

Chapter 4

Forming a Lake District

This chapter explores the formation of public inland lake protection and rehabilitation districts – better known as lake districts or lake management districts. In some communities, lake districts operate side by side with voluntary associations. Most lake organizations share the goals of preserving and protecting their lakes but the abilities, authorities and structures of lake districts and voluntary groups can vary greatly. *See Chapter 1 for an overview of different lake organizations and Chapter 2 for information about initial strategies to follow when starting any lake organization.*

Are you considering forming a public inland lake protection and rehabilitation district around your lake? Are you a lake district commissioner or are you considering running for election as a new commissioner in an existing lake district? If any of these situations apply to you, this chapter and the next will help you understand how lake districts are created, how they operate, and what responsibilities these governmental bodies have and can undertake.



So What is a Lake District?

A lake district is a specialized unit of government designed to manage a lake or group of lakes. One of the major differences between a lake district and a lake association is a lake district's ability to tax property within the district. Since 1974, when Wisconsin passed legislation allowing the formation of lake districts, over 200 lake communities have formed lake districts.

Lake districts have a unique blend of powers and governance provisions tailored to fit the needs of local lake communities. A lake district is guided and operated by those that live in or own property in the district. A lake district's day-to-day operations are carried out by a board of commissioners composed of elected volunteers and local officials. The financial direction of the district is determined by district residents (electors) and property owners at an annual meeting. Unlike other governmental units, such as towns or sanitary districts, nonresident property owners have the right to vote and hold office in lake districts.

Lake districts in Wisconsin have tremendous opportunities to address lake and watershed management issues. The Wisconsin Legislature has consistently recognized their potential by giving lake districts legal standing, the ability to tax, and eligibility for cost sharing funds and other state assistance. Governmental units, including lake districts, enjoy the advantages of automatically being exempt from federal income tax.

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Since the 1970s, lake districts have shown that small public institutions can achieve remarkable results when it comes to lake management. A key to lake district success is a core of dedicated volunteer leaders willing to learn and work hard to maintain their lake. Through the work of these individuals, Wisconsin communities have identified and addressed threats to water quality, restored habitat, improved recreational boating and generally enhanced the vitality of inland lakes in the state.

Unlike a lake association, a lake district is a governmental body with statutory responsibilities to the resource, local citizens and taxpayers.

A lake district is not a club. Unlike a lake association, a lake district is a governmental body with statutory responsibilities to the resource, local citizens and taxpayers. Like all government entities, the powers and operations of a lake district are set by law with legal responsibilities and consequences designed to ensure that the rights and interests of the public are protected.

The laws governing lake districts can be found in chapter 33 of the Wisconsin State Statutes. Those legal questions that lake districts may have which are not addressed in Chapter 33 are often covered under the same body of municipal laws that govern Wisconsin towns and counties.

Statutory Responsibilities

Various laws have been enacted to encourage good government in Wisconsin. These laws include ethical standards for government officials, requirements for all meetings to be open to the public, and guaranteed access to public records. Lake district commissioners as well as residents within a district should make sure they fully understand the public obligations undertaken by those serving on the board of commissioners. For more information see:

Ethics for local government officials:	Wis. Stat. § 19.59
Open meetings:	Wis. Stat. § 19.81-19.98
Public records:	Wis. Stat. § 19.31-19.39

To assist communities and governmental bodies in meeting the requirements of these laws, the Wisconsin Attorney General's Office (Department of Justice) produces compliance guides and resources on open meetings and public record requirements.

These are available from:

Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707-7857
Phone: 608-266-1221
www.doj.state.wi.us





Good Idea

Forming a lake district is a complex and extensive process which often requires a certain understanding of a variety of laws and legal concepts. Some lake districts have formed with little or no legal assistance. Others have opted to retain some level of professional help. You should consider whether you feel comfortable trying the process alone or if you should obtain some level of professional or legal advice and assistance. There may be someone within your proposed district who has the needed skills and willingness to assist.



Definition of Public Lakes

In Wisconsin, lake districts may only form on lakes that are publicly accessible. Lake districts are formed to undertake the protection, rehabilitation and recreational improvement of all or part of one or more “public inland lakes.” A “public inland lake” is a lake, reservoir or flowage within the boundaries of the state that is “accessible to the public via contiguous public lands or easements giving public access.” The access need not be developed with docking, launching or parking facilities. If a public user can reach the lake without trespassing on private land, the lake is a public inland lake.

Lake districts may only form on lakes that are publicly accessible.

Wis. Stat. § 33.01(8)



General Principles on Boundaries

Once you have decided to go ahead with the official process of forming a lake district, you will need to consider what lands should be included in the district boundaries. The larger the district, the better opportunity you have to include properties that can impact the lake. As you get further from the lake, you lessen the likelihood that folks will perceive themselves to be associated with the lake and therefore may be less interested in supporting a lake district. Deciding the initial boundaries is often a balancing act. Suggestions for working out lake district boundaries are given in the box on the next page.

