

**SPECIAL MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JANUARY 12, 2009 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE RD.**

Mayor Landry called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Gatt-absent/excused, Council Members Burke, Crawford, Margolis, Mutch, Staudt

ALSO PRESENT: Clay Pearson, City Manager
Tom Schultz, City Attorney
Mark Roberts, Secret Wardle

APPROVAL OF AGENDA

CM-09-01-06 Moved by Margolis, seconded by Crawford; CARRIED UNANIMOUSLY: To approve the agenda as presented.

Voice vote

Mayor Landry said the meeting was scheduled to consider a resolution to establish a Lake Board. He said because this was a special meeting they would grant ten minutes to Mr. Iszler who represents LAHA to make a presentation because they were the organization that initially proposed the Lake Board. He said Mr. Harvey represented another group and would also be granted ten minutes to address Council. Mayor Landry stated these people were representatives and that was why they were granted the extra time. However, if anyone would like to make comments, Council would allow them to do so and asked that they respect a three minute time limit because there were individuals who were representing both sides of the issue.

AUDIENCE COMMENT

George Rourk said he had lived at 1331 South Lake Drive for 16 years and over that time the weed problem in the lake had progressively gotten worse. He believed there had been no effective action taken over that time and was heartened by LAHA's efforts to take action on the problem. He commented he was present to support the formation of the board to take action on the problem.

Alan DeZell, 1217 E. Lake Dr., said the last several years the lake had deteriorated with increased invasive species, particularly the Eurasian Milfoil. He noted that by mid summer there was 25 to 30 feet of seaweed muck that was deposited in front of their home. He said it essentially solidifies, builds upon itself and becomes a very deep sludge and that was after harvesting it several times. He said the decomposition had a very strong stench and flies and mosquitoes bred in it along with dead fish and decaying garbage, which resulted in a very high bacteria count. He said the whole street, backyard and home reeked of the stench; they couldn't open their windows because it smelled like raw sewage. Mr. DeZell said because of the bacteria they can't swim in the area. He said it bred mosquitoes, which they were trying to eradicate because of things like the West Nile Virus. He noted the Milfoil was not naturally occurring but the more the seaweed was cut, the worse it got. He noted they paid a premium

in taxes on lakefront property and if he tried to sell his home, no one would buy it when it looked so bad and smelled worse, especially in the summer. If left untreated, it would definitely lower their housing values and the associated tax base for the City. He said the City also relied on Walled Lake as a selling point and a showcase for Lakeshore Park. He asked the Council to form the Lake Board for the benefit of the citizens and to help with City revenue because inaction would cause the perpetual decline of the lake and housing values. He said as the muck built up it drew oxygen from the lake and killed the plankton and fish and eventually would become a dead lake, which would ultimately amount to a swamp. Mr. DeZell said the majority of the lake owners along with LAHA had signed a petition and wanted this to go forward. He said a small investment today would benefit tenfold in the future.

Mayor Landry clarified that Council did not respond to audience comments. However, he wanted to tell them that Council had seen pictures, received a lot of documentation from both sides on this issue and they were aware of the problem.

Paul Olsen, 1312 East Lake Drive, said he was very interested in getting the Lake Board started. He said Walled Lake was a jewel on the north end of Novi and needed to be maintained. He thought people traveling from one body of water to another brought in some species that were not healthy for Walled Lake and it needed to be managed. He commented a Lake Board would be a management tool and as a resource would be a positive thing. He felt the City would incur more expense if the problem continued, as it did with lakes to the south.

Rick Gergis, 130 Northaven, felt the Lake Board should have control of only environmental issues on the lake and didn't want it to balloon to further regulation for different things on the lake. He thought that should be handled by the City. He thought that back lot homeowners didn't have any representation and didn't see anything in it regarding his deeded access to any type of special assessment for his property that should be determined and that information was missing from the proposal. Mr. Gergis said he spoke for many owners who were not a part of LAHA but while they supported what they were trying to do he wanted to be sure that the back lot owners had representation and were included.

Pam Smith, 204 Monticello, said she was a back lot owner who had lived on the lake since 1967. She said she was present because she was hoping to learn what the Lake Board was about and whether it was a City board or a community association and what authority it would have. She said the concerns of the residents on Monticello were drainage and local parks for the children, as they didn't have any neighborhood parks. She said there was open land that had been the amusement park but she didn't think it was designated as parkland. She said that would be the closest City land that could be a neighborhood park for the children. Ms. Smith said as the property behind them built up, everyone on Monticello and Paramount were flooded because the ditches couldn't handle the flow coming off the other subdivisions. She said when she called the DPW to come out they said the engineers approved the retention ponds so there wasn't anything they could do about it. She thought there was something that could be done to prevent their water from flooding them out. Ms. Smith said the subdivision had been there since 1915 and they were about three inches above the lake and the ditches just didn't handle the flow from the other subdivisions. She said she wanted to know what the Lake Board could do and how it would affect all of them.

Gary Zack, 359 S. Lake Dr., said he had seen the weed problems get worse since he came to Novi in 1991 and was in support of the Lake Board. He thought there were safety issues of people getting entangled in the weeds and drowning. He felt there would be more instances of the invasive species because of the nature of the way things were with the global economy. He commented it would be good to have something in place for the next threat and it concerned him that if they didn't have a Lake Board, they would be behind the eight ball because this process took a lot of time. He said he liked the idea of a Lake Board because it prepared them for anything else and there would be someone to watch the lake and take some action to address future threats.

