

# LAKE ARROWHEAD FAIR SHARE COMMUNITY INFORMATION MEETINGS

November 4, 11, 12, 15, 2009

# WELCOME!

## Agenda:

- |                                     |  |
|-------------------------------------|--|
| <b>1. Introduction and Welcome</b>  | <b>Mike Bertram, LAC President</b>       |
| <b>2. Fair Share</b>                | <b>Robin Bachman, LAC Secretary</b>      |
| <b>3. Lakes' Issues</b>             | <b>Dave Hobart, PhD, LAC Lakes Chair</b> |
| <b>4. Proposed Mandatory Budget</b> | <b>Bob Seijas, LAC Treasurer</b>         |
| <b>5. Membership Privileges</b>     | <b>Mike Bertram. LAC President</b>       |
| <b>6. Q&amp;A</b>                   | <b>All</b>                               |

# Introduction and Welcome

Michael Bertram, LAC President

- Lake Arrowhead, then and now
- Neighborhood dilemma
- Solutions Considered
- Fair Share



# Neighborhood Dilemma

## Facts:

- Property taxes on our lakes increased 30% over the past 5 years!
- Liability insurance for our lakes increased 15% over the past 5 years!
- Our lakes require extensive care to bring them back to health.
- Expensive dam repairs, if necessary, are required by the state (state average = \$200,000 per dam!)

# Possible Solutions

- Things we've done and are doing
  - Annual membership drives
  - Lake Restoration Fund Drive
  - Neighborhood membership meetings
  - Annual Wine and Cheese Party
- Things we've considered
  - Sale of lakes to a town
  - Take out a mortgage
  - Open membership to public
  - Allowing commercial membership

# Why Fair Share

LAC members (approx. 100) can no longer carry these expenses alone or rely on the generosity of a few individuals

Real estate agents will tell you that the lakes benefit the entire community, so LAC needs help from the entire community to spread out these expenses for the lakes.

Recent NJ Appellate Court decisions (since 1978!) recognize the obligation of the entire community to share in these expenses.

# Fair Share

Robin Bachman, LAC Secretary

- The Easement
- What is Fair Share
- Legal Opinion
  - Cases

# The Easement

Each Lake Arrowhead property owner's deed gives them the right to use the lake.

Only property owners in the Lake Arrowhead community have this right, subject to the rules established by the Lake Arrowhead Club.

Legally, this means that all property owners in Lake Arrowhead have an "Easement" to use the lake.

# The “Easement” in the Original Deeds

- “Together with the right to use the lake and the roads, as may property owners generally in the community of which the above described property forms a part, subject, however, to the rules and regulations established or hereafter established governing same.”
- “To have and to hold all and singular the above-described land and premises, with the appurtenances, unto the party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.”

# Legal Opinion for LAC

*“These two clauses are significant as they provide an easement to the lake and properties that runs to all who take title. It is by virtue of this easement that a lake association can implement a “fair share” assessment.”*

**Searched >50 deeds to confirm presence of easement in each one.**

# What is Fair Share?

- It is a legal process by which *all* property owners in a planned community, not just those who choose to join the community property owners' association, are assessed equally for the cost of maintaining the community property.
- Recent NJ Appellate Court decisions have enforced the principle that in consideration for the easement to use the lakes, all property owners are required to share in the costs of maintaining the lakes to which the easement applies.

**Expert legal advice indicates that Lake Arrowhead qualifies for Fair Share.**

# NJ Case Law

- *Island Improvement Association of Upper Greenwood Lake v. Ford, 155 N.J. Super 571 (Appellate Division 1978)*
- *Lake Lookover Property Owners Association v. Olsen, 348 N.J. Super 53 (Appellate Division 2002)*

***If all property owners pay their fair share toward these expenses, which support the lakes, which benefit the entire community, the share from each property owner will be affordable, and the future of the lakes and their value to the community will be secured.***

# Our Lakes' Issues

Dave Hobart, PhD, Lakes Chair

- Brief Lakes' History
- Dam Issues
- (Very) Basic Limnology
- Treatments
- Restoration Plan
- Costs.....