The organizers typically make the initial decision on the proposed boundaries of a lake district. The final decision is made by the county or town, and the boundary is established when the official order to establish the district is adopted.



Good Idea

Suggested inclusions for a lake district:

- Include all riparian parcels (those touching the water), because they are the most directly benefited from the lake
- Include parcels which are not on the lake but their use is assumed to be benefited by the proximity of the lake (recreation-oriented businesses, marinas, hotels, etc.)
- Include all of the territory to be included in any proposed service area (for example, where sewer or water utility service is contemplated)
- Include properties that have deeded lake access or shared access lots
- Include parcels whose characteristics or location are linked to the lake (for example, businesses that rely on the lake)
- Include entire parcels of land as they are listed on the tax roll. (This is necessary, since taxes and special assessments must be levied on whole tax parcels. There is no mechanism to allocate tax on a parcel that is only partly within the district)



Developing Proposed Boundaries

The tax listing office in your county courthouse maintains large-scale maps showing tax parcels and it is a good place to start to develop a proposed district boundary. County mapping or land information departments may also be good places to obtain maps and tax parcel information. Your county Land and Water Conservation Department may be able to help sketch a map of the lake's watershed or drainage basin. Knowing what lands drain to the lake, viewing the road system surrounding your lake, and having a knowledge of the numbers of properties that could potentially be included in your proposed district are valuable pieces of information to be considered when defining lake district boundaries. *See Appendix C for a sample map and description of proposed boundaries.*

District Size

A larger district with more homes is able to spread the costs of lake management activities over a larger tax base and include more of the watershed area that affects the lake. However, a larger district may also mean more difficulty in organizing and reaching consensus on issues. A smaller district may not include all of the areas affecting the lake, but is typically easier to organize. If need be, district boundaries can be changed after they have been formed (*see Changing Lake District Boundaries, page 82*).

The Laws on Boundaries

The law provides only limited guidance on boundaries for lake districts:

- The district may only include territory found to be benefited by the establishment of the district *(see box on page 51)*.
- The district may not include any portion of a city or village without the approval of the city council or village board.

Wis. Stat. § 33.26(3)

Wis. Stat. § 33.24(2)



Formation Process

Typically, lake districts are formed by the action of county boards in response to a petition from landowners wishing to form a lake district. In some cases, lake districts can be formed by a town board receiving a petition through the same process, but only if the entire frontage of the lake is included within the town. Lake districts can also be formed by resolutions adopted by city councils or village boards or through the conversion of sanitary districts *(for details see page 56)*.

A lake district can be formed in any one of four ways:

- By landowners petition to the county board
- By landowners petition to the town board
- By resolution of a city council or village board
- By conversion of a sanitary district

Wis. Stat. § 33.23(1)

Districts Created by County Boards

In this section we will focus on the most common process for lake district formation – a petition to the county board from landowners wishing to form a lake district. Although this is by far the most common method of lake district formation, a town board may play the role of the county board by receiving the petition and establishing the district when the lake is located totally within its town boundaries *(see Districts Created by Town Boards, page 55)*. (A lake community wishing to form a lake district which is located totally within a single town may opt to petition the county board or the town board.) When a lake extends across several communities, the petition must be sent to the county board.



Key Point



Organizing districts within city or village limits

Wis. Stat. § 33.24

If the proposed district includes any lands that are within a city or village, the petitioners must approach the city council or village board to negotiate inclusion of all or part of its territory within the proposed district.

The city or village may decide on one of three options.

- Vote not to include its lands within the proposed district. In this case the city or village territory could not become part of the district.
- Vote to give its permission to allow all or part of its territory to be included within the proposed district. In this case, petitioners could approach landowners within the city or village for petition signatures.
- Vote to give its permission to allow all or part of its territory to be included within the proposed district and sign the petition on behalf of all landowners within its jurisdiction (*see An Alternative to Individual Signatures, page 47*).

Wis. Stat. § 33.25(1)

There are no clear guidelines as to whether you should approach landowners in the city or village for petition signatures before or after approval by city council or village board. If approval is granted, it is a good idea to ask for a copy of the approval from the city or village for your records.

Organizing districts across county lines

Wis. Stat. § 33.37

When the proposed district lies in more than one county, the law gives jurisdiction for receiving the petition to the county with the highest equalized valuation within the proposed district.

The Petition Process

Making sure that people can make an informed decision is vital to the lake community and the whole process of petitioning. If people agree that what you are proposing is best for the lake and lake community, they will be more likely to support your efforts.

There are a few steps you might consider even before you start the petition process. Build a relationship with local units of government and any other key groups and individuals. Arrange a visit, ask them about their lake concerns, tell them what you are considering and why you think it is a good idea. Ask for ways you can help make their work easier and work together. If a city or village may become part of your district, you will need to request their approval (*see Organizing districts within city or village limits, page 40*). You will need to be able to articulate why a lake district will be an asset to the local unit of government.

