



## **NO CONFIDENCE IN HERON COVE ASSOCIATION FOR SMALLWOOD LAKE**



The Smallwood Lake Association (SLA) is a volunteer non-profit made up of Smallwood property owners, business owners, township officials, and friends of Smallwood Lake. We are open to ALL. Our mission is the restoration of Smallwood Lake. We support the FLTF's Restoration Plan as this is the only viable plan. While others have offered ideas / opinions over the years, there is no other plan that will restore Smallwood which was scheduled to return in 2025 before the appeal.

There is recognition that Special Assessment District (SAD) costs to property owners are high. The capital/construction SAD does not go into effect until the winter tax bill, December 2025 which is due in February 2026. We have 2 years to find additional funding to reduce costs to property owners and the SLA and FLTF are currently in the process of applying for additional grants and meeting with legislators to work toward obtaining additional funding. The capital/construction SAD is based on the "not to exceed" amounts, which will provide the needed funds to meet or exceed the costs to restore all four dams. In the event additional funds are obtained, the capital/construction SAD will be reduced for all lake property owners.

The Smallwood Lake Association (SLA) continues to advocate for and seek additional funding / support for the 4 Lakes Special Assessment District. Our RestoreTheLakes campaign helped secure over \$200 Million in grants for the 4 Lakes Special Assessment District which has benefited ALL property owners.

**Our goal is simple, to restore Smallwood Lake as soon as possible while reducing assessment costs for all property and business owners within the special assessment district.**

Our SLA Board was asked to comment on the appeal. As Board members, and property owners, we believe:

- We recognize the disaster took place after a lack of oversight at the federal level over a course of decades.
- The capital/construction assessment to property owners and businesses is high.
- We will continue to use our time and talent to seek additional grants to reduce costs to ALL.
- We agree property owners have the right to appeal their individual assessment as described by the laws of the special assessment district as outlined by the Midland Circuit Court.
- Our goal is to restore Smallwood Lake . . . the current plan and construction schedule allows this to happen. There is a risk to the plan should there be a delay. A delay will cost all Smallwood property owners time, money and the possibility Smallwood will never be restored.

As we focus on the restoration of Smallwood Lake, we look out for the best interests of Smallwood Lake property owners. The following **are key reasons we do not have confidence Heron Cove Association (HCA) is working in the best interests of the Smallwood Lake community:**

### **The HCA Appeal**

- 1) The HCA legal appeal indicates all work on Smallwood dam should not have started. This includes stabilization, engineering, environmental studies and permitting required by EGLE. The logic applied in their appeal further delays the return of Smallwood Lake stretching the time to multiples of years or longer.
- 2) The HCA legal appeal seeks to terminate and redesign the special assessment district. This will delay Smallwood dam construction by years with no guarantee the court will establish a different SAD. The legal fees required to establish a SAD are high - - and those costs have already been invested to create the current SAD. The HCA is advocating for a county wide millage, which would require a referendum vote just like the sheriff or school millage. As stated in the past, anyone can begin the process to get this on the ballot. A millage takes a lot of effort and often does not pass, as we have seen recently in Gladwin with school millages. In addition, the counties would have to agree that the entire county should be responsible for the cost of completing construction of the dams.
- 3) The HCA legal appeal indicates there is no benefit to property values should the lake not be returned. They believe there will be no change to property values on Smallwood without a return of the lake to full lake level. Should construction cease with no path forward, the dam would have to be removed. It could not remain as is, thus Smallwood would resemble Wixom or Sanford with a river flowing through thousands of acres of nuisance trees, and there would be costs to remove the dams. Sadly, Smallwood Lake properties will likely experience property value decreases should the lake not be able to return to its legal level as well as incur costs related to dam removal.
- 4) HCA is an organization that states it only cares for “the general welfare of its members.” It does not address the well-being of our community at large.

You can read a summary and view the legal appeal here: [https://www.restorethelakes.org/files/ugd/cd86dd\\_5a80d59b07ea47008a655d072b46e450.pdf](https://www.restorethelakes.org/files/ugd/cd86dd_5a80d59b07ea47008a655d072b46e450.pdf)

### **HCA Agreement with their Attorney (it is legal jargon but what it means to Smallwood is important)**

- 5) Their agreement signed between Jan Colton and Foster Swift states: ***“The Owners and Association have designated Jared Nickel, Nicole Weber, and Janis Colten (sic) as their representatives to direct the Firm’s legal work, including the ability to negotiate, accept, or reject settlement offers on behalf of the Association or Owners.”***

Jan Colton represents herself in the media as the Heron Cove Association President, clearly implying she has the decision-making authority for the HCA.

