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Of Counsel



f /MidwestEnvironmentalAdvocates
t /MidwestAdvocate

June 23, 2015

Mayor Thad Birmingham
and Members of the Common Council
City of Sturgeon Bay
421 Michigan Street
Sturgeon Bay, WI 54235

RE: Sawyer/Lindgren Hotel Development Conflict With
Public Rights Under Art. IX, Sec. 1 of the Wisconsin
Constitution

Dear Mayor Birmingham and Council Members:

Midwest Environmental Advocates has been investigating potential conflicts between the proposed Sawyer/Lindgren Hotel development and the rights of the public in navigable waters and lakebed under the public trust doctrine, Article IX, Sec. 1 of the Wisconsin Constitution. The State Constitution establishes that the rights of the public extend to all lands that were submerged lakebed at the time of Wisconsin statehood. *See Pewaukee v. Savoy*, 103 Wis. 271, 274, 79 N.W. 436 (1899) ("It is the settled law that submerged lands of lakes within the boundaries of the state belong to the state in trust for public use. . . . Upon the admission of the state into the Union the title to such lands, by operation of law, vested in it in trust to preserve to the people of the state forever the common rights of fishing and navigation and such other rights as are incident to public waters at common law.")

In an effort to fulfill the City's obligation under the Development Contract for Hotel for Sturgeon Bay Waterfront Redevelopment dated January 8, 2015, it appears that the City has procured a title commitment through a mischaracterization of key facts. The development parcel is described as Lot 1 of a Baudhuin certified survey map dated 3-11-15 ("Hotel Parcel") (ATTACHMENT 1). Peninsula Title's commitment to insure over the rights of the public in the Hotel Parcel is subject to rescission if the City's statements are determined to be a material misrepresentation. *See Wis. Stat. § 631.11.*

MIDWESTADVOCATES.ORG

612 W MAIN STREET, SUITE 302 P 608.251.5047
MADISON, WISCONSIN 53703 F 608.268.0205

**The DNR's Ordinary High Water Mark ("OHWM")
Determination Does Not Cover the Entire Hotel Parcel**

As you know, the City recorded a "WDNR Determination of Concurrence with the Approximate Ordinary High Water Mark for the City of Sturgeon Bay West Side Waterfront Project," on October 28, 2014 (the "DNR Concurrence") (ATTACHMENT 2). But the DNR Concurrence applies to only a portion of the Hotel Parcel. This is readily ascertained by comparing the Hotel Parcel CSM with the survey exhibit attached to the DNR Concurrence. On its face, the exhibit (which is based on a Baudhuin plat of survey dated 10-2-2014) states that the parcel subject to DNR's OHWM determination contains **13,524 sq.ft.** In comparison, the CSM states that the Hotel Parcel contains **38,720 sq. ft.**

An earlier version of the 2014 plat of survey (ATTACHMENT 3, dated 4-3-2014 and possibly prepared in connection with the City's request for DNR to issue an OHWM "concurrence") includes a dashed line extending northwest from the top of that parcel, roughly along the parcel boundary. This line extension is not part of the DNR Concurrence. It does not appear in the recorded document either as an exhibit or as part of the legal description. See Attachment 2, Ex. A. While the City may have desired to have the extended dashed line included as part of its OHWM concurrence, the DNR declined to do so.

**The City is Proceeding at Significant Risk
That Title Insurance for the Hotel Parcel will be Rescinded**

Consistent with the fact that the DNR Concurrence is limited to approximately one-third of the area of the Hotel Parcel, Peninsula Title's original title commitment dated 3-23-2015 (ATTACHMENT 4) included standard exceptions to the policy in Schedule B-2. The title commitment included exceptions as to "the title to any filled land" (paragraph 7 of the exceptions), "any part of the insured land falling within the bed of Sturgeon Bay or unlawfully reclaimed from said Sturgeon Bay" (paragraph 10) and "title to that portion of the captioned property lying below the high-water mark of the Sturgeon Bay" (paragraph 11).

These exceptions were removed from the commitment at the request of the City Attorney in correspondence dated May 11, 2015 (ATTACHMENT 5), which broadly represented that DNR "*had made a determination of what land is within the bed of Sturgeon Bay and what land is outside of the bed of Sturgeon Bay and has determined that natural accretion led to the attachment of a portion of the filled in land to the land of the City of Sturgeon Bay,*" and that "*this title commitment is for land landward of the ordinary high water mark line.*" Given the more limited legal description in the Concurrence and the DNR's specific refusal to recognize the OHWM line extension in the 4-3-2014 Baudhuin survey, these do not appear to be inadvertent misstatements.

Whether intentional or mistaken, the statements in the May 11th letter appear to be material misrepresentations of fact. Peninsula Title's letter agreeing to the requested removal of exceptions is dated one day later (ATTACHMENT 6), suggesting that the insurer relied on the City's representations, rather than an independent investigation by its

underwriter. This is troubling, not only because of its mischaracterization of the DNR document, but also because the City has in its possession documents and reports conclusively showing that the Hotel Parcel is situated on artificially filled lands.

Overwhelming Evidence Confirms That Most of the Hotel Parcel is Filled Lakebed Subject to the Public Trust Doctrine

There is a great deal of readily available evidence confirming that the Hotel Parcel is situated on the filled bed of Sturgeon Bay. Detailed maps beginning with the 1891 Sanborn fire insurance map (ATTACHMENT 7) depict the rectangular shape of extensions of docks or wharves from the natural shoreline. The dock was enlarged and structures incrementally added as shown by the 1904 and 1919 Sanborn maps (ATTACHMENTS 8 and 9). One “wing” of the proposed hotel structure is sited over the dock/fill. Portions of the hotel are sited over what was surveyed as open water in 1891. See ATTACHMENT 10, a map of the hotel parcel overlaid with the shorelines depicted on the Sanborn maps.

The map evidence is consistent with title documents recorded with the Door County Register of Deeds, beginning with the Plat of the Village of Bayview recorded by Joseph Harris in 1873 (ATTACHMENT 11). The Bayview Plat depicts the shoreline of Sturgeon Bay and shows Lots 1 through 9 of Block 8 as being either partially or entirely submerged. For comparison purposes, the attached tax parcel map obtained as part of the City’s response to MEA’s open record request (ATTACHMENT 12) shows Lots 1 through 6 of Block 8 of the Bayview Plat forming the southern portion of 92-100 East Maple Street. These maps evidence that most of the Hotel Parcel footprint was under water at least until 1873.

Deeds in the City’s chain of title confirm that the Hotel Parcel was largely created by artificially filling submerged lakebed. For example, an 1891 deed from Harris to Martin conveying portions of Lots 4 through 7 of Block 8 of the “Village of Bay View” (ATTACHMENT 13) includes “*the steamboat dock + warehouse thereon, built upon the above described Lots and extending therefrom into the waters of Sturgeon Bay.*” These structures are depicted on the 1891 Sanborn fire insurance map (ATTACHMENT 7) as the “Harris Dock.” The 1904 Sanborn map (ATTACHMENT 8) labels an enlarged dock with additional structures as the “Sawyer Dock” of Teweles & Brandeis, consistent with the 1903 deed to “Arthur M. Teweles and Isidore Brandeis of Sturgeon Bay,” (ATTACHMENT 14) a conveyance that included “*all the lands...formerly owned by A.W. Lawrence, Sr. and used and occupied by him for planing mill, elevator, dock and warehouse purposes.*”

In addition to the historic maps and title evidence, the environmental reports prepared for the Waterfront Redevelopment Authority provide physical evidence that the Hotel Parcel is situated on filled lakebed. A Phase I Environmental Assessment prepared by AECOM in January 2013 included evaluation of historic aerial, Sanborn and topographic maps. The Summary, the Records Review, the Findings and Opinions, and the Conclusion state:

“Based on review of historical Sanborn maps, the northern portion of the Subject Property [92-100 East Maple Street, 3.69 acres total, encompassing the hotel development parcel] is located in an area formerly occupied by

water (Sturgeon Bay). Sanborn maps suggest that the area was filled in the late 1800s. Furthermore, WDNR information indicated that up to 10 feet of fill (including up to 5 feet of wood chips and/or charred wood and/or concrete) was identified in soil borings advanced on the Subject Property during the LUST case assessment activities.”

The Phase I report provides detail in the Historical Fire Insurance Maps section that in 1885, “[a] large portion of the Subject Property appeared to be covered by water (Sturgeon Bay). A dock was shown near the eastern property boundary.” In 1891, “A large portion of the Subject Property appeared to be covered by water (Sturgeon Bay). Two docks and a warehouse were shown near the eastern property boundary.” In 1898, “A majority of the Subject Property (with the exception of property near the eastern boundary) appeared to have been filled, as land which was formerly located underwater was shown covered by ‘Lawrence’s Dock.’”

The Phase II Environmental Report subsequently prepared for the City by Ayers & Associates in August 2013 includes geographical cross-sections showing 10 or more feet of fill overlaying lake deposits, leaving no doubt that the Hotel Parcel consists primarily of filled lakebed.

As you know, the City is preparing to apply to DNR for an exemption to Wis. Admin. Code § NR 506.085, which prohibits development of structures on waste fill. The City cannot in good faith acknowledge for regulatory compliance purposes that the property is filled lakebed, while also representing to its title insurer that the same property is above the OHWM. The historic maps, title evidence, and the engineering reports leave no doubt that the Hotel Parcel consists primarily of a large dock or wharf constructed on filled lakebed that caused artificial (speeded up) accretion to form to the southeast (the area of the DNR Concurrence).

A century’s worth of Wisconsin law holds that the filling of submerged lands does not transfer title to the riparian property owner. *See Menomonee River Lumber Co. v. Seidl*, 149 Wis. 316, 320-321, 135 N.W. 854, 857 (1912) (“One cannot by building up land or erecting structures in a lake, the title to the bed of which is in the state, thereby extend his possession into the lake and acquire the state’s title.”). As stated in DNR’s brief in the Lighthouse on the Lake case in Two Rivers (see below), “[t]he possession of a deed or federal patent purporting to convey title to lakebed . . . is meaningless for that purpose.” (citing *Illinois Steel Co. v. Bilot*, 109 Wis. 418, 84 N.W. 855 (1901)).

The title record and historic Sanborn maps clearly show that most of the lands underlying the Hotel Parcel were filled by the City’s predecessors in title, who constructed and successively enlarged the wharf that is now viewed by the City as its property. To the extent the historical uses of the Hotel Parcel by the Door County Cooperative and its predecessors in interest exceeded the scope of their riparian rights, those uses should be considered unprosecuted public trust violations, in the same way that the “Pieces of Eight” Restaurant (now the Harbor House) on the Milwaukee lakeshore is a public trust violation. *See* Letter of the Attorney General to DNR Secretary Besadny dated 8-11-1987 (ATTACHMENT

15). The City, as a governmental entity, has a duty to ensure that future uses of the property conform to the constitutionally imposed limits of the public trust doctrine.

**The DNR's OWHM Concurrence is Inconsistent with
Wisconsin Law and the Agency's Well Established Water Regulatory Policy**

MEA disputes the conclusion in the DNR's Concurrence that the OWHM shifted lakeward based on the doctrine of accretion. That conclusion fails to address the legal effect of natural accretion (which adds to the riparian's title) vs. artificial accretion (which does not). Further, the circumstances under which DNR issued this document do not comport with DNR's well-established procedures for OWHM determinations. Indeed, by its very title, the Concurrence simply suggests that DNR's Director of Policy and External Affairs on a previous determination by the City. Apparently the "concurrence" process relied primarily on a very limited data set provided by the City, including the Baudhuin survey and two maps. It is not clear what political pressure was brought to bear on DNR; however the Concurrence was clearly not issued by professional staff or DNR's water regulatory counsel.

The DNR Concurrence cites the legal principle that submerged lakebed may be removed from the public trust via the processes of "accretion," where land is gradually built up over time by waterborne sediments. The Concurrence concludes:

"The Parcel area . . . appears to have been a shallow bay of 2 ft. water depth [to the Low Water Datum]. In [the writer's] opinion, the Parcel area would have filled with sediment slowly over the course of time between the 1925 [soundings] map and the 1955 Bulkhead Map. The gradual addition of soil to the shallow area . . . should be considered accretion and would extend the riparian title out to the OWHM."

The City clearly desires to establish that the Hotel Parcel is riparian land formed by the "natural" process of accretion (as stated in Attachment 5, the City Attorney's letter to Peninsula Title dated May 11, 2015). The DNR Concurrence concludes that a portion (approximately one-third) of the Hotel Parcel was formed by accretion and thus added to the riparian's title. However, a review of the court files in *Lighthouse on the Lake v. DNR*, (Manitowoc County Case No. 09-CV-0565), the notorious public trust dispute in the City of Two Rivers, shows that the process by which DNR's External Affairs Director issued the Concurrence is not based on a complete investigation according to that agency's standard procedures and Wisconsin law.

In the *Lighthouse* case, DNR filed voluminous affidavits of staff experts in the water resources division to support its position that substantial areas of the Lighthouse Inn were comprised of fill or "artificial accretion," *i.e.*, that structures and fill placed on the lakebed either caused or speeded up the accretion process. See Affidavit of Byron Dale Simon (former Chief Biologist, DNR Waterways Protection Section) (ATTACHMENT 16), explaining the distinction between natural and artificial accretion. The above-cited *Menominee River*

Lumber case holds that artificially accreted areas, like filled lands, do not add to the riparian's title.

The City should be aware that the DNR Concurrence is not conclusive of the rights of the public. DNR simply has *permitting* authority under ch. 30 of the Statutes. Regardless of DNR's regulatory position, any citizen has standing to enforce the rights of the public under the public trust doctrine. *See Gillen v. City of Neenah*, 219 Wis.2d 806, 580 N.W.2d 628 (1998) (public trust doctrine enables a citizen to directly sue a party whom the citizen believes was inadequately regulated by the DNR). The only way to finally resolve the cloud on the City's title is to obtain a declaratory judgment in circuit court as to the location of the OHWM along the entire Hotel Parcel.

The City has placed itself (that is, the taxpayers) at substantial risk by its misleading communications to its title insurer. Section 631.11, Wis. Stats. authorizes the title company to rescind the title policy based on those representations. The City has thus exposed itself to unknown liability and the prospect of litigation with its insurer and with the public. The City cannot fulfill its obligation under the Development Agreement to convey the Hotel Parcel "free and clear of all liens and encumbrances," because the lien of the public trust and associated threat of litigation remain.

It is certainly understandable that the City would wish to develop its bayfront property in a manner that enhances tourism and increases the tax base. However, as former DNR Secretary George Meyer advised the Milwaukee County Executive in 1996 (ATTACHMENT 17):

"[D]evelopments on our lakes and rivers must be substantially related to navigation and its incidents. . . . This means that such development must be connected to commercial navigation or to the public recreation associated with the use or enjoyment of the waterway. Even the most "liberal" interpretations of the Constitution have required this linkage to be made. . . ."