Jim Loeffler, 1341 S. Lake Dr., commented he had removed 25-50 wheelbarrows of weeds that accumulated in front of his home. He said he had a cottage up in the Houghton Lake area and about ten years ago they started to experience a problem with Milfoil; it was a much bigger lake but one that was totally dependant on tourism on a healthy lake. He said it was the same situation Novi had, with multiple communities involved, and they formed a Lake Board. He said they took a lake they couldn't even boat on anymore and solved the problem in only 1 to 2 years and they kept the Lake Board intact to treat the lake in the future. Mr. Loeffler said the Lake Board was very successful and he very much supported a Lake Board.

John Langlois, 1815 E. Lake Drive, noted Novi was a jewel in Oakland County and Walled Lake was an asset that must be managed. He said the lake was a special entity with special requirements and should be addressed as a special object. Mr. Langlois commented that everyone agreed there was a problem and forming a Lake Board to address this issue was a good idea and could be the solution.

Paul Weindorf, 1641 W. Lake Dr., was opposed to the formation of a Lake Board because it appeared that once it was formed it had dictatorial powers over what it could do and it would require a 2/3rds majority vote of the residents on the lake to dissolve it. He said if what he was reading was right, it meant that even Council couldn't stop their actions once it was formed. Mr. Weindorf said that was a huge concern to him because the Lake Board, with its unlimited power, could decide to do anything it wanted to including complete dredging of the lake and charging all the assessments for the dredging to the citizens. He said the citizens would not even have a vote on whether they wanted the lake dredged or not. Mr. Weindorf said if the wrong people were on the board, who had special interests, there would be no way of stopping them. He commented he didn't want dictatorial power to exist when it came to paying out his money for services.

Nicholas Milani, 1505 E. Lake Dr., commented when he first moved in on Walled Lake it was a beautiful lake with sandy beaches 200 yards out. He said now there was 30 feet of muck that was about a foot and a half deep and smelled like raw sewage. Mr. Milani's concerns were that it was unhealthy and it was affecting his home value. He said it was a small investment today to protect and increase the home values. He felt the lake had a lot of potential and this was the first step in protecting this asset.

Casey Ambrose, 440 E. Walled Lake Dr., stated he was a Walled Lake City Council member and had listened to both sides during their meeting with Walled Lake and Novi residents, both lakefront residents and back lot owners. They heard conversations and issues regarding weeds and how long they had been there. Mr. Ambrose said they have had weeds but not this

type; this was an invasive species that entered the waters 8 to 10 years ago and had been increasing about 10% a year. He said it was probably from the aeriels and incorporated about 70% of the lake. He said last year due to the heavy rains, it wasn't that bad of a boating season and fortunately the weeds were 12 to 18 inches below the surface, which made it more difficult to take them out everyday to keep a handle on it. Mr. Ambrose said about three years ago there was a shortage of rainfall and the weeds were 40-50 feet out from the shoreline and caused a closing of the beach on the Walled Lake side for a record number of days. He said the experts said the only way to effectively control this species was to chemically treat it and it had to be done systematically and uniformly for it to be effective. Unfortunately, it was very difficult to please all the people all the time. However, based on this situation where the majority of the people who live on the lake had voted for the Lake Board made the situation a little easier from Councils part. He said the boards were set up with all the safeguards in place with the representation on these boards. As what was presented to the Walled Lake City Council, the petition signed by the majority of the lakefront residents solely put the burden of controlling the weeds, from a liability standpoint, on the lakefront residents. However, he said the lakefront owners, lot owners, renters, back lot owners and visitors would benefit from this. He noted the fatality that happened last year on the Walled Lake side, which according to the Sheriff's Department was caused from being entangled in the weeds. Mr. Ambrose asked that they move forward with the Lake Board so they could take care of the lake and all the assets they had there.

David Hultgren 116 Arvida St., Walled Lake, stated he was a back lot owner with deeded access to the lake and had been involved in the petition drive since its inception. He said they followed the same process in Walled Lake as they followed in Novi. He noted that this was not just opinion and read a portion of the letter addressed to LAHA from Steve Hansen. It read "after evaluating the condition of Walled Lake over the past several years, it is my recommendation and the recommendation of Professional Lake Management to aggressively control the exotic aquatic plant species, the Eurasian Water Milfoil, with the most appropriate and effective methods available. As of September 2008, the Eurasian Water Milfoil dominated the submerged aquatic plant community and its ability to out compete native plants and ultimately alter aquatic communities makes Eurasian Water Milfoil a threat to the ecological, recreational, aesthetic and economic values of the Walled Lake and its surrounding properties". Mr. Hansen also included with his letter a diagram of the lake showing where the Eurasian Water Milfoil was most prevalent. Mr. Hultgren said there were numerous safeguards built into the Lake Board process; he wished there was another way but there was no other way to control this other than a Lake Board. He said the Lake Board was the vehicle that the State of Michigan had set up to deal with these issues. Mr. Hultgren commented that was why they were asking that the focus of the Lake Board be to control exotic, invasive plants, nothing more and nothing less. He urged Council to take the first step and pass the resolution.

