

Galvin's News and Views from *Lake of the Ozarks*

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News from around the Lake.....

Lake of the Ozarks sees summer-like weather, water patrol encourages safety earlier

Summer-like weather has come a little early this year to the Lake of the Ozarks, and many locals are seeing the area come alive already. Steve Lemens works as the head salesman at Glencove Marina in Lake Ozark, and he says this is some of the best weather he has seen at this time of the year.

"It has picked up dramatically since the weather has changed. I mean, we're seeing weather that was unprecedented in the last 10 years. 80 degrees in March is just a great example," said Lemens. That means many are uncovering and de-winterizing their boats and personal watercraft, but that can also mean more issues with safety earlier in the year.

Captain Matt Walz of the Missouri State Highway Patrol, Water Patrol Division says folks still need to put safety first. "Certainly boaters are getting the fervor to get out on the water, and there are a few precautions that they can take," he says.

The water patrol says not much has changed since last year as far as laws on the lake, but they still say common sense rules the day.
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Lake of the Ozarks sees summer-like weather, water patrol encourages safety earlier

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That includes inspecting your boat before going out, giving way to smaller watercraft on the lake, and always making sure you have enough life vests on board for everyone. Lemens teaches people how to drive their new boats and says having the essentials goes a long way to keep everyone safe on the water. "Safety equipment: ropes, buoys, life jackets. Make sure you have enough life jackets and [that] they're in good repair." Mar 18, 2012. Mike DeFranco *Lakenews.com*

Businesses in Osage Beach to decide on smoking ban

Osage Beach hasn't adopted a public indoor smoking ban, but some of the city's restaurateurs are instituting their own smoke free policy. The owners of the City Grill and Blue Room became the latest to declare their restaurant smoke free and will adopt the self-imposed ban once a remodeling project is finished this spring.

"It's going to happen regardless. There's going to be a statewide ban at some point," City Grill co-owner Joey Homm said. Major cities like Kansas City, St. Louis, Springfield and Jefferson City have adopted bans of smoking in restaurants. In Osage Beach, the Board of Aldermen debated a public smoking ban in the summer of 2011, but has not taken any action on the proposal since August. The Homm family has owned restaurants at Lake of the Ozarks since it opened Jo Jo's in 1952. The family opened City Grill in 2003. After experimenting with non-smoking nights in the Blue Room nightclub on Wednesday nights, the family voted to go smoke free this spring.

"It was a family decision. We all agreed that we are in favor of going non-smoking. Not only for personal health reasons, but because so many customers come through the front door and the sense and the smell of the smoke drives them away from our place," Homm said.

In an effort to balance business decisions and keeping customers happy, contractors will build an outdoor smoking patio on to the restaurant. The patio will have 20-25 seats, propane heaters and outdoor televisions.

"We're not turning our backs on our smoking clientele, because we know that they're out there. We want to be proactive in trying to keep them with us," Homm said. City Grill joins Osage Beach restaurants such as J. Bruner's, Half Sauced BBQ, the Cozy Cafe and Hideout Bar and Grill in going smoke free.

Debate over an all out smoking ban in Osage Beach died away in August because aldermen grappled with the question of whether or not banning smoking in restaurants infringed on the rights of the individual business owner. "It's a business owner's decision, period," Alderman Steve Kahrs said in August. "I feel that the government sticking its long arms into private business takes away liberties."

The Osage Beach Board of Aldermen could pursue other smoking regulations such as creating a ballot issue that would allow voters to decide on a ban, regulating ventilation and enclosures in restaurant smoking sections, or impose a smoking ban on non-bar businesses. In a community survey taken in 2011, 68 percent of the 1,509 respondents said they would support an indoor smoking ban in Osage Beach bars. Feb 13, 2012. Rance Burger. *Lakenewsonline.com*

Did you know?

- ◆ Bagnell Dam was the largest - and last - major dam in the U.S. to be built with private investment.
- ◆ The Bagnell Dam actually got its name from a railroad man who formed his own town and then named it after himself. William Bagnell platted a town bearing his name on June 30, 1883. The owners of the new dam chose the Bagnell name, and "Bagnell Dam" was born.
- ◆ Missouri's Lake of the Ozarks is one of the largest man-made lakes in the world, covering 86 square miles in four counties.
- ◆ The dam holds back 600 billion gallons of water.
- ◆ Bagnell Dam is one-half mile long, rising 148 feet high from bedrock. That's comparable to a building 12 stories high and seven blocks long.
- ◆ Cost of construction: \$30 million. More than \$100 million has been spent since the initial construction to add generators, anchor the dam to the bedrock below to ensure protection against a "maximum" flood, modernize the plant's control facilities and replace six turbines.
- ◆ In a typical year, the Osage Power Plant produces more than 500 million kilowatthours of electricity - enough to supply the needs of nearly 42,000 average households.
- ◆ By using the natural energy of falling water, the Osage Power Plant saves our nation about one million barrels of oil or one million tons of coal each year.
- ◆ The Lake is a little over 100 feet deep at its deepest point. The Lake level reading is the height of the surface of the Lake above sea level. The full pool elevation of the Lake is 660 feet above sea level. www.ameren.com