In circulating the petition, it may be helpful to include a cover letter with the petition describing what a lake district is and why you feel a lake district will be beneficial for the lake, property owners, residents and the lake community.



Key Point

A petition to form a lake district must include:

- The proposed name of the district
- Statements about the necessity and benefit of the district
- A description of the boundaries of the proposed district
- A plat or sketch indicating the approximate area and boundaries
- Signatures of petitioners
- Verification of the signatures

Each of the petition components is described in detail below.

Wis. Stat. § 33.25

Proposed Name of the District

Wisconsin Statutes do not require a lake district to include “Public Inland Lake Protection and Rehabilitation District” or “Inland Lake District” as part of its official name, although many districts are named as such. Some lake districts prefer a simpler name, such as the *Blue Lake District*. The petitioners propose a name, but the county (or municipal) board that establishes the district actually gives the district its name.

Wis. Stat. § 33.26(3)

Statements

The petition needs to set forth specific information:

- That the proposed district is necessary.
- That the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of the district.
- That the lands to be included will be benefited by such establishment.

Wis. Stat. § 33.25(2)

Describing the Boundaries

The initial boundaries of the proposed district need to be described accurately. It is important that boundaries be clearly stated and easily identifiable. In describing the boundaries, it is important to use landmarks that last over time, such as section lines or parcel boundaries, so that future generations can accurately locate the district boundary should the need arise. You may consider engaging a professional to write a description of the proposed boundaries. Some groups petitioning for the formation of a lake district have submitted a listing of tax parcel numbers.



Good Idea

It is recommended that you talk with staff of the county government who will be receiving the petition and ask them what they will need in regards to describing the district boundaries. Many counties use parcel identification numbers (PIN) or property identification numbers that you may be able to use to describe the properties in the proposed district. Often, listing the parcel numbers can help with mapping the lands proposed for inclusion in the district as these numbers often form the basis for county and local government mapping systems.

See Appendix C for a sample description of lake district boundaries.

Plat/Sketch

A plat or sketch is required to indicate the approximate area and the boundaries of the proposed district. With current mapping technologies available to many counties and local governments, obtaining and using an accurate map of the lands proposed to be included within the district may be a straightforward task. Visit with your county land information or mapping department or register of deeds office to see if they can assist you in obtaining or creating such a map. The map should be used to show the proposed lake district boundary in as accurate a manner as possible. *See Appendix C for a sample map.*

Wis. Stat. § 33.25(3)

Signatures

The petition should include lines for signatures and addresses for the landowners. Each page of signatures should have a verification component, which includes a signature line for the petitioner who is certifying the petition (*see Verification, page 47*). The petition may be reproduced on several separate sheets for convenience in circulation. Some districts add the name of the circulator on each page that they distributed. A sample petition is included below.

Sample Petition

page 1

PETITION TO ESTABLISH _____ DISTRICT

We, the undersigned landowners (the “Petitioners”) hereby petition the Board of Supervisors of the County of _____ to establish a public inland lake protection and rehabilitation district, pursuant to the authority vested in Chapter 33, Wisconsin Statutes, and state that:

1. The district, if established, shall be known as the _____ District (“The District”).
2. The District is necessary.
3. Establishment of The District will promote the public health, comfort, convenience, necessity and public welfare.
4. The lands to be included within The District will be benefited by the establishment of The District.
5. The boundaries of the proposed district are as follows:

Beginning at the intersection of Upper Red Lake Road and County Road G being the NE corner of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 34 T.28N R.14E and the Point of Beginning; Thence in a Southerly direction on an imaginary line to a point which is on the south side of Hill Street Section 3 T.27N R.14E.; Thence Easterly along...

The boundaries of the land described above are shown on plat/sketch shown in Exhibit 1, attached hereto, indicating the approximate area and boundaries of the proposed district.

See Appendix C for a sample map and description of lake district boundaries.

Sample Petition

The persons signing this Petition requesting the Board of Supervisors of _____ to establish _____ District state that they own land, or are authorized to sign on behalf of entities owning land, within the boundaries of the proposed district.

<u>Signature*</u>	<u>Name</u>	<u>Property Address</u>	<u>Date</u>	<u>Parcel ID Number**</u>
<i>John Smith</i>	John Smith	123 Lake Rd.	6/6/06	03 83 4 42 00000
<i>David Bell</i>	David Bell	456 Lake Rd.	6/6/06	03 83 4 42 00010
<i>Mary Bell</i>	Mary Bell	456 Lake Rd.	6/6/06	03 83 4 42 00010
<i>James Murray</i>	James Murray	789 Lake Rd.	6/7/06	03 83 4 42 00020
<i>Susan Murray</i>	Susan Murray	789 Lake Rd.	6/7/06	03 83 4 42 00020
<i>Michael Mason</i>	Michael Mason	1 West Shore Dr.	6/7/06	03 83 4 43 00000
<i>John Meyer</i>	John Meyer	2 West Shore Dr.	6/9/06	03 83 4 43 00050
<i>Mary Fee</i>	Mary Fee	2 West Shore Dr.	6/9/06	03 83 4 43 00050
<i>Carl Hill</i>	Carl Hill	2 West Shore Dr.	6/9/06	03 83 4 43 00050
<i>John Wilson</i>	John Wilson	6 West Shore Dr.	6/9/06	03 83 4 43 00045
<i>Ted Williams</i>	Ted Williams	708 Sunset Ln.	6/9/06	03 83 4 43 10002
<i>George Olson</i>	George Olson	710 Sunset Ln.	6/15/06	03 83 4 43 10003
<i>Ryan Peters</i>	Ryan Peters	712 Sunset Ln.	6/15/06	03 83 4 43 10006
<i>Kyle Adams</i>	Kyle Adams	756 Sunset Ln.	6/15/06	03 83 4 43 10026
<i>Robert Jones</i>	Robert Jones	802 Sunset Ln.	6/15/06	03 83 4 43 10035