Donna Skelcy, 301 Duana, stated she lived on the Shawood Lake border and encouraged Council that if the Lake Board would also have control over Shawood Lake that they have representation of someone who lived on Shawood Lake.

John Thomopoulos, 425 S. Lake Dr., noted he was concerned about his children swimming in the lake due to the weeds because of the risk to them and it diminished the ability to go boating in the lake. He said the sooner it was under control, the better off they would be.

Tom Harvey Sr. said he attended the Walled Lake Council meeting in December where this was discussed. He was impressed with Mayor Roberts and he listened to the entire Council of Walled Lake with a multitude of questions and most of the questions were unanswered. He said when it came to a vote, even though the majority of questions were unanswered, the Mayor was the only one who didn't vote in favor of the Lake Board. He said everyone else rolled over even though they didn't have the answers. Mr. Harvey talked with Mayor Roberts about this and he said they didn't need another layer of government to control the weeds in Walled Lake. Mr. Harvey asked if they needed a board that was not elected and would decide what the homeowners would pay and for how many years. He said Walled Lake didn't need a board to get rid of the seaweed problem.

Michael Hilley, 135 Maudlin, spoke and said he cut grass on Wolverine Lake and a lot of his customers lived on the lake and pumped the water into their yards. He said he and a lot of them don't like chemicals and dredging because it wasn't environmentally friendly and he didn't think they needed a board. However, he felt if Novi did this, since Novi had a park there, it should include them as if it was the whole City of Novi not as a special assessment for those around the lake but spread across the whole City since the City maintained a park there that had public access.

Steve Loe, 1507 W. Lake Drive, asked if Council had seen the three page handout he distributed, which was created to provide accurate information to the residents on Walled Lake. He said all statements made were backed by public documents and could be accessed through the Internet. He gave the handouts to the Clerk. He asked that Council send LAHA back to the drawing board to put together three proposals by people that treat lakes. He said there was a requirement for a permit but it was basically rubber stamped from DEQ, but they would require a map for treatment of the lake. Mr. Loe said he wanted to get rid of the weeds safely and suggested looking at removing lawn fertilization.

Mark Adams, 1721 E. Lake Dr., said questions had been posed that none of them could answer before a Lake Board was formed. He commented it was the job of the Lake Board to do the research, contact the consultants, do the studies and decide what the best treatment would be. Mr. Adams said that was the Lake Board's assignment and all the meetings would be open. He commented that no action was no solution and they had a serious problem.

Sandra Carolan, 835 Bluffton, Walled Lake, and her mother just purchased a home in Harbor Cove on the Novi side. She said her concerns were that the taxes on her property would probably go up; she was concerned about that and about how and who would pay for this. She said it bothered her that it was a Lake Board but she wouldn't have any say about who was going to be on it but they would have a say about her taxes. She felt there was a lot of people who were in the dark that would want answers to their questions. She said she wasn't opposed to getting rid of the weeds but there might be a lot of unhappy people who would be taxed for this that might have had other solutions for it. She suggested a Town Hall type meeting to get some questions answered, prior to the appointments to the board, would be a good step and help some residents feel more comfortable with it.

Mr. Pearson said they provided Council with a draft resolution for their consideration and the City Attorneys had worked with staff and provided some primers on the Lake Board. He said the City of Walled Lake had passed a similar resolution, which was dependent upon Novi's actions. He noted City Attorney Tom Schultz was present and Mark Roberts from Secrest

Wardle who had considerable experience with Lake Boards was also present. He noted Rob Hayes and Benny McCusker were also present for resource, if Council so chose.

Presentation by Greg Iszler of LAHA

Greg Iszler, 621 S. Lake Dr. and President of LAHA began his presentation. Mr. Iszler said in 1998 a study commissioned by the City of Novi identified a new invasive weed, Eurasian Milfoil on the west side of Walled Lake. At that time, the area affected was relatively contained and the City decided no further action was necessary. He said by 2004, the weeds had become so pervasive that a group of lakefront property owners, led by then president of LAHA Asa Smith, researched possible solutions to the problem. He commented that after extensive discussion with consultants and lake engineers, they decided that the best mechanism the State of Michigan provided was the formation of a Lake Board. Mr. Iszler said the decision was made to solicit support for a Lake Board and volunteers had achieved nearly 2/3rds approval from lake residents. However, a local campaign of detractors concerned about lake access and mooring disputes were able to persuade the cities not to support the effort. He said in 2008 a resurgent membership within LAHA voted during a public meeting that the weed issue was the top priority for lake residents among six issues considered. He said a motivated group of volunteers initiated another push to address a weed problem that had become far worse. After much research and discussion with additional consultants and engineers who had come out to look at the lake's condition, the group solicited the help of their association's leadership to initiate another campaign. Mr. Iszler said once again, of the numerous solutions considered the Lake Board options remained the best mechanism that the State provided for cities, townships and residents to address lake maintenance issues. He said the key differentiator with this Lake Board initiative, the carefully worded and City Attorney approved mission of the Lake Board, was for the sole purpose of addressing the invasive weed problem on the lake, nothing else. Mr. Iszler commented that to insure the mission was retained there would be a five member Lake Board established by State of Michigan statute that would require two representatives from Oakland County, a lakefront property owner and representatives from two neighboring cities, Walled Lake and Novi. He said vowing greater information and transparency and closer cooperation with the cities their group launched a website, distributed fliers, held two public meetings, sent out 20 plus volunteers over six weeks with fact sheets and draft resolutions and personally reached out to those who raised concerns. To insure that the scope of the Lake Board, the particulars of the petition drive and the wording of the petition itself would be acceptable to the City of Novi, they deferred to City management expertise and the City Attorney's direct experience with other Lake Boards. He said to consider the resolution, the City of Novi requested that they deliver a significant show of support, specifically 51% plus of lakefront property owners. He said with the approved petition a group of 20 plus volunteers representing both members and non-members of LAHA spent the next six weeks talking with the residents, sharing information and soliciting support. Mr. Iszler said in the October 7th Walled Lake City Council meeting, David Hultgren presented signatures from more than 60% of lakefront property owners in the City of Walled Lake in support of this resolution. The Walled Lake City Council approved the resolution contingent on subsequent approval from the City of Novi., He said on October 20th at the Novi City Council meeting he presented signatures from better than 55% of lakefront property owners supporting the creation of the Lake Board and accepting the additional \$180 to \$240 per year in estimated assessments that would probably come from a five year eradication effort. He said they had successfully completed the goals established for them and eagerly awaited the City's continued support of this effort and a final resolution of this growing problem on Walled Lake.

