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December 2, 2005

VIA E-MAIL AND U.S. MAIL

Hon. Richard H. Hill
Mayor
Village of Round Lake Beach
1937 N. Municipal Way
Round Lake Beach, IL 60073
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Hon. Bill Gentes
Mayor
Village of Round Lake
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Round Lake, IL 60073
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Hon. Ila M. Bauer
Mayor
Village of Round Lake Park
203 E. Lake Shore Drive
Round Lake Park, IL 60073
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Re: *Alpine Country Club Opposition to proposed boat sticker program*

Dear Mayors Hill, Gentes and Bauer:

Thank you for the copy of the opinion letter which Mayor Hill was kind enough to forward to me yesterday. Obviously, we are very disappointed with the opinion letter prepared by the Ancel, Glinck law firm. The opinion is not only wrong, but the logic for the conclusion is fatally flawed. In particular, for some inexplicable reason, the writer cited the appellate court opinion in *Beacham v. Lake Zurich Property Owners Association*, 159 Ill. App. 3d 204, 511 N.E.2d 226 (2nd Dist. 1987). That case was the subject of further appeal and the Supreme Court of Illinois issued an opinion in the case - which supersedes the appellate court opinion. See, *Beacham v. Lake Zurich Property Owners Association*, 123 Ill. 2d 227, 526 N.E.2d 154 (1988). In the opinion of the Illinois Supreme Court, the sticker program violated the plaintiff's right to unrestricted use of the lake and the case was remanded to the trial court to determine whether the plaintiff's business of renting boats to the general public was a reasonable use of the lake such that it did not interfere with the reasonable use of the lake by the Association.

The writer opines that because the Association in the *Beacham* decision was precluded from forcing a lake owner to pay for a sticker to use the lake, Alpine would be precluded from claiming it is exempt from the enforcement of a similar sticker program. The writer fails to connect such an assertion to the facts at hand. Alpine is not the entity seeking to control or restrict the reasonable use of the lake. Rather, like the plaintiff in the *Beacham* case, Alpine is seeking to enforce its right to reasonable use of the lake without having to pay to use its own

Mayors Hill, Gentes and Bauer

December 2, 2005

Page 2

property. We firmly believe that our right to use the lake without having to pay for a sticker is exactly like the right of plaintiff Beacham - a right which was vindicated by the Illinois Supreme Court.

Further, unlike the situation in Lake Zurich, most of Round Lake - including all of the Alpine Lake property - is located outside the municipal boundaries of the members of the Lake Commission (Round Lake, Round Lake Beach and Round Lake Park). Under the Boat Registration and Safety Act, Lake Zurich may enact "ordinances or local law" governing the use of vessels on the waters of Lake Zurich because the lake is within the corporate limits of Lake Zurich. In this regard, please see the attachments showing (1) the corporate boundaries of Lake Zurich and (2) the corporate boundaries of the municipalities surrounding Round Lake.

It has been said that Illinois statutes allow the exercise of jurisdiction within three miles (over water) of the corporate boundaries of a municipality and that such grant of general municipal jurisdiction would allow a municipality to enact ordinances restricting and/or regulating use of private property within that distance from the municipal boundaries. *See*, Illinois Municipal Code, Sec. 7-4-4, 65 ILCS 5/7-4-4. Indeed, according to local media reports, this statute was used as justification for regulation of the use of Wooster Lake by the Village of Round Lake. However, Illinois law places limits upon the exercise of the general grant of jurisdiction by a municipality in that, specifically, a municipality can not regulate or restrict the use of private property by virtue of such a general grant of jurisdiction. For example, in *County of Will v. City of Naperville*, 226 Ill. App. 3d 589 N.E.2d 1090 (3rd Dist. 1992), the court held that the one-mile extension of general jurisdiction over land found at 65 ILCS 5/7-4-2 (similar to the three mile extension over water found at 65 ILCS 5/7-4-4) did not empower the municipality to enforce a zoning ordinance to change a use restriction over a parcel of property even though the municipality owned the property. The court stated: "Section 7-4-2 of the Municipal Code, on which the City relies, is a general provision describing the jurisdiction scope of a municipality's authority. The powers of a municipality are set forth in article 11 of the Code. Division 13 of Article 11 details a municipality's zoning powers. The power to zone outside the corporate limits is specifically and unambiguously denied by section 11-13-1 when the county has enacted a zoning ordinance. This specific statutory provision is controlling and cannot be broadened by reference to the general jurisdictional provisions of section 7-4-2. [citation omitted]." Accordingly, while a municipality (or group of them collectively) may exercise general jurisdiction over water within three miles of its corporate boundaries to enforce state law - like the Boat Registration and Safety Act, or the Illinois Criminal Code, to name two significant examples - the municipality may not engage in the regulation of the use of private property - zoning - outside its corporate limits. (Incidentally, it should be noted that Alpine would object to any effort to annex the lake by any of the municipalities - given the size of the Alpine parcel we would have the right to object to such annexation.)