Wehrenberg Theatres to break ground on eight-screen multiplex

Wehrenberg Theatres, based in St. Louis, Mo., announced plans for a new multiplex theatre in Lake Ozark. The new theatre, with a working title of Eagles Landing 8 Cine, will feature eight digital movie screens including two state of the art 3D digital auditoriums.

All auditoriums will include "snuggle-seating" with movable armrests so guests can get close, stadium-seating and sharp, clear digital picture and sound. The concession stand will be larger and offer a wider variety of snacks for hungry movie-goers. Guests will also have the option of filling their own soda to include as much or little ice as they like, and to make refills hassle free.

Ground will break on Eagles Landing 8 Cine in mid 2012 and will be completed in early 2013. Demand for more movie choices and a desire to bring the latest innovations to the Ozarks necessitated the new building. The eight screens, or three more than Wehrenberg's existing Osage Village 5 Cine in Osage Beach Premium Outlets, will allow additional films to show, as well as letting films stay longer so all guests have a chance to see them when convenient.

The Osage Village 5 Cine will continue to operate as normal.

Having celebrated its 100th Anniversary in 2006, St. Louis-based Wehrenberg Theatres is the oldest family-owned-and-operated theatre circuit in the U.S. Ronald P. Krueger, 3rd Generation, Chairman and CEO of Wehrenberg Theatres. Jan, 2012. *TheLakeOnline.com*



Trash levels diminishing at the lake

More than five million pounds of trash have been pulled off the Lake of the Ozarks shoreline thanks to the volunteers that have participated in the annual cleanup effort over the last 20 years and although the amount of debris is dwindling, there is still work to be done.

Ameren Missouri is preparing to kick-off the annual cleanup beginning on March 17. The cleanup will run through April 15. Volunteers and groups are being recruited to get involved with the upcoming clean up.

If the numbers are any indication, the amount of old dock flotation creating an unsightly mess along the shoreline of Lake of the Ozarks has declined significantly.

During the 2011 spring shoreline cleanup volunteers removed 70 tons of old dock foam, trash and other debris compared to 130 ton in 2010. Cleanup organizers expect the results to be similar in 2012.

The results of the annual shoreline cleanup show the days of hauling waterlogged dock foam off the lake are coming to an end and allowing volunteers to get some of the more remote areas of the lake cleaned up, according to Bryan Vance, Field Coordinator of Ameren Shoreline Management.

"We are definitely working on going into the remote areas of the lake. We are starting to organize for our third trip to the 66 mile marker area," he said. "We have been taking a few of our lower lake groups up to the 66 and partnering with our two groups (Bryant's Osage Outdoors and Rick and Sandy Fayard) that clean in that area. It has been a huge success. Last year we filled two 40 yard dumpster in 4 hours."

What used to make up the majority of the trash picked up each spring and fall, the old dock foam is, accounting for less and less, he said. *Continued on page 4.*

Trash levels diminishing at the lake Continued from page 3.

A record 69 Adopt-the-Shoreline member groups participated in the 2011 Spring Shoreline Cleanup cleaning 525 miles of shoreline.

The 681 volunteers removed 1,091 cubic yards of trash and debris—weighing 70 tons.

“Having less flotation to remove allows our volunteers to walk many more miles of shoreline and concentrate on the recreational type of debris that accumulates each year,” he said. It also gave the chance for volunteers to hit areas that have not been included in past cleanups.

The end result was more miles cleaned and less trash overall.

Ameren Missouri sponsors the Adopt-the-Shoreline program. In 2011, the utility company paid more than \$25,000 to dispose of the trash and debris collected. In addition, numerous local organizations and individuals donated boats and other equipment the volunteers needed to make the event a success.

For years, non-encapsulated dock foam created an unsightly mess along the shoreline. Ameren Missouri subsequently banned the use of non-encapsulated foam. Feb 10, 2012. Joyce Miller *Lakenewsonline.com*

Kohl's [opened March 7, 2012]

Kohl's Department Stores [officially opened] the doors of the Lake Ozark location on Wednesday, March 7 with a ribbon cutting ceremony. One of eight new stores opening this spring, Kohl's is creating approximately 130 local jobs and approximately 1,000 jobs nationwide. Located at 2455 Goldie Pearl Parkway, the store will offer shoppers a variety of ways to get exceptional values on the quality brands they love. With this store opening, Kohl's will operate 26 stores in Missouri.