Mr. Iszler said, on a personal note, as sensitive as they had tried to be to some genuine concerns from a handful of property owners, he was equally sensitive to the effect of continued inaction. He said inaction put their property values at risk, the smell of rotting and drying weeds was frequently mistaken for an open sewage smell coming from the lake. He noted that even a suspicion of sewage seeping into the lake was damaging. He said inaction also affected water enjoyment and safety beyond the operational hazards it presented boaters and the presence of the weeds did not help swimmers who voluntarily or involuntarily entered the water. Also, inaction encouraged potentially harmful or renegade solutions by individuals trying band-aid solutions to the problem themselves. He said they were asking the City to approve a Lake Board whose sole mission was to address the invasive weed problem on Walled Lake. He said all the valid questions being asked could only be answered once a Lake Board was in place; until then who was assessed and how much and what the proposed treatment would be could not be answered. He commented Public Hearings on all that information would be held as part of the regulated process established by the State of Michigan. They understood that some had concerns and they respected and honored; his only request was that concerns be expressed with an equal level of respect and honesty. He noted there had been detractors who had stated specifics that were incorrect and misinformation would only serve to kill this effort and discourage any future solutions from emerging. Mr. Iszler said the association would likely suggest a couple of candidates to serve on the Lake Board but any lakefront property owner could submit their own name. He said LAHA had no say in who served on the Board. He said they were a group of 20 some volunteers backed by 168 lakefront property owners in Walled Lake and Novi who signed a petition submitted to the cities of Novi and Walled Lake. Mr. Iszler stated they had tried to be fair and transparent with all lake residents throughout this process and had fully cooperated with the City of Novi on every front. As a direct result of that, they were able to quickly demonstrate the strong show of support, the City saw it, and they now stood respectfully before Council asking for this Lake Board resolution to be approved.

Tom Harvey Jr., noted the packet for Council was 60 pages; he downloaded it and reviewed it. He said he disagreed with some of the things in the packet and agreed with other things. He also agreed and disagreed with comments made earlier. He felt that he had the opportunity to address the Council over the last couple of months with his concerns about the issue. He said last summer his wife attended a LAHA meeting as a member. During that meeting there was a discussion about beginning a process to create a petition, acquire signatures and begin a Lake Board to address the weeds. He said in the July 30, 2008 update to the LAHA website it said under the category, "Informal Conversations in Mid July with City Officials" it stated "a willingness to provide their support in setting up the Lake Board upon 51% of lakefront and back lot owners signing a petition, resolving to the cities to set up the Lake Board." He noted that in Council's own resolution in the packet tonight, the fifth item stated "WHEREAS according to a petition submitted to the City a majority of affected property owners are in favor of a creation of a Lake Board". He said when he read the language in the resolution and read the language from July of 2008, LAHA's intent sounded pretty fair to him and exactly what he would expect the Council to require in order to commit their time and City resources to move forward with a project like this. Mr. Harvey said a majority of lakefront and back lot homeowners would be enough to motivate the Council to move forward. He said it would be absurd to suggest that a Lake Board be created with only lakefront homeowners and it would be absurd to expect lakefront homeowners to bear the entire cost for projects to maintain or improve Walled Lake. He said it would be equally absurd not to include or invite participation of the back lot homeowners who had a legal right to maintain and operate a boat

on the lake. Therefore, he was surprised when the petition was circulated in September and LAHA decided not to include the back lot owners. He didn't receive any feedback from the paperwork he provided to the City but the fact was that the original goal to acquire 50% of the lakefront and back lot owners wasn't even attempted. He said Mr. Roberts had given his comments in the packet for this evening and he was accurate and he agreed with him completely, but no petition was required to form a Lake Board. He said this Council had the authority to form a Lake Board at the request of a single resident or no resident whatsoever. Mr. Harvey thought what he knew about the Council and the other public servants of the City of Novi was that they took great pride in not only serving the best interests of the City but took great pride in serving the residents of this City. Mr. Harvey noted that Council expected that the majority of lakefront and back lot property owners would sign the petition. He said the petitioner didn't do that and only knew that the petition submitted to the City didn't represent a majority of lakefront and back lot owners. While this has been a visible topic, he hasn't seen any indication that LAHA had reached out to back lot owners. He wondered, with the website, fliers, etc., why it was so difficult to get more than 50% of the lakefront and back lot owners, if they designed their petitions that way. He said it was because it was not that important to everybody. Mr. Harvey asked Council to deny the request to form a Lake Board because it was never demonstrated that the majority of lakefront and back lot owners wanted this.

1. Consideration of a Resolution to Establish a Lake Board in Accordance with Part 309, Inland Lake Improvements, of the Natural Resources and Environmental Protection Act.

Member Margolis asked how or what process would the Lake Board use to determine the assessment based on whether it was a lakefront owner or a back lot owner. Mr. Schultz noted it was a special assessment process not unlike what would be used for any other public kind of project such as a water and sewer assessment. He said the process was essentially the same statutory process. He said the statute was based on units of benefit relative to the benefit of the whole. He said the process started out by forming the Lake Board, give them direction on what they were to do and they determined the scope of the project through the engineering review and report. Then they take that report, the scope of the project, to the Assessor who based upon their general experience in doing these things, fairness etc., would assign value to lakefront owners and as to the back lot owners they had a couple of options and Lake Boards had done it in different ways. Some Lake Boards had put a 50% value on it or a 10% value on it and some had taken one unit and split it up among all the back lot owners. He said sometimes it would depend on what it was they actually had. They might not have full riparian rights; they might have a pedestrian access. So, there would be a roll created and he could not say exactly what that would be as it would depend on the engineering report, the particular right that the back lot owner had and on the overall analysis and benefit that Mr. Lemmon and the Walled Lake Assessor would go through. He said it was likely that it would not be a full assessment share for people who were not on the lake and it might not be the same for each one of the back lot owners. Member Margolis said the City and the Assessor would have a continuing role in helping to determine the special assessment amount. He said they would submit that and then the Lake Board would accept or reject the roll. If they accept it, it could be challenged the same way that someone would challenge a special assessment for a road or sewer, which was to go to the Michigan Tax Tribunal to be reviewed for fairness and reasonable allocation. Member Margolis said one of the issues, and they had dealt with other things that involved the lake and back lot owners and deeded access, and sometimes that was not real clear in records because some of the records in that area went back a long time. She

asked how that process worked because she was listening to the question of why the back lot owners didn't get petitioned. She said she could imagine determining who had deeded access was probably a very difficult process. Mr. Schultz said the statute defined interested persons as people with land contract rights, warranty deed, title, etc., but also rights of ingress. So the first time around, the two assessors would have to look at their maps and see who fronts, see who looked like they might have some other sort of access and evaluate that. Member Margolis said in some ways it was a process that hasn't been able to take place and the Lake Board would facilitate that process to get a better idea of who had rights. Mr. Schultz said it would be a new reason to find out exactly who had what rights. She asked if the two assessors would work together on it. Mr. Schultz said they would each do the parcels and the assessment rolls for their particular tax rolls. Mr. Roberts said there should be communication between the two for consistency and they would create just one roll for the Lake Board. Member Margolis said there was a sunset provision in the resolution for the Lake Board that in five years there would be an automatic hearing as to whether or not to dissolve the Lake Board. She asked if that was only in Novi's resolution or was it also in Walled Lake's resolution. Mr. Roberts stated that was only in Novi's resolution and the purpose of that was to automatically schedule the dissolution hearing as opposed to requiring homeowners to come forward with a 2/3rds petition. It was another level of control over the board and it could be dissolved earlier. Mr. Schultz said there was concern that this was a perpetual thing. He said there was a provision in the statute for dissolution and it contemplated an initial resolution from the two entities and ultimately the Lake Board would also determine that it didn't need to go forward. He said there was the ability to terminate or dissolve, if the two communities decided it was not working out. Member Margolis said if Council held the sunset hearing in five years and decided to dissolve the Lake Board, would that dissolve it or would Walled Lake also have to conduct a hearing. Mr. Roberts said yes, Walled Lake would have to conduct a similar hearing. He said Walled Lake and Novi both had representatives on that same board and would have similar experience. Member Margolis said she was quite comfortable with the resolution and thought that while it created a board that neither City could control, it was the only way to deal with something that went between two cities. Member Margolis thought that the provisions in the statute in terms of being limited to environmental issues, public health and welfare, natural resources, limited by the expert analysis, they still had to get permits under the MDEQ. She said each of the cities, County and homeowners would be represented on the Lake Board. She felt it was the way to go and it had enough pieces in it to control some of their concerns. Member Margolis said it was one of the most organized efforts of a group of citizens she had ever seen. She appreciated the background information. Member Margolis said, from her reading, that Shawood Lake could not be included in this resolution and if Shawood Lake wanted to be addressed, they would have to have a separate Lake Board. Mr. Schultz replied she was correct but the statute was set up to address one lake at a time.

