BRIEFING PAPER
Annual Fee Determination
Occupation of Great Lakes Bottomlands for Marina Purposes
Part 325, Great Lakes Submerged Lands, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended

Issue

The Michigan Boating Industries Association (MBIA) requested the Department of Environmental Quality (DEQ), Water Resources Division (WRD), to modify the methodology to determine the annual fee for occupations of publicly owned Great Lakes bottomlands for marina purposes pursuant to Subrule 7(4) of the Part 325 administrative rules.

Background

Part 325 authorizes the lease of bottomlands for marina purposes pursuant to Subrule 7(4) which provides:

> The consideration for leases to unpatented bottomland for marina purposes shall be not less than 5% of the typical gross dockage and mooring rent in the area. A lease period may be a period of up to 50 years, but rental rates shall be adjusted at least every 5 years. Adjustments shall be in all years ending in "0" or "5." The rental fee adjustment shall be directly proportional to the bureau of labor statistics 'all-items' index and other economic indicators. Typical gross dockage and mooring rent shall be based on the most efficient use of the area involved.

Beginning in 1982 when the Part 325 rules were promulgated, the State of Michigan charged 5 percent of the estimated gross dockage and moorage rent for the annual fee for marina purposes. In 2006 the DEQ director authorized an increase from 5 percent to 10 percent to account for increased operational costs and a more fair return to the public as compensation for these private commercial uses of public bottomlands. The MBIA represents marinas, boat yards, boat sellers, and other businesses connected to the boating industry. The MBIA has heard from members recently that the increased percentage causes marinas "to struggle in the market."

The MBIA and certain appointed members of the Department of Natural Resources' Waterways Commission requested "...the director and DEQ review the situation and charge a rate closer to the minimum 5% verses [*sic*] charging 10%." In addition, the MBIA requested that the "most efficient use of the area involved" as described in Subrule 7(4) be reviewed so that the annual fee reflects the actual dockage in the open water areas of the subject facility and not include breakwaters or filled bottomland areas used for parking, roadways, boat storage, etc., as these areas do not generate "dockage and moorage rent."

The MBIA also requested a phase-in of the annual fee over 6 to 10 years to ease a large annual fee increase on a lessee's budget. This large increase will occur when a new lease is approved to replace older 50-year leases that have very low annual fees upon expiration of the lease and for the renewals of existing leases for the second 25-year term.

Analysis

A review of the annual lease fees charged for the current Great Lakes bottomlands leases and agreements was conducted to assess the effect of a rate reduction on the WRD's budget. A rollback from the current 10 percent charge to 5 percent revealed an annual loss of approximately $156,000, equivalent to one full-time employee (FTE). This loss would have adverse impacts on the WRD's budget and its ability to implement the statutory responsibility of administering the bottomlands leasing program under Part 325 to ensure the general public receives a fair compensation for these private commercial uses of Great Lakes public trust bottomlands.

The request to revise the "most efficient use of the area involved" interpretation to reflect the actual dockage in the open water areas of the subject facility is directly related to the appraisal practice of income approach for determining the value of a property. Specifically, this approach that the annual bottomlands fee as a function of dockage fees derived from the occupation of public trust bottomlands was the conclusion in the 1979 study conducted to revise the bottomlands leasing program at that time and then became the basis for Subrule 7(4). A potential design that incorporates filled areas or breakwaters in the facility as part of the most efficient use could be problematic as different size slips or a certain configuration may not actually work in practice. Issues such as property line setbacks, uncertainty of construction permit or plan approval of the potential dockage, contaminated sediments, and other site-specific matters unknown to the WRD could alter or eliminate the designed most efficient use configuration versus the actual dockage.

The WRD currently phases in the annual lease fee for leases that replace the older 50-year leases and for the renewals of existing leases for the second 25-year term.

Recommendations

1. Base annual fee of 7.5 percent of the estimated gross dockage and moorage revenue per Subrule 7(4) for all new applications and all renewals of existing leases/agreements.

2. Reduce the current annual fees charged at 10 percent of the estimated gross dockage and moorage revenue per Subrule 7(4) to 7.5 percent beginning with the 2018 payment.

3. Use only existing dockage in the open water areas of the subject public trust bottomlands at the time of application or renewal to determine the most efficient use to estimate the gross dockage and moorage revenue.

   a. Adjust the annual fee by any increase or decrease in the number of slips during the lease period. Note that permits are required for removal or construction of dock structures.

4. Phase in the annual fee for either the initial lease/agreement or for a renewal to be phased in over 5 years as follows:

   a. Year 1 – 50 percent of annual fee due
   b. Years 2 through 5 – 25 percent of balance due added each year to previous year annual fee to arrive at full annual fee in Year 5
   c. Year 6 forward – full annual fee due

   Example for annual fee of $8,000:
   a. Year 1 - $4,000 due - 50% of $8,000
   b. Year 2 - $5,000 due - Year 1 fee plus 25% ($1,000) of balance of $4,000
   c. Year 3 - $6,000 due - Year 2 fee plus 25% ($1,000) of balance of $4,000
   d. Year 4 - $7,000 due - Year 3 fee plus 25% ($1,000) of balance of $4,000
   e. Year 5 - $8,000 due - Year 4 fee plus 25% ($1,000) of balance of $4,000
   f. Year 6 forward - $8,000 due

5. In accordance with Subrule 7(4), continue to adjust the annual fee "directly proportional to the bureau of labor statistics 'all-items' index and other economic indicators" in years ending in "0" and "5."

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Date