While recognizing "the extremely high potential financial return from commercial development on prime sites such as the lakefront," and "the fiscal stress experienced by government agencies," the DNR Secretary nevertheless cautioned:

"We continue to object to the development of 'destination' restaurants, bars, or similar commercial facilities on lakebed or riverbeds around Wisconsin. These types of developments are clearly not consistent with the provisions of our constitution."

MEA takes no position on the desirability or aesthetics of the proposed Sawyer/Lindgren Hotel or the City's development policies. The sole purpose of this letter is to urge the City to conform those policies to Wisconsin law.

Thank you for your consideration.

Sincerely,

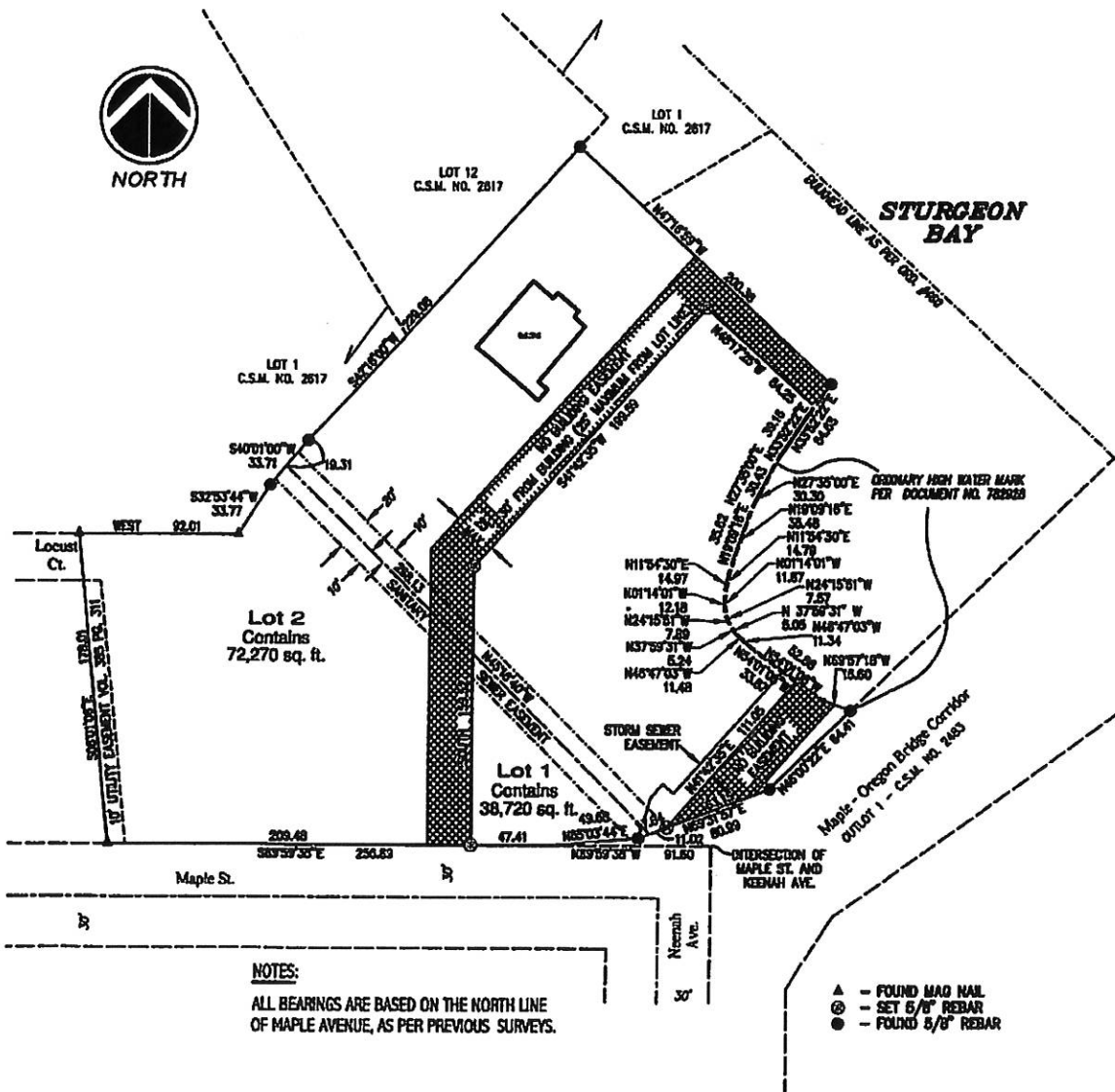
/s/

Sarah Williams
Staff Attorney
Midwest Environmental Advocates

cc: Michael Bruhn, WDNR
Attorney Timothy A. Andryk, WDNR Chief Legal Counsel
Attorney Tom German, BCPL Deputy Secretary
Attorney Randall Nesbitt, Sturgeon Bay City Attorney
Attorney William P. O'Connor
George Meyer, Wisconsin Wildlife Federation

CERTIFIED SURVEY MAP

BEING:
 PART OF LOT 1, BLOCK 9 OF HARRIS FIRST ADDITION AND
 ALSO A PART OF LOTS 1, 6 AND 7, BLOCK 8 OF BAYVIEW
 PLAT AND ALL OF LOTS 2, 3, 4 AND 5, BLOCK 8 OF BAYVIEW
 PLAT AND ALSO PART OF SUBDIVISION 76
 AND BEING LOCATED IN:
 THE NE 1/4 OF SECTION 7, T. 27 N., R. 26 E.,
 CITY OF STURGEON BAY, DOOR COUNTY,
 WISCONSIN.

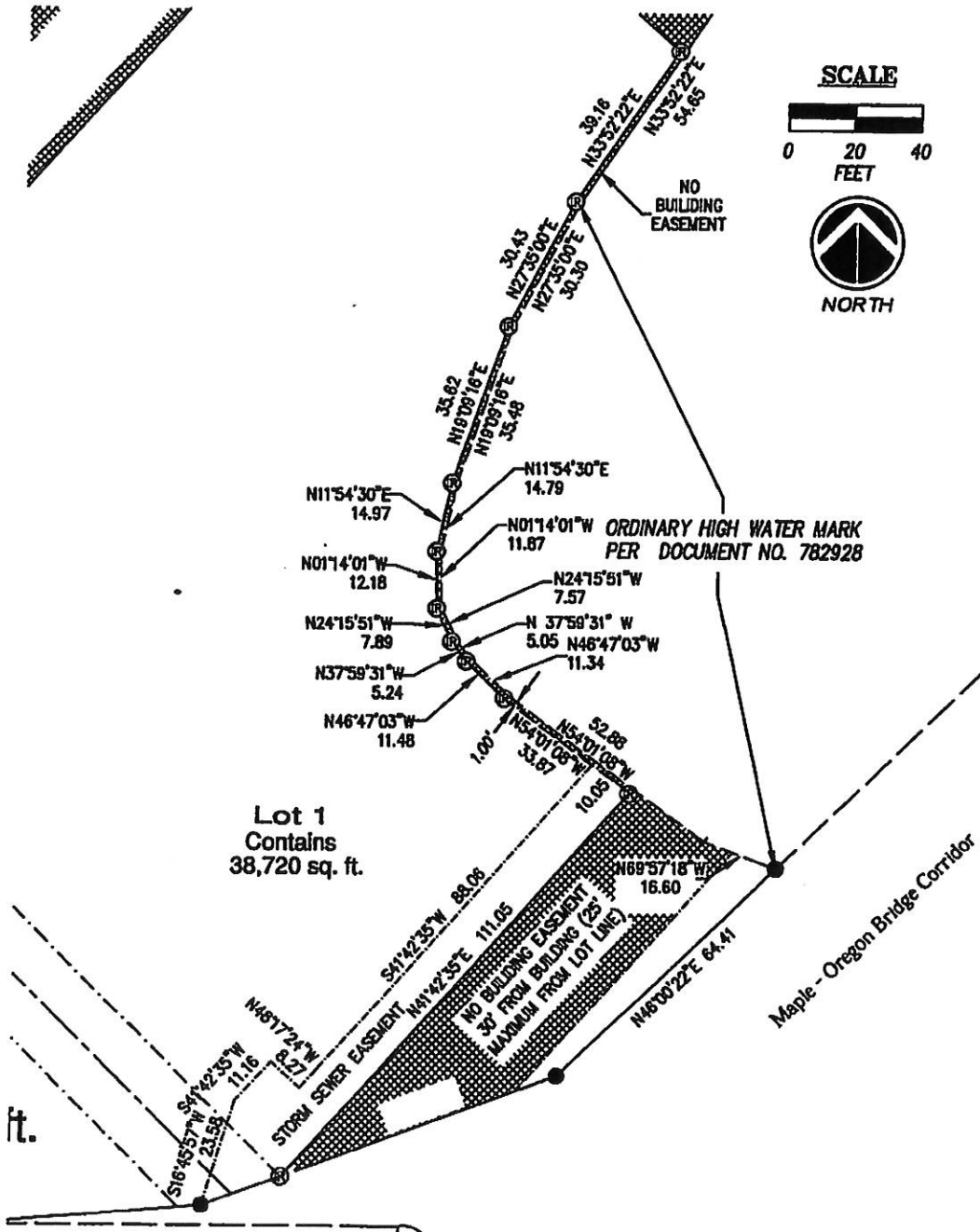


NOTES:
 ALL BEARINGS ARE BASED ON THE NORTH LINE
 OF MAPLE AVENUE, AS PER PREVIOUS SURVEYS.

- ▲ - FOUND MAD NAIL
- ⊙ - SET 5/8" REBAR
- - FOUND 5/8" REBAR

CERTIFIED SURVEY MAP

BEING:
 PART OF LOT 1, BLOCK 9 OF HARRIS FIRST ADDITION AND
 ALSO A PART OF LOTS 1, 6 AND 7, BLOCK 8 OF BAYVIEW
 PLAT AND ALL OF LOTS 2, 3, 4 AND 5, BLOCK 8 OF BAYVIEW
 PLAT AND ALSO PART OF SUBDIVISION 78
 AND BEING LOCATED IN:
 THE NE 1/4 OF SECTION 7, T. 27 N., R. 28 E.,
 CITY OF STURGEON BAY, DOOR COUNTY,
 WISCONSIN.



Lot 1
 Contains
 38,720 sq. ft.

CERTIFIED SURVEY MAP

BEING:
PART OF LOT 1, BLOCK 9 OF HARRIS FIRST ADDITION AND
ALSO A PART OF LOTS 1, 6 AND 7, BLOCK 8 OF BAYVIEW
PLAT AND ALL OF LOTS 2, 3, 4 AND 5, BLOCK 8 OF BAYVIEW
PLAT AND ALSO PART OF SUBDIVISION 76
AND BEING LOCATED IN:
THE NE 1/4 OF SECTION 7, T. 27 N., R. 26 E.,
CITY OF STURGEON BAY, DOOR COUNTY,
WISCONSIN.

SURVEYOR'S CERTIFICATE:

I, Michael G. McCarty, Registered Land Surveyor for Baudhuin Incorporated, do hereby certify that we have surveyed the following described parcel:

Being a part of Lot 1, Block 9 of Harris First Addition and also a part of Lots 1, 6 and 7, Block 8 of Bay View Plat and all of Lots 2, 3, 4 and 5, Block 8 of Bayview Plat and also part of Subdivision 76, all in the NE 1/4 of Section 7, T. 27 N., R. 26 E., City of Sturgeon Bay, Door County, Wisconsin, bounded and described as follows:

Commencing at the intersection point of the east line of Neenah Avenue and the north line of Maple Street, thence N. 89°59'38" W., 91.60 feet along the north line of Maple Street to the point of beginning of lands to be described; thence N85°03'44"E -- 49.68 feet; thence N69°31'57"E -- 80.99 feet; thence N46°00'22"E -- 64.41 feet to the approximate ordinary high water mark; thence along said ordinary high water mark as follows: N69°57'18"W -- 16.60 feet; thence N54°01'08"W -- 52.88 feet; thence N48°47'03"W -- 11.34 feet; thence N37°59'31"W -- 5.05 feet; thence N24°15'51"W -- 7.57 feet; thence N01°14'01"W -- 11.87 feet; thence N11°54'30"E -- 14.79 feet; thence N19°09'16"E -- 35.48; thence N27°35'00"E -- 30.30 feet; thence leaving said ordinary high water mark N33°52'22"E -- 54.65 feet; thence N47°16'59"W -- 200.38 feet; thence S42°16'00"W -- 229.08 feet; thence S40°01'00"W -- 33.71 feet; thence S32°53'44"W -- 33.77 feet; thence West, 92.01 feet; thence S06°01'06"E -- 178.01 feet to the north line of Maple Street; thence S89°59'38"E -- 256.89 feet along said north line to the point of beginning.

Said parcel contains 110,990 square feet.

Also, I have fully complied with the requirements of chapter 236.34 of the Wisconsin Statutes. I further certify that the attached map is a true representation of said property and correctly shows the exterior boundaries and correct measurements thereof.

Dated: _____

Michael G. McCarty S-2298

CERTIFIED SURVEY MAP

BEING:
PART OF LOT 1, BLOCK 9 OF HARRIS FIRST ADDITION AND
ALSO A PART OF LOTS 1, 6 AND 7, BLOCK 8 OF BAYVIEW
PLAT AND ALL OF LOTS 2, 3, 4 AND 5, BLOCK 8 OF BAYVIEW
PLAT AND ALSO PART OF SUBDIVISION 78
AND BEING LOCATED IN:
THE NE 1/4 OF SECTION 7, T. 27 N., R. 28 E.,
CITY OF STURGEON BAY, DOOR COUNTY,
WISCONSIN.

OWNER'S CERTIFICATE:

As owners, we, City of Sturgeon Bay and the Sturgeon Bay Waterfront Redevelopment Authority, do hereby certify that we have caused the land depicted on this certified survey map to be surveyed, mapped and dedicated as represented on this certified survey map.

Dated: _____
Thad Birmingham, Mayor

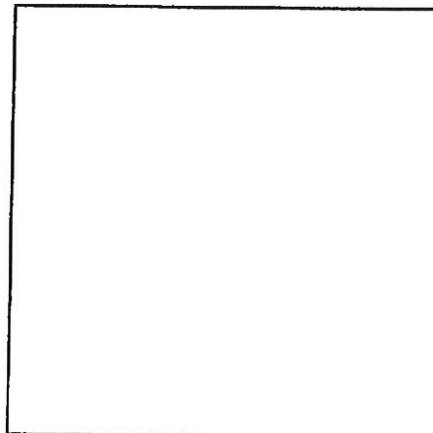
Dated: _____
Stephanie Reinhardt, Clerk

Dated: _____
Thomas Herlache, Chairman - Sturgeon Bay
Waterfront Redevelopment Authority

PLANNING COMMISSION CERTIFICATE:

This certified survey map has been submitted and approved in accordance with Chapter 21 of the Sturgeon Bay Municipal Code.