**CM-09-01-007 Moved by Margolis, seconded by Staudt; CARRIED UNANIMOUSLY:
To approve Resolution, without reference to petitions and
signatures, to Establish a Lake Board in Accordance with Part 309,
Inland Lake Improvements, of the Natural Resources and
Environmental Protection Act.**

DISCUSSION

Member Crawford commended the citizens of Novi and the City of Walled Lake and thought their effort was extraordinary. She lived on Walled Lake 60 years ago and there were weeds in

the lake then. She also had a cottage on a lake that had this same weed issue and you couldn't use your lake or beach because of the smell, bacteria, weeds and public safety. She said it did lower property values and was a problem for everyone on the lake, and trying to get everyone on the lake to see the problem the same was impossible. She felt there was protection and safeguards by statute regarding this issue. She asked what the biggest challenges of a Lake Board would be. Mr. Roberts replied getting started. They had to have an engineering study done that gave a recommendation to address that specific problem. He said they determine if the cost was reasonable, and what options were available to address the problem spelled out in the engineering report. Then, they would make a determination on how to proceed to address it. Mr. Roberts said it was typically done over a three to five year period. He said they would return to periodically adopt budgets, review how things were progressing but typically once the engineering study was done and project was under way, it was a matter of one or two meetings a year. Member Crawford asked if it had been his experience that most groups established the board for this very problem. Mr. Roberts said of the ones he was involved in, every one was to address weeds. Mr. Schultz said the statute had been around for 13 or 14 years and had not been the subject of a lot of litigation because they were formed specifically to resolve the issue of weeds. Mr. Schultz said the big question was the policy issue of getting it. Member Crawford said she knew that they were not all in agreement but it seemed that most people felt it was a problem that needed to be addressed. She said she had read all the material, listened to the people from LAHA and to the rest of the people who had concerns and felt comfortable moving forward to form the Lake Board.

Member Staudt commented that Council had been extremely deliberate, well informed and had received a lot of correspondence from the City legal staff, Administration and residents. He said they had taken a lot of time to look through this, had listened to every side and thought there wasn't any knee jerk reaction happening at the Council table. Member Staudt said it probably didn't happen at Walled Lake either. He said they had the opportunity to opt in or opt out of paying the special assessment as a City. Member Staudt said he supported the City opting into this and participating. He said the City had 13 lots on the lake and depending on how they evaluated what portion of the assessment would be the City of Novi's, if the rest of Council agreed to this, they would be a significant partner in this assessment and not just walking away and saying let the residents pay. He said the City was paying a very substantial portion of this. He said he would support the motion and stated he was very comfortable that the City would have very strong representation on this. He commented the Lake Board would be made up of the City of Novi and City of Walled Lake, a County Commissioner, member of Oakland County and a resident and he thought everyone's voice would be heard.

Member Burke said he echoed Member Staudt's comments. He said Novi was involved in this and were paying as well. He said he supported this because he had property on a lake and knew the problems the nuisance of weeds posed for people as they use their property. He said unfortunately on his lake they didn't have a Lake Board, yet. He felt it made sense and it was not necessarily popular with everyone on the lake but it affected the entire lake. So, everyone lived on the lake and used the entire lake so everybody had to pay, if the Lake Board was approved.

Member Mutch asked, in terms of the assessment costs associated with the Lake Board and if there were two Lake Boards, did that mean that the properties that fell between Walled Lake and Shawood Lake would they be assessed for both, or would they only fall within the scope of one board or the other. Mr. Schultz said they were the lakefront owners and those with ingress

and those were the contemplations of who might be assessed. He said all of this was subject to the engineering report when they found out who had what access through the Assessing Department. However, if that factual situation arose, they could end up participating in both Lake Boards. Member Mutch thought Mr. Schultz had raised the point of representation and stated if they were Shawood Lake, they wouldn't be considered for board representation in terms of that individual homeowner. He said in that situation that person could potentially be a candidate for the board. Mr. Schultz said the statute talked about the member being somebody who abutted the lake. Member Mutch said at past meetings there had been a lot of discussion from the Shawood Lake residents and that they had a significant concern with their lake. He didn't want to just leave that because he thought they should think ahead a little bit because they needed to address Shawood Lake. Member Mutch asked about the inclusion of City property in the special assessment roll and Member Staudt brought up the issue of the City opting in to be a contributing member. He said because the assessor typically didn't apply a value to those properties, how would they determine the value of the contribution from the City for that assessment. Mr. Schultz replied if the City agreed to be a part of the assessment process, the assessor with the engineering report would look at the map and properties and assess whatever relative unit of value would relate to the parcel. For example, if the assessors decided they were going to do this at one unit of benefit per lakefront owner that would apply to the City, if the City agreed to participate. Mr. Schultz said it shouldn't be much different than assessing a unit of value to any other parcel that fronted the lake. Member Mutch said he was thinking about it based on property value and asked if that would be possible. Mr. Roberts said it was done by the benefit received to the property, which was not necessarily related to the value assessed for that property. So, in that respect the two were kind of different animals. Member Mutch said in the City's case, since there was one large parcel of lakefront at old Novi Road, Lakeshore Park and a number of smaller parcels, they could potentially have some larger assessments. Member Mutch agreed with Member Staudt in terms of looking forward. He thought the City, through the ownership of the properties on the lake, had to be a contributor to the cost of that. He said it was probably a little bit of irony because they would be paying individually as lakefront owners and then also be contributing through the City. He said they were kind of double dipping in a sense but he didn't see any other way to address it. Member Mutch thought the City should contribute because the City's properties would benefit from whatever improvements were done. Member Mutch said there was also the question on the authority of the Lake Board. He thought the concerns expressed were regarding the ability of the Lake Board to impose regulations on the use of the lake. He asked what authority the Lake Board would have. Mr. Schultz replied they didn't have any regulatory authority. They were there as a funding mechanism primarily but also as part of that they determined the scope of the project. He said what they had done in the resolution was charge them with dealing with the invasive species, the weeds. They get to decide how they do that and as long as they were doing that they were within their authority but they don't regulate. Member Mutch said when the petition was sent to the residents, it stated it was for the sole purpose of controlling the weeds in the lake. However, by approving the Lake Board and giving it that authority the Council couldn't control the Lake Board's actions. Mr. Schultz said one of the problems with the statute was it didn't have any cases that said exactly what the language meant. He said the resolution did two things; it formed the Lake Board and gave them a project, and that project was to implement a program to control nuisance growth of invasive species. Mr. Schultz said although they might think otherwise, he didn't think that gave them the right, under the general statute, to improve their fisheries, build a pier or deepen the lake. Mr. Schultz thought what they had been charged with in Novi's and Walled Lake's resolution was the project of controlling the invasive species. He said they did get to determine the scope

