

FEDERAL AND STATE LEGISLATION GRADUALLY OBSCURING COASTAL PROPERTY RIGHTS

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SAM GOLDSMITH NERVOUSLY WATCHED his lakeside yard in Sheffield Lake, Ohio wash away during every storm event. He really needed to get a wall installed to protect his shoreline. Because of the gravity of his problem, Sam signed a lease for his own property with the Ohio Department of Natural resources. Even though he was forced to insure the leased beach for an exorbitant figure, he felt that he had no choice.

Margaret Lowhigh's seawall in Loraine, Ohio badly needed repair. After going through the painful application process, the ODNR told her she must sign a lease. She refused, so the work has not been done. She also watches nervously as the damaged wall gradually deteriorates.

The names here have been changed to protect innocent property owners, but both stories are true and demonstrate the two extremes under the Ohio law.

HISTORY

Fifteen years of studies and meetings with Government agencies and a large and diverse group of Legislators on both sides of the border have never been able to determine the right way to deal with private shoreline property rights. The original priorities have changed drastically but the Government controls have not.

The conclusions of the infamous "Levels Reference Study" that was completed in 1993 appeared to be predetermined even before the study began. Still, our representatives worked conscientiously on committees that ostensibly operated "objectively". During this period, a high level U.S. Government official was heard to say, "some day we will make it too expensive to own private property on the Great Lakes".

The GLC Flow Control Plan, was dismissed with polite lip service from the Great Lakes Control Boards, even though their Chairman observed that it would work better than existing controls.

The Corps is considering a policy that will seriously affect the ability to own private coastal property on the Eastern Shore of Lake Michigan if it is adopted.

The Ohio Department of Natural Resources has already started to attack private property rights on the Ohio shore of Lake Erie at Sheffield Lake and Lorain, among other locations, assisted by the passage last spring, of Sub.H.B. 601. This hostile legislation to prevent individuals from protecting their own property was placed in unrelated legislation and enacted the same day as an emergency at the end of the session.

LEGISLATIVE STRATEGY

Federal laws have been gradually passed during the last half of the 20th century that stimulate the Great Lakes States to exercise their authority in a manner that is unfriendly to coastal property owners..

P.L. 89-454 was made U.S. Law in June of 1966. This evolved into P.L. 92-583 by October of 1972 when the "Coastal Zone Management Act" became the law of the land. By 1976, the U.S. Congress had decided that more effective protection and use of the land and water resources of the coastal zone called for a strategy to encourage the states to exercise their full authority over the lands and waters by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs.

Congress declares that management of coastal development is necessary to protect against *storm surge and geological hazard, in flood and erosion-prone areas likely to be affected by or vulnerable to sea level rise, land subsidence, fluctuating water levels of the Great Lakes, and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands.*

Tacked onto the end is the scary phrase "and improved predictability in government decision making."

Just a year ago, President Clinton signed as public law 106-53, the Water Resources Development Act of 1999. His statement dated August 17, 1999 reads. "I support the bill's authorization to develop and

implement a comprehensive fish and wildlife habitat restoration plan for the Missouri River to increase the amount of land along the river corridor authorized for acquisition from willing sellers."

Willing sellers indeed! It certainly doesn't take much imagination to substitute the Great Lakes for Missouri River in this logic.

CHIPPEWA GRASS ISLAND POOL LEVELS DATA IS ELUSIVE

Having noted some inconsistencies during the tourist season in the fluctuations of the Grass Island Pool, current levels data has been requested by the Coalition from the Buffalo District of the Corps, only to be stone walled.

This has to do with the reduction in flow over Niagara Falls at dusk and there must be some reason that the Corps is not cooperating.

FRIGHTENING STUFF

What was originally considered paranoia that began on Lake Erie, is coming into focus now as a real concern. The routine of enacting laws favorable to shoreline land side management threatens 5th amendment rights to own and protect property.

Probable enforcement will be by State departments of natural resources as evidenced by the fierce tactics being used by the Ohio Department of Natural resources.

If you were to lay this radical analysis on your Congressman or Senator they would no doubt be completely surprised because these laws are legislated piece meal and not really in the sunshine.

The boldness with which some of these legislative clubs are coming down on the heads of our members dictates that this observation be shared with NEWSLETTER readers.

In Thomas Jefferson's words, "When government fears the people, there is liberty; but when the people fear the government, there is tyranny".

AN INCREDIBLE LADY PASSES

Dorothy Stillwell, President of the Pennsylvania/Lake Erie chapter died on November 16, 2000 in Erie, Pennsylvania. She was 74 and a veteran of the Korean conflict. Our prayers go with Dorothy, our dear friend and colleague.

DRACONIAN LAWS OF OHIO

by: Phyllis Rader, President Ohio/Lake Erie chapter

The State statute defines our property line to be at the natural shoreline and this term is used in our deeds. The ODNR claims that we own to the ordinary high water mark. They have determined this to be 573.4 feet above sea level, a condition that has been reached only two times in the last century. It is clearly not ordinary.

For a permit to construct protection from erosion, a property owner must go through a 27 permit procedure. They are then required to sign a submerged land lease as well as sign away their land below the ordinary high water mark.