**There are no Smallwood Lake property owners able to make decisions regarding the appeal and directing the attorneys.** All decision-making involves three people from Wixom Lake.

For those that claim “there is a board that makes decisions and Smallwood is represented” - - one needs to read the agreement each signed. On the bottom of page one it reads: ***“Further, by signing and returning to***

***the Association or the Firm the acknowledgment attached to this agreement, the Owners agree to designate representatives of the Owners and the Association who will communicate with the Firm to direct the appeal and litigation of the special assessments***". It is very clear, only three people are directing the appeal and litigation and none of them are from the Smallwood Lake community. **None of the three own property on Smallwood Lake.**

- 6) The HCA attorney retention letter signed by Jan Colton explains: *"The Association agrees to pay us an initial retainer of \$30,000.00, which we shall place in our Trust Account. **We understand that the Association will act as the payor of legal fees incurred on behalf of the Owners and the Association and the Association will collect sufficient funds from the Owners to pay our fees. The Association and Owners are jointly and severally liable for our fees and costs.**"*

It also states: *"In the interest of assuring that you are fully aware of our fees, we are explaining our fee arrangement for our representation. Our services on behalf of the Owners and the Association, which commenced on February 5, 2024, will be billed to the Association on the basis of hourly rates for time incurred. Hourly rates differ between attorneys and subject matter but are generally in the range of \$250 per hour to \$550 per hour. **My hourly rate currently is \$505 per hour . . .** The hourly rates are subject to adjustment from time to time, usually at the end of each calendar year. You will also be billed for costs which are expenditures by the Firm on your behalf, including mileage and expert witnesses."*

The most recent filing against the counties of Midland and Gladwin separately has now created 3 legal proceedings. These legal proceedings will cause an untold delay in the restoration efforts of Smallwood dam coupled with legal costs for all parties.

We respect the rights of our Smallwood friends and neighbors that joined the Heron Cove Association. Please note that those who joined the HCA appeal "are jointly and severally liable" for all legal fees and costs.

To further clarify for appellees engaged with Heron Cove Association:

- *"The Association **and Owners** are jointly and severally liable for our fees and costs."* Meaning each Owner is personally responsible for the ENTIRE BILL of Foster & Swift, regardless if the individual Owner causes \$1 or \$10,000 worth of attorney fees. All members are responsible for all fees and costs.
- *"The amount held in our Trust Account is never less than \$30,000."* The Owners—who are jointly and severally liable—have to keep \$30,000 of their money in the law firm's trust fund at all times. Meaning as the funds are exhausted to the \$30,000 level, owners will need to provide additional funding to maintain the legal relationship.

## **The End Game**

**The HCA has no plan to restore Smallwood Lake.** The only plan is to attempt to invalidate the capital/construction SAD. The HCA president has stated that they are looking to have the State of Michigan "step in and stop this dramafest."

However, in Michigan for an appropriation to pass there must be agreement from a majority in the House (110 people); Senate (38 people) and the Governor. This is a lengthy process and while the SLA and FLTF are working with legislators to obtain additional grants, it will take time to work through this process and in the interim we support completion of the construction of the Smallwood Dam, and implementation of the capital/construction SAD with the potential for reduction of assessments upon receipt of additional grants.

In the event any appellees want to be removed from the appeal, this is permitted by providing an email directly to Michael Homier at [mhomier@fosterswift.com](mailto:mhomier@fosterswift.com). A client has the legal right to terminate their attorney at any time. (Michigan Rules Professional Conduct 1.16). Provide a statement to the law firm Foster Swift such as the following:

“I wish to immediately withdraw from the appeal filed in Midland Circuit Court, Case No. 2024-002751-AA along with the separate filings in Midland Circuit Court, Case No. 2024-0000002829-CZ and Gladwin Circuit Court, Case No. 2024-0000012106-CZ. Please file a dismissal on my behalf and provide me with email confirmation.”

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**The Smallwood Lake Association will continue to focus in these areas:**

- 1) Continue to seek additional grants at the state / federal level to reduce the assessment for ALL.
- 2) We will continue to encourage our members and the lake community to frequent our local business as they are our neighbors, friends, and a vital part of the Smallwood Lake community.
- 3) We will continue to provide update on Facebook, web page, at meetings and through email to share relevant information.

As we respect the right of individuals to appeal, please respect our right to express our vote of no confidence to the Heron Cove Association and their leader. They are NOT acting in the best interests of the Smallwood Lake Association’s goal, which is to restore Smallwood Lake.

We support the FLTF’s Restoration Plan as this is the only viable plan. We are committed to seeing Smallwood Lake returned as soon as possible and will continue to work to secure additional grants to benefit ALL property owners.

Sincerely,

***Smallwood Lake Association Board of Directors***