Circulated by***: _____

I, (name), being duly sworn, state that I am the person described herein and hereby certify that the signatures on the petition attached hereto are true and correct to the best of my knowledge.
 _____ (signature of person certifying petition pages)

STATE OF WISCONSIN ss.
 COUNTY OF _____
 Subscribed and sworn to this ___ day of _____, 200_.
 _____ (signature of notary public)
 Notary Public, State of Wisconsin
 My Commission Expires _____.

* The signature is the only required element of the petition, but it is a good idea to include other information to help the county determine if the petition has enough eligible signatures.

** May be referred to as a Property ID Number or Tax Parcel Number or something similar. This is not a required element of the petition. If your municipality has a numeric coding system in place, it can be an easy way to identify specific parcels of land and locate them on a map.

*** Some lake districts find it helpful to include a line on the signature pages indicating who circulated each page, for ease in tracking the petition drive. Each petition page will still need to be certified in front of a notary by the person verifying the entire petition.

Number of Signatures Required

In order for a county board to create the lake district, the petition must be signed by either:

- 51% of the owners of land within the proposed district, or
- the owners of 51% of the land area within the proposed district

Wis. Stat. § 33.25(1)

Typically lake districts are formed by petitions signed by 51% of the owners of land. Occasionally, where a few large properties comprise most of the proposed area, it is possible that the petition can be signed by the owners of 51% of the land area.

Who Signs the Petition?

The petitioners need to determine that the petition includes the required number of signatures (at least 51%). Only certain owners of land are qualified to sign a lake district petition:

- Each person whose name appears as an owner of real property on the previous year's tax roll¹ is qualified to sign.
- The spouse of a person named on the previous year's tax roll² is eligible to sign the petition, provided that the spouse is "referred to on the tax roll." For example, some tax rolls include the terms "John Smith and spouse" or "John Smith et ux," which refer to the spouse even though that person is not explicitly named.
- Ownership of more than one parcel of real estate within the proposed district does not entitle the individual to sign more than once. An individual signs the petition only once for all of the parcels he or she may own within the proposed district
- A partnership, corporation, trust, foundation, association or local unit of government is treated as a single owner of property entitled to one petition signature. In these cases, the petition must be signed by the authorized representative.³ State and federal governments are not eligible to sign the petition.

Wis. Stat.
§ 33.01(9)(am)(1)

Wis. Stat.
§ 33.01(9)(am)(2)

Wis. Stat. § 33.25(1)

In the case of condominiums or shared access lots, only those people whose name(s) appear on the tax roll are eligible to sign.

Example determination of the number of eligible signatures for each property:

<u>Name on Tax Roll</u>	<u>Number of eligible signatures</u>
John Smith	1
David and Mary Bell	2
James Murray <i>et ux</i>	2 * (includes wife)
Michael Mason et al	1 **
John Meyer, Mary Fee, Carl Hill	3
Wilson Family Foundation	1
Williams Revocable Trust	1
George and Judith Olson Trust	1 ***
J&M Partnership	1
Adams LLC	1
Co-Tech Inc.	<u>1</u>
Total eligible signatures	15

- * an abbreviation for the Latin term “et uxor” meaning “and wife.” Used in deeds and tax rolls
- ** only persons specifically referred to on the tax roll can sign
- *** only one person can sign for a trust



Good Idea

To meet the 51% of the owners requirement, it is helpful to first count the potential number of eligible signatures in the proposed district, and then calculate the minimum number of signatures you will need. In counting potential eligible signatures, remember that a name which appears on the tax roll more than one time (someone who owns more than one piece of property) can only be counted as one potential signature for purposes of the petition.



Good Idea

The purpose of the petition is to determine whether a majority of property owners support the formation of the district. Even though 51% is the legally required minimum, it stands to reason that the larger the percentage of petitioners that support the formation of a district, the more likely the county board will support the wishes of the petitioners. The number of signatures gathered is a reflection of the community support for the formation of the proposed district—which will be important at the public hearing on the proposed district formation.



The number of signatures gathered is a reflection of the community support for the formation of the proposed district.