Dated: _____
Martin Olejniczak
Community Development Director



DOOR COUNTY REGISTER OF DEEDS

DOC#: 782928



Recorded
OCT. 28, 2014 AT 09:50AM

CAREY PETERSILKA
REGISTER OF DEEDS
DOOR COUNTY, WI

Fee Amount Paid: \$30.00

Tract Indexed

Recording Area

Name and Return Address

Attorney James R. Smith
Pinkert Law Firm LLP
454 Kentucky St., P.O. Box 89
Sturgeon Bay, WI 54235

281-24-15090101

Parcel Identification Number (PIN)

WDNR DETERMINATION OF CONCURRENCE
WITH THE APPROXIMATE ORDINARY HIGH
WATER MARK FOR THE
CITY OF STURGEON BAY
WEST SIDE WATERFRONT PROJECT

Drafted by:
Michael L. Bruhn
Director of Policy and External Affairs
State of Wisconsin
Department of Natural Resources
101 South Webster Street, Box 7921
Madison, WI 53707-7921
Telephone: 608-266-2621

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 608-266-2621
Toll Free 1-888-938-7463
TTY Access via relay - 711



October 20th, 2014

Attorney James R. Smith
Pinkert Law Firm, LLP
454 Kentucky St.
P.O. Box 89
Sturgeon Bay, WI 54235-0089

Re: WDNR Determination of Concurrence with the approximate Ordinary High Water Mark for the City of Sturgeon Bay West Side Waterfront Project

Dear Mr. Smith:

At your request I have reviewed the attached "Plat of Survey," dated October 2, 2014, prepared by Baudhuin Inc. and certified by Wisconsin land surveyor Michael G. McCarty (Survey), depicting the approximate location of the ordinary high water mark (OHWM) with respect to an area located in downtown Sturgeon Bay. The Survey is attached hereto as Exhibit A and incorporated herein by reference. The City of Sturgeon Bay (City) is seeking to establish its property rights with respect to the area legally described on attached Exhibit B which is incorporated herein by reference (the "Parcel").

Under the public trust doctrine, the state holds title to the beds of all natural lakes, including Lake Michigan, in trust for the public. See, Wis. Const., Art. 9, §1. In addition, the Wisconsin Department of Natural Resources (DNR) holds the authority, as the central unit of government regulating waters of the state, to make the determination of the location of the OHWM. The OHWM determination for this site not only defines the extent of state title, it also establishes the jurisdictional authority of the DNR by defining the boundary between the bed and bank of Lake Michigan for the Parcel.

Typically, an OHWM concurrence would require a DNR expert to conduct a field analysis of the physical characteristics of the shore for the purpose of verifying the point on the bank or shore where water has left a distinct mark—the OHWM. Due to historic filling of public lakebed, the location of the OHWM could not be determined by DNR in the routine course. Instead, DNR reviewed several historic maps in order to analyze the historic evolution of the shoreline.

In 1955, the City of Sturgeon Bay established a bulkhead line ordinance, which was approved by the Public Service Commission (the predecessor to DNR with respect to OHWM responsibilities). Despite the 1955 bulkhead approval, the land filled did not conform as nearly as practicable to the shore and was not accompanied by a lakebed lease issued by Board of Commission of Public Lands (BCPL) pursuant to Wis. Stat. §24.39(4). Because the 1955 bulkhead was inconsistent with the requirements of Wis. Stat. §30.11(2), it did not come into force. The 1955 bulkhead file, however, contained a map which provided a depiction of the shoreline in 1955, which included an unusual bay-like feature. It is the DNR's understanding that the approximate location of the OHWM in the Plat of Survey described above was based upon the location of the shoreline in the 1955 map.

DNR was able to review a 1925 U.S. War Department map image (1925 Map) that provided water depths in the Sturgeon Bay area. At that time, the Parcel was not dry land but was actually under the waters of Sturgeon Bay. The 1925 Map illustrates that the Parcel was bookended by an abutment labeled L.M. Washington Dock and designated as Mill Refuse on the southeastern side and a dock structure labeled Teweles & Brandeis on the northwestern side. The Parcel area between the two solid structures in the 1925 Map appears to have been a shallow bay of 2 ft. water depth. In my opinion, the Parcel area would have filled with sediment slowly over the

course of time between the 1925 Map and the 1955 Bulkhead Map. The gradual addition of soil to the shallow area shown in the 1925 Map should be considered accretion and would extend the riparian title out to the OHWM.

The DNR has been working with the City on its proposal to redevelop the portion of the downtown area located above the approximate OHWM with a private retail facility and a public promenade and other public features below the OHWM. The DNR has reviewed the attached Survey and concurs with the approximate location of the OHWM with respect to the Parcel. It is DNR's understanding that the City of Sturgeon Bay is the riparian owner with respect to the Parcel. By execution of this document, the DNR concurs that title to the Parcel above the OHWM will rest in the City due to its status as the adjacent riparian owner. Below the OHWM, the proposed uses contemplated by the City must remain consistent with the public trust uses that allow for public use and enjoyment of the navigable waters of Lake Michigan.

The DNR appreciates the opportunity to work with you in protecting Wisconsin's public trust resources and your cooperation.

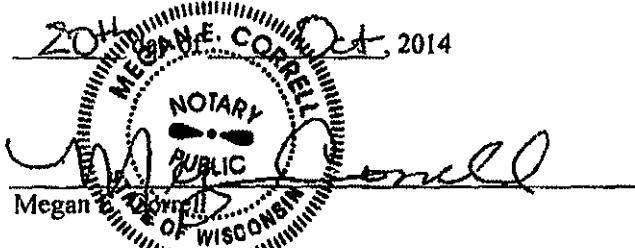
Sincerely,



Michael L. Bruhn
Director of Policy and External Affairs

Subscribed and sworn to before me this

20th Oct, 2014



Megan E. Correll

My Commission is permanent.

Plat of Survey

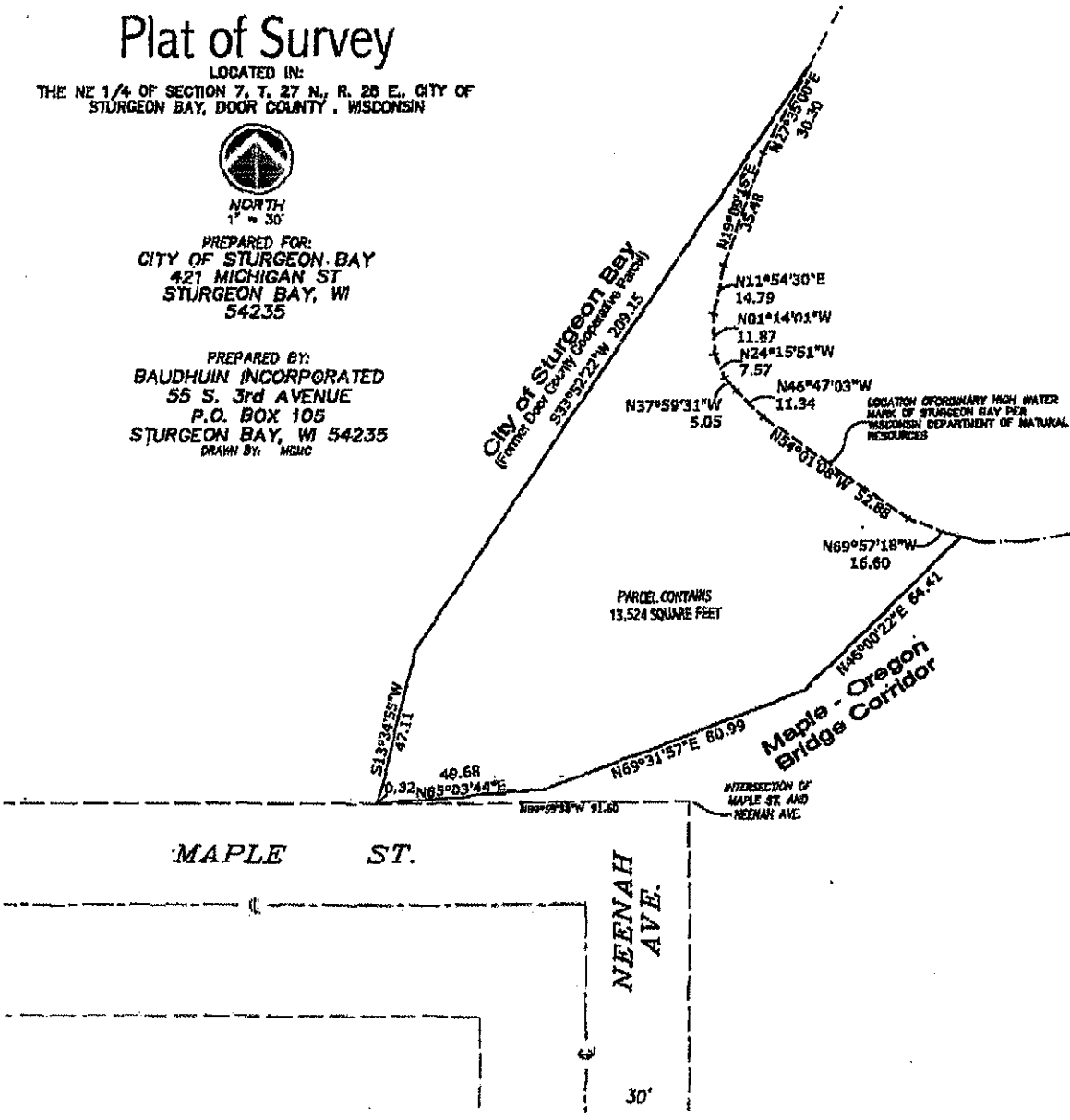
LOCATED IN:
THE NE 1/4 OF SECTION 7, T. 27 N., R. 28 E., CITY OF
STURGEON BAY, DOOR COUNTY, WISCONSIN



NORTH
1" = 30'

PREPARED FOR:
CITY OF STURGEON BAY
421 MICHIGAN ST
STURGEON BAY, WI
54235

PREPARED BY:
BAUDHUIN INCORPORATED
55 S. 3rd AVENUE
P.O. BOX 105
STURGEON BAY, WI 54235
DRAWN BY: MSJC



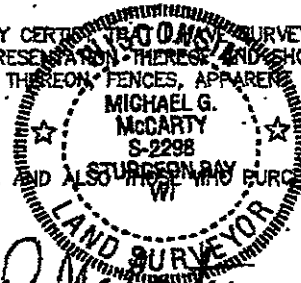
Description:

A parcel of land located in the NE 1/4 of Section 7, T. 27 N., R. 26 E., City of Sturgeon Bay, Door County, Wisconsin, bounded and described as follows:

Commencing at the intersection point of the east line of Neenah Avenue and the north line of Maple Street, thence N. 89°59'38" W., 91.60 feet along the north line of Maple Street to the point of beginning of lands to be described; thence N85°03'44"E - 49.68 feet; thence N69°31'57"E - 80.99 feet; thence N46°00'22"E - 64.41 feet to the approximate ordinary high water mark of Sturgeon Bay as determined by the Wisconsin Department of Natural Resources; thence along said ordinary high water mark as follows: N69°57'18"W - 16.60 feet; thence N54°01'08"W - 52.88 feet; thence N46°47'03"W - 11.34 feet; thence N37°59'31"W - 5.05 feet; thence N24°15'51"W - 7.57 feet; thence N01°14'01"W - 11.87 feet; thence N11°54'30"E - 14.79 feet; thence N19°09'16"E - 35.48; thence N27°35'00"E - 30.30 feet; thence leaving said ordinary high water mark S33°52'22"W - 209.15 feet; thence S13°34'55"W - 47.11 feet to the aforementioned north line of Maple Street; thence S89°59'33"E - 0.32 feet along said north line to the point of beginning. Said parcel contains 13,524 square feet.

SURVEYOR'S CERTIFICATE:

I, MICHAEL G. Mc CARTY, REGISTERED LAND SURVEYOR FOR BAUDHUIN INCORPORATED, HEREBY CERTIFY THAT I HAVE SURVEYED THE DESCRIBED PROPERTY AND THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE MAP IS A TRUE REPRESENTATION THEREOF AND SHOWS THE SIZE AND LOCATION OF THE PROPERTY, ITS EXTERIOR BOUNDARIES, THE LOCATION OF ALL STRUCTURES THEREON, FENCES, APPARENT EASEMENTS AND ROADWAYS AND VISIBLE ENCROACHMENTS, IF ANY.



THIS SURVEY IS MADE FOR THE EXCLUSIVE USE OF THE PRESENT OWNERS OF THE PROPERTY, AND ALSO FOR THE PURPOSE OF PURCHASE, MORTGAGE, OR INSURE THE TITLE THERETO.