Mayors Hill, Gentes and Bauer
December 2, 2005
Page 3

There is no dispute that the Alpine owns a very large percentage of Round Lake (well over 75%). Alpine has never taken any action to restrict the use of the lake by the public. Alpine has expressed a desire to work with the lake commission and support the lake commission in its effort to "provide a safe, clean and pleasant lake." However, we must strenuously object to being charged to use our own private property. We must object to any effort to restrict or regulate the use of our property by outside municipalities. We have proposed to the commission members several alternatives to address their desire to raise revenue for their programs. However, mandatory payment of fees of any kind for the private use of our own property will never be acceptable to the Alpine members. We hope that this issue can be amicably resolved. Once you have had a chance to review the foregoing, please give me a call to discuss the matter further.

Very truly yours,

CLAUSEN MILLER P.C.

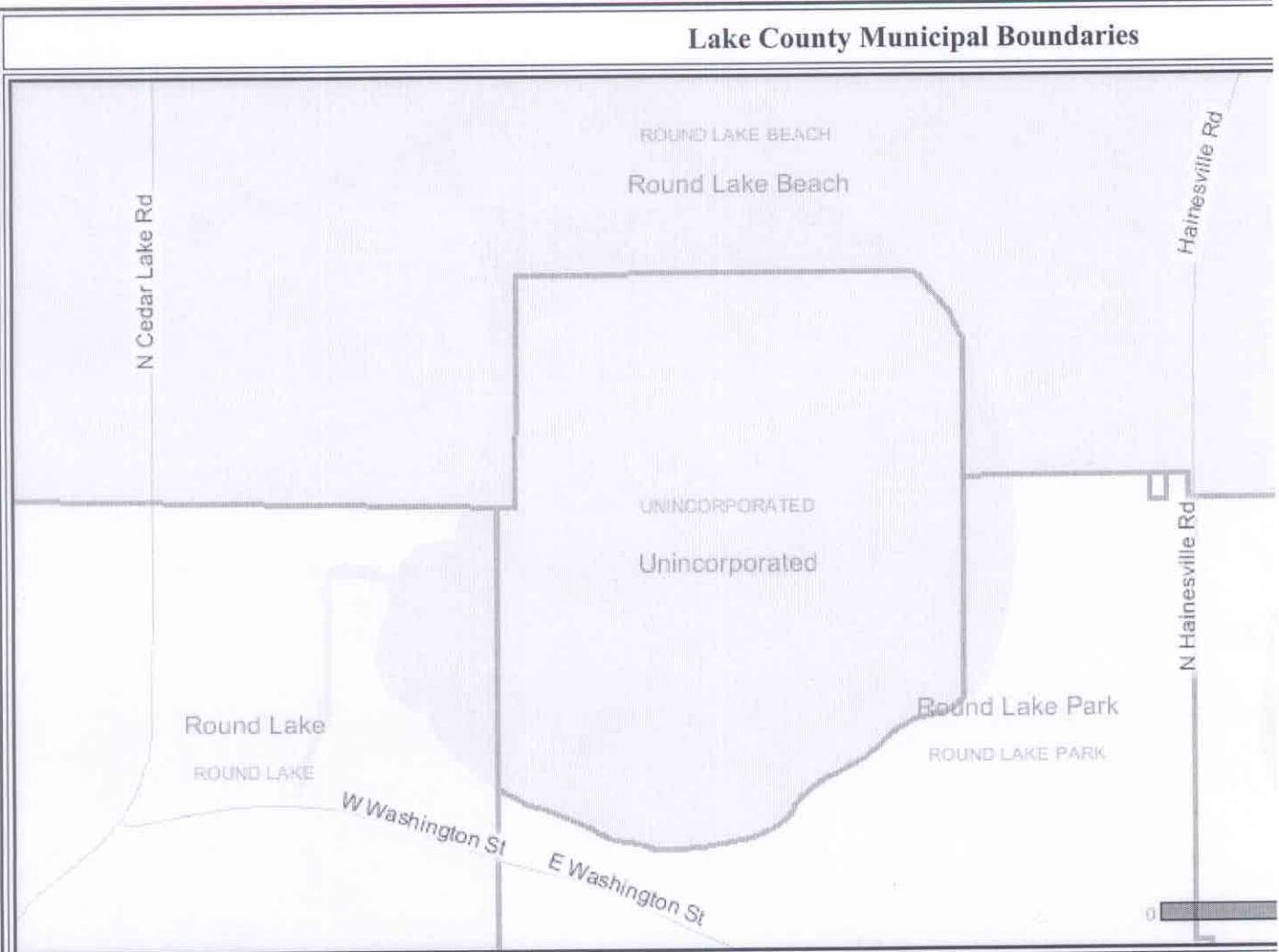
By:



