



**Division of Water
Memorandum**

Date: October 12, 2011

To: Jennifer Kane, Paralegal
Division of Hearings, Natural Resources Commission

From: Michael W. Neyer, P.E. *MW 10/12/11*
Director, Division of Water

RE: Establishment of the Lake DeTurk Conservancy District

On June 16, 2011, the petition for the establishment of the Lake DeTurk Conservancy District was filed in Morgan Circuit Court. Under Cause Number 55C01-1106-MI-1254, this petition was deemed complete as to form and content and referred to the Natural Resources Commission on August 12, 2011. The petition was forwarded to the Division of Water for review and comment.

The proposed Lake DeTurk Conservancy District is located on the Martinsville Quadrangle Map, Sections 27 and 34 of Township 12 North, Range 1 East. Documents on file with the Division of Water indicate that this low hazard dam was constructed by Grassyfork Fisheries Co., Inc. in the early 1970's to supply water for a goldfish hatchery. At some point the ownership of this commercial fish operation was transferred to Ozark Fisheries, Inc.

According to IC 14-33-2-2, the petition must be signed by 30 % of the freeholders owning land in the proposed district. The proposed Lake DeTurk Conservancy District includes 248 freeholders with 124 of those signing the petition. The petition requests that the district be established for the purposes of: 1) developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management, and 2) operation, maintenance, and improvement of works of improvement.

As directed by Chapter 2, Section 17 of the Indiana Conservancy Act (IC 14-33), and pursuant to the Public Hearing on September 26, 2011, concerning the proposed establishment of the Lake DeTurk Conservancy District in Morgan County, the Division of Water offers the following comments.

1) Appears to be necessary

a. Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management:

Lake DeTurk supplies water to a fish hatchery owned by Ozark Fisheries. The dam is classified as low hazard according to accepted dam safety standards. The original structure was relatively small but the addition of 20 feet of material in the 1970's increased the total height of the dam to 30 feet. As indicated in dam inspection reports this work was initiated without the necessary permits from the Department of Natural Resources (DNR). On April 11, 1979, an application for Approval of Construction in a Floodway was submitted but DNR staff determined that additional soil information would be needed before the evaluation could be completed. The permit (D-6132) was issued by the DNR on August 30, 1985.

Shireman Estates is a 322 lot residential development that is now part of the City of Martinsville in Morgan County. This development contains the 35 acre Lake DeTurk, dam and spillway, two (2) beaches, two (2) parks and common areas which were improved and maintained by the original developers of Shireman Estates and are now owned by Ozark Fisheries (Ozark).

In 2000, a group of real estate owners in Shireman Estates filed a lawsuit against Ozark Fisheries because they felt they had a right to use and enjoy Lake DeTurk and the other amenities provided by the original developer and that Ozark had a duty to maintain Lake DeTurk and those amenities. A Settlement Agreement between the parties was reached in November 2010.

This Agreement stipulates that within 90 days of the approval of the Agreement by the Court, the Plaintiffs are to file a petition for the formation of a conservancy district. It is the intention of the proposed conservancy district to manage, operate and conserve the water resource known as Lake DeTurk. Specifically the Conservancy District will accept any and all liabilities concerning the real estate conveyed by Ozark, including but not limited to taxes, insurance, maintenance, and improvements. Ozark will be provided with a perpetual right to withdraw a reasonable amount of water from Lake DeTurk for use in its commercial fish operation. Terms of Use will be established in a Water Lease to be executed between Ozark and the Lake DeTurk Conservancy District.

Several long time residents of Shireman Estates stated at the September 26, 2011 public hearing that they purchased their property because of the lake and the associated recreational facilities. Use of the lake for canoeing and fishing was a common occurrence. Amenities such as the picnic area, beach, playground, and sports facilities were also significant attractions for the residents. However these facilities have not been maintained and are now in a state of disrepair. It is the intent of the proposed conservancy district to restore the recreational facilities. Potential projects outlined at the public hearing may include controlling weeds in the lake, addressing siltation, and rehabilitation of the beaches, playground, picnic area, and sports facilities.