DATED THIS 2nd DAY OF October 2014

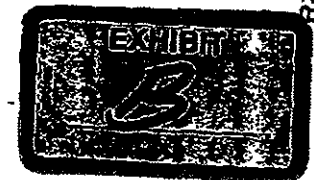
MICHAEL G. Mc CARTY S-2298

CAD: D:\B\DWG\DC CO-OP 15581\581-161 SHEET 1 OF 1

JOB NO. 15581

DOC# :

782928





BULKHEAD LINE AS PER ORD. #400

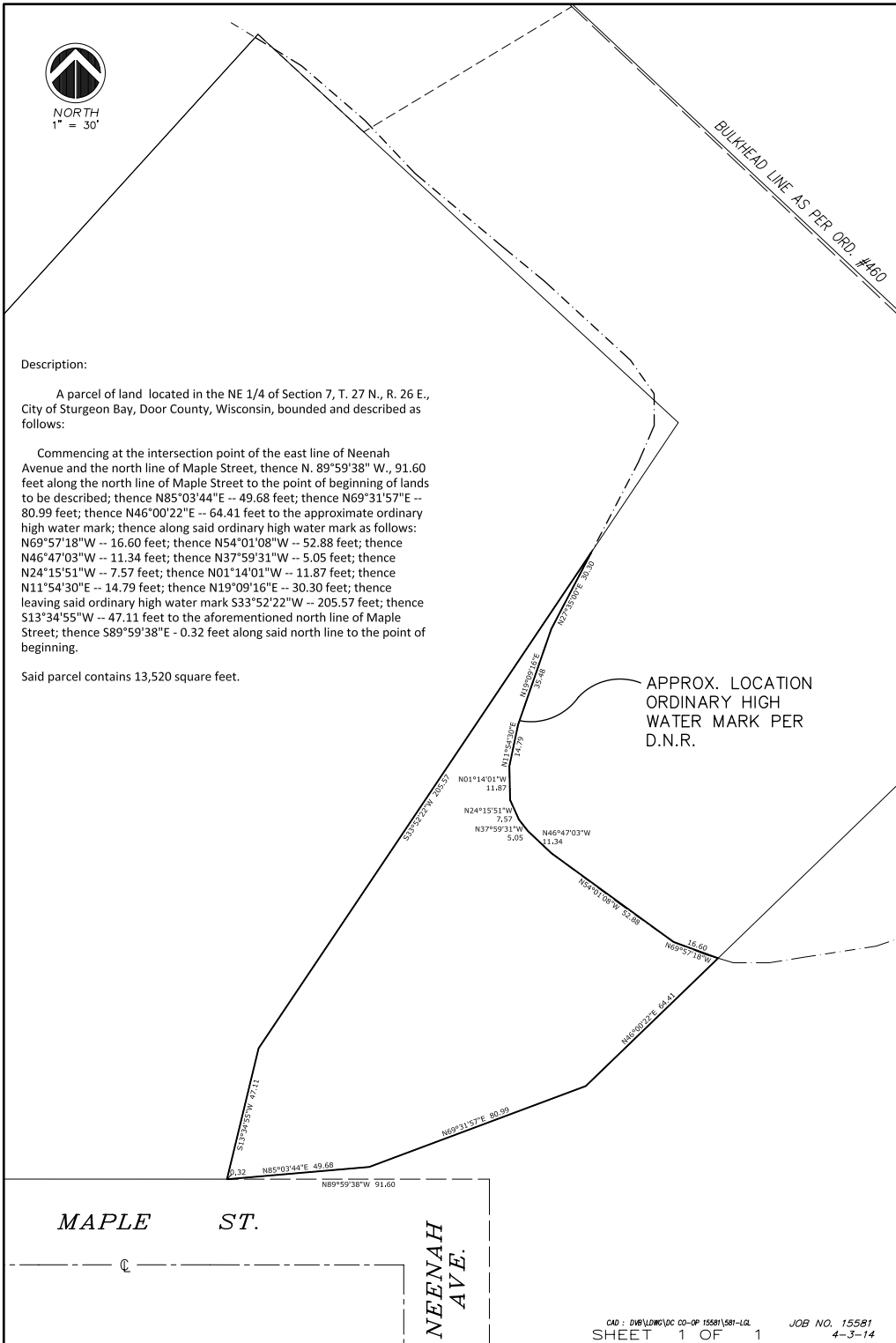
Description:

A parcel of land located in the NE 1/4 of Section 7, T. 27 N., R. 26 E., City of Sturgeon Bay, Door County, Wisconsin, bounded and described as follows:

Commencing at the intersection point of the east line of Neenah Avenue and the north line of Maple Street, thence N. 89°59'38" W., 91.60 feet along the north line of Maple Street to the point of beginning of lands to be described; thence N85°03'44"E -- 49.68 feet; thence N69°31'57"E -- 80.99 feet; thence N46°00'22"E -- 64.41 feet to the approximate ordinary high water mark; thence along said ordinary high water mark as follows: N69°57'18"W -- 16.60 feet; thence N54°01'08"W -- 52.88 feet; thence N46°47'03"W -- 11.34 feet; thence N37°59'31"W -- 5.05 feet; thence N24°15'51"W -- 7.57 feet; thence N01°14'01"W -- 11.87 feet; thence N11°54'30"E -- 14.79 feet; thence N19°09'16"E -- 30.30 feet; thence leaving said ordinary high water mark S33°52'22"W -- 205.57 feet; thence S13°34'55"W -- 47.11 feet to the aforementioned north line of Maple Street; thence S89°59'38"E - 0.32 feet along said north line to the point of beginning.

Said parcel contains 13,520 square feet.

APPROX. LOCATION
ORDINARY HIGH
WATER MARK PER
D.N.R.



MAPLE ST.

NEENAH
AVE.

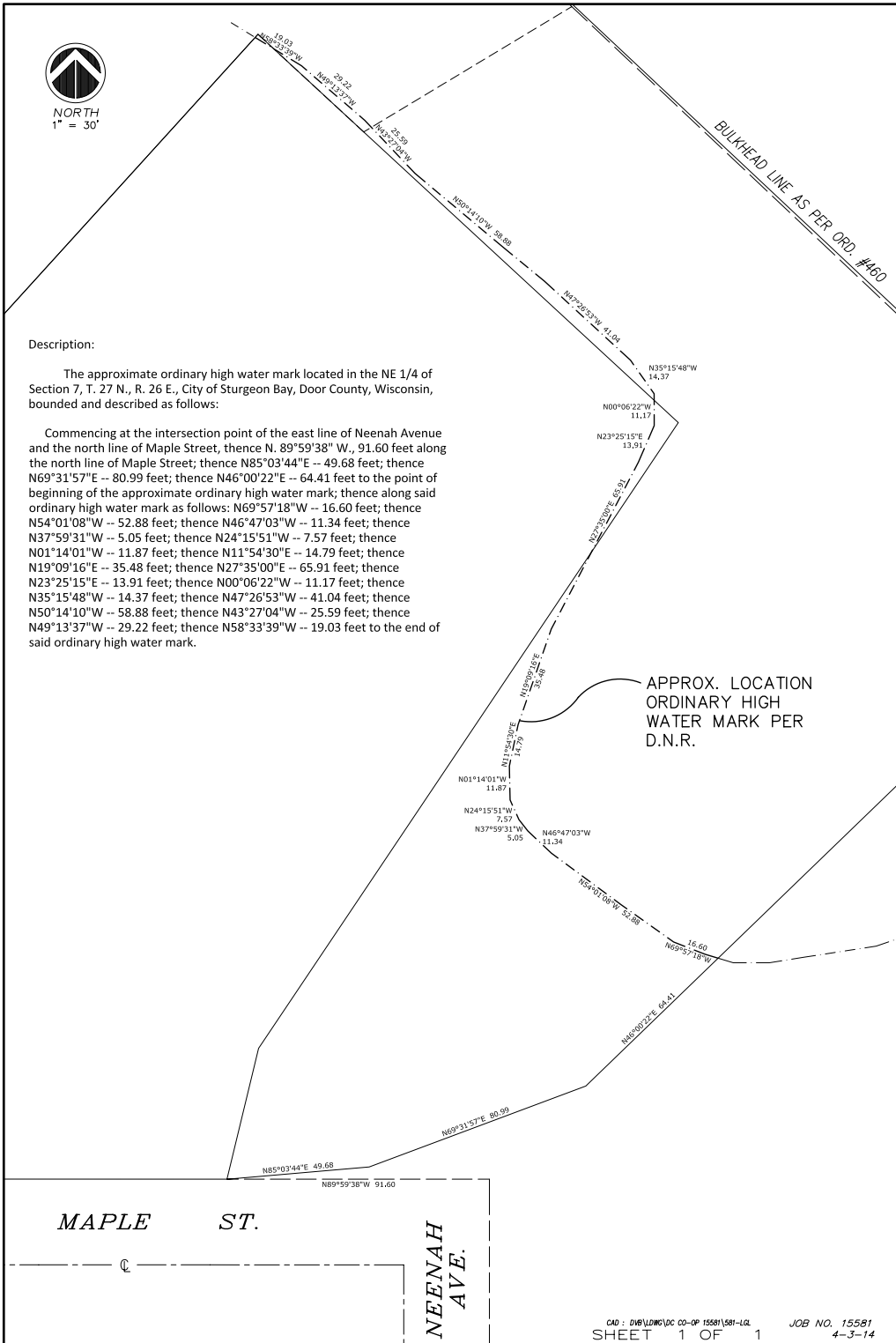


Description:

The approximate ordinary high water mark located in the NE 1/4 of Section 7, T. 27 N., R. 26 E., City of Sturgeon Bay, Door County, Wisconsin, bounded and described as follows:

Commencing at the intersection point of the east line of Neenah Avenue and the north line of Maple Street, thence N. 89°59'38" W., 91.60 feet along the north line of Maple Street; thence N85°03'44"E -- 49.68 feet; thence N69°31'57"E -- 80.99 feet; thence N46°00'22"E -- 64.41 feet to the point of beginning of the approximate ordinary high water mark; thence along said ordinary high water mark as follows: N69°57'18"W -- 16.60 feet; thence N54°01'08"W -- 52.88 feet; thence N46°47'03"W -- 11.34 feet; thence N37°59'31"W -- 5.05 feet; thence N24°15'51"W -- 7.57 feet; thence N01°14'01"W -- 11.87 feet; thence N11°54'30"E -- 14.79 feet; thence N19°09'16"E -- 35.48 feet; thence N27°35'00"E -- 65.91 feet; thence N23°25'15"E -- 13.91 feet; thence N00°06'22"W -- 11.17 feet; thence N35°15'48"W -- 14.37 feet; thence N47°26'53"W -- 41.04 feet; thence N50°14'10"W -- 58.88 feet; thence N43°27'04"W -- 25.59 feet; thence N49°13'37"W -- 29.22 feet; thence N58°33'39"W -- 19.03 feet to the end of said ordinary high water mark.

APPROX. LOCATION
ORDINARY HIGH
WATER MARK PER
D.N.R.



-----end of message-----

Peninsula Title Company

a Division of Bay Title & Abstract, Inc 1242 Green Bay Rd.
Sturgeon Bay, WI 54235

Phone: (920) 746-1600 Fax: (920) 746-1635

Issuing Agent for:

First American Title Insurance Co.

1650 W. Big Beaver Road P.O. Box 1289 Troy, MI 48099

Commitment Schedule A

File Number: PTI-17671-FA

1. Effective Date: 3/23/2015, at 12:01:00AM

2. Policy (or Policies) to be issued:

(a) ALTA OWNERS POLICY 6-17-06

Policy Amount

Proposed Insured: Sawyer Hotel Development LLC,
a Wisconsin limited liability company

\$90,000.00

(b) ALTA LOAN POLICY 6-17-06

Proposed Insured:

\$0.00

(c)

3. The estate or interest in the land described or referred to in this Commitment is Fee Simple

4. Title to the Fee Simple estate or interest in the land is at the Effective Date vested in:

City of Sturgeon Bay
a Wisconsin municipal corporation

5. The land referred to in this Commitment is described as follows:

Lot One (1) of Certified Survey Map No. _____ recorded in Vol. _____ Certified Survey
Maps, Page _____ as Doc. No. _____ being a survey in part of Lot One (1), Block Nine (9), of
Harris First Addition also a part of Lots One (1), Six (6) and Seven (7), Block Eight (8), according
to the recorded Bayview Plat and all of Lots Two (2), Three (3), Four (4) and Five (5), Block Eight
(8), according to the recorded Bayview Plat and also part of Subdivision 76 and being located in
the Northeast Quarter (NE 1/4), Section Seven (7), Township Twenty-seven (27) North, Range
Twenty-six (26) East, in the City of Sturgeon Bay, Door County, Wisconsin.

Property Address: E. Maple Street Sturgeon Bay, WI 54235

Tax Parcel Number: 281-12-10080101 (PART OF) AND 281-24-15090101 (PART OF)

CONTINUED ON NEXT PAGE

Bay Title

By: _____


John C. May, President

THIS COMMITMENT VALID ONLY IF COVER AND SCHEDULE B IS ATTACHED
Customer Copy

Commitment Schedule B - Section 1

File Number: PTI-17671-FA

REQUIREMENTS

The following are the requirements to be complied with:

- 1A. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- 1B. Pay us the premiums, fees and charges for the policy.
- 1C. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
2. Documents satisfactory to us creating the interest and/or the mortgage to be insured must be signed, delivered and recorded.
 - 2A. Upon final recording of the Certified Survey Map, additional requirements and or exceptions may be added.
 - 2B. Deed from City of Sturgeon Bay, a Wisconsin municipal corporation to Sawyer Hotel Development LLC, a Wisconsin limited liability company.

First American Title Insurance Co.

Customer Copy

Commitment Schedule B - Section 2

File Number: PTI-17671-FA

Exceptions

Schedule B of the policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any encroachment, encumbrances, violation, variation, or adverse circumstance affecting the title including discrepancies, conflict in boundary lines, shortages in area, or any other facts that would be disclosed by an accurate and complete land survey of the land, and that are not shown in the public records.
3. Any facts, rights, interests or claims that are not shown by the public records but that could be ascertained by an inspection of the land or by making inquiry of persons in possession of the land.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown in the public records.
5. Liens or deferred charges not shown on the tax roll, for installations and connections of water and sewer laterals, mains and service pipes.
6. Special taxes or assessments, if any, payable with taxes levied or to be levied for the current and subsequent years, which are not now due and payable.
7. Roads, ways, streams, easements or claims of easements, or encumbrances, if any, that are not shown by the public records, riparian rights and the title to any filled in lands.
8. Taxes and special assessments, actual or pending, which are not yet due and payable.
9. Rights of the public in that portion of the within described premises lying within the limits of public roads and public rights of way.
10. Statutory rights of the public, the State of Wisconsin and The United States of America for navigation, boating, fishing and the like, to the uninterrupted flow of the waters of Sturgeon Bay as to any part of the insured land falling within the bed of Sturgeon Bay or unlawfully reclaimed from said Sturgeon Bay.
11. This policy does not insure riparian rights, nor title to that portion of the captioned property lying below the high-water mark of the Sturgeon Bay.
12. Easement recorded in Vol. 18 Miscellaneous, Page 321, as Doc. No. 229269A.
13. Rights recorded in Vol. 86 Records, Page 365, as Doc. No. 273590.
14. Reservations and rights recorded in Vol. 217 Records, Page 608, as Doc. No. 351329.
15. Waterfront Redevelopment Authority recorded in Vol. 506 Records, Page 285, as Doc. No. 515659.
16. Declaration of Restrictions recorded in Vol. 634 Records, Page 777, as Doc. No. 568262.
17. Declaration of Restrictions recorded in Vol. 644 Records, Page 131, as Doc. No. 572236.
18. WDNR Determination recorded as Doc. No. 782928.
19. Sanitary Sewer Easement as set forth on Certified Survey Map recorded in Vol. ___ of Records, Page _____ as Doc. No. _____.
20. Storm Sewer Easement as set forth on Certified Survey Map recorded in Vol. ___ of Records, Page _____ as Doc. No. _____.

See Attached
Customer Copy

Commitment Schedule B - Section 2 Continued

File Number: PTI-17671-FA

Exceptions

21. No Building Easements as set forth on Certified Survey Map recorded in Vol.____ of Records, Page_____, as Doc. No._____.