of how that would be done, such as dredging or any number of different ways but he didn't think they could go beyond that scope to pick up other things. Mr. Roberts agreed and said that was the interpretation he meant by the Lake Board controlled the scope of the project. He said the overall intent of the board specified in the resolution was weed control, the method to implement that was up to the Lake Board subject to additional control of the engineering study and the public hearing process that was required. He said there was a multi level control on the Lake Board but overall the Lake Board did determine how best to implement the project at hand. Member Mutch asked what other alternatives there were. He said the State created a Lake Board statute to address what he thought were typical situations in a number of communities, a public or private body of water in many cases crossing multiple jurisdictions where they needed the ability to improve and fund it. He said from the Council's perspective if they didn't do the Lake Board, what would the legal alternatives be to do improvements to the lake and to fund them focused on the people who primarily benefitted from them. Mr. Schultz said it was a public purpose for the communities to control weeds and it was a public lake. He thought they could spend City money to do this kind of a project. He noted one of the things they went back and forth about was whether the City had the right to actually special assess this just under the Special Assessment Ordinance and the Charter. Mr. Schultz said it was not obvious that they had the right to do the special assessment, in other words get participation, unless they had some different kind of authority. He thought that was why the Lake Board statute was created. He thought if a township was involved, there might be another funding mechanism. Mr. Schultz thought the City could do it but they would be doing it on their own dime without the Lake Board. Member Mutch asked if there would be an inter-municipal government agreement that would outline what was being done, who's paying for it, who was in charge and what the representation was, etc. Member Mutch said when this initially came forward he wasn't supportive of it because he was always leery about creating another layer of government to address the question. He said it was important to him that whenever they, as a community through the government, were assessing residents for taxes or fees that they, as voters and taxpayers, had someone to hold accountable and that was Council. However, in this case, based on the information that had come forward, he thought this was the best solution. He said on the Lake Board, there would be a member of Novi's Council and a member of the Walled Lake Council, Oakland County Commissioner, Water Quality Commissioner, all elected officials or their representative, and someone from the community who would directly represent the residents. He thought they also had to look at other alternatives they could take such as a Special Assessment District that would be imposed by the Council as a whole but then as a resident they wouldn't have any representation beyond that. He said the Lake Board residents would have someone to address at the public meetings that were focused on the problem at hand. Member Mutch noted if a Lake Board was not in keeping with its determined purpose, it would be evaluated. He thought the most equitable solution was to ask the residents who benefitted, lakefront and back lot owners, to contribute to the cost of that with the City being a partner. He said he wanted to see the City be a partner and contribute towards the funding because of the property the City owned. Member Mutch said if Council saw a Lake Board that was going beyond the scope of the resolution or was proposing solutions with extravagant costs and not in keeping with what Council expected, he thought they would see Council come back and re-evaluate the Lake Board and whether or not it was working. He thought the five year time limit in the resolution would give Council a chance to insure that once the work was done the board would sunset. He also spoke with Margaret Birch, Township Treasurer in Waterford Township, who had sat on many lake boards in Waterford Township and was very positive about the Lake Board statute. Member Mutch said he would support the resolution.