Obtaining only 51% percent of needed signatures may not be sufficient because some signatures may end up not being accepted as valid. Such occurrences can diminish the number below the required 51%, preventing the county from considering or establishing the district.

It does not matter whether the qualified signers move out of the district or are not living when the petition is considered, provided their names appear on the tax roll at the time the county board considers the petition. The law specifies that the applicable tax roll is the one used to prepare the previous year’s tax bills.⁴



Good Idea

From a practical perspective, some signatures may become “stale” if the petitioning process extends from summer through winter and into spring; properties may be sold, title deeds changed, or trusts established that result in changes to the tax roll changing the validity of specific signatures. Gathering additional signatures beyond the specified 51% provides some “assurance” if the validity of specific signatures is denied due to a new tax roll having been published during the petitioning process.



An Alternative to Individual Signatures: As an alternative to obtaining the signatures of individual owners of land, city councils and village boards may by resolution represent all persons owning lands within those jurisdictions and sign the petition on behalf of all qualified landowners.

Wis. Stat. § 33.25(1)

Verification



Key Point



One of the petitioners must verify that the petition and the signatures are true and correct to the best of his or her knowledge and sign under oath in the presence of a notary public.

The Wisconsin Court of Appeals upheld the following verification to a lake district petition.⁵

(Name), being duly sworn, states that he/she is the person described herein. This is to certify that the signatures on the petition attached hereto are true and correct to the best of his/her knowledge.

The verification component should be reproduced on each sheet of the petition. See sample petition on pages 43-44.

The same person needs to certify all signature sheets of the petition. This person need not be present when each individual actually signed the petition, but this person should have been in charge of the petition drive, and if petitions are returned by mail, this person should have directly received them.

Expense

The petitioning process will incur some cost. The initial expense of the petition process depends on many factors including the size of the proposed district and the effort involved in contacting landowners and circulating petitions. Typically the majority of these expenses are borne by the petitioners. If the lake district is formed, initial expenses incurred after formation can be covered from district funds (see page 54).

Presumption

Every petition is presumed to have been signed by the person whose signature appears on it, until proven otherwise.

Wis. Stat. § 33.25(4)

Filing the Petition

After it has been circulated and verified in the presence of a notary public, the petition is filed with the county clerk. Some lake district petitioners request the clerk to date-stamp a duplicate copy of the petition to confirm the filing date.

Wis. Stat. § 33.25

When a petition is presented which includes signatures of at least 51% of the owners or the owners of 51% of the land area in the proposed district, the county board must consider and act on the petition.

Once the petition has been filed, there are several actions which are required by law to take place within specified time periods. The maximum time frame for these occurrences are explained in the subsequent pages and marked on the timeline below.

Timeline for Lake District Petitioning Process

File petition
with clerk

Report of hearing to county board
within 3 months of hearing

Hearing
*within 30 days of filing
the petition*

Decision by county board
within 6 months of hearing

(Withdrawing from Petition -
at least 10 days before hearing)

Withdrawing from the Petition

A person who has signed a petition may withdraw from the petition by filing a written notice of withdrawal with the county clerk at least ten days before the hearing on the petition. A withdrawal, like the original petition, must be verified.⁶

Wis. Stat. § 33.25(5)

Hearing

The county board is required to appoint a committee to conduct a public hearing on the formation of a proposed lake district. Frequently, this committee is the committee of the county board tasked with land and water resource conservation. The hearing must be held within 30 days of the date the petition is filed with the clerk.

Wis. Stat. § 33.26(1)

Any person is entitled to appear at the public hearing and testify on matters pertinent to the formation of the proposed lake district. In addition, any person opposing the organization of the district may file objections with the county clerk prior to the date of the hearing.

Wis. Stat. § 33.26(1)

Notice of the Hearing

The county must:

- Publish notice of the hearing, stating the boundaries of the proposed lake district, in a newspaper of general circulation in the county. This is called a Class 1 notice.⁷ A map showing the proposed boundaries may be published, although this is not required.
- Mail notice of the hearing, stating the boundaries of the proposed lake district, to the last-known address of each landowner within the proposed district.
- At the time the hearing date is set, provide written notice of the hearing to the Department of Natural Resources.⁸

Wis. Stat. § 33.26(2)

Wis. Stat. § 33.26(2)

Wis. Stat. § 33.26(5)

Appointment
& Appeal
*within 30 days
of decision*

Organizational meeting of
initial lake district board
*within 90 days of decision
(unless appealed)*

Preparing for the Hearing



Good Idea

Whether you are in favor of the district or against it, it is a good idea to take some time to prepare for the hearing on the proposed district formation:

- Have prepared statements on why you feel the district will be advantageous or not for the lake and the community
- Be aware of possible reasons for support of, or opposition to the district and be prepared to speak to them
- Be ready to justify your reasons for including certain parcels or areas
- Be appreciative and listen to other concerns and opinions that may not coincide with yours
- Encourage people in the proposed district to attend the hearing



Report of the Hearing

Wis. Stat. § 33.26(3)

The committee is required to report its findings to the county board within three months of the hearing. Typically, these committee reports identify the time, date and place of the hearing; include information on persons who attended or testified at the hearing; summarize the verbal testimony presented at the hearing; describe written comments received from residents and other persons at or prior to the hearing; and set forth the committee's findings and recommendations on the petition to the county board.

Decision

Wis. Stat. § 33.26(3)

Within six months of the hearing, the county board is required to issue an order granting or denying the petition to form a lake district. The county board should take into consideration the committee's report, and may review other evidence relevant to the findings it is required to consider.



Key Point



Wis. Stat. § 33.26(3)

The county board is required to issue a decision based on these four findings:

1. That the petition is signed by the requisite number of owners
2. That the district is necessary
3. That the public health, comfort, convenience, necessity or public welfare will be promoted by the establishment of the district
4. That the property included in the district will be benefited by the district's establishment

What does it mean for land to “benefit” from inclusion in a lake district?

The question of benefit is not a simple one. Generally, a county board’s finding that property to be included in a special district is “benefited” is considered to be a “legislative” decision. It is the kind of judgment and policy call that is entrusted to elected officials, taking into account their knowledge of the community.

The Wisconsin courts have broadly interpreted the “benefit” standard in cases involving lake districts and sanitary districts. The Courts have held that, where the lands proposed to be included within the district will benefit *as a whole*, the district can be formed.⁹ Parcels of land need not be excluded because the owner objects to inclusion.¹⁰ It is not required that each individual parcel of land be benefited or be located in the lake’s watershed. The county board need not examine parcels individually.

The Wisconsin Supreme Court considered the question of lake district “benefit.” *Donaldson v. Rock-Koshkonong Lake District*, 2004 WI 67. When the county board initially formed the lake district it concluded that the property proposed to be included in the district benefited. Years later, an owner petitioned the lake district board of commissioners to “detach” his property from the district. The lake district board rejected the petition because the landowner conceded that there had been no change in circumstances since the county board had made its formal finding that the land within the district’s proposed boundary would be benefited by the establishment of the district. The Court of Appeals agreed with the district, holding that detachment could only be granted when a petitioner can show a change in circumstances since the district was established.

The Supreme Court disagreed. Its decision was based on its conclusion that the county board had not examined each and every parcel to make its benefit determination when it created the lake district. The Court held that when an owner petitions to detach his property, the lake district board must determine whether the particular parcel is “benefited by continued inclusion” in the district, unless the county board made a “particularized” determination on the parcel. The Supreme Court’s decision recognizes the authority of lake district boards to determine whether property is benefited, but (in this case) found that the lake district board did not consistently apply criteria the district had established to determine “benefit.”



Boundary Changes

In issuing its order creating the district, the county board may remove lands proposed in the petition. However, new lands can only be added if another public hearing is held and owners of the property in the proposed addition have received notice of the hearing.

Wis. Stat. § 33.26(6)



Good Idea

Boundary changes should only be made at the edge of the district. Deletions should not create holes in the district and noncontiguous property should not be added.



Adopting and Filing the Order

If the county board finds that the proposed district meets the four criteria /see *Decision, page 50*) for the creation of a lake district, it is required to:

- adopt a formal order which:
 - declares its findings
 - establishes the district's boundaries
 - gives the district a name
 - declares the district organized
- Upon adoption of this order, the district formation is legally complete.
- appoint four of the five members of the initial board of commissioners of the lake district, to include:
 - three owners of land within the district (at least one should be a resident of the district¹¹)
 - one member of the county land conservation committee (or someone nominated by the county land conservation committee)

Wis. Stat. § 33.26(3)

Wis. Stat. § 33.27(1)

Wis. Stat. § 33.27(1)

Wis. Stat. § 33.28(2)(a)

The county clerk should notify the city, village or town with the largest assessed value of property within the district of their obligation to appoint the fifth representative to the board of commissioners within 30 days of the lake district's establishment.

Wis. Stat. § 33.27(2)

Denying the Petition

If the evidence does not support the formation of a lake district, the county board should deny the petition to form a district. The county board is required to issue an order stating why it is denying the petition. The county board's order should specifically state why the lake district could not be formed.

Wis. Stat. § 33.26(3)

Appeal

Any person aggrieved by the county board's action may petition for circuit court review within thirty days of the board's decision.

Wis. Stat. § 33.26(7)

Initial Board of Commissioners

When a county board finds in favor of creating a lake district, the county board is responsible for appointing four of the five initial board members. For districts created by county board order, the initial board of commissioners consists of:

- three owners of land within the district, appointed by the county board. At least one of the property owners should be a resident of the district.¹²
- one member of the county land conservation committee (or someone nominated by the county land conservation committee), appointed by the county board.
- one member of the governing body of the town, village, or city having the largest assessed value of property in the district (appointed by that governing body). If possible, this member should own property within the lake district.

Wis. Stat. § 33.27(1)

Wis. Stat. § 33.27(1)

Wis. Stat. § 33.28(2)(a)

Wis. Stat. § 33.27(2)
Wis. Stat. § 33.28(2)(b)

Except for the commissioner from the land conservation committee and the commissioner from the town, village or city, the terms of these initial commissioners expire at the first annual meeting of the district.

What Next? The Life of a New Lake District

For lake districts created by county board order, the initial board of commissioners is charged with the responsibility of getting the district up and running and preparing for the first annual meeting.

The initial lake district board of commissioners needs to:

- Ensure that a copy of the county board's order, along with a legal description of the district boundary, is recorded with the register of deeds office in each county where the lake district is located. The board may need to enlist the help of the county surveyor or another professional in preparing a legal description of the district boundary. *See Appendix C for a sample legal description.*
- Ensure that a copy of the order and a legal description of the district boundary is filed with the Wisconsin Department of Revenue¹³ and the Wisconsin Department of Natural Resources.¹⁴
- Hold an organizational meeting of the initial board within 90 days after the adoption of the county board's order. (If the county board's order is challenged in court, the organizational meeting may be postponed to a date not later than 60 days after the final judgment in any such appeal.)
At the organizational meeting, the initial board of commissioners:
 - selects temporary officers from the initial board of commissioners to serve until the first annual meeting
 - commences conducting the affairs of the district.
- Set the first annual lake district meeting date (required to be between May 22 and September 8)

Wis. Stat. § 33.265

Wis. Stat. § 33.265

Wis. Stat. § 33.27(3)

- Prepare a proposed budget, agenda, ballots, and other materials for the annual meeting. (Approval of a budget and election of new commissioners need to occur at the annual meeting)
- Mail written notice at least 14 days in advance of the annual meeting to all residents and property owners within the district and to the Wisconsin Department of Natural Resources.¹⁵ Notice of the meeting must include the:
 - time
 - date
 - place
 - agenda, which includes a list of each item proposed for consideration at the meeting
 - proposed annual budget

Wis. Stat.
§ 33.30(2m)(b)
Wis. Stat.
§ 33.30(2m)(a)

For more detailed information on annual meetings, see Annual Meetings, page 70.



Good Idea

It is a good idea to talk with the clerk or treasurer of each town, village and city within the district to ensure that they have what they will need to correctly assess any tax authorized by vote at the annual meeting to the appropriate properties.



The initial board of commissioners can expend necessary funds required to conduct the affairs of the district until the first annual meeting. Typically, these expenses include the costs of posting and mailing notice of the annual meeting to the residents (electors) and property owners of the district, costs associated with the noticing and recording of any board of commissioner meetings, and related administrative expenses. Generally, this initial board does not engage in the conduct of projects, although they may consider application for lake management grants or other items that involve local cost. The initial board of commissioners may recoup these costs through an initial assessment of all taxable property within the district.

Wis. Stat. § 33.27(4)

Contact local government officials, your WDNR Lakes Coordinator, WAL, and the UW-Extension Lakes office to let them know you exist. The UW-Extension Lakes office can include you in the statewide directory, the *Lake List* (www.uwsp.edu/cnr/uwexlakes/lakelist).

Districts Created by Other Entities

Although the most common process for lake district formation is a petition from landowners to a county board, there are other ways that lake districts can be created.

Districts Created by Town Boards

If a lake is located totally within a single town's boundaries (except any portions outside the State of Wisconsin), the town board may play the role of a county board by receiving a petition from landowners wishing to form a lake district. If a lake extends across several towns, however, the petition must be sent to the county board (*see Districts Created by County Boards, page 39*).

Wis. Stat. § 33.23(1)

When a petition is submitted to a town board, the process is the same as when a petition is submitted to a county board, with the following exceptions:

Wis. Stat. § 33.23

- the town clerk performs the functions of the county clerk
- the town board performs the functions of the county board
- the town board is required to conduct the hearing
- when a town finds in favor of creating a lake district, the town board serves as the board of commissioners, similar to lake districts created by city or village resolution.

Since the town board serves as the board of commissioners, the town board is charged with the responsibility of getting the district up and running, preparing for the first annual meeting, and conducting the subsequent affairs of the lake district. These districts are otherwise governed like other lake districts, with an annual meeting of electors and property owners determining the district's budget and tax levy.

The lake district members can petition the town board to allow for the election of lake district members as commissioners. For an election of the board of commissioners to occur, a petition requesting that form of governance must be filed with the town. That petition must be signed by at least 20% of property owners within the district. Upon presentation of such a petition, an election must be held at the next annual or special meeting of the district, whichever occurs first. In that case, the new board of commissioners will consist of elected representatives as well as two appointed representatives, one from the county and one from the town (*see Board of Commissioners, pages 63-66*).

Wis. Stat. § 33.23(3)

Districts Created by Cities or Villages

A city or village may establish a lake district by a simple resolution, provided that all the frontage of the lake is within the city or village, (except any portions outside the state of Wisconsin).