22. Storm Sewer Line as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

23. Sanitary Sewer Line as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

24. Watermain as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

25. Underground Electric Line as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

26. Underground Fiber Optic Line as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

27. Underground Electric and Fiber Optic Line as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

28. Guy wires, storm manholes, electric pedestal, monitoring well and catch basin manholes as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

29. Encroachment upon premises to the Northwest and Northeast by asphalt appurtenant to the insured premises as disclosed by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

30. Rights of others upon premises by asphalt appurtenant to the premises on the West as disclosed by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

31. Notes as set forth as noted on survey by Professional Land Surveyor, Michael G. McCarty, dated December 15, 2014.

NOTE: The 2014 Real Estate Taxes are as follows:

Tax Parcel No. 281-12-10080101 are EXEMPT.

Tax Parcel No. 281-24-15090101 are EXEMPT.



JAMES R. SMITH
RANDALL J. NESBITT†
RICHARD A. HAUSER
DAVID L. WEBER**†
JON R. PINKERT
JENNIFER C. HOBART
AMY M. SULLIVAN

454 KENTUCKY STREET
P.O. BOX 89
STURGEON BAY, WISCONSIN 54235-0089
TELEPHONE (920)743-6505
FACSIMILE (920)743-2041

HERMAN J. LEASUM (1910-2006)

RETIRED:
JEFFERY M. WEIR
ROGER PINKERT
MARK A. JINKINS

* Court Commissioner
** Also licensed in Iowa
† Certified Civil Trial Specialist by
National Board of Trial Advocacy

WRITER'S E-MAIL rnesebitt@pinkertlawfirm.com

NORTHERN DOOR OFFICE:
2294 SUNSET DRIVE
SISTER BAY, WISCONSIN 54234
TELEPHONE (920) 854-2616

May 11, 2015

Peninsula Title Company
1242 Green Bay Road
Sturgeon Bay, WI 54235

**RE: Sawyer Hotel Development
PTI File No. 17671-FA**

Dear Peninsula Title:

The proposed insured in this policy, Sawyer Hotel Development, LLC, by its attorney, William Plummer, has requested a revision of the title commitment issued with a date of March 23, 2015.

In particular, Attorney Plummer has requested that the revision remove exception numbers 7, 10 and 11 from the commitment. These have been, I understand, an obstacle in obtaining financing upon this project. The present owner of the land, the City of Sturgeon Bay, joins in this request to remove these exceptions in order to enable the transaction to proceed.

With respect to exception No. 7 of Schedule B, the City of Sturgeon Bay engaged in a lengthy process with the Wisconsin DNR to locate the ordinary high water mark and establish ownership to filled in lands on the site. DNR determined, in a recorded concurrence, that the land up to the ordinary high water mark had accreted to land owned by the City of Sturgeon Bay. Accreted land attaches to and becomes part of the land ownership of the original owner.

Exception No. 10 of Commitment B relates also to filled lands and to land falling within the bed of Sturgeon Bay. Again, the Wisconsin DNR has made a determination of what land is within the bed of Sturgeon Bay and what land is outside of the bed of Sturgeon Bay and has determined that natural accretion led to attachment of a portion of the filled in land to the land of the City of Sturgeon Bay. The issuance of title insurance is requested to insure title to that portion of land landward of the ordinary high water mark established by

Peninsula Title Company
May 11, 2015
Page 2

Wisconsin DNR which includes filled land that has accreted to the City of Sturgeon Bay. Therefore, it would be appropriate to remove Exception 10 from the title commitment as well.

Exception 11 of Schedule B exceptions also excepts land lying below the ordinary high water mark of Sturgeon Bay. Because the DNR made a determination as to the location of the ordinary high water mark line, and this title commitment is for land landward of the ordinary high water mark line, this exception should properly be removed as well. The City is not requesting Peninsula Title to insure any land below the ordinary high water mark.

Please review this with your underwriters and get back to us with your thoughts.

Thank you for your consideration.

Sincerely,

PINKERT LAW FIRM LLP



Randall J. Nesbitt

RJN:hb

cc: Atty. William Plummer
Mr. Steve McNeil, City Administrator
Mr. Marty Olejniczak, Community Development Director

F:\Clients\S\Sturgeon Bay-City\Sawyer Hotel\peninsula title company 05-11-15.docx



May 12, 2015

Attorney Randall J. Nesbitt
PINKERT LAW FIRM LLP
454 Kentucky Street
PO Box 89
Sturgeon Bay WI 54235-0089

**RE: Sawyer Hotel Development
PTI-17671**

Dear Randy:

I am in receipt of your letter concerning the above transaction and have the following comments:

In regards to your specific questions on our Commitment with the Effective Date of 3/23/2015. Specifically on Schedule B-Section 2 Items number 7, 10 and 11.

Exception 7. Will be modified with the removal of ..." and the title to any filled in lands."

Exceptions 10 and 11 will be deleted.

If you need anything additional on this matter, please do not hesitate to contact me.
Sincerely,

PENINSULA TITLE, a division of
Bay Title & Abstract, Inc.

A handwritten signature in cursive script that reads "Mary L. Mohr".

Mary L. Mohr



Sturgeon Bay, Door County, Wisconsin September 1891
Sanborn Map Company
Date Original 1891
Wisconsin Historical Society
Electronic Publication Date 2014
Stitched by Aten from multiple pages March 2015. For educational nonprofit use only.





Sturgeon Bay, Door County, Wisconsin March 1904
 Sanborn Map Company
 Date Original 1904
 Wisconsin Historical Society
 Electronic Publication Date 2014
 Stitched by Aten from multiple pages March 2015. For educational nonprofit use only.

KEY	
1	FIRE WALL 6 IN. ABV ROOF.
2	METAL CORNICE
3	FIRE WALL 12 IN. ABV ROOF.
4	WOOD CORNICE.
5	FIRE WALL 18 IN. ABV ROOF.
6	FRAME PARTITION.
7	OPENING WITH IRON DOOR.
8	" " "STANDARD" IRON DOOR
9	WINDOWS & IRON SHUTTERS.
10	WINDOW - 1ST STORY.
11	WINDOWS 1ST & 3RD STORIES
12	" " 2ND & 4TH " "
STABLE	
BUILDINGS COLORED YELLOW ARE FRAME	
" "	RED BRICK
" "	BLUE STONE
" "	GRAY IRON
" "	BROWN ADOBE
" "	GREEN SPECIALS
13	INDICATE RELATIVE HEIGHTS.
14	FIRE STATION, AS SHOWN ON KEY MAP.
ALTERNATE STREET NUMBERS ARE ACTUAL	
CONSECUTIVE STREET NOS ARE ARBITRARY.	

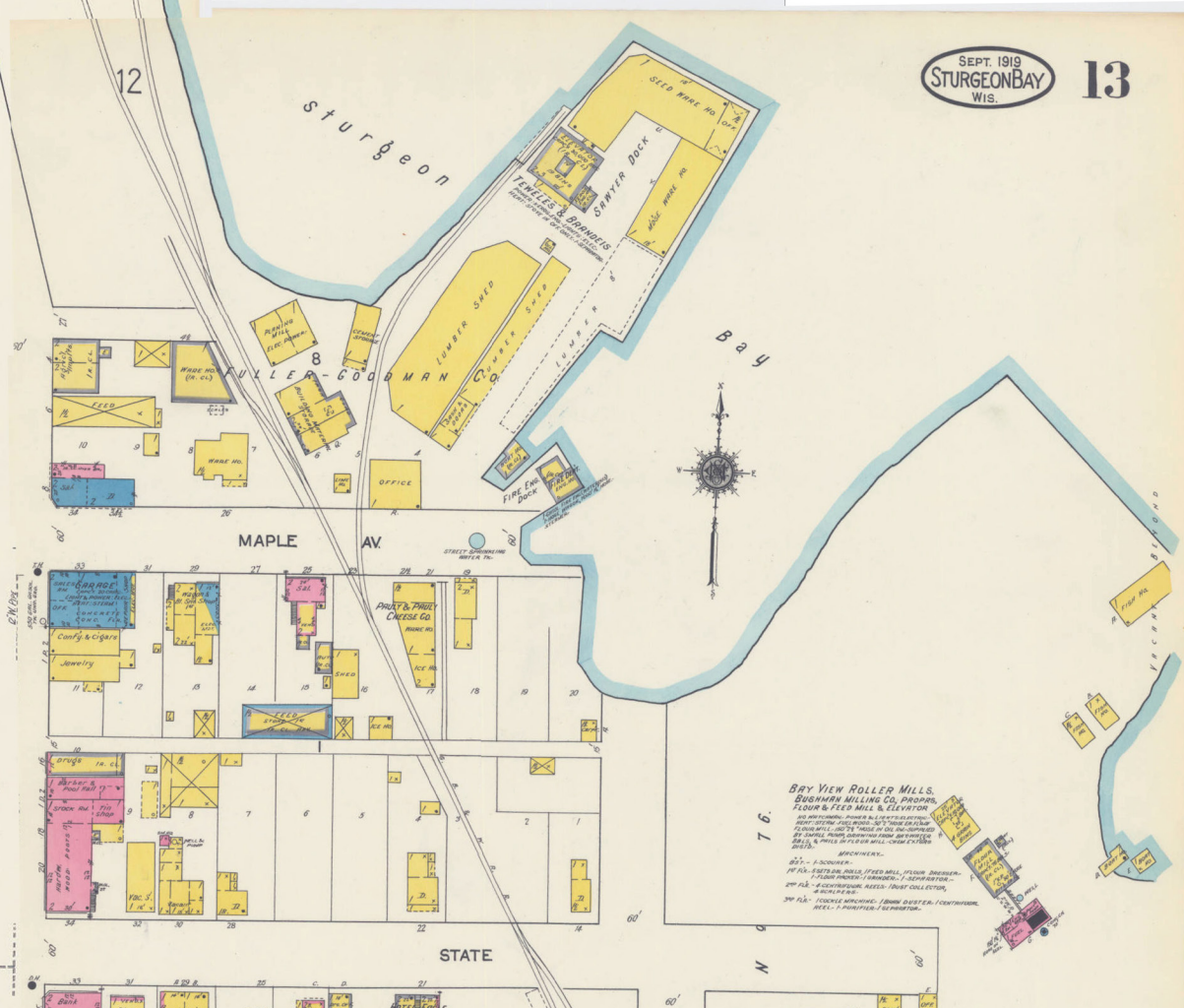


A. SHAW & CO.
 FLOUR & FEED MILL & ELEVATOR.

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1919 Sanborn Map
Wisconsin Historical Society



**ZONING MAP AMENDMENT
C-2 TO PUD - SAWYER HOTEL**

- 100 E. Maple, Parcel 2812415090101, 1.262 acres
- 92 E. Maple, Parcel 2811210080101, 2.231 acres
- PUD lot, 1.134 acres (portions of 92 E. and 100 E. Maple)
- 13,520 SF (0.31 acres) portion of 100 E. Maple and portion of PUD lot for which WDNR OHWM Letter of Concurrence applies and is recorded.

1919 Sanborn

1904 Sanborn

**No OHWM
Determination**

**OHWM "Letter of
Concurrence" Parcel**

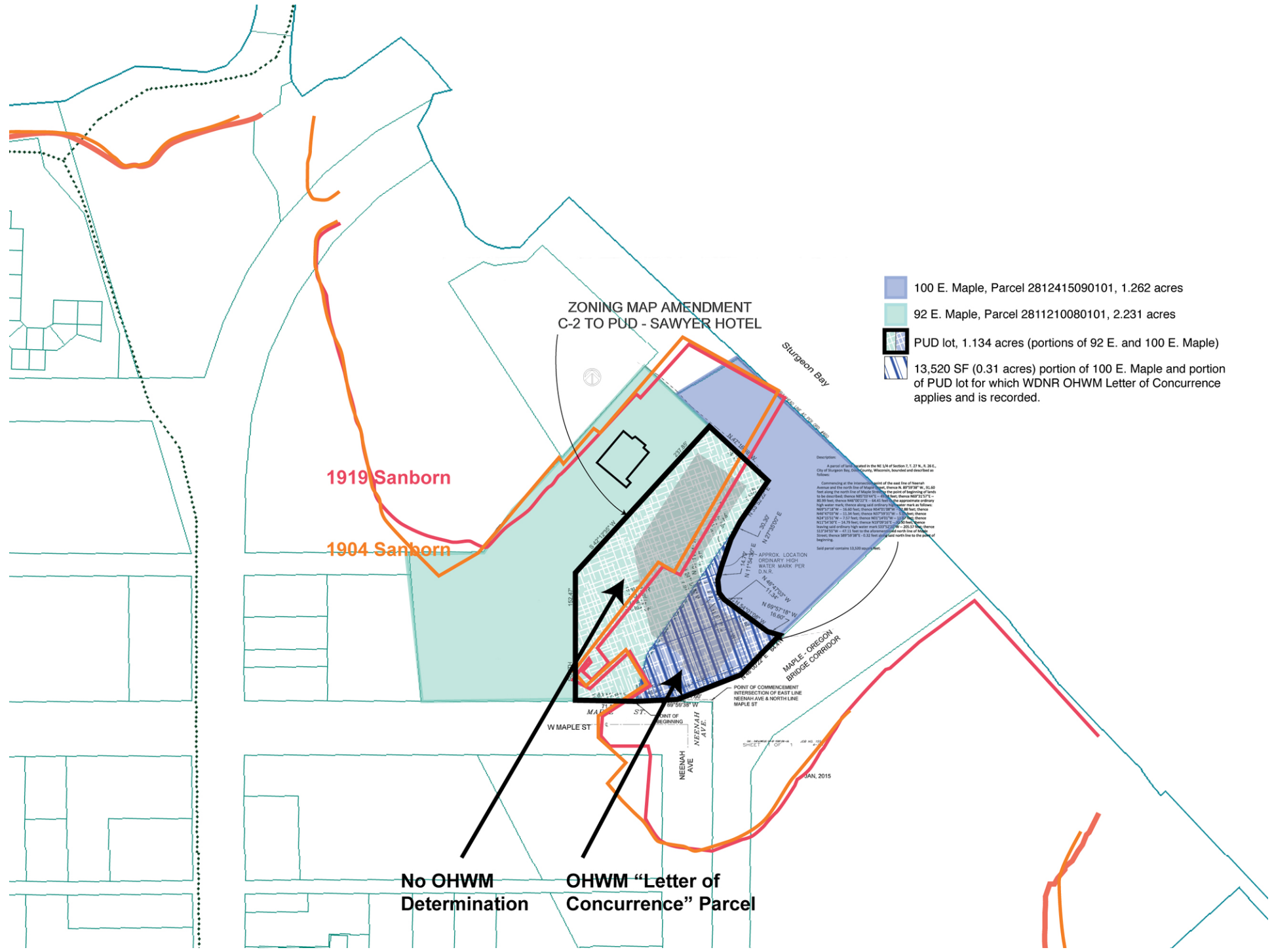
Description:
A portion of the land, located in the NE 1/4 of Section 1, T. 37 N., R. 26 E.,
City of Burgon Bay, Clatsop County, Wisconsin, bounded and described as
follows:
Commencing at the intersection of the east line of Neenah
Avenue and the north line of Maple Street; thence S. 89°32'30" W. - 31.50
feet along the north line of Maple Street to the point of beginning of lands
to be described; thence N67°15'47" E. - 64.41 feet to the approximate ordinary
high water mark; thence along said ordinary high water mark as follows:
N67°15'47" E. - 234.00 feet to the intersection of the east line of
N37°15'47" W. - 11.24 feet; thence N37°15'47" W. - 25.00 feet; thence
N37°15'47" W. - 11.24 feet; thence N37°15'47" W. - 25.00 feet; thence
N37°15'47" W. - 11.24 feet; thence N37°15'47" W. - 25.00 feet; thence
N37°15'47" W. - 11.24 feet to the intersection of the north line of Maple
Street; thence S89°32'30" W. - 31.50 feet along said north line to the point of
beginning.
Total parcel contains 13,520 square feet.

