

I Will Join OLG and Fight ODNR

Establish or renew your annual membership now to continue your support of the OLG lawsuit against the ODNR. The cost is \$50 per household, plus a suggested \$50 per \$100,000 tax value of your property.

There are 3 ways to donate to the Ohio Lakefront Group:

1. Donate by mail with your MC or Visa or a check. Fill out this form and mail it to:

**Ohio Lakefront Group
P.O. Box 2084**

Sheffield Lake, OH 44054

2. Donate by phone with your MC or Visa. Call 888-502-3224 and give us your name, phone number, card number, expiration date and the amount of your donation.
3. Visit www.ohiolakefrontgroup.com

Click on a "Donate" button and then follow the step-by-step instructions. You will be directed to a secure PayPal website.

See gift premiums at right. E-mail your choice to ohiolakefrontgroup@att.net

Membership Form

Name: _____

Mail Address: _____

City, State, and ZIP: _____

Phone: _____

Shoreline City _____

Email: _____

Annual Dues: \$50.00

Plus requested donation (\$50 per \$100K value) \$ _____

Total \$ _____

Credit Card: VISA ___ MC ___ Check Number _____

Card Number: _____

Expiration Date: _____ Code on card back: _____

Choose your gift premium (add note on form):

\$100 – ODNR Stop Taking Our Property T-shirt (red)

\$200 – Polo Shirt (men) Sleeveless Polo (women) OLG Logo

\$500 – OLG Windbreaker (men) Sweater-Set (women)

Size(s): S M L XL XXL (note women or men)



**P.O. Box 2084
Sheffield Lake, OH 44054**

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Newsletter of the Ohio Lakefront Group

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Appeals, Cross-Appeals, Motions to the Appellate Court

As we expected, our opponents appealed Judge Lucci's December 11, 2007 Order in our lawsuit.

On January 8th the State of Ohio and the National Wildlife Foundation (NWF) and the Ohio Environmental Council (OEC) filed Notices of Appeal. Both the State and NWF/OEC stated: "The Court erred, as a matter of law, in denying the Defendant-Appellant State of Ohio's Motion for Summary Judgment and granting Plaintiff-Appellees' and Intervening plaintiffs' Motions for Summary Judgment. The Court erred, as a matter of law, in concluding that the requirements for summary judgment to issue in favor of the Plaintiffs-Appellees and the Intervening Plaintiffs were met."

On January 10th OLG filed a motion to order the State to award attorney fees stating that "The State's position initiating the matter of controversy was not substantially justified and resulting in OLG incurring a significant amount of attorney fees." The motion requested an amount of \$303,442.74.

Subsequently, the State filed a Motion for Stay of Execution of the Judge's order pending Appeal. This Stay would include OLG's request for attorney fees. The Court granted the motion for Stay.

On January 18th, OLG filed a Cross-Appeal with the Court. This cross-appeal allows OLG to also argue further against the State and Intervening defendants (NWF/OEC) in its Appeal.

On January 30th OLG filed a response to the State's Motion for Stay of OLG's Motion for fees. We stated that the case cited, did not, as the State claimed, "stay any determination...for attorney's fees during the time in which the appeal of its decision was before the Court. OLG conceded the Stay, but wanted to get the facts of the State's Motion for Stay before the Court.

One of the State's attorneys who signed the Motion for Stay was also counsel in the case cited, and therefore would have and should have known the facts to be quite different than presented in the State's Motion.

In a separate response to the Stay, OLG argued that the Stay would merely extend the damages period for additional years until the State's appeal is rejected. The amount of damages from the State's temporary unconstitutional taking of property will increase. We anticipate, at a minimum, that damages would include a refund of submerged lands lease payments and fees property owners incurred because of leases, permits, engineering, and mitigation fees. Other damages could also be sought by OLG for property owners over the period. While the State is entitled to the Stay, it could prove economically injurious to the State in the long run.