In the event that the property owner refuses to sign the lease, all structures (piers, weirs, sea walls, boat ramps, groins, etc.) whether of recent or ancient vintage, have to be removed at the owner's expense if the ODNR determines that the structure is within the ordinary high water mark. If the owner can not pay the removal costs, the State will attach a lien on the property. In addition, a \$1,000.00 per day fine (recently up from \$500.00) will be assessed for non compliance. The ODNR has received so much heat regarding fines that it surreptitiously had fine collection transferred to the Division of Water under HB 601.

That is not all . . . Upon signing the lease, a \$1,500,000.00 insurance policy, naming the State of Ohio as beneficiary, is required. If the owner wishes to sell the property, a 90 day notice of intent is necessary,

and ODNR has the authority to prevent the sale.

A further cloud is placed upon the property by the stipulation that property can only pass to an heir one time, and then the State of Ohio has first right of refusal before it can be considered for transfer to a family member again.

ATTORNEY TERRY SAUNDERS ELECTED TO BOARD

Ms Saunders has worked closely with our legal committee in the area of interruption of the natural sand supply by the Government. Her logic and toughness have impressed the Directors so much that she was invited to join this group and she has accepted.

We are delighted to be able to announce this significant enhancement of the leadership of your Coalition.

CORPS OF ENGINEERS PLAN TO CHANGE RULES FOR EASTERN LAKE MICHIGAN COAST

By now, everyone is aware of a proposal for the Detroit District of the Corps to impose a requirement on some protected shoreline parcels to replenish sand at a rate of two cubic yards annually per lineal foot.

The Coalition has taken a strong position against this attitude and our members also responded with some eighty letters that addressed the impractical aspects of it.

Even though the notice had a deadline date of September 29th, the silence out of the Corps is deafening. Several verbal and written inquiries to the Corps have been stone walled so the status of this scary change in shoreline control remains unknown.

Congressman Hoekstra wrote a blistering letter to the Corps that requested Col. Polo, Detroit District Commander, meet with him to explain their objective. This meeting has not yet occurred supposedly because the policy is in limbo.

There is a rumor to the effect that the notice was put up as a trial balloon just to see what kind of a reaction it would get and that it probably would never fly. Maybe this is the status, but the Corps will not confirm nor deny it. Such behavior is an unnecessary impediment in our relationship with the Corps of Engineers.

ST. LAWRENCE RIVER BOARD NOT ACCURATELY INFORMED

It was almost two years ago that the GLC flow control plan was presented to the three Great Lakes Control Boards and it was ultimately not rejected but also not accepted either.

During the time it was under consideration, it was evidently reviewed with the full St. Lawrence Board. We have recently learned that the huge benefit / cost ratio to hydro power was not passed on to them, thus leaving them under the impression that it is not economically sound. Still, their technical staff believes that the plan was given a fair and objective hearing.

Another take is that the GLC plan would take the primary control of flows through the Great lakes System from the hydro power interests and include the other water level interests as well.

Of course, mitigation of erosion and flood damage by responsibly managing water levels is not politically correct because it violates the land side management policies that are starting to proliferate.

ANNUAL MEETING OF GREAT LAKES COMMISSION

The Coalition was represented at the annual meeting of the Great Lakes Commission on October 16, 2000 in Hamilton , Ontario, Canada by Joe Menegon, Canadian Vice Chairman. The Great Lakes Commission is a binational public agency that partners with the eight U.S. Great Lakes States and two Canadian Provinces for the use, management, and protection of the water, land, and other natural resources of the Great Lakes, St. Lawrence system.

Presentations were all prepared and formal, with audience participation restricted to only thirty minutes.

The only speaker to relate to water levels was Dr. Ned Dikman who spoke to the challenges faced by recreational boaters during near record low levels on the upper Great Lakes. This prompted a resolution to urge appropriate Government agencies to consider the need to dredge harbors and channels during low water periods.

The focus of the Commission appears to be quite selective since Mr. Menegon's inquiry as to why similar consideration was not given to the ravages of the thirty year high water regimen took them aback.

LAKE MICHIGAN DAMAGE POTENTIAL STUDY CONTINUES

The technical competence of this work is indeed amazing. What worries us is the human equation that develops after the scientists make their analysis. That is when the administrative types take over.

The latest finding that comes out of the four county (Sheboygan and Ozaki in Wisconsin and Ottawa and Allegan in Michigan) compressed focus is that well over a thousand coastal properties in Allegan and Ottawa Counties will fall victim to progressive erosion during the next fifty years.

The effort now is to develop mitigation strategies that will be practical and economical. These options include structural protection of total reaches of hazardous erosion zones or continuous beach replenishment. A possible source for replenishment could come from the large off shore deposits diverted over the last century by the government navigational structures.

IN CONCLUSION

This NEWSLETTER is offered with a heavy heart because the Coalition has considered itself as a contributing partner with the Government agencies for the last several years. True, we also act as devil's advocates when arguments are presented, but always in a spirit of cooperation.

This issue deviates from that position but hopefully will be received without prejudice and in the spirit of telling the story the way the facts describe it.

Bill Andresen