APPROX. LOCATION
ORDINARY HIGH
WATER MARK PER
D.N.R.

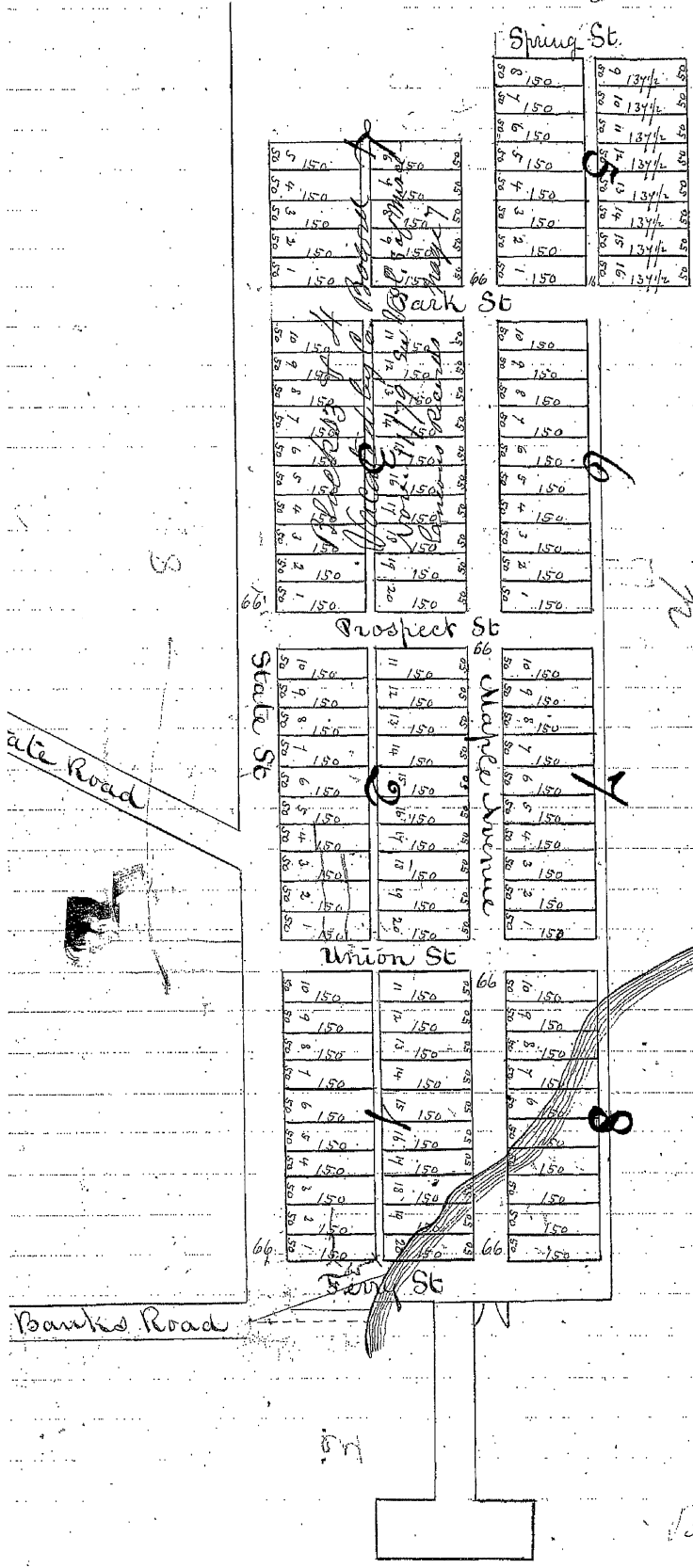
MAPLE - OREGON
BRIDGE CORRIDOR

POINT OF COMMENCEMENT
INTERSECTION OF EAST LINE
NEENAH AVE & NORTH LINE
MAPLE ST

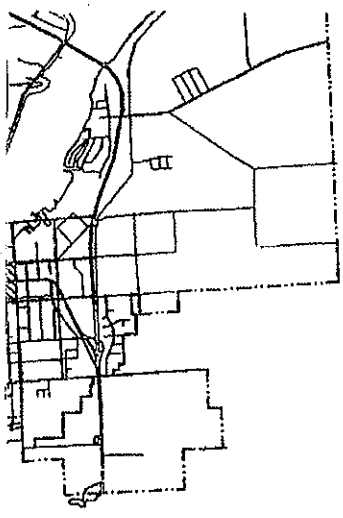
JAN. 2015



Sturgeon Bay Door County Wisconsin



Recorded Sept 9, 1893
at 6 o'clock P. M.
Peter Zimmers, Register
by John Garand, Deputy

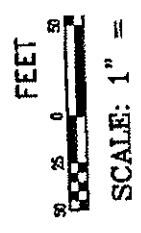
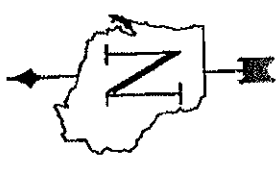


Prepared for

Door Cou.
Real Property Li

Sturgeon Bay, W

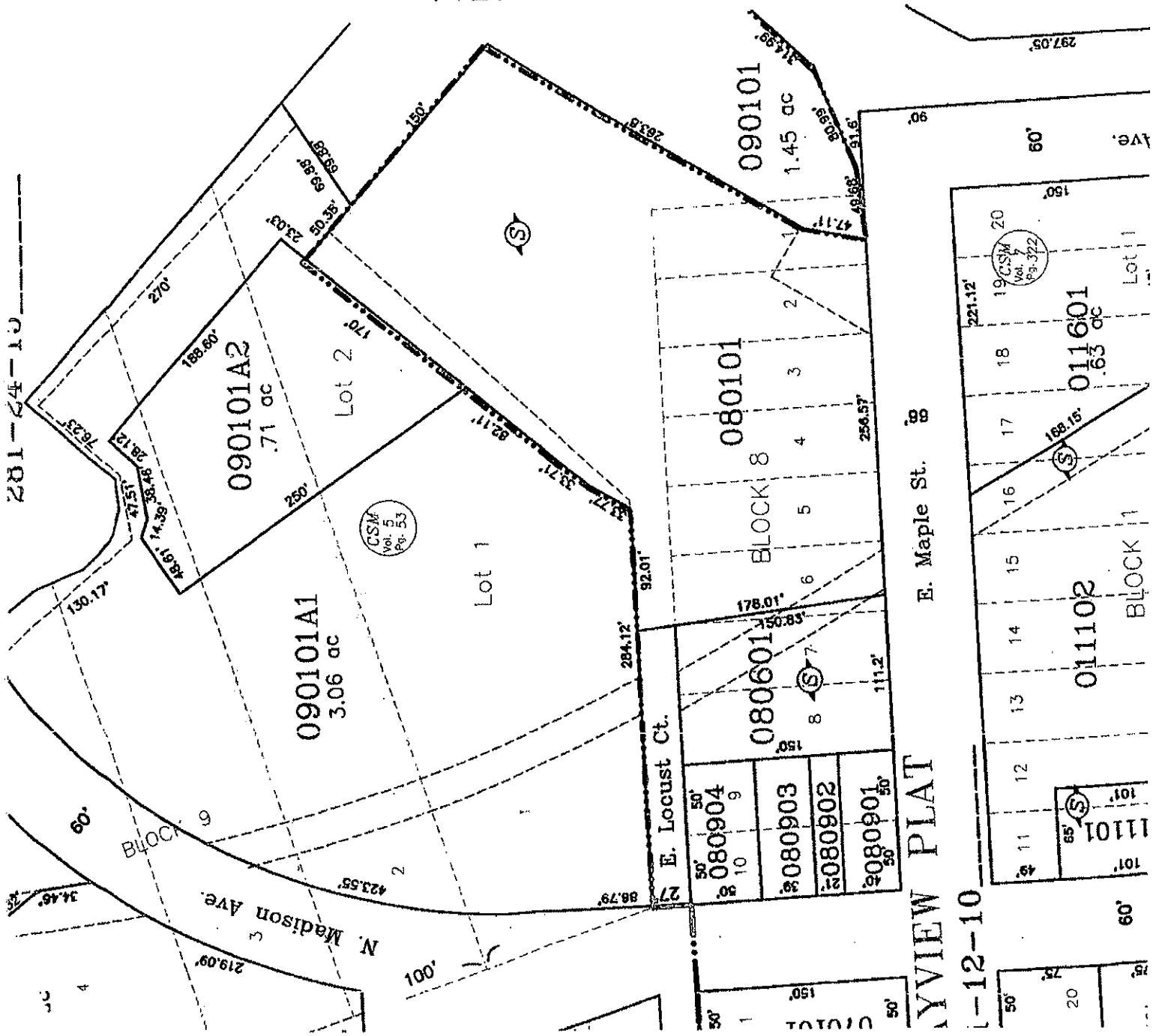
October 199



For Symbolry and Linetype representations, refer to

LAST UPDATED: 21 June, 2011

See Map 0714



VIEW PLAT

12-10

Village of Bay View
Sturgeon Bay Door County Wisconsin
Joseph Harris Sr. Proprietor

State of Wisconsin. I hereby certify that on the 8th and 9th days of August
County of Door 3⁵⁵ A. D. 1873 with John Darling and Joseph Harris Sr. as assistants
did lay out a part of lots 2 and 3 in section 7 Town 27
Range 26 East, Commencing N.E. corner of the NW 1/4 of the SE 1/4 of said
Section 7, north North 33 feet for 1/2 of State Street and West 60 feet
for Perry Street, thence West setting stakes every 50 feet for corner
of lots 500 feet for Block 1, thence 60 feet for Union Street, thence
same as above 500 feet for Block 2, thence 60 feet for Prospect
Street, thence same as 500 feet for Block 3, thence 60 feet for
Park Street, thence same as above 250 feet for Block 4, thence
North 150 feet for lot, thence 16 feet for Alley, thence 150 feet
for lot, thence 66 feet for Maple Avenue, Northern bound-
-ary of aforesaid Blocks 1. 2. 3. 4, and Southern boundary
of blocks 5. 6. 7. 8, all lots are 50 feet East and West by 150 feet
North and South each full Block contains 20 lots, all lots
from 1 to 10 inclusive are numbered on the Stake at S.E. cor-
-ner, and all lots from 11 to 20 inclusive are numbered on
the Stake on the NW corner, lots in Block 5 from 9 to 16
inclusive are 50 feet by 137 1/2 feet, lots 19 and 20 in Block
1 and lots 6. 7. 8. 9. 10 in Block 8 are fractional on line
of Sturgeon Bay, Blocks 6. 7. 8 contain one tier of lots
and numbered respectively from 1 to 10, Block 5
contains 16 lots, and Block 4 contains 10 lots, attached
herewith is a correct Plat.

J. C. Pinney
County Surveyor
Door Co

Whereas Joseph Harris Sr. of the town of Sturgeon Bay in the county of Door and State
of Wisconsin did on the 8 & 9th days of August 1873 caused to be surveyed and laid out by
James B. Pinney then the county surveyor of this county a certain plat of the village of Bay
View in said town, the said village plat being a part of lots 2 & 3 in section 7 Town 27 Range
26 East and the same being recorded on the 9th day of September 1873 in Vol. H of Deeds on page
408 & 409 by the Register of Deeds of said county. And whereas the said Joseph Harris Sr. did
at the time of laying out and platting said village neglect to acknowledge the same before
an officer duly authorized to receive and execute the same. Therefore be it remembered
that on this 15th day of May 1878 personally appeared before me the above named Joseph
Harris Sr. to my known as the proprietor and owner of the village of Bay View
aforesaid and acknowledged the aforesaid plat for the uses and purposes of the instrument
C. E. Drexler Not. Public Commissioner Joseph Harris Sr.
Eastern District of Wisconsin Proprietor.

9-591
No
128318

This Indenture, Made this twenty fourth day of November, in the year of our Lord, one thousand eight hundred and ninety one, between Henry Harris and Elizabeth Harris his wife, of the City of Philadelphia, State of Pennsylvania parties of the first part, and C. J. Martin of the City of Sturgeon Bay, County of Door State of Wisconsin party of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of Eleven Hundred (\$ 1100.) Dollars,

to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, hath given, granted, bargained, sold, remised, released, aliened, conveyed and confirmed, and by these presents doth give, grant, bargain, sell, remise, release, alien, convey and confirm unto the said party of the second part, his heirs and assigns forever, the following described real estate, situated in the county of Door and state of Wisconsin, to wit:

And more particularly described as follows, to wit:
Fractional Lots number Four (4) Five (5) Six (6) and Seven (7) in Block Number Eight (8) of the Village of Bay View together with the Steam boat Dock & Warehouse thereon, built upon the above described Lots, and extending therefrom into the waters of Sturgeon Bay.

Together with all and singular the hereditaments and appurtenances thereunto belonging or in any wise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said parties of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises, and their hereditaments and appurtenances.

To Have and to Hold the said premises as above described, with the hereditaments and appurtenances, unto the said party of the second part, and to his heirs and assigns Forever.

And the said parties of the first part for themselves and for their heirs, executors and administrators, doth covenant, grant, bargain and agree to and with the said party of the second part, his heirs and assigns, that at the time of the ensembling and delivery of these presents, they were well seized of the premises above described, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever,

and that the above bargained premises in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, they will forever Warrant and Defend.

In Witness Whereof, the said party of the first part ha hereunto set hand and seal the day and year first above written.