- Our sole motivation is to maintain and restore these lakes, and make Lake Arrowhead a premier neighborhood in both Mountain Lakes and Denville ... and thus raise the value of all our properties!

# Lakes' History

- Four lakes (~36 acres) built in 1920's by Arthur D. Crane Co.
  - 'Impoundment' lakes
    - Have dams
    - Relatively small and shallow
- 1 Dam, 3 Sluiceways
  - LAC Clubhouse and Beach are on the dam
- Privately owned by LAC
  - NOT Denville or Mountain Lakes
- BUT - All original and subsequent Lake Arrowhead property owners have an Easement to use them.

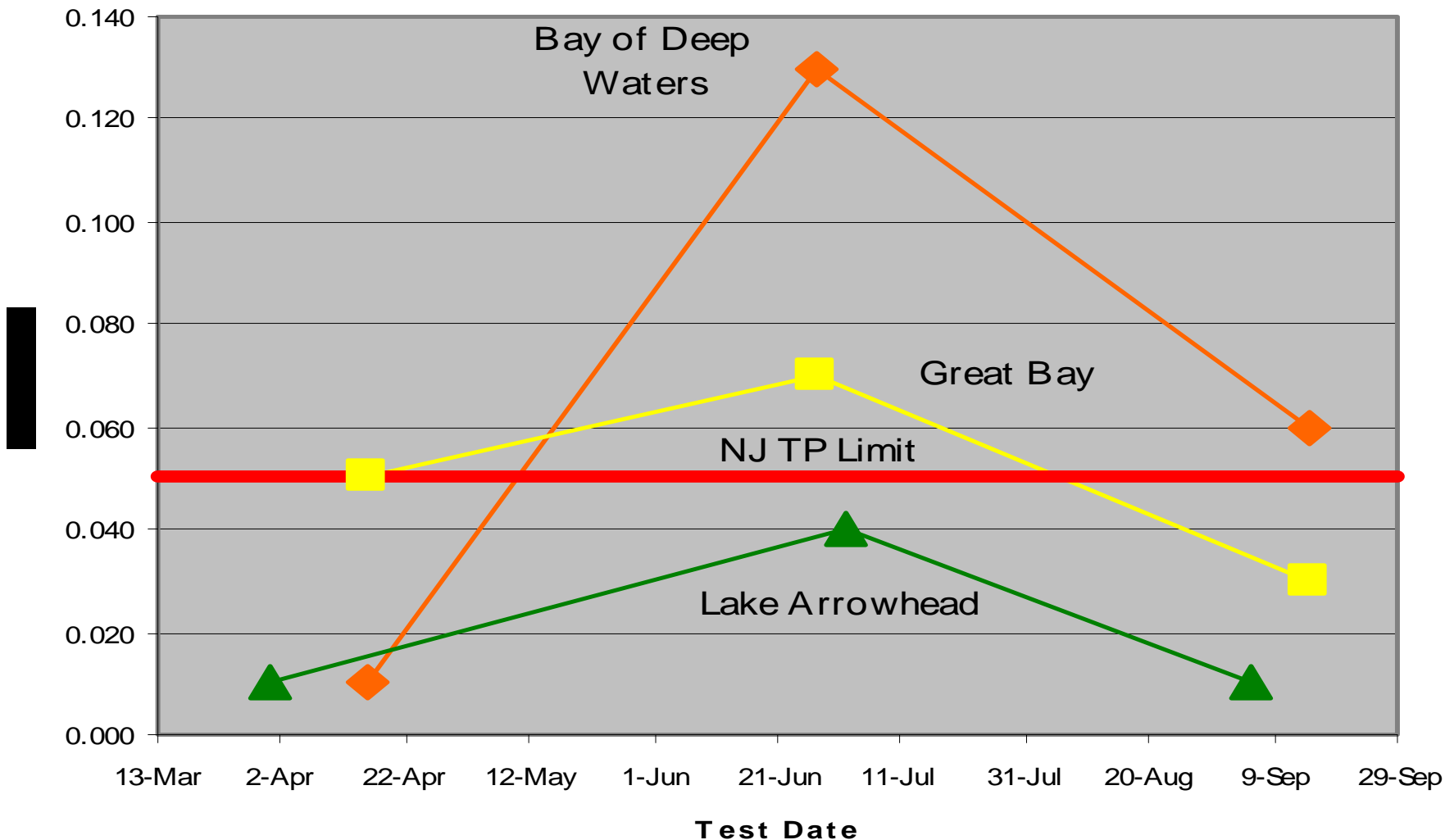
# Dam Issues

- NJ mandated dam inspection every two years
  - \$3000
- Yearly dam maintenance
  - \$2000 – 3000
- Major dam repair – if needed
  - NJ state average cost: \$200,000
- Begin to establish dam escrow of \$75,000
  - Cover both dam maintenance and repair

# (Very) Basic Limnology

- In most fresh water lakes, phosphorus is the limiting nutrient for all plant life.
  - 1 lb P = 1100 lbs algae!!
  - 4 Geese = 1 Outhouse!!
  - Found in: decomposing bottom muck, fertilizer, animal, bird and plant waste, and street runoff – and the water in our lakes!
- Plants also need sunlight and carbon dioxide
- Algae is a plant....

# Total Phosphorus - 2008



Bay of Deep Waters Great Bay Lake Arrowhead NJ TP Limit

# Past Lake Treatments

- Algaecide
- Occasional herbicide
  - Control non-native invasive plants: e.g., Cabomba and Duckweed
- Occasional Alum
  - Control soluble phosphates to limit algae blooms
- Blue Dye only in Lake Arrowhead for 2 seasons
  - Limit light penetration to limit algae growth
- No hydro raking or debris removal in 80+ years
- No aeration
- Our lakes are in need of serious restoration!!

# Lakes' Restoration Goal

Self-sustaining, natural lake ecology  
with as little intervention as possible  
– within 5-10 years.

For scenic beauty and recreational use  
by all of Lake Arrowhead residents.

