

**From:** Smith, Jim R [<mailto:JSmith@pinkertlawfirm.com>]  
**Sent:** Tuesday, July 16, 2013 11:38 AM  
**To:** Schenker, Don  
**Cc:** Nesbitt, Randy J; [molejniczak@sturgeonbaywi.org](mailto:molejniczak@sturgeonbaywi.org)  
**Subject:** City Waterfron Property

Good morning Don. We have not communicated or spoken for a while and I hope that all is well. We represent the City of Sturgeon Bay and are asking your company to insure a parcel of land on the west side of Sturgeon Bay that was filled long ago pursuant to the establishment of a bulkhead line by the City back in the 50's. The City retained Wally Arts to do some research on this matter and render an opinion, and I see that Nick at Peninsula Title has forwarded her opinion and information to you. If you have any questions of me or the City regarding this matter please feel free to contact me. I worked with Ms. Arts on this matter and have an extensive file regarding it. I am hopeful that you will give Nick the green light to issue a commitment we can live with. I note that Nick will be gone until the end of the month, but if I can answer any questions in the meantime which will help move this matter along please contact me. Thank you.

**From:** Schenker, Don [<mailto:dschenker@firstam.com>]

**Sent:** Thursday, July 18, 2013 9:18 AM

**To:** Smith, Jim R

**Cc:** Holly Haines ([hhaines@baytitle.com](mailto:hhaines@baytitle.com))

**Subject:** RE: City Waterfront Property

Goof Morning Jim:

We have given this proposal much thought. We have discussed it among the ourselves here in the First American state office.

Because the public trust doctrine is a state constitutional concept, we cannot get a comfort level that irrespective of the what the State of Wisconsin may be saying today, today's position may not bind future state governments, executive and judicial.

Although it is not dispositive, the fact that the use contemplated by this redevelopment includes private commercial uses is big concern.

We do not lightly turn down the opportunity to write title insurance on what may be a major redevelopment project, but in this case, we must do so.

This proposal deserves the greatest consideration that the title industry can give it.

While First American has this view, some other company may take a different view.

I am sure Holly will ask her other underwriter to give this proposal careful consideration.

**Donald L. Schenker**

Assistant Vice President

First American Title Insurance Company

**From:** Smith, Jim R [<mailto:JSmith@pinkertlawfirm.com>]  
**Sent:** Thursday, July 18, 2013 11:12 AM  
**To:** Schenker, Don  
**Cc:** [artswa@charter.net](mailto:artswa@charter.net); Nesbitt, Randy J; [hhaines@baytitle.com](mailto:hhaines@baytitle.com)  
**Subject:** RE: City Waterfron Property

Don. Thank you for your response. Disappointing but I understand your company's position. What if we were to contact DNR and they were willing to accept Ms. Arts' opinion and agreed to enter into a stipulation to the effect that they admit the legality of the City's position with respect to the filled lands with a legal description of the subject property so that it could be recorded in the office of the Register of Deeds? Would your view change?

**From:** Schenker, Don [mailto:dschenker@firstam.com]  
**Sent:** Thursday, July 18, 2013 11:37 AM  
**To:** Smith, Jim R  
**Subject:** RE: City Waterfron Property

Jim:

Because our concern is founded on the State Constitution, any stipulation entered into by the current DNR would not bind any future Wisconsin DNR or court. That is what makes this matter so difficult. I do not see how one gets a definitive answer that is never subject to some future attack.

Given the big dollars that may eventually be involved here, I cannot see a way to allay our apprehension.

**Donald L. Schenker**  
Assistant Vice President  
First American Title Insurance Company

**From:** Smith, Jim R  
**Date:** July 18, 2013 9:19:58 AM CDT  
**To:** "Nesbitt, Randy J" <RNesbitt@pinkertlawfirm.com>  
**Cc:** "artswa@charter.net" <artswa@charter.net>  
**Subject:** **FW: City Waterfron Property**

The not so good news from First  
American Title.