Signed, Sealed and Delivered in Presence of

Francis A. Flood
Alma M. Updike
State of Pennsylvania
County of Philadelphia County,

Henry Harris [AS]
Elizabeth Harris [AS]
[AS]

BE IT REMEMBERED, That on this twenty fourth day of November A. D. 1891 before me a Notary Public for the Commonwealth of Pennsylvania residing in Philadelphia personally appeared the above named Henry Harris and Elizabeth Harris his wife to me known to be the said individuals named in and who executed this foregoing conveyance and acknowledged that they signed sealed and delivered the same as their voluntary act and deed, and acknowledged the same to be true and correct, and that the said Elizabeth on a private examination apart from her husband, the full contents hereof first been made known unto her and she acknowledged that she signed sealed and delivered the same voluntarily and without any fear, threats or compulsion of her husband.

Received for Record at _____ o'clock _____ M.
December 2nd A. D. 1891
Jacob Dehos Register.

Francis A. Flood
Notary Public
[Seal]

Vertical text on the left margin, likely a notary's signature or a recording stamp, partially obscured and difficult to read.

A. J. Lawrence Jr et al - to - Arthur M. Jeweles et al.

WARRANTY DEED.

Form No. 21 A.

THE H. S. BARALL MFG. CO., STATISTICAL, INCORPORATED, CHICAGO, ILL. 35513

This Indenture, Made this eighteenth day of May in the year of our Lord, one thousand nine hundred and thirty, between A. J. Lawrence, Jr and Jennie M Lawrence his wife, of the city of Sturgeon Bay, Wisconsin and Ella E. Martin, of Marinette, Wisconsin. part is of the first part, and Arthur M Jeweles and Isidor Brandeis, of Sturgeon Bay part is of the second part, his cousin

Witnesseth, That the said part is of the first part, for and in consideration of the sum of Eight Thousand (8000) Dollars, and other considerations DOLLARS, to them in hand paid by the said part is of the second part, the receipt whereof is hereby confessed and acknowledged, ha ve given, granted, bargained, sold, remised, released, aliened and confirmed, and by these presents do - give, grant, bargain, sell, remise, release, alien, convey and confirm unto the said part is of the second part, their heirs and assigns forever, the following described Real Estate, situated in the County of Dor and State of Wisconsin, to-wit:

lots four (4), five (5), six (6) and seven (7) in Block eight (8) of the Plat of Bay View, being all the land in said Block eight (8) formerly owned by A. J. Lawrence, Sr. and used and occupied by him for planing-mill, elevator, dock and wash house purposes, and all the buildings thereon; excepting and reserving, however, the right of way of the Chicago and St. Eastern Railway company, the same being a strip of land thirty (30) feet wide through said lots six (6) and seven (7), heretofore conveyed to said company by deed recorded in Volume two (2) on page 87, in the Registers Office of said County; and excepting and reserving, also, the boilers, engines, machinery and all tools and implements, used or set up for use, in and about the planing mill on said premises, with the right to enter on and into said premises and remove the same therefrom and all other personal property thereon belonging to the grantors.

Isie cousin (ss) Personally came before me, this 19th day of May, 1903, the above named (4) of Marinette) Ella E. Martin, before known to be one of the persons who signed the instrument, and acknowledged the same

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining; and all the estate, right, title, interest, claim or demand whatsoever, of the said part is of the first part, either in law or equity, either in possession or expectancy of, in and to the above bargained premises and their hereditaments and appurtenances.

To Have and to Hold, the said premises as above described, with the hereditaments and appurtenances, unto the said part is of the second part, and to their heirs and assigns FOREVER.

And the said A. J. Lawrence Jr and Jennie M. Lawrence, his wife and Ella E. Martin parties of the first part, for themselves their heirs, executors and administrators, do - covenant, grant, bargain and agree to and with the said part is of the second part, their heirs and assigns, that at the time of the ensembling and delivery of these presents they are well seized of the premises above described, as of a good, sure, perfect, absolute and indefeasible estate of inheritance in the law, in fee simple, and that the same are free and clear from all incumbrances whatever

and that the above bargained premises, in the quiet and peaceable possession of the said part is of the second part, their heirs and assigns, against all and every person or persons lawfully claiming the whole or any part thereof, they will forever WARRANT AND DEFEND.

In Witness Whereof, The said part is of the first part ha ve hereunto set their hand & seal this the day of May the date hereof A. D. 1903

Signed, Sealed and Delivered in Presence of
Julia E. Clark } witnesses
John A. Lawrence } also
Dr. J. C. Oliver for Ella E. Martin }
J. Lundberg }

A. J. Lawrence Jr [SEAL]
Jennie M. Lawrence [SEAL]
Ella E. Martin [SEAL]

State of Wisconsin, } ss. Personally came before me on this 20 day of May, A. D. 1903
Dor COUNTY.

the above named A. J. Lawrence, Jr. and Jennie M. Lawrence, his wife

to me known to be the person S who executed the foregoing instrument and acknowledged the same.

Received for record the 1 day of June }
A. D. 1903 at 3:10 o'clock P.M. }
No. 152123 # }
Julia E. Clark }
Notary Public }



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

Kosen w3/6
RR

DONALD J. HANAWAY
ATTORNEY GENERAL

Mark E. Musolf
Deputy Attorney General

Michael W. Stead
Executive Assistant

Justice Building
P.O. Box 7857
Madison, WI
53707-7857

AUG 13 1987

August 11, 1987

Department of Water
Resources & Zoning

RECEIVED

AUG 12 1987

OFFICE OF THE
SECRETARY

Mr. Carroll D. Besadny
Secretary
Department of Natural Resources
101 South Webster Street
Madison, Wisconsin 53702

Dear Mr. Besadny:

You have requested guidance on the Department of Natural Resources' duties with respect to legislative grants of state-owned lakebed to municipalities. Although your inquiry focuses on the Pieces of Eight Restaurant situated on the filled bed of Lake Michigan in Milwaukee, you seek clarification of the state's responsibilities to monitor and enforce the Wisconsin constitutional mandate that state-owned lakebed be preserved for public trust purposes.

The lakebed land on which Pieces of Eight is located was legislatively granted to the City of Milwaukee in 1929 on the condition that it be used "in aid of navigation and the fisheries." This conditional grant is consistent with Wisconsin Supreme Court cases defining the constitutional parameters of lakebed grants, State v. Public Service Comm., 275 Wis. 112, 81 N.W.2d 71 (1957). The legislation further provides that land used inconsistently with these stated purposes reverts to the State of Wisconsin's ownership (Chapters 151 and 516, Laws of 1929). By no stretch of the imagination can use of the lakebed for a privately-owned, exclusive dining establishment be deemed "in aid of navigation and fisheries" consistent with the purposes of the lakebed grant. Arguably, a hot-dog stand adjacent to a pier or beach and open to all members of the public could be justified as a use incidental to promoting navigation and fisheries, but Pieces of Eight is no hot-dog stand. Thus, I agree with you that the restaurant was not lawfully constructed to begin with and that its continued presence on lakebed violates the terms of the lakebed grant. This conclusion also applies to the proposed "addition" to the restaurant contemplated in connection with the permanently anchored barge to be used for serving cocktails.

The obvious next question, however, is how or even whether the state should assert its reversionary interest at this late date. You note that the restaurant has been in business for nearly twenty years without objection from the state. Since no

action was taken twenty years ago to prevent its construction, and no attempt has been made since then to assert the state's reversionary interest, it would not seem to be an equitable or reasonable use of the state's prosecutorial discretion to now seek dismantling and removal of the restaurant.

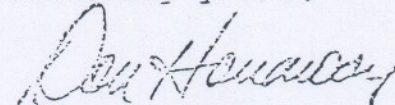
Unfortunately, the practical result is that Pieces of Eight continues to be spotlighted by would-be lakebed developers as an example of the state's inconsistent enforcement stance. I can only suggest that your agency candidly acknowledge that Pieces of Eight cannot be justified as a lakebed use consistent with public trust purposes, but point out that when the department discovers or the state is made aware of potential (or at least recent) lakebed development inconsistent with public trust purposes, it has a constitutional duty to prevent or abate misuse of the state's lakebed.

If such cases are brought to your attention, the appropriate way to assert the state's interest is to obtain the governor's or legislature's request to the attorney general to take legal action under section 165.25(1), Stats. This route is necessary because the attorney general has no independent authority to initiate litigation absent a specific legislative grant of power, Estate of Sharp, 63 Wis. 2d 254, 217 N.W.2d 258 (1974), and no specific statute authorizes the attorney general to take action in these cases.

By separate letter you requested additional advice as to the legality of Pieces of Eight's most recent proposal to permanently anchor a barge in the water next to the restaurant to be used with a portable bar for serving cocktails. This would seem to be no different from your initial inquiry: an anchored barge with portable bar for serving cocktails is no more a permissible use of state-owned lakebed than a restaurant.

I hope this guidance assists your agency in carrying out its public trust responsibilities. These are not easy issues to resolve, since potential developers invariably argue the economic benefits--particularly to urban areas--of their proposals. It must not be forgotten, however, that lakebed is premium real estate granted free of charge to municipalities. It is only reasonable to insist that public trust purposes be preserved so that all citizens of this state can enjoy equal access to the lakes which the state holds in trust for its people.

Sincerely yours,



Donald J. Hanaway
Attorney General

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 2

MANITOWOC COUNTY, WIS
FILED
MANITOWOC COUNTY
2011 FEB 15 PM 3:27

CITY OF TWO RIVERS,
THE LIGHTHOUSE ON THE LAKE, INC.,

LYNN JOHNSON
CLERK OF
CIRCUIT COURT

and

Case No. 09-CV-0565

THE LIGHTHOUSE INN, INC.,

Plaintiffs,

v.

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Defendant.

AFFIDAVIT OF BYRON DALE SIMON

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

BYRON DALE SIMON, being first duly sworn on oath, deposes and says:

1. I make this affidavit on the basis of my own personal knowledge and review of Wisconsin Department of Natural Resources (DNR) records and in support of defendant's Motion for Summary Judgment.

2. I am employed as the Chief Biologist, Waterways Protection Section with the DNR, Division of Water, working out of the department's Central Office in Madison, Wisconsin. I have held this position since 1983. My responsibilities in this position include the administration of the State's navigable waters protection laws in Chapters 30 and 31 Stats., and the State's wetland protection laws under s. 281.36 and s. 281.37, Stats., and all Wisconsin

Administrative Codes associated with those statutes. I also serve as the DNR lead coordinator for the review of hydropower projects in the state and I am the DNR's Statewide expert in navigability and ordinary high water mark determinations. Prior to 1983 I worked as a water management specialist for the DNR from 1975 to 1983 administering the State's navigable waters protection laws in nine counties in western Wisconsin.

3. I graduated from Eastern Illinois University with a Major in Botany and Minors in Zoology, Health Education and Driver Education. I have taken additional coursework from Colorado State University, University of Wisconsin-LaCrosse, University of Wisconsin-Madison and Madison Area Technical College for subjects related to hydrology, hydraulic engineering, surveying, botany, soil science, and pre-MBA coursework.

4. In February 2006, the City of Two Rivers filed a Petition for Declaratory Ruling requesting a determination regarding the location of the ordinary high water of Lake Michigan with respect to property located in the City of Two Rivers, Manitowoc County, Wisconsin. I was requested by the DNR regional office to become involved in the field investigations, ordinary high water mark determination, and declaratory ruling.

5. My role was to provide my expertise in assisting Kristy Rogers in the determination of the ordinary high water mark at this location, and to document artificial filling activities that have occurred in and adjacent to the Lighthouse Inn from a time period of approximately 1960 to the present. The following narrative and exhibits clearly show substantial unauthorized filling activities and associated artificial accretion of material on the bed of Lake Michigan that was conducted by the Van Lanens or under the direction of the Van Lanens, persons I know to be the owners or operators of the Lighthouse Inn.

6. The term accretion refers to the buildup of land either by natural or artificial forces on a beach. In a natural situation it is the deposition of water or airborne materials (generally sand, i.e. sand dunes). In the course of *natural* coastal processes on Lake Michigan beaches constantly change with the winds, water level and wave action of the lake. It is a natural process. During higher water years the shoreline of the beach moves inland and during low water years the beach moves waterward. It's a constant process of natural accretion and erosion. The process of *artificial* accretion, and on the other hand, the prevention of erosion occurs through a variety of man made processes in and adjacent to the property in question in this case. In an artificial situation accretion results from an act of man such as the construction of a groin, breakwater, wind fence or similar structure that captures wind and water driven materials on the beach. Perhaps a better example of how a wind fence can capture wind borne material is a snow fence installed next to a highway for the purpose of trapping snow and preventing drifting across the highway. The same principal applies on beaches where fencing or some type of artificial wall interrupts natural processes and facilitates the process of deposition.

7. I have participated in field visits at the Lighthouse Inn site on Lake Michigan. I have observed artificial accretion occurring immediately adjacent to and south, southwest of the Lighthouse Inn development as well as the construction of a rock embankment and other associated filling within this area.

8. Attached are true and correct copies of documents that demonstrate the artificial accretion activities and direct filling that have occurred in and adjacent to the Lighthouse Inn. I have identified specific landmarks on some of the documents for purposes of describing when and where filling/artificial accretion occurred. The attachments are described as follows:

- Pages 1 and 2 are photographs of the Lake Michigan shoreline at the Harbor Breakwater in Two Rivers looking south and north. Note the wind fence located

on the beach to capture wind and wave driven materials, particularly sand. This is a good example of artificial accretion.

- Page 3 is an aerial photograph of the shoreline at Two Rivers in 1961 prior to any filling activities that created the land where the Lighthouse Inn currently exists.
- Page 4 is a survey of part of the land that the Lighthouse Inn is located on and a description of the shoreline and waters edge in 1971.
- Page 5 is a 1971 aerial photograph of the survey on page 4. Note the location of the shoreline to the north of the Lighthouse Inn fill and south of the Lighthouse Inn fill.
- Page 6 is a 1973 photograph depicting the pre-existing shoreline north and south of the filled shoreline and depicting heavy armoring (riprap) along the artificial shoreline to prevent the fill from being eroded by wave action of Lake Michigan. The artificial armoring prevents the natural coastal process of accrete/erode from occurring.
- Page 7 is a 1979 aerial photograph depicting the addition to the Lighthouse Inn on the south and additional filling placed to facilitate the addition. Note the waters edge of Lake Michigan landward of the building on the south end.
- Page 8 is a 1983 aerial photo of the shoreline at the Lighthouse Inn, note location of the waters edge relative to the filled area. Also note the paved access from the parking lot to the waters edge on the west side of the new addition that is circled and the location of the waters edge relative to the paved access.
- Page 9 is a 1985 photograph of the Lighthouse Inn. Note again the location of the waters edge on the north and south ends of the artificial shoreline and the location of the paved access and fence just west of the new addition.
- Page 10 is a 1992 photograph of the Lighthouse Inn. Note the waters edge and exposed beach to the right of the new addition and the location of the paved access and fence.
- Page 11 is similar to page 10 except it extends toward the harbor more.
- Pages 12 and 13 are 2000 and 2001 photographs of the Lighthouse Inn. Note the lower water level of Lake Michigan, the additional heavy armoring along the artificial shore and the presence of a tree south of the fence immediately adjacent to the exposed beach and parallel to the access path.
- Page 14 is a contour map of the Lighthouse Inn and the land located to the south of the Lighthouse Inn surveyed on 02/10/2003. Note the width and height of the

sand/rock embankment on the left side of the map and it's relationship to the paved access and fence on the map. This is all filled lakebed.