On March 6th the State and NWF/OEC filed for extension of time to brief their appeals. The original date set by the Court was March 17th. The requested extension was for 30 days, arguing that adequate notice was not given. The NWF/OEC also asked for an extension of the number of pages allowed in the brief. They asked that the number be extended from 35 to 50, arguing that this was much too important a matter to the people of Ohio and to the citizens of the United States to be covered in the 35-page limitation. The Court granted an extension to April 7 to both parties. The page limit was held in abeyance pending the filing of the briefs.

On March 21st the State filed for an additional 9-day extension. An extension until April 17th was granted.

Also on March 21st a Joint Motion was filed by the State and the NWF/OEC to consolidate their Appeals. They argued that consolidation "will avoid unnecessary cost and delay" and other reasons. The motion is pending.

Appeal briefs inside.

Notice of 2008 Annual OLG Meeting

The Annual OLG Meeting will be held on Thursday, May 22nd at the Holiday Inn West at 1100 Crocker Road in Westlake. The business meeting will be from 7 to 9 P.M. Coffee and a cash bar will be available at 5:30 P.M. Senator Tim Grendell and other elected officials will be in attendance.

Please plan to arrive early for registration and ballots for the election of OLG Directors. Dues for 2008 must be current in order to vote. A \$10 gift certificate for Crocker Park will be given to voting members.

Directions: Take I90 to exit 156. Go north on Crocker Road. The hotel is on the left.

Submerged Lands Lease Payments

Many Lake Erie shoreline owners are asking questions regarding the requests they have received from ODNR's Office of Coastal Management seeking payment for Submerged Land Leases, despite the Governor's policy statement regarding honoring our deeds. Recall that the Governor's statement, in part, reads as follows:

"...Governor Strickland believes that apparently valid real property deeds must be honored unless a court of law determines that the deeds are limited by or subject to the public's interest in those lands or are otherwise defective and/or unenforceable."

"Consistent with the Governor's view that deeds should be honored unless they are found to be limited and/or unenforceable by a court of law, ODNR has determined that it is inappropriate to require deed holders to lease land that they maintain that they own."

Based on the above, one can only wonder why ODNR would continue to send out requests for lease payments. The Governor's statement gives a possible answer: "Still, because some land owners would prefer to voluntarily obtain a lease for the property on which they intend to build permitted structures, ODNR will continue to make leases voluntarily available."

The Ohio Lakefront Group cannot tell people that they should or should not pay the lease payment requested by the ODNR. However, the Governor's statement makes it clear that:

"ODNR has determined that it is inappropriate to require deed holders to lease land that they maintain that they own."

If you wish to make a lease payment, feel free. If you feel that it is inappropriate to lease land that your deed states that you own, ODNR and the Governor agree.

Proposed Lease and Permitting Rules

ODNR's Office of Coastal Management has been working to revise these rules in response to the Governor Strickland's "New Regulatory Policy", announced last July. These new rules would eliminate the requirement to lease back your own deeded property as well as to create a more efficient permitting process for wall, jetties, etc.

A subcommittee of the CRAC Council reviewed the original proposed rules last year, submitting nearly 200 comments and recommendations. OCM Chief John Watkins has indicated that they have nearly completed the incorporating many of these recommendations.

According to Watkins, these rules will be reviewed for public comment at meetings to be held at four locations across the Lake Erie shoreline area. These meetings will serve as additional input for of the final rules.

This has been a long process and we are hopeful that our concerns will be heard and incorporated into the final rules. As soon as locations and dates for the four public meetings are announced, OLG will provide this information to its members.

State of Ohio and NWF/OEC Appeal

Both the State and NWF/OEC have filed their Appeal Briefs with the Court of Appeals, Eleventh Appellate District, in Lake County.