The new stores opening this spring feature innovative store designs and new enhancements to provide customers an easier shopping environment. Some of these features include updated check-out stations, newly designed shopping carts and strollers, reinvented beauty department, upgraded fitting rooms throughout the store with fitting room lounges in Misses and Juniors, an expanded customer service area relocated to the front of the store in most locations, in-store kiosks and electronic signs located throughout the store.

In addition, the Lake Ozark store was built according to a prototype that received Leadership in Energy and Environmental Design (LEED) certification at the Gold level from the U.S. Green Building Council. Characteristics include: recycled and regionally sourced building materials; water-efficient landscaping and plumbing fixtures; improved indoor air quality through increased fresh air ventilation and use of ENERGY STAR-rated roofs. Mar 7, 2012. *Lakenewsonline.com*

Adverse possession may play a factor in shoreline dispute

Adverse possession could come into play after all in the property dispute over the shoreline of the Lake of the Ozarks.

After further research on his property, Charles "Bud" Sanzottera initially found that he didn't own what he thought he did. Now, he's not so sure.

The abstract of the deed showed lot lines that ran down to the elevation of 660', or the variable water's edge. However, the records that the deed was subject to showed that Ameren Missouri owned to the 665' elevation. Those records show that Union Electric Land and Development Company conveyed the land below the land below the 665' to Union Electric of Missouri with an easement on the property that the two entities shared, acting as a covenant running with the land.

The easement gave use of the land for "any and all purposes" as long as any improvements did not interfere with the operation and maintenance of the dam. The deed also assigned responsibility for property taxes on the land covered by the easement to the second party - Union Electric Land and Development.

Union Electric Land and Development then sold the excess land. The property below the 665' was, however, subject to the easement and its requirements "forever," according to the deed. Sanzottera purchased the house and property over 20 years ago, believing he owned to the 660'. He has paid the taxes on it ever since.

Adverse possession is a common law concept that grants title to real property without compensation by the possession of the property for a specified length of time. Missouri Revised Statute 516.010 establishes adverse possession after 10 years. *Continued on page 6.*

UPCOMING EVENTS

April



May

| EVENT | DATE | LOCATION | CONTACT INFO |
|--|-----------------|--------------------|--|
| Adopt the Shoreline Spring Cleanup | Mar 17 - Apr 15 | Lake of the Ozarks | 573-352-9252 |
| Home, Garden & Lifestyle Expo | Mar 31 - Apr 1 | Lake Ozark, MO | 573-964-1008 |
| Jacob's Cave Swapping Days | Apr 5 - 8 | Versailles, MO | 573-348-4374 |
| Easter Egg Hunt - Hillbilly Fairgrounds | Apr 8 | Laurie, MO | 573-374-8776 |
| Bunny Hop / Tax Day Dance | Apr 15 | Linn Creek, MO | 573-365-6155 |
| Dogwood Festival 62nd Annual | Apr 19 - 22 | Camdenton, MO | www.camdentonchamber.com/dogwoodfestival |
| In Water Boat Show | Apr 20 - 22 | Osage Beach, MO | 573-480-2300 |
| Demo Days at Glencove Marina | Apr 21 - 22 | Lake Ozark, MO | 573-365-4001 |
| Midcoast Bike Run | Apr 28 | Eldon, MO | www.eldonobleagle.com |
| Lake Area Fiber Arts Festival | Apr 28 | Osage Beach, MO | 573-836-3806 |
| Lake Regional's 5th Annual Fun Run/Walk | Apr 28 | Osage Beach, MO | 573-348-8153 |
| Free Lesson Month Dogwood Hills Golf Resort | May 1 - 31 | Osage Beach, MO | 573-348-3153 |
| Lodge of Four Seasons - Labor Day Fireworks | May 2 | Lake Ozark, MO | 888-265-5500 |
| 24th Annual Magic Dragon Street Meet Nationals | May 4 | Lake Ozark, MO | 573-964-1008 |
| Spring Harbor Hop 15th Annual | May 5 | Osage Beach, MO | 1-800-funlake |
| Dogwood Hills 3 Course 3 Person Scramble | May 8 | Osage Beach, MO | 573-348-3153 |

Register now for 5th annual Fun Run/Walk

Register now for Lake Regional Health System's 5th Annual Fun Run/Walk scheduled 8 a.m. Saturday, April 28, at Hidden Lakes Golf Course at Tan-Tar-A Resort in Osage Beach.

