

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Determination and
Establishment of a Lake Level for the Waters
of Stylus Lake, Logan Township, Ogemaw
County, Michigan.

OGEMAW COUNTY BOARD OF
COMMISSIONERS,

UNPUBLISHED
November 18, 2003

Petitioner-Appellee,

v

No. 242302
Ogemaw Circuit Court
LC No. 00-652966-CE

GEORGE FABERA and KATHLEEN FABERA,

Intervening Respondents-
Appellants.

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Respondents appeal as of right the circuit court order setting the boundaries of a special assessment district in connection with a lake level determination. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Pursuant to MCL 324.30704, petitioner initiated proceedings to establish the normal level for Stylus Lake and to establish a special assessment district. In an order entered May 4, 2000, the court set the lake level at 848.30 feet above sea level. In November 2001 the drain commissioner filed a petition to establish the boundaries of a special assessment district. The court first denied the petition as untimely, but on reconsideration confirmed the boundaries of the district.

MCL 324.30707 governs the procedures for setting normal lake levels and special assessment district boundaries. It provides in part:

(5) The court shall determine the normal level to be established and maintained, shall have continuing jurisdiction, and may provide for departure from the normal level as necessary to accomplish the purposes of this part. The court shall confirm the special assessment district boundaries within 60 days following the

lake level determination. The court may determine that the normal level shall vary seasonally.

“[T]he fundamental rules of statutory construction generally preclude construction of a time limit for performance of an official duty as being mandatory, absent language that expressly precludes performance of such duty after the specified time has elapsed.” *People v Yarema*, 208 Mich App 54, 57; 527 NW2d 27 (1994). “Such statutes are normally construed as being ‘directory.’” *Id.*; see also 3 Sutherland, Statutory Construction (6th ed), § 57.19, pp 58-59. “In this context, the term ‘directory’ means something less than the alternative of compliance or absolute dismissal.” *Yarema, supra* at 57. A provision requiring a decision of a court to be entered within a certain time has been held to be directory. *Id.*

Here, the language of the statute does not preclude the court from acting after the sixty days have passed and provides for the continuing jurisdiction of the circuit court. See *Anson v Barry Co Drain Comm’r*, 210 Mich App 322, 326; 533 NW2d 19 (1995). Where the delay in confirming the special assessment district has not affected any private rights, the time limit in the statute should be construed as directory. The circuit court did not err in proceeding with the special assessment district boundary determination.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter