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September 30, 2009

VIA E-MAIL & U.S. MAIL

Hon. James R. Dietz
Village President, Village of Round Lake
442 N. Cedar Lake Road
Round Lake, IL 60073

Re: Round Lake Village Ordinance 05-0-27, an
ordinance establishing rules and regulations for
Wooster Lake usage

Dear Mayor Dietz:

I have been contacted by several residents of Wooster Lake regarding an apparent ongoing dispute over the use of watercraft on Wooster Lake. During the course of my discussions with these lake property owners (persons who actually own parts of Wooster Lake), I was advised that the Village of Round Lake adopted an ordinance in 2005 that purported to restrict the use of watercraft on Wooster Lake. While the Alpine Club has no interest in Wooster Lake, *per se*, we are concerned with the adoption of any ordinance which attempts to restrict the use of private waters in unincorporated Lake County. Accordingly, I thought it would be helpful to provide you with our views as to the legality of the subject ordinance.

The ordinance in question first cites the “three mile jurisdiction” statute as the basis for the village’s exercise of municipal authority over Wooster Lake. As you are aware, I am sure, the three-mile jurisdiction statute has been amended to make it clear, on its face, that the statute does not supersede the restrictions on municipal zoning authority contained in the Illinois Municipal Code. However, as can be readily seen from the legislative history of the recent amendment, the law was not actually changed in any way. That is, the purpose of the amendment was to provide clarity to municipalities who erroneously disregarded the clear limitations of municipal authority contained in the Municipal Code. In this regard, and for your information, I have enclosed a copy of my letter to (then) Governor Blagojevich outlining the development of the amendment to the statute.

The law governing municipal authority, as it existed at the time your ordinance was adopted, specifically prohibits the exercise of a municipality’s zoning power outside the

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corporate boundaries of the municipality. 65 ILCS 5/11-13-1. The three-mile jurisdictional statute does not act to extend a municipality's zoning power outside of its corporate boundaries. *County of Will v. City of Naperville*, 266 Ill. App. 3d 662, 589 N.E.2d 1090 (3rd Dist. 1992). Notwithstanding the foregoing, some have argued that the jurisdiction statute affords municipalities blanket authority up to three miles beyond the corporate boundaries, over water. This is a patently erroneous assertion which, in our opinion, would have been defeated had we chosen to litigate the matter. Fortunately, when the Alpine Club was faced with a potential exercise of municipal authority by the villages surrounding Round Lake, we were able to convince the mayors of the three villages to refrain from such efforts. Nevertheless, we were concerned with future efforts to invoke the three mile jurisdiction statute notwithstanding the unambiguous limitation on that jurisdiction set forth in the modern Municipal Code. This was the reasoning for our efforts to amend the ancient three mile jurisdiction statute to bring clarity to this area of the law.

Even though the Village of Round Lake is restricted from exercising zoning power beyond its municipal boundaries, the village retains "jurisdiction" over Wooster Lake, by virtue of the three mile jurisdiction statute. Round Lake shares that "jurisdiction" with the other municipalities which border the unincorporated lake. This "jurisdiction" is limited, however, by virtue of the Illinois Municipal Code. The village may exercise police power to enforce state law such as the Boat Registration and Safety Act and the Criminal Code. However, any effort to restrict the use of private property by its owners, is, by definition, zoning and the adoption of any ordinance which restricts the use of private property outside of the municipal boundaries of the village is prohibited by the Municipal Code. Similarly, the other key statutes cited in your ordinance (65 ILCS 5/11-44-3 and 625 ILCS 45/5-7) apply to harbors and waters located within the municipality and do not apply to private property located in unincorporated areas.

Finally, characterizing an ordinance as a public safety/public health measure, while refraining from designating a restriction as a zoning measure, does not somehow revive an otherwise prohibited exercise of extra-territorial jurisdiction by a municipality. Any exercise of municipal authority which attempts to restrict the use of private property by its owners is, by definition, zoning. Many zoning restrictions are adopted for the protection of the health and safety of the public. A municipality cannot regulate the use of private property outside of its municipal boundaries, regardless of the purported purpose of the ordinance. The Municipal Code treats any restriction on the use of private property as an exercise of zoning power, regardless of the justification for the measure.

In reviewing the other factors regarding the adoption of this ordinance, it also appears that the village may have failed to follow appropriate procedures in the adoption of the subject ordinance. Clearly, no notice was given to the owners of the property to be affected by the

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ordinance. Additionally, it seems that the ordinance was a "late entry" onto the agenda for the meeting of the village board of September 6, 2005. Additionally, the audio record of the board meeting shows that there was no second reading for this ordinance. Additional factors may call into question the veracity of this ordinance. Accordingly, it is not clear that the subject ordinance was properly adopted. Whether properly adopted or otherwise, the ordinance in question was not given the fair public hearing it should have been afforded. Statements were made by the proponents of the ordinance which were false and misleading and, given the lack of notice to anyone who might be in opposition to the ordinance, those statements went unopposed.

The simplest way to deal with an ordinance which was a mistake is to repeal the ordinance. You may find it efficacious to revoke the ordinance or otherwise de-certify the ordinance due to the illegality of its adoption or due to the fact that the exercise of zoning power contained therein is prohibited by the Municipal Code. In any event, something should be done to address this ordinance as it, apparently, has formed the basis for several confrontations on Wooster Lake.

Should you wish to discuss any of the foregoing, I would be happy to meet with you, or your village attorney (or the both of you). The Alpine Club remains committed to the preservation of the private waters of Round Lake, the rights of private land owners of those waters and the free, safe and lawful public use of all of the waters of Round Lake, both public and private.

Very Truly Yours,

CLAUSEN MILLER P.C.

By:



Martin C. Sener

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