- ◆ Check-in will begin at 7 a.m. for the 5K run.
- ◆ Participants will compete in the following six categories: men, age 18 and younger, ages 19 through 50, and age 50 and older; and women, age 18 and younger, ages 19 through 50, and age 50 and older.
- ◆ First, second and third place prizes will be awarded in each category, for a total of 18 medals.
- ◆ Registration for the fun walk will begin at 8 a.m. Walkers may start immediately after registering.
- ◆ Proceeds from the event will benefit Lake Regional's Cardiopulmonary Rehab department.
- ◆ Early bird registration for runners is \$15 through Friday, April 13. After that date, the registration fee will be \$25. The 5K fee includes a t-shirt. All registered walkers who raise or donate \$15 also will receive a t-shirt.

Registration forms are available online at lakeregional.com/events or by contacting Terri Hall at 573-348-8153.

Lake Regional's Cardiopulmonary Program is certified by the American Association of Cardiovascular and Pulmonary Rehabilitation. Cardiac rehab services are available at Lake Regional Hospital in Osage Beach, as well as at Lake Regional's Cardiac Rehab clinics in Camdenton, Eldon, Lake Ozark and Laurie.

To learn more about the comprehensive cardiovascular care available at Lake Regional, visit: lakeregional.com/cardiac.

Adverse possession may play a factor in shoreline dispute *Continued from page 4.*

Sanzottera previously believed that utility companies were exempt from adverse possession under RSMo 516.090.

It states, "Nothing contained in any statute of limitation shall extend to any lands given, granted, sequestered, or appropriated to any public, pious, or charitable use, or to any lands belonging to this state. This section shall be construed to prohibit any judgment granting adverse possession to a claimant where the defendant possesses an interest in land described in a recorded deed and is a public utility".

However in 2000, the Missouri Court of Appeals, Southern District, Division Two upheld an adverse possession claim against an electric company on the grounds that the indirect benefit of generating electricity did not fall under public use as intended by 516.090.

In *Empire District Electric Company v. Gaar*, the company which operates the Ozark Beach Hydroelectric Project at Lake Taneycomo appealed a trial court decision to award Lois Gaar adverse possession of land she had paid property tax on for more than 10 years.

The appeal contended that the land was devoted to public use because the Federal Energy Regulatory Commission (FERC) through its licensing process and mandate from the Federal Power Act had determined that the entire Project served the public interest.

For that reason, it argued that the Supremacy Clause of the U.S. Constitution - the federal government preempts state law - would be in effect.

Public interest as defined by FERC under the Federal Power Act includes protection of fish and wildlife and their habitat, the development of public recreation and project reservoirs and the preservation of environmental amenities.

FERC included all lands within the boundaries of the Project in the licensing application and determined the public necessity and utility of the entire area not just the electrical facilities, the appeal by Empire argued.

The appellate court's decision states "This contention ignores the language in 796(11) of the Federal Power Act that defines a 'project' to include only 'lands or interests in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.'"

Empire failed to convince the appellate court that FERC "intended to make a binding determination that the disputed property 'serves the public interest' because it is 'necessary or appropriate' in the maintenance or operation of the Project."

The court was also not persuaded that FERC was authorized by Congress to "determine that the land in question is 'given, granted, sequestered, or appropriated' to a public use for the purposes of 516.090."

Empire claimed "public use" was not limited to "parks, streets, or other areas where people may freely enter," as the company claimed was determined by the trial court.

The appellate court disagreed, citing several examples of public use in case law. In all of the court cases, the general public derived a direct benefit from the use of the land.

The appellate court decision also notes that Empire is a corporation operating for profit.

"One of its business endeavors is producing hydroelectricity. The land in question has never been used to aid in Appellant's production of electricity, nor does the Appellant have intentions to use it for this purpose in the future," the appellate court stated in its judgment in favor of Gaar.

The Camden County Commission's proposed Coordinated Land Use Plan cites *Empire v. Gaar*. In the CLUP, Camden County proposes that lands located above the 660' elevation be excluded from the revised Project boundary, with the exception of the 662' contour boundary being employed in areas containing wetlands that have been previously identified.

"Property taxes from the variable water's edge, or 660' contour, landward, have been paid by the adjacent fee owners for many decades. This means that multiple decades of property taxes were paid by successor owners prior to the relatively recent 2007 modification of Missouri RDMo 516.090, and prior to the creation of the FERC in 1977 which marks the beginning point in time for the FERC authority and the current trend towards increased regulation. While Camden County recognizes that the FERC is a restructuring of the Federal Power Commission under the United States Department of Energy, it is the opinion of Camden County that unauthorized over-reaching regulation began at the inception of this reformation," the proposed CLUP states. "It has been upheld whenever challenged that private property rights are a State's Rights issue. Under Missouri land law, the continual payment of property taxes on a parcel for 10 more consecutive years causes the subject land to ripen to fee ownership for the payee by default without court action (this premise has been upheld, with respect to utilities, by case law in *The Empire District Electric Company vs. Gaar*)." Feb 23, 2012. Amy Wilson. Lakenewsonline.com