The State of Ohio filed its 58 page brief with the Appellate Court. Much of the brief restates what had been previously presented in the original case and citing numerous other court cases that the State believes will support their appeal. The State continues to use the IGLD (International Great Lakes Datum) of 573.4 feet as the ordinary high water mark since statehood and cites Ohio Revised Code, which never mentions the IGLD.

One key argument by the State is that the Court relied on "Historical records" dealing with this case as one of real property rather than one of public trust rights. In other words, it appears that the State is claiming that private property rights are not at issue here. Of course, the State cited the Michigan case where the Supreme Court ruled that the public had the right to walk on the beaches of private property owners. (The Michigan law in fact specifically used ordinary high water mark within its context, whereas the Ohio Revised Code does not.)

The State found fault with the Judge Lucci's ruling, holding that it was inconsistent with "(1) Ohio Supreme Court precedent; (2) Ohio Department of Natural Resources rules; (3) the Ohio Attorney General's position on the issue; and (4) traditional property rights."

Several important reasons for the ruling seem to have been left out. They are the Constitution of the United States, the Ohio Constitution, Ohio Revised Code, and the legal deeds of private property owners.

The State continued its same distorted interpretation of Ohio law, hoping that the appeals court will not see through their charade. As Judge Lucci has shown, the courts are not easily swayed by repetition and skewed interpretations of the law.

The NWF/OEC asserts the following in its Appeal Brief:

"The trial court erred in holding that the public trust in Lake Erie is demarcated by the line the water of the lake touches at any given time."

"The trial court erred in holding that the Ohio Department of Natural Resources may not use the IGLD elevation to establish the high water mark of Lake Erie."

"The trial court erred in holding that the littoral property owners may exclude the people from using the lands below the high water mark of Lake Erie." Numerous Federal and State trial cases are cited in their brief, including cases involving rivers and tidal waters. Lake Erie is not tidal water.

They also included an economic analysis, which stated:

(Continued next page)

OLG Dues – Continue to Fight for Your Property Rights

OLG President, Tony Yankel and the OLG Board wish to thank those members who have responded to our recent requests to contribute dues for 2008. We have had a good response including the addition of new Gold and Platinum members since the first of the year.

The dues period is the calendar year (January 1 through December 31). The previous fiscal year was October 1 through September 30th. Because of the change, your contribution is counted for the 2008 if you already paid dues after October 1, 2007.

Dues are \$50, plus a requested \$50 per \$100,000 of your property assessment per year. For example, if your property is assessed at \$200,000, dues would be \$50 plus \$50 times 2 equals \$100, for a total of \$150 dues for the year. This is a small price to pay compared to what you will be losing should we not be able to sustain the fight. If ALL members paid their dues annually, we would be assured of enough money to continue this fight.

Keep the momentum going by paying your dues before the annual meeting! Also, remember the Gold, Platinum, and Diamond levels of support. You may be very close to this distinguished level of support of giving over the years. If you need to know how much you have contributed in total over the years, contact ohiolakefrontgroup@att.com. You can contribute through the website by clicking the donate button, or send a check to our address on the cover of this Newsletter.

Great Lakes Compact

The intent of the Great Lakes Compact is to protect the Great Lakes from future diversions outside the Great Lakes Basin. While the goals are commendable, many experts have raised concerns that the original language agreed to by the Governors is ambiguous and conflicts with current Ohio law as related to traditional protections for private property owners. We as OLG members support the intent of the Compact, but our past experience with ODNR causes concern for our individual property rights. The Compact's original language could nullify any favorable court decision for OLG.

Since it is apparent that the Ohio Senate's minor, yet drastically important, changes to eliminate this ambiguity to the Great Lakes Compact will not be adopted, Senate Republicans proposed an amendment to Ohio's Constitution as another potential solution to correct the ambiguity surrounding the protection of Ohio property owners' water rights.

Proponents of the Compact (as written) assert that it does in fact recognize current state law on the Public Trust Doctrine and the status of water rights. However, this assertion relies on the assumption that state law is "well settled." We all know this to be all too untrue.

