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PARKS AND RECREATION

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June 18, 2013

Via Fax and First Class Mail

Michigan State Waterways Commission
State of Michigan
P. O. Box 30257
Lansing, Michigan 48909

**Re: Eagle Lake in Ontwa Township, Cass County, Michigan
Former "The Dock" Property
Option to Purchase by the DNR**

Dear Commission Members:

We are legal counsel for the Eagle Lake Improvement Association (the "Association"), which represents most of the lakefront property owners at Eagle Lake in Ontwa Township, Cass County, Michigan. This letter pertains to the purchase option apparently held by the Michigan Department of Natural Resources (the "DNR") with regard to the property located at the east end of Eagle Lake formerly known as "The Dock" property (the "Property"). It is our understanding that the Michigan State Waterways Commission (the "Commission") will be addressing the DNR's potential purchase of the Property at its upcoming meeting on June 21, 2013.

Prior to any decisions being made regarding whether the DNR should exercise its option to purchase the Property, there are several matters of which the Commission should be aware. First, Ontwa Township Supervisor John Brielmaier sent a letter to the DNR dated March 21, 2013, wherein Mr. Brielmaier stated that "Ontwa Township supports the DNR purchasing yhe [sic] Dock Property to be used as a boat launch and public park." The Association believes that Mr. Brielmaier's letter is both misleading and inaccurate. The positions and policies for Ontwa Township can only be set with the approval of the seven-person elected Ontwa Township Board. The Association has not been able to find any minutes or other information indicating that the Ontwa Township Board ever voted on whether to support the DNR purchase of the Property for a boat launch or otherwise. In fact, at the recent Ontwa Township Board meeting held on June 10, 2013, Mr. Brielmaier publicly admitted that no formal vote had been taken by the Township Board and that he simply did an informal survey of Township Board members. Not only does that not constitute formal Ontwa Township policy, but such actions could potentially be a violation of the Michigan Open Meetings Act, being MCL 15.261 *et seq.*

Commission members should also be aware that a boat launch and boat launch parking facility are not currently allowed for the Property pursuant to the Ontwa Township Zoning Ordinance, as amended (the "Zoning Ordinance"). Clearly, any DNR boat ramp and boat ramp parking facility would be subject to local zoning regulations pursuant to *Burt Twp v DNR*, 459

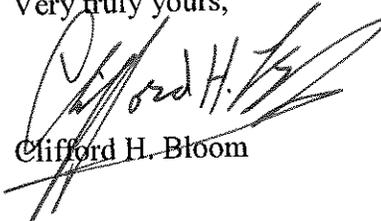
Mich 659 (1999). The Property is located within the L-R Lake Residential zoning district under the Zoning Ordinance. A boat launch facility and boat launch parking are not permitted uses within that zoning district. See Section 8.02 of the Zoning Ordinance. Association officials have asked Ontwa Township Zoning Administrator Wayne Hardin whether he has approved a boat launch and boat launch parking facility for the Property or whether such uses are even allowed on the Property pursuant to the Zoning Ordinance. Mr. Hardin has indicated to Association officials that he has not approved a boat launch or boat launch parking facility for the Property. Regarding whether or not the boat launch facility and boat launch parking are permitted uses within the L-R zoning district, Mr. Hardin has been noncommittal. He has indicated to Association officials that such uses would be allowed only if they are considered a "park" (for which he has not given an opinion – he apparently believes that the Township Planning Commission must make that interpretation).¹ Association officials do not believe that the DNR's proposal would be a "park."

Some have asserted that the Property has been used for many years as an informal boat launch and that the DNR would be able to develop a boat launch for "safe and effective access" to the lake. Such assertions are off base for at least two reasons. First, the site is inherently unsafe for any boat launching uses, given its proximity to a busy public road. There is no effective way to launch a boat into the lake at that site without interfering with road traffic. Second, the degree of usage of the informal boat launch in the past will pale in comparison to the high volume watercraft launching that will occur pursuant to an improved DNR public boat launch site. The Association will address this and other pertinent issues in more detail at your upcoming meeting.

This letter will supersede and replace the virtually identical letter of June 17, 2013, as there was an error in that earlier letter which listed me as the "Township Attorney" under my signature. We represent a significant number of townships and the wrong format was erroneously utilized. We are not legal counsel for Ontwa Township. We regret any misunderstanding that such error may have caused.

The Association thanks the Commission and its members for your careful consideration of these issues.

Very truly yours,



Clifford H. Bloom

cc: Eagle Lake Improvement Association
Roland Johnson, DNR Parks & Recreation Division
John Brielmaier, Ontwa Township Supervisor
Paula Ralph, Ontwa Township Clerk
Wayne Hardin, Ontwa Township Zoning Administrator

¹ It should be noted that the Zoning Administrator recently indicated that the Property is located within the R-1A Residential zoning district pursuant to the Zoning Ordinance, which is erroneous.