The dilapidated recreational facilities (baseball field, tennis court, basketball court) in Shireman Estates would not ordinarily be considered "in connection with beneficial water management" as stated in the statute. However there are other instances where conservancy districts have this purpose which allows them maintain areas such as a community center, play ground and a swimming pool. It was noted in the reports prepared by DNR that conservancy districts with these amenities would unify the community and provide an aesthetically pleasing living environment.

This purpose appears necessary.

b. Operation, maintenance and improvement of a work of improvement for water based recreational purposes:

Appropriate maintenance is an integral part of responsible dam ownership. Currently the lake, dam and several lots in the Shireman Estates are owned by the Ozark Fisheries. In 2000, a lawsuit was filed against Ozark by a group of Shireman Estates property owners because they felt Ozark had a duty to continue to maintain the amenities provided by the original developer. A Settlement Agreement was reached between the two (2) parties in November 2010.

Upon acceptance by the Morgan Circuit Court of the Settlement Agreement, Ozark shall convey the dam, Lake DeTurk, and certain lots of Shireman Estates to Lake DeTurk Conservancy District. Additionally Ozark will be relieved of any and all future obligations to maintain, improve or service any of the common areas, parks, lakes any property conveyed or any property located within the platted area known as Shireman Estates. Ozark Fisheries placed \$35,000 into escrow which will be distributed to the Lake DeTurk Conservancy District upon successful establishment.

Several residents, who attended the September 26, 2011 public hearing, indicated that they originally purchased their property because of the proximity to Lake DeTurk and the recreational opportunities it offered. The President of Ozark Fisheries indicated at the same hearing that it was not in the best business interest of the company to maintain the recreational facilities into perpetuity. This lack of maintenance has caused the lake to be difficult to use for fishing and canoeing. The other facilities such as the picnic area, beaches, sports facilities, and playground are also in a state of disrepair.

Once established the Lake DeTurk Conservancy District will be responsible for the real estate conveyed to them by Ozark. This will include but not be limited to taxes, insurance, maintenance, and improvements to the conveyed property except obligations specifically assumed by Ozark in the Water Lease Contract.

The formation of the Lake DeTurk Conservancy District for the purpose of operation, maintenance and improvement of a work of improvement appears to be necessary.

2) Holds promise of economic and engineering feasibility

Shireman Estates is a 322 lot residential development that also contains the 35 acre Lake DeTurk, a low hazard dam, two (2) beaches, two (2) parks and other common areas which are now owned by Ozark Fisheries. Several property owners in Shireman Estates filed a lawsuit in 2000 because they felt that Ozark had failed to maintain Lake DeTurk and the other recreational facilities. A Settlement Agreement accepted in 2010 outlines how the lake, dam, and common areas will be conveyed to the proposed Lake DeTurk Conservancy District.

An informational meeting for all of the residents of Shireman Estates was held on May 10, 2011. This meeting provided details on what a conservancy district entails, potential annual budget, and estimated costs to freeholders.

Several residents who have lived in Shireman Estates for over 20 years spoke at the September 26, 2011 public hearing in support of the conservancy district. The common theme was that Lake DeTurk and its recreational opportunities is what attracted them to purchase their homes in Shireman Estates. The lack of maintenance has caused these areas to fall into a state of disrepair and some are not useable. These residents felt that it was time for them to create an entity that would own and maintain the lake, dam and common areas for the good of the entire community.

Appraiser and real estate broker, Steve Cobb, provided testimony that property with lake frontage typically sells for \$200,000 but if the lake no longer existed, each of those 20 lots could experience a loss in value of \$50,000 for a total reduction of \$1M. Likewise properties not on the lake would probably experience a 10% potential loss in value if the lake and recreational opportunities no longer existed. Establishment of a conservancy district will provide a mechanism for the property owners in Shireman Estates to have ownership of the lake, dam, and common areas as well as provide for its rehabilitation and maintenance into the future.

A letter of support from the Morgan County Board of Commissioners was filed with the Natural Resources Commission on September 28, 2011. The Commissioners indicated that a conservancy district will provide those who benefit from the lake the means and authority to maintain the lake, dam, and any improvements for the years to come.

