thus proposes to reverse this authority. It is the position of the Lake of the Woods Association Board that Hamilton Township should continue in its denial of the project request pursuant to current ordinance regulations and effectively render the Michigan DEQ application null and void.

Lake of the Woods Improvement Association continues to advocate for those who enjoy our precious lake resource. We strive to fulfill the Association's Purpose and desire to protect the interests of its riparian and non-riparian owners alike. We feel that Hamilton Township was correct in its denial of the initial zoning related to "The 40 Dock" Project and strongly endorse the continued denial in the course of the Hamilton Township Zoning Board Appeal (ZBA). We profess this same desire in relation to the DEQ, U.S. Army Corps of Engineers public hearing and submit this document for the official record as evidence of our unanimous position.

Respectfully submitted,

Lake of the Woods Improvement Association Board of Directors
Robert Richter, President