# Lake Restoration Tactics

- Limit inflow of nutrients – community involvement.
  - Zero P fertilizers, buffer zones, rain gardens, wildfowl control, yard and pet waste control
- Treatment of excessive plant growth as needed.
  - Algaecide / herbicide
- Limit available sunlight to inhibit plant / algae growth
  - Dye application
- Removal of P from water column
  - Alum or aeration
- Removal or accelerated decomposition of bottom muck, with 80+ years of nutrients (P).
  - Hydro raking or aeration

# Costs....

- Seasonal Symptomtic Treatments – 4 lakes

- Algaecide (as needed):

\$ 5645

- Blue Dye (per application):

\$ 4285

- Alum (once per season):

\$ 3300

- Herbicide (As needed, dependant on lake volume; GB): \$ 6000

BDW \$ 4000

- Long(er) Term Solutions

- Hydro Raking (per acre; for ~10 acres)

\$ 12K – 15K

- (5-10 years)

- Aeration (per acre of lake, and depth)

± \$ 1000

# Proposed Mandatory Easement Budget

Bob Seijas, LAC Treasurer

# **Proposed Mandatory Easement Budget**

<u>Item</u>	Total Amt	2010 Amt	Easement Share	Notes		
<b>Dam</b>		<b>\$ 6,500</b>	<b>26.53</b>			
Dam Escrow Account, REPAIRS	\$ 75,000	\$ 5,000	20.41	Amortized over	15	years
NJ Mandated Biannual Dam Inspections	\$ 3,000	\$ 1,500	6.12	Amortized over	2	years
<b>Community Lake Bottoms and Properties</b>		<b>\$ 31,751</b>	<b>129.60</b>			
Liability Insurance		\$ 8,651	35.31			
Real Estate Taxes		\$ 21,800	88.98			
Landscaping Maintenance		\$ 1,300	5.31			
<b>Lake Maintenance</b>		<b>\$ 20,730</b>	<b>84.61</b>			
Chemical Applications		\$ 13,230	54.00			
Physical / Biological Debris Removal	\$ 75,000	\$ 7,500	30.61	Amortized over	10	years
<b>Administration</b>						
Office materials, postage, member tags		<b>\$ 1,500</b>	<b>6.12</b>			
<b>Professional Services</b>		<b>\$ 19,000</b>	<b>77.55</b>			
Accounting		\$ 5,000	20.41			
Legal	\$ 50,000	\$ 10,000	40.82	Amortized over	5	years
Collection Expenses		\$ 4,000	16.33			
<b>Total Proposed Easement Budget</b>		<b>\$ 79,481</b>	<b>324.41</b>	Divided over	245	properties