It is anticipated that the creation of a conservancy district for maintenance, repair, and operation of the works of improvement will have a positive effect on property values while providing recreational opportunities to the freeholders of the proposed District. The petition indicates that costs will most likely be paid for by the annual levy of special benefits taxes and an annual assessment on land to be exceptionally benefited. Annual operation and maintenance costs are estimated to be \$47,300.

The Lake DeTurk Conservancy District shall establish a Cumulative Maintenance Fund as set forth in the Indiana Conservancy Act, IC 14-33-14.

It appears that the proposed Lake DeTurk Conservancy District holds promise of economic and engineering feasibility.

3) Seems to offer benefits in excess of costs

Ozark Fisheries currently owns Lake DeTurk, the dam, spillway, and ten (10) lots utilized for recreation in Shireman Estates. Upon acceptance of the Settlement Agreement by the Court, Ozark is to execute Warranty Deeds conveying the real estate; the deeds are to be held in escrow, pending formation of the Conservancy District.

The proposed District will collect and manage funds to address any repairs and provide for long-term maintenance of the Lake DeTurk Dam, beaches, and parks.

At the September 26, 2011 public hearing, Steve Cobb an appraiser and real estate broker provided testimony regarding the loss of value that would result if Lake DeTurk was eliminated. After review of the listings and calculating the averages, the 20 homes on the lake sold for approximately \$200,000 while the average home not on the lake sold for \$150,000. If Lake DeTurk no longer existed, each lake front home could experience a potential loss of \$50,000 or a total reduction of \$1M for the community. Mr. Cobb also indicated that those lots not on the lake would likely experience a 10% loss in value from the lack of recreational opportunities. The potential losses of \$4.5M for the non-lake properties and \$1M for lake front properties would reflect in a total loss of property values of \$5.5M for Shireman Estates. Improvements and maintenance to the lake and common area would have a positive effect on the property values and increase the desirability of purchasing a home in Shireman Estates.

Ross Holloway of Holloway Engineering & Surveying testified at the public hearing that general maintenance of the lake and dam would cost approximately \$20,000 annually. Inspections have noted a seepage problem on the principal spillway which could be attributed to a problem with a valve or may indicate another problem with the dam. If the dam should need to be breached because of problems those costs could be in the range of \$400,000.

Mr. Holloway indicated that rehabilitation of the several of the recreational facilities could cost approximately \$150,000. Siltation along the western side of the lake was also mentioned as a problem. Removal of the silt would improve the quality of the lake and benefit the recreational activities. The amount of silt to be removed, method of removal, and location of a disposal site could cost as much as \$900,000 and make this project too costly in the short term. Therefore the siltation issue may need to be addressed in phases or considered a future project.

The benefits should exceed the costs associated with maintaining this dam and rehabilitating the other recreational facilities by continuing to provide recreational opportunities to the freeholders of the District while maintaining property values associated with the lake.

4) Proposes to cover and serve a proper area

Chapter 3 of the Indiana Conservancy Act states that "any area may be established as a district if each part of the district is contiguous to another part". The boundaries of the proposed Lake DeTurk Conservancy District are contiguous.

The proposed boundaries encompass Shireman Estates which is a residential subdivision in Sections 27 and 34 of Township 12 North, and Range 1 East. Included within Shireman Estates is the 35-acre Lake DeTurk. The conservancy district will include only the property owners of Shireman Estates,

who will benefit from the establishment of the District.

As proposed the Lake DeTurk Conservancy District boundaries appear to cover and serve a proper area.

5) Could be established and operated in a manner compatible with established Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects

There are no other Conservancy Districts whose boundaries would overlap those of the proposed Conservancy District. The Lake Edgewood Conservancy District is also located in Morgan County but it is northwest of Martinsville whereas Lake DeTurk is on the northeast side of Martinsville. The proposed Lake DeTurk Conservancy District could be established and operated in a manner compatible with other districts. The proposed district does not appear to interfere with any other known flood control or water management areas.

Should you have questions concerning the above comments, please contact Terri Curlee Price, Project Development Section at 317-234-1081.

MWN/TCP