Wis. Stat. § 33.23(1)

A petition of property owners is not required for the creation of a district by a city council or village board. The resolution establishing the district is adopted in the same manner as resolutions for other municipal business. The law does not require a public hearing to be held in connection with establishing the district. However, most incorporated municipalities do schedule a public hearing or informational meeting on creation of a lake district in order to provide an opportunity for public comment, in the interest of fairness and open government.

When a district is established by a city or village, the city council or village board generally serves as the board of commissioners. These municipal districts are otherwise governed like other lake districts, with an annual meeting of electors and property owners determining the district's budget and tax levy.



Good Idea

In situations where the governing body of a city or village serves as the board of commissioners of a lake district, they sometimes consider establishing a citizen advisory committee or other structure to include citizen input.



The city council or village board is required to provide for an election of the board of commissioners if a petition requesting that form of governance is filed. The petition must be signed by at least 20% of property owners within the district. Upon presentation of such a petition, an election must be held at the next annual or special meeting of the district, whichever occurs first. In that case, the new board of commissioners will consist of elected representatives as well as two appointed representatives, one from the county and one from the city or village (*see Board of Commissioners, pages 63-66*). The new board of commissioners will become effective immediately after the election (unless there is a challenge to the election results initiated in circuit court within 14 days of the election).

Wis. Stat. § 33.23(3)

Districts Created by Conversion of a Sanitary District

Sanitary districts may be converted into "restructured districts" to allow district members to have direct input into the district by voting at annual meetings.

Wis. Stat. § 33.235

Although a lake district may only be formed on a lake that is accessible to the public, there is no such restriction for a sanitary district, consequently, a restructured district created by conversion of a sanitary district does not carry the requirement that the lake be accessible to the public. *For more information on sanitary districts, see Chapter 6.*

When the Sanitary District Encompasses All the Frontage

If the sanitary district encompasses all the frontage of a lake, the town board may, by resolution, convert the sanitary district into a restructured district with the same boundaries. The restructured district automatically assumes all the rights and liabilities of the sanitary district.

The sanitary district commissioners serve as the initial board of commissioners until the first annual meeting of the restructured district, at which time three (or five if approved at the annual meeting) commissioners are elected and two commissioners are appointed (one each by the county and town), as for any other lake district (*see Board of Commissioners, pages 63-66*).

Wis. Stat.
§ 33.235(1m)

When the Sanitary District **Does Not** Encompass All the Frontage

If the sanitary district **does not** encompass all the frontage of a lake, the commissioners of the sanitary district may (with approval of the town board) petition the county board for conversion of the sanitary district into a restructured district. The restructured district includes all of the territory of the pre-existing sanitary district and any additional frontage on the lake deemed appropriate by the commissioners. The commissioners may sign the petition for the landowners within the existing sanitary district, while the owners of the additional lands would be invited to sign the petition in the same manner as required for the formation of a new lake district by a petition. This petition would then be presented to the county board and considered in the same manner as a petition to create a new lake district (*see Districts Created by County Boards, page 39*).

Wis. Stat. § 33.235(2)

Wis. Stat. § 33.25

A restructured district created by a county board assumes all the rights and liabilities of the pre-existing sanitary district, but the method of apportioning the rights and liabilities within the restructured district must be set out in the county board order creating the district.

Wis. Stat. § 33.235(2)



Endnotes

Wis. Stat.
§ 33.01(9)(am)

¹ The tax roll delivered on or before the 3rd Monday in December of the previous year.

² Ibid

³ Signature power can vary greatly in these cases. Whenever an entity other than an individual is the owner of land, care should be taken to ensure the petition is signed by an official representative, officer or employee who is authorized to sign on behalf of the entity.

Wis. Stat.
§ 33.01(9)(am)

⁴ The tax roll delivered on or before the 3rd Monday in December of the previous year.

⁵ Nielsen v. Waukesha County Board of Supervisors, 178 Wis.2d 498, 504 N.W.2d 621, (Ct. App. 1993).

⁶ Ibid

Wis. Stat. § 985.07

⁷ Class 1 notice – A legal notice published in a newspaper that is required to be inserted one time.

⁸ Hearing notice should be sent to the Wisconsin Department of Natural Resources, Lakes Management Section, 101 S. Webster Street, Box 7921, Madison, WI 53707-7921

⁹ Haug v. Wallace Lake Sanitary District, 130 Wis.2d 347, 387 N.W.2d 133 (Ct. App. 1986).

¹⁰ Fort Howard Paper Company v. Town of Ashwaubenon, 250 Wis. 145, 26 N.W.2d 661(1947)

Wis. Stat. § 33.27(1m)

¹¹ If no resident is willing to serve, this requirement is waived.

¹² Ibid

¹³ Wisconsin Department of Revenue, Local Government Services, Box 8971, Madison, WI 53708

¹⁴ Wisconsin Department of Natural Resources, Lakes Management Section, 101 S. Webster Street, PO Box 7921, Madison, WI 53707-7921

¹⁵ Ibid