# Membership Privileges

Mike Bertram, LAC President

- Comparison of Easement and LAC membership privileges
- Benefits of LAC membership

# Easement Member Privileges

## Privilege\*

## Easement Member

Boating

Daily use.

Fishing

From own boat or property, lake access points

Clubhouse Rental

Full Rates

Docks / Retaining Walls

Grandfathered; minor repairs

LAC Participation

Easement Committee membership; Vote on  
Optional Easement Budget Items

\* Subject to LAC Rules and Regulations

# LAC Member Privileges

## Privilege\*

## LAC Member

Boating

Daily use and overnight dry storage on racks at lake access points.

Fishing

From own boat and property, and LAC property

Swimming,

From guarded LAC beach

Butterfly field use

Full use, including lights

HUB Lakes Sports

Full participation

LAC social functions

Full participation

Clubhouse Rental

Discounted Rates

Docks / Retaining Walls

Construction / major repair of dock / retaining wall

LAC participation

Full participation

\* Subject to LAC Rules and Regulations

# ***Join LAC and share in the fun...***

**Swimming**

**Sailing races**

**Fishing**

**Adult and child athletic leagues**

**Discounted Clubhouse rentals**

**Boating**

**Social events**

**Beach parties**

**Childrens' activities**

**Voting rights**

**LAC Website: [www.lakearrowheadclub.com](http://www.lakearrowheadclub.com)**

***THANK YOU!***

**Questions?**

# Summary of the Legal Opinion --1

The theory of “fair share” assessment was developed in a series of cases which determined that a property which holds an easement to another property bore responsibility for the maintenance of that easement. In the case of **Island Improvement Association of Upper Greenwood Lake v. Ford, 155 N.J. Super 571 (Appellate Division 1978)**, a non-profit voluntary lake association was organized to raise funds to maintain the roads in a privately developed residential area of Upper Greenwood Lake. They brought a class-action suit against all owners of residential property in the area to compel these owners to contribute to the road maintenance costs. In that matter, it was clear that the titles to the road were held by the private lake association and that the deeds to the individual property owners contained an express easement for the use of the roads, but did not contain an express contractual obligation on the part of the owners to maintain the roads. **The Appellate Division held that the individual owners of the residential properties who were granted an easement to use the roads were obligated to contribute to the repair and maintenance of those roads. The Court provided an analysis under easement theory and determined that “with the benefit ought to come the burden” and therefore any holders of the easement were obligated to contribute their fair share of maintenance of that easement.**

## Summary of the Legal Opinion --2

This theory was affirmed in a later case, **Lake Lookover Property Owners Association v. Olsen, 348 N.J. Super 53 (Appellate Division 2002)**. In the Lake Lookover matter, the property owners association sought contribution by way of assessment from all individual property owners to pay for the repair costs of Lake Lookover's dam. **The Appellate Division held that the property owners could not avoid liability for contributions to the repair cost of the dam by surrendering their easement rights to use the lake and further that Lake Lookover had the authority to assess the property owners for the costs of the repairs.** The Court specifically noted that present easement holders and their predecessors in title have enjoyed the benefit of the lake community easement since the creation in the 1920's. It noted the wear and tear suffered by the dam over the course of the years and requirement for substantial rehabilitation. In particular, it stated that **"a decision which would promote those who have enjoyed the use of that easement to now avoid such payment, simply by act of a purported abandonment of the easement, would make little sense."** It stated that under the rule of the Island Improvement case **"ones who enjoy the benefit of the easement must share in the burden."**