Mayor Landry echoed the comments of his colleagues and said he had spoken with many people on both sides of the issue during Mayor's hours. He commented everyone had been very well prepared, very respectful to petition their City on this issue and he was very proud of the way everyone had comported themselves in this process. Mayor Landry stated he also believed that the manner in which the City had dealt with this had been appropriate. He said they had received a great deal of information from a number of sources on this issue and had set aside a Special City Council meeting and Council came in on another night at a time when they were dealing with goal setting and budget sessions and that was their job. He thanked everyone for their patience and said assessments were some of the most difficult issues to grapple with because there was always someone who truly could not afford it. He said they couldn't avoid that situation and they had to have a reasoned method to approach the problem and solve it. In this case, he was convinced the weeds were a problem for health, safety, property value and aesthetics. He said it was the jewel of Novi and Walled Lake and the weeds had to be dealt with; the Lake Board was the most reasoned way to deal with this problem and the City would pay its share for the 13 lots it owned. Mayor Landry believed that the assessment process would be equitable and that Mr. Lemmon and the Walled Lake assessor would do this correctly. He said for example, the City Attorney said the question of back lot owners couldn't be answered until they knew what their rights were and they were not always equal. He said the Walled Lake Assessor and Mr. Lemmon could read these minutes. He said he was not looking for the back lot owners to pay the same as the City would pay because he thought it had to be equitable according to the nature of the rights they had. He said he was confident they would not assess the back lot owners the same. Mayor Landry was pleased that the sunset provision was placed into this and was confident that Walled Lake and the City of Novi would address this appropriately and for all of those reasons he could support the motion.

Member Burke asked if the language on the resolution was the same as the language on the Walled Lake resolution so there would be no problems in how it was interpreted. Mr. Schultz said with the exception of the sunset provision it was the same charge. Member Burke asked if they would add that into their resolution. Mr. Schultz thought they could go back to Walled Lake and tell them that the resolution adopted by Novi clarified that they would have a public hearing and they might want to do the same. He said this insured that the City of Novi would call the public hearing and raise the question that Walled Lake would have to vote on as well.

Member Mutch said, regarding the resolution, there was a question about the petition submitted to the City that showed a majority of affected property owners in favor of the creation of a Lake Board. He said there were two positions stated on that and asked if that caused a problem for the City, if someone came back and said there wasn't a majority. He asked if it would be cleaner for Council to strike that and approve it. He said from the City's viewpoint, Council could approve it without a petition. He thought Mr. Roberts' position was that the petition wasn't really relevant except as a sense of community support. Mr. Schultz said it wasn't necessary to be in the resolution and it sounded like maybe it might be a little misleading to have it in there. He thought it would be appropriate to alter the motion to say "a majority of lakefront owners, or a number of interested owners", or something like that. He said it didn't have to be done but thought it would be more factually correct. Mr. Roberts concurred that it was not a requirement for the City to take action that it received a petition stating anything. He said it was drafted before he was aware there was an issue with the petition. He said if the City was interested, it should be stricken. Member Mutch offered a

friendly amendment to remove the issue of the petition and not because he didn't think the petition process wasn't important, it was, but the Council had the authority to take this action without it. He said until the assessment roll was done and the determination of who would be affected was determined, there wasn't an accurate way, short of someone coming in with every property owner's signature, the line of who's the majority could shift as determined. The maker and seconder of the motion agreed.

Member Staudt asked if the ability to opt into the special assessment was at some future point, and when would that be determined. Mr. Roberts said it would be addressed at the assessing stage assuming the Lake Board was formed, the engineering report was received and the determination was made. At that point, the Lake Board would request the assessors for Walled Lake and Novi to prepare the roll. He thought that would be the appropriate point where the City would indicate they were opting into the assessment. He said there was also another provision in the Lake Board statute where they could appropriate funds regardless of what the assessment worked out to be. He said the City could participate by granting funds to the Lake Board as well. He thought the appropriate point to make that determination was when the assessors were directed to prepare the roll, so that he knew either the City properties would be included or there would be a lump sum payment by the City. Then the assessor could gauge the apportionment of the rest of the cost. Member Staudt said then there would be a vote of allocation in the future point for City Council. Mr. Roberts said yes, he believed that would be appropriate. Mr. Schultz said the statute was a little vague and just said "the local unit might agree." He said they would do that at the time of the special assessment.

Mayor Landry asked if he was correct that there was a majority of the lakefront owners that signed the petition. Mr. Schultz said he didn't know if there was any type of formal determination that a majority was obtained. He thought it was circulated to the lakefront people, not the back lot owners. He said he didn't know whether they counted those and decided that there was 51% or if the signatures were checked. He didn't think they had done that. Mr. Schultz said the kind of thing they would do for the actual special assessment, such as make sure they owned the property, etc., they didn't get that formal.

Member Mutch said, just to make it clear to everyone, there's no petition process that applies to this for the adoption of the Lake Board. He said if they went through a petition, he thought it was 2/3rds but in this situation it didn't apply. So the fact that the City didn't check every last property owner and signature didn't have anything to do with the adoption of the Lake Board. Mr. Schultz said that was correct. He said the written materials had said clearly that there was no obligation for any petition. He said the City staff wanted to be sure there was solid support for this and they got a number of signatures that added up to a good number, possibly a majority, and the petition was accepted by the City and they moved forward with the process. He said the City was not required to compare signatures as it wasn't needed and wasn't done.

Roll call vote on CM-09-01-007

**Yeas: Burke, Crawford, Margolis, Mutch, Staudt,
Landry**
Nays: None
Absent: Gatt

ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 8:56 P.M.

David Landry, Mayor

Maryanne Cornelius, City Clerk

Transcribed by Charlene Mc Lean

Date approved: January 26, 2009