- Pages 15, 16 and 17 are photographs of the Lighthouse Inn taken in December, 2005, note extremely low water level.
- Page 18 is a 2005 aerial photograph of the harbor breakwater and waters edge north and south of the harbor along Lake Michigan at Two Rivers.
- Page 19 is a photograph of the area just south of the Lighthouse Inn. The beach ends at approximately the highway ROW. Ms. Binsfield is standing just behind the fence on the south end of the Lighthouse Inn.
- Page 20 shows contrasting views of the area south of the Lighthouse Inn in 1982 and 2007. Note the SW corner of the hotel addition the shrub next to the building and the 4 fence panels in each photo and the paved access path in the 2007 photo. These important landmarks help identify the extent of the filling and artificial accretion that occurred over this 25 year period.
- Page 21 shows the striking differences of the lake Michigan shoreline in this location between 1982 and 2008. The location of the access path in both photo's is an excellent landmark in determining the extent of change that has occurred in the area to the south of the Lighthouse Inn due to artificial accretion and direct filling.
- Page 22 shows the extent of the filling and the growth of trees on the sand/rock embankment identified on page 14. The age of the trees on the embankment varies with time, the oldest trees, next to the steps leading lakeward, ranged from 0.9' dbh ("diameter at breast height") to 0.15' dbh on top of the sand/rock embankment where it terminates at the stormwater outfall channel. The difference in size of the trees is directly correlated to the time the sand/rock embankment was put in place and the time it took for the artificial accretion to occur on top of the rock. The vegetation on the natural sand dunes south of the stormwater outfall channel, see pages 15 and 16, had woody vegetation growing on top of the dune as well. The dbh of all of the woody vegetation ranged from .03' to a maximum of 0.13'. The reason for the difference in dbh north of the outfall channel and south of the outfall channel is attributed to the sand/rock artificial embankment that prevents the natural accretion and erosion processes from occurring. The natural dunes to the south would reflect natural accretion and erosion where the plants, woody species in particular, are all very young due to ever changing conditions in the natural dune. They come and go with time and changes in water levels on the lake.
- Page 23 is a photograph taken south of the stormwater outfall looking in a northerly direction toward the Lighthouse Inn. Note the trees on top of the sand rock embankment and how they run from the SW edge of the hotel addition along

the top of the embankment then gradually turn west toward the highway, all of this area was artificially manipulated, through artificial accretion, direct filling or the rock armoring in the sand rock embankment preventing erosion.

- Page 23a. is a close-up photograph of the sand/rock embankment looking northward toward the Lighthouse Inn.
- Page 24 are photographs taken from similar locations on the landscape looking northward toward the Lighthouse Inn.
- Pages 25 and 26 are photographs taken standing on top of the sand/rock embankment looking toward the Lighthouse Inn.
- Pages 27-29 are photographs of the filled area just south of the Lighthouse Inn. Note the location of the fence and the paved access path. Also note the size of the trees on the sand rock embankment and how they go from larger to smaller in a southerly direction.
- Page 30 is a close-up photograph of the sand/rock embankment.
- Page 31 is a photograph taken on the paved access path, north of the fence, looking southward down the sand/rock embankment.
- Page 32 is a photograph showing the location of the cross sections surveyed by WDNR and the location of the soil borings taken on 10/18/2007. The water level in Lake Michigan on the day we did the survey was 576.98, IGLD (International Great Lakes Datum).
- Page 33 is a cross-section of the landscape drawn to scale from STH 42 easterly to the waters edge of Lake Michigan.
- Page 34 is a photograph standing on top of a natural dune south of the stormwater outfall channel looking southerly. Note the small size of woody vegetation on top of natural dune.
- Page 35 is a photograph of me observing the trench I just dug on the landward side of the sand /rock embankment.
- Page 36 is a photograph of non-decomposed grasses found buried under sand approximately 0.6' below the land surface. The elevation where the non-decomposed grasses were found was 578.23, IGLD. The sand over the grasses was lacking evidence of any organic material suggesting the material placed over the grasses occurred at once and in a relatively short period of time. That conclusion is further substantiated by the fact that a very distinct organic layer is found immediately below the non-decomposed grasses.

- Page 37 is a photograph of soil boring #2 located in one of the lowest spots landward of the sand/rock embankment near cross-section 3 as identified on page 32.
- Page 38 is a photograph of a soil boring pit showing the presence of a very distinct organic layer. The elevation of the organic layer is 578.17, IGLD. The organic layer was found under 0.5' of sand.
- Page 39 is a photograph of soil boring #3 and identified on page 32.
- Page 40 is a photograph of soil laden with clam shells found 2.2' below the soil surface with water present. This elevation was 577.12 IGLD. Please direct your attention back to page 4 and note the surface water elevation information depicted on the diagram. All elevations are in IGLD datum. 1935, Low Water, elevation 578.56, 1886 High Water, elevation 583.70, water elevation in June, 1971, elevation 580.85, water level in March, 1965, elevation 577.60.

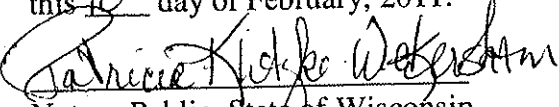
9. Therefore the evidence provided on pages 1-40 clearly shows that the area where the Lighthouse Inn is located and the area south of the Lighthouse Inn parallel to STH 42 down to the stormwater outfall canal has been filled as a result of artificial accretion and other man induced activities including the placement of a sand/rock embankment and the direct placement of fill into this area by the Van Lanens or at the direction of the Van Lanens.

10. Lastly, I have reviewed the work of Ms. Kristy Rogers and directly participated in the development of materials and information she used in making her determination of where the ordinary high water mark is located along Lake Michigan south of the harbor breakwater down to the stormwater and concur with her determination.

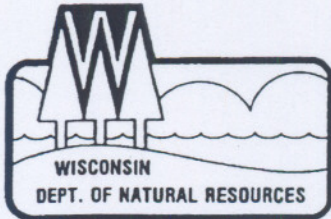
Dated this 10th day of February, 2011.


BYRON DALE SIMON

Subscribed and sworn to before me
this 10th day of February, 2011.


Notary Public, State of Wisconsin
My Commission: 8/10/2014

1:30



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

Box 7921
101 South Webster Street
Madison, Wisconsin 53707-7921
TELEPHONE 608-266-2621
FAX 608-267-3579
TDD 608-267-6897

June 10, 1996

IN REPLY REFER TO: 8300

Mr. F. Thomas Ament
County Executive
Milwaukee County Courthouse
901 North 9th Street
Milwaukee, WI 53233

SUBJECT: Development of the Coast Guard Station on Lake Michigan

Dear ^{Tom} Mr. Ament:

We met recently to discuss issues between Milwaukee County and the Department of Natural Resources. One of the issues we discussed related to proposals for the redevelopment of the abandoned Coast Guard Station, which is located on filled lakebed adjacent to Lake Michigan. This letter is in response to your request that I outline the legal limitations which exist for developments in our public trust waters, including filled areas of our Great Lakes.

Under the Wisconsin Constitution, Article IX, Section 1, the State of Wisconsin holds all navigable waters in trust for the people of the State of Wisconsin and the nation. This was a condition of statehood under the Northwest Ordinance of 1787. The State has an affirmative obligation to assure that these public trust lakebed areas, including those that are filled pursuant to state authorization, are maintained and used for appropriate public trust uses.

The Attorney General, in a 1989 opinion dealing with the enforcement authority of the Department of Natural Resources relative to areas filled pursuant to lakebed grants, stated:

As trustee of lakebed lands, "[t]he state has no proprietary interest in them," McLennan v. Prentice, 85 Wis 427,444 (1893), and thus cannot convey complete title to them. Even though the Legislature may make a grant of land for public trust purposes, "the state is powerless to divest itself of its trusteeship as to submerged lands under navigable waters...." Priewe v. Wisconsin State Land & Improvement Co., 103 Wis. 537, 548 (1899). The state "cannot abdicate its trust in relation to them, and while it may make a grant of them for public purposes, it may not make an irrevocable one...."

In its creation of section 30.03(4)(a), the Legislature has insured that the state retains its paramount authority over all navigable waters, even those whose bed has been granted to municipalities. Using its investigatory and fact finding power... the department [of natural resources] has the mechanism to determine whether the activities causing the infringement are in violation of the lakebed grant, making it subject to revocation or reversion. (78 OAG 107(1989))

Quality Natural Resources Management
Through Excellent Customer Service



In accordance with this opinion and the decisions of the Wisconsin Supreme court, the lakebed grant to Milwaukee County gives the County a measure of control over the use of this land area, but the extent of that control is limited under the public trust doctrine and is subject to continued scrutiny by the State of Wisconsin.

As you are aware, the Department has reviewed, and is supportive of, the "Great Lakes Future" proposal for redevelopment of the Coast Guard Station. We believe it is consistent with the public trust doctrine. This type of specialized educational facility can have significant positive impacts on the public's understanding of and appreciation for our Great Lakes and their associated resources and values.

The Department of Natural Resources has been involved with various proposals for redevelopment of the Coast Guard Station and the McKinley Marina area since 1983. At that time, we reviewed the "Marina Shores" plan which proposed to convert the Coast Guard Station "for restaurant purposes" and to develop other commercial facilities on an eight acre site. The Department appeared at the public hearings on that proposal in July, 1984 and explained why the proposed commercial developments could not take place on lakebed.

A 1989 proposal included the construction of a restaurant and bar facility adjacent to the existing Coast Guard building. There were numerous meetings and discussions concerning that proposal between Milwaukee County staff and Department staff. I will not reiterate all of those discussions and correspondence here, but the Department outlined the legal and practical reasons why such a commercial development is inappropriate on public trust lakebed areas.

During this time period, there were numerous other proposals around the State of Wisconsin for commercial developments in our lakes and rivers. Department staff developed materials for distribution to our District Directors which outlines the basis for our authority and the rationale for our position relative to various development proposals. I have included a copy of the internal memorandum and Attachment 2 to this memorandum, which provides an outline of the types of proposals we have reviewed and the Department's reaction to them. This embodies our position relative to these types of proposed facilities and is based on the decisions of the Wisconsin Supreme Court and Attorney General's letters and opinions dealing with these issues.

As outlined in this document, based on the decisions of the Wisconsin Supreme Court interpreting Article IX, Section 1 of the Wisconsin Constitution, it is clear that developments in our lakes and rivers must be "substantially related to navigation and its incidents." The document goes on to state that:

This means that such development must be connected to commercial navigation or to public recreation associated with the use or enjoyment of the waterway. Even the most "liberal" interpretations of the Constitution have required this linkage to be made. While the kinds of development within waterways is thus limited, the trust doctrine is clearly not an anti-development policy. Instead, it is a confirmation that the uses must be consistent with the purposes for which those waterways are held in trust for the public. This is true whether the development is "commercial" or "public" in nature.

In dealing with these issues around the State, we are often asked how the Pieces of Eight restaurant is allowed to be maintained on filled lakebed in Milwaukee. This facility was developed prior to the formation of this Department and is not a permissible use of lakebed. We requested an opinion from the Attorney General in 1987 concerning the Pieces of Eight and a proposed expansion of that facility. I attach for your review a copy of the

response from Attorney General Hanaway, in which he opined that this restaurant facility "was not lawfully constructed to begin with and its continued presence on lakebed violates the terms of the lakebed grant." He noted that the State would not pursue removal of the Pieces of Eight facility since "it would not seem to be an equitable or reasonable use of the state's prosecutorial discretion to now seek dismantling and removal of the restaurant." He further stated that no expansions of the Pieces of Eight resaurant and bar facilities should be allowed.

In response to numerous proposals we have received to place restaurant facilities on filled lakebed areas around the state, we have developed internal Guidelines for Food Service in Lakebed Areas to assist our staff in reviewing such proposals. We recognize that parks, marinas, museums, and other facilities which are developed on filled lakebed often desire to provide some food service for the public using these facilities. Examples on the Milwaukee waterfront are the park kiosks, the Roundhouse facility at McKinley Marina, and the cafeteria at the War Memorial. These facilities are acceptable because they are "ancillary to, and have the primary purpose of supporting, allowable public trust uses." If the "Great Lakes Future" facility is developed in the Coast Guard Station, we would anticipate that it would provide some food service for the people visiting and using the facility. We believe that would be allowable under the public trust doctrine if such food service facilities are appropriately sized and are operated in such a manner that they are "ancillary" to the primary use of the facility.

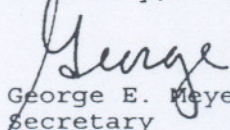
We continue to object to the development of "destination" restaurants, bars, or similar commercial facilities on lakebed or riverbeds around Wisconsin. These types of developments are clearly not consistent with the provisions of our constitution.

We have conferred with the Attorney General's office at great length concerning the issues above and they concur in our position relative to these types of developments in our public trust waters, including, specifically, the restaurant developments which have been proposed historically at the Coast Guard Station.

We recognize the extremely high potential financial return from commercial development on prime sites such as the lakefront. We also understand the fiscal stress experienced by government agencies. This dilemma confronts us in managing our state park system. Milwaukee County has long been considered a leader in preserving open space and providing park facilities. I hope we can share experiences and expertise in seeking creative ways to continue providing attractive public spaces with facilities available to all citizens.

In closing, I would like to reiterate that we stand ready to work with you to assure that the Coast Guard Station and the associated lakebed areas are developed in a manner which fulfills our mutual responsibilities for these public trust lands. If you have questions about these issues or have additional issues which you would like to discuss, please feel free to contact me.

Sincerely,


George E. Meyer
Secretary

cc: Secretary James Klausel
Gloria McCutcheon- SED
Lee Kernan-FH/4
Attachments

Tom - I checked on the "retail" component of the Madison Convention Center. It is limited to a "gift-souvenir shop similar to the War Memorial."

Attorney General James Doyle
Susan Sylvester-AD/5
Michael Cain-LC/5