Martin C. Sener

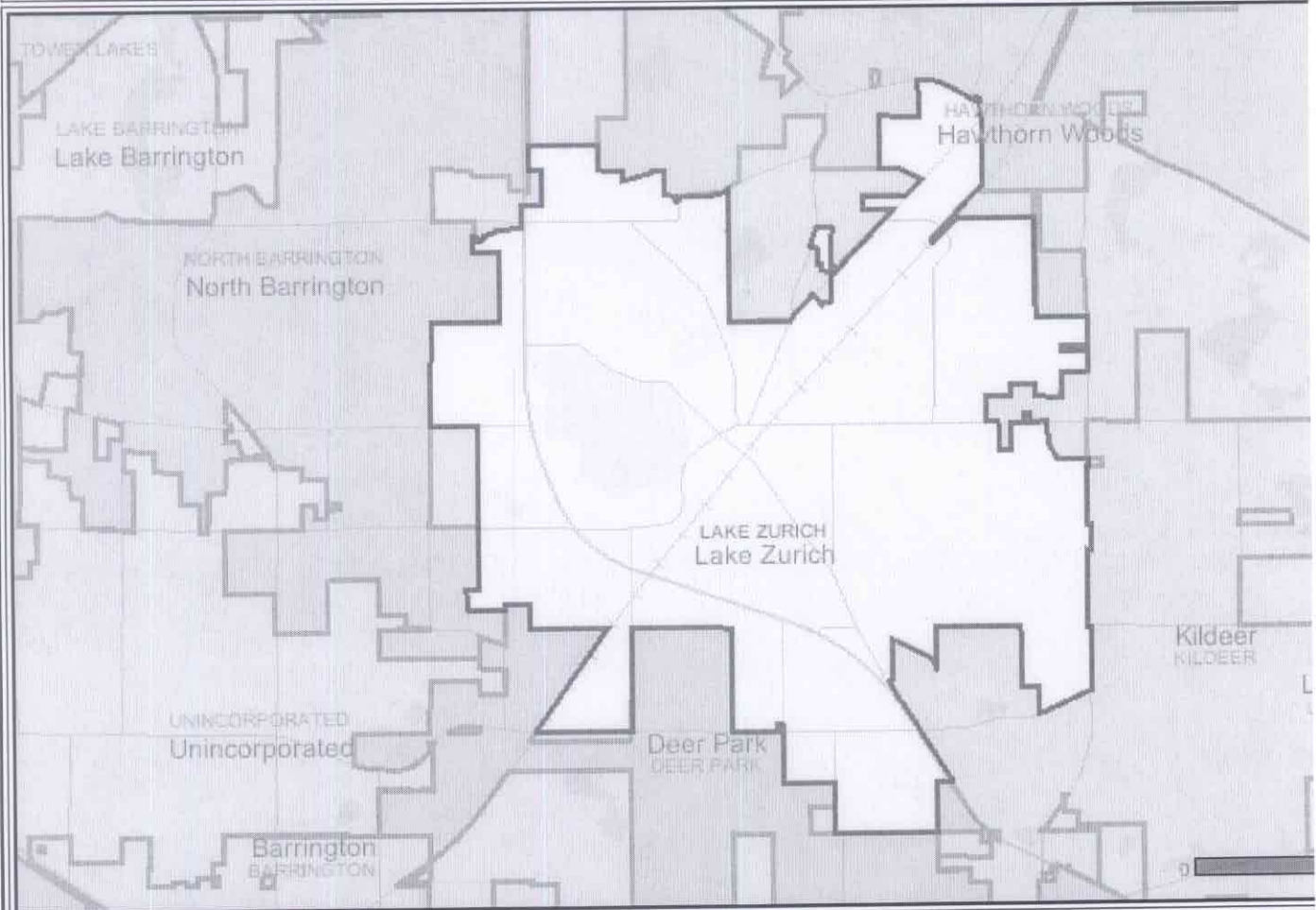
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Enclosure

Lake County Municipal Boundaries



Tax parcel boundaries shown are for general reference purposes only. An Illinois Registered Surveyor determine the precise location of property boundaries on the ground. This map is intended to be view

Lake County Municipal Boundaries



LakeCounty
Geographic Information System

Tax parcel boundaries shown are for general reference purposes only. An Illinois Registered Surveyor determine the precise location of property boundaries on the ground. This map is intended to be view