

Sent: Mon 10/21/2013 08:09 AM
From: "McNeil, Stephen"
<smcneil@sturgeonbaywi.org>
To: "Smith, Jim R"
<JSmith@pinkertlawfirm.com>
CC: "Olejniczak, Marty"
<MOlejniczak@sturgeonbaywi.org>, "Nesbitt,
Randy J" <RNesbitt@pinkertlawfirm.com>
Subject: DNR
Attachments:

Good morning Jim –

Thank you for the meeting on Friday. I thought Attorney Arts comments were very informative and to the point. I think the city has to trust her suggestions and follow them., I know that there will be some that think that we should go directly to the governor, I think that we should hold that in reserve.

Attorney Arts stated that she felt our chances of achieving our goal is only 50%. Do you concur? How long do you think that the process that is recommended will take? The city is spending money with consultants and is meeting with developers to complete the project. Based on our conversations on Friday I am beginning to feel that we should slow down, minimize our financial investment, certainly not mislead developers. Pursuing the project with a revised/scaled down plan maybe what we should consider.

Also, I do think that the question of the City's ability to indemnify the developer (i.e. Title Company) is an important one.

Steve

Stephen B. McNeil, City Administrator
City of Sturgeon Bay
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Sent: Thursday, November 21, 2013 4:35 PM
To: Jim Smith; Randall J. Nesbitt; McNeil, Stephen
Subject: conference call with Tom German
Importance: High

I spoke with Tom German from the Board of Commissioners of Public Lands. He was pretty informative of how the Public Trust Doctrine, Lake Bed Grants, Bulkhead Ordinances, etc play into our situation. Basically, while he stopped short of saying we're screwed, I think we're screwed.

He agreed to have a conference call so that the city administrator and city attorney can also hear his thoughts (I had originally asked him to email me a time so that we could collectively call him, but he called me direct instead). The call is scheduled for 9:30 AM on Friday. Let me know if you can participate.

Marty Olejniczak
Community Development Director
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November 22, 2013

Atty. Waltraud A. Arts
530 West Doty Street, Suite 203
Madison, WI 53703

RE: City of Sturgeon Bay West Waterfront

Dear Wally:

On November 22, 2013, