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November 29, 2005

SCOTT A. PUMA
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Richard H. Hill
Mayor
Village of Round Lake Beach
1937 N. Municipal Way
Round Lake Beach, IL 60073

Re: Boat Stickers

Dear Mayor Hill:

You have inquired as to whether Alpine Country Club is correct in its assertion that its members may legally refuse to buy boat stickers, if sold by the Village, because the Club allegedly owns 75% of the lake bottom of Round Lake. The answer is that the Club is not correct. The Village may lawfully sell boat stickers in conformity with the Boat Registration and Safety Act, 625 ILCS 45/1-2, *et seq.*, and enforce the sale with respect to the owners and members of the Alpine Country Club.

As you may know, the Village of Lake Zurich faced a similar argument from the Lake Zurich Property Owners Association. Lake Zurich is a 240-acre private lake. The lake bed is owned by a number of different parties. In 1983, the Lake Zurich Property Owners Association was formed, and it solicited as members owners of property under and contiguous to the lake. The Association then instituted regulations requiring that boats intending to use water above the property subject to the Association's control purchase a sticker from the Association. One of the property owners, Diana Beacham, who owned 15 to 20% of the lake bed, did not join the Association but continued to operate her boating business over the whole lake, including waters over portions of the lake bed controlled by the Association. She was issued a warning by the Association for not having a sticker and was later arrested and acquitted of criminal trespass to property. She then filed a civil action asking for a declaratory judgment that she and her customers had the right to reasonable use and enjoyment of the entire lake. The Association responded with the argument that it had the exclusive right to control the surface waters above those areas of the lake bed collectively owned by Association members.

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In *Beacham v. Lake Zurich Property Owners Association*, 159 Ill.App.3d 204, 511 N.E.2d 226 (2nd Dist. 1987), the Second District Appellate Court (the governing appellate court for cases arising out of Lake County), held that each private lake bed owner has the right to reasonable use and enjoyment of the surface waters of the entire lake, provided only that he or she does not interfere with the reasonable use of waters by other owners. In so doing, the court specifically rejected the Association's contention that a lake bed owner has the exclusive right to control the surface waters above that portion of the lake bed that it owns or controls.

The *Beacham* decision necessarily means that the Alpine Club is not exempt by virtue of its lake bed ownership from local ordinances regulating the operation of boats on Round Lake. In Illinois, the governing law is the Boat Registration and Safety Act, which was enacted to "promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws relating thereto". Section 8-1 of that statute, 625 ILCS 45/8-1, governs local ordinances dealing with boat registration:

The provisions of this Act, and of other applicable laws of this State shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this State, or when any activity regulated by this Act shall take place thereon; but nothing in this Act shall be construed to prevent the adoption of any ordinance or local law by any political subdivision of the State relating to operation and equipment of vessels the provisions of which are not inconsistent with the provisions of this Act, amendments thereto or regulations issued thereunder....

Consistent with the Boat Registration and Safety Act, the Village of Lake Zurich Municipal Code contains a chapter dealing with public waterways and beaches, which in turn contains a section dealing with watercraft inspection permits:

A. Watercraft Permit Required: No watercraft shall be moored or operated on the lake of Lake Zurich or any other navigable waterway of the village without first obtaining a watercraft permit from the village and paying the fee required by section 7-4-5-2 of this chapter....

D. Display of Permit: No watercraft shall be moored or operated on the lake of Lake Zurich or on any other navigable waterway within the village unless a current, valid watercraft permit is affixed to such watercraft at the lower starboard stern at all times.

Lake Zurich Municipal Code, Section 7-4-5-1. These requirements are applicable to the owners of the lake bed in the same manner as they apply to all other boat owners, whether lake bed or lake front property owners or otherwise. The only difference between property owners and non-owners is with respect to the fee. The standard fee for a boat sticker is \$50 per year. A boat owner with property ownership or other direct access rights to the waterway, however, is required to pay only \$35, provided that the boat is used exclusively for private, noncommercial use. Section 7-4-5-2.

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It is not our opinion that a fee difference is required in order to validate a boat sticker ordinance. The fee difference in Lake Zurich is cited only because it appears to be a political accommodation to property owners, and therefore is a feature that the Village of Round Lake Beach might wish to consider in its deliberations regarding a future boat sticker ordinance.

If you would like to discuss this matter further please do not hesitate to contact Donald Anderson or me.

Very truly yours,

Scott A. Puma

cc: David Kilbane
Village Manager