Ohio currently relies on common-law protections for water rights. If the Compact is passed, these common-law protections will be undone, as statute supersedes common-law. To resolve this problem, members of the Senate plan to introduce a constitutional amendment.

This constitutional amendment, if ratified, would articulate the status of water rights in Ohio. If passed by the Ohio Legislature, the constitutional amendment would appear on this November's ballot asking the people of Ohio vote on its ratification.

This is especially important in light of recent testimony in the Senate Committee by environmentalists (some of the same ones fighting our lawsuit) that hypothesized that *if* Ohio legislators tried to pass a constitutional amendment protecting private ground water *then* they *may* file a lawsuit to claim that groundwater has always been part of the public trust doctrine. This is the mentality that we are fighting and the reason we must assure that all private property rights are protected from government bureaucrats.

Appeal Motions - Continued

"The beauty and excitement of the lake draws millions of visitors to it each year. They come to experience the rich maritime history, walk its windswept beaches, canoe scenic tributaries, and climb beautiful lighthouses. In addition to direct expenditures the effect of visitors taking part in these activities is the creation of more than 130,000 jobs and the generation of more than \$400,000 in state and local taxes."

It appears they believe that \$ 400,000 in tax revenue for the state justifies the taking of your private property.

Affidavits were attached from individuals who claim they have walked the "private" beaches for years and intend to do so in the future. However, the NWF/OEC states they want accessibility to beaches on private property to "picnic, bird watch, exercise.... (and to) canoe or swim from the shore.

Larry Mitchell, President of the League of Ohio Sportsman, although not party to the lawsuit, stated in a press release: "We will vigorously defend the public trust doctrine and we will prevail."

The OLG continues to stand by our belief that the U.S. Constitution, the Ohio Constitution, the Ohio Revised Code, and our legal property deeds are on our side and we will prevail over the State. Our deeds have stood on Lake Erie since before Ohio's statehood. Their legality should not be altered at the whim of a state agency, extreme environmentalists, or sports hunting groups.

Ask the President – Tony Yankel

Q. What should I do when I get a letter requesting payment for my submerged lands lease?

A. This is answered in the article “Submerged Lands Lease Payments” on page 2. However, since we have gotten so many questions on this I am repeating our position here. The Ohio Lakefront Group cannot tell people that they should or should not pay the lease payment requested by the ODNR. However, the Governor’s statement makes it clear that “ODNR has determined that it is inappropriate to require deed holders to lease land that they maintain that they own.” If you wish to voluntarily make a lease payment, feel free to do so. If you feel that it is inappropriate to lease land that your deed states that you own, ODNR and the Governor agree with you.

Q. Why is there such an effort to take away our privately deeded property?

A. This is not just an effort to take away our property, but it is a movement that is sprouting up everywhere. The Ohio Lakefront issue just happens to be the most visible issue at the moment. There are also major efforts to take away private property rights along all streams (including intermittent streams) in Ohio and elsewhere. Much of this effort stems from the 1970 article written by Dr. Joe Sax (from Michigan) that fabricated the “public trust doctrine” that we hear about today. Dr. Sax’s article, as well as a very good rebuttal that debunks Dr. Sax may be found on our website.

Q. Why is Senator’s Grendell’s amendment considered so essential before the State of Ohio passes the Great Lakes Compact?

A. The language in the legislation is ambiguous. The Compact’s language could be construed to characterize streams and ground water as “held in trust by the states.” If passed as currently constructed, it could mean that all streams and ground water are in the “public trust” potentially depriving property owners of their own natural resources. Senator Grendell’s amendment removes the ambiguity.

Save OLG \$

Get this Newsletter by email

OLG spends over \$15,000 annually on Newsletter printing and mailing. Send us an e-mail to receive only the electronic e-mail version and help save us money. Print a copy and share the Newsletter with neighbors and friends.

Did you change your email address?

Over the past months we have been getting an increase in the number of “invalid mailbox” rejects when we send out the weekly OLG e-News to keep you informed about current activities and events. **If you are missing the e-News, please send e-mail** to klkemmerer@att.net and we will update the e-mail list. We never share or disclose members’ e-mail addresses.

In Memoriam

It is with deep regret that we report the passing of two former OLG Board members during the past few weeks.

Bob Henderson was an OLG board member in 2002 and 2003. Bob passed on March 22, 2008. His loving wife Bev survives him.

Mike Thomas was a board member in 2004 and 2005. Mike passed on March 31, 2008. His loving wife Deb survives him.

The OLG Board on behalf of the membership sends its sincerest condolences to Bob and Mike’s families and friends.

Special Member Recognition

Our OLG special member recognition is for those who have given significant contributions to help us support our lawsuit. We have added one new Platinum, and seventeen new Gold members since our last newsletter.

The levels are: Gold for members who have contributed at least \$1000, Platinum for those who have contributed at least \$2500, and Diamond for those who have contributed \$5000 or more. We publish this list in each Newsletter to recognize these dedicated members.

DIAMOND

Robert Liebert – New Albany/Marblehead
Cherry Peirce – Port Clinton
Jerry & Kathy Rusk – Port Clinton
Cedar Point - Sandusky
Lost Lake Development – Port Clinton

PLATINUM

Dr. Roger & B.J. Alexander – Rocky River
Michael & Sharon Cole – Findlay/Port Clinton
Joe Darr – Port Clinton
Robert & Cora Doyle – Wakeman/Oak Harbor
John Elden Jr. – Vermilion
Jerome & Mary Fritz – Bay Village
Kent & Marilyn Hampton – Findlay/Port Clinton
Zenon & Dozia Krislaty
Leo & Dolores Leiden – Madison
Frank & Melinda Lovell – Marblehead
Robert & Diane Merrill – Madison
James & Dianne Miers – Huron
D Scott & Mary Morrison – Bay Village
Stephen & Mary Pero – Oak Harbor
Richard Rennell – Bay Village
James & Ruth-Anne Robertson – Findlay/Pt Clinton
Thomas & Kathy Wasserman – Avon Lake
Hugh & Elly Windsor – Sheffield Lake
Barbara Wisch – Mentor
Long Beach Association – Oak Harbor
Sandusky Yacht Club – Sandusky
Save Our Shoreline (Ohio) – Mentor

GOLD MEMBERS

Ed & Dot Andrus & Family – Geneva-on-the-Lake
Richard & Joan Bailey – Curtice/Kelleys Island
Ken & Leah Baranowski – Albion, IN/Marblehead
Greg & Marilyn Baeppler – Bay Village
Bob & Sharon Barnes – Huron
Charles Bauernschmidt – Bratenahl
Duke & Deborah Benevento – Port Clinton
Thomas & Mary Lou Berry – Euclid
Adrian & Eileen Betleski – Lorain
Judge James Bierce – Port Clinton
Michael Bockrath – Sandusky
Robert & Lucy Bunsey – Huron
Bruce & Charlotte Burge – Lorain
Dick & Joyce Burke - Mentor
Mike & Nicki Cancelliere – Bay Village
Edward & Victoria Carey – Powell/Marblehead
Joseph Chmielewski – Port Clinton
Douglas Clarke – Brook Park
Gary & Michelle Coon – Port Clinton
Vitas Cyvas – Willowick
Edward & Loretta D’Alessandro - N Olmstd/Vermiln
Joe Darr – Port Clinton
Paul & Connie Davis – Sandusky
William Dauterman – Port Clinton
Connie & Paul Davis – Sandusky
David & Carole Dreffer – Huron
Roger & Mary Drusbacky – Port Clinton
Scot & Darla Duncan – Sandusky
Gregg & Madelyn Foster – Rocky River
Gale & Linda Fritz – Port Clinton
Helen Frye – Port Clinton
Pamela Gartin – Columbus/Marblehead
Greg & Susan Gibson – Port Clinton
Timothy & Melanie Gooding – Mentor
Vicki Heigel – Port Clinton
Larry & Carolyn Heintz – Oak Harbor
Mike, Delores & Aaron Herbert - Tiffin/Oak Harbor
David & Sharon Herzer – Vermilion
Jim and Linda Hivnor – Sandusky
Dave & Theresa Hoffman – Vermilion
Clifford & Sue Holman – Port Clinton
Lee & Joanne Howley – Vermilion
George & Katherine Jones – Whitehouse/Pt Clinton
Patrick & Patricia Judge – Lorain
Alfred & Christina Kafity – Huron
Kent & Linda Kemmerer – Willowick
Paul & Sarah Kesselem – Bratenahl
Sally Conway Kilbane – Rocky River
Richard & Lori Kiser – Toledo/Port Clinton
Merle & Jane Koppenhafer - Vermilion
Ray Lambert – Port Clinton
Louis & Gail Lehmann – Geneva
Paul & Emma Lincoln – Mentor
Thomas & Fran Livingston-Clark – Mentor
Norm & Jan Malcosky – Columbus/Port Clinton

Paul & Diane Marinchick – Willoughby
Richard & Mary Lou Marsh – Naples FL/Pt Clinton
Brian & Jill McBride – Bay Village
Gary & Janette McCreery – Bowling Green/Oak Hrbr
Richard & Janice McNellie – Madison
Paul Mihalik – Madison
Donald & Judy Miller – Fostoria/Port Clinton
Floro & Nancy Miraldi – Cleveland Hts/Sheffield Lake
Gene & Mary Molnar – Port Clinton
Benjamin & Jane Norton – Lorain
Paul Novosel – Bratenahl
William & Arlene Oley – Cape Coral, FL/Vermilion
Thomas & Tomie Patton – Avon Lake
Thomas & Judy Peterson – Mansfield/Marblehead
Stanley & Wanda Pijor – Sheffield Lake
Ed & Carla Pivcevic – Avon Lake
Ken & Dawn Prince – Avon Lake
Chuck Rathburn – Madison
James & Elizabeth Redinger – Marblehead
Robert Risman – Beachwood
Stan & Joan Ross – Columbus/Port Clinton
Gregory & Linda Rothman – Avon Lake
Ken & Carol Sander – Port Clinton
Brooke & Elizabeth Schumm – Bay Village
Richard & Myrna Schwarz – Peoria, IL/Ashtabula
Robert & Clara Shank – Perrysburg/Port Clinton
Donald Shury – Cleveland
Thomas Smith – Port Clinton
Kenneth & Christine Spano Moyenage – Bratenahl
Dennis & Sherianne Stacy – Toledo/Port Clinton
Doris Stamm – Marblehead
Karen & Don Strang – Lakewood
Tom & Sandra Sullivan – Bay Village
Dave & Rhea Sylvester – Vermilion
Martin & Ann Tarr – Bay Village
Ken & Nina Tatter – Sheffield Lake
Gary Toth & Fran Young – Madison
Thomas & Sandra Wade – Port Clinton
Gage & Susan Williams – N Ridgefield/Sheffield Lake
Sarah & William Williams – Port Clinton
Crist & Barbara Winterstein – Vermilion
Anthony & Sheryle Yankel – Bay Village
Christine Zimmer – Huron
Bar Harbor Association – Marblehead
Catawba Point Association – Port Clinton
Harbor Island Association – Port Clinton
Kennykirk Association – Port Clinton
Linwood Park Company – Vermilion
North Side Marshes – Sandusky
Sand Beach Association – Oak Harbor
Save Our Shoreline, Inc. – Bay City, MI
Vermilion Lagoons Association – Vermilion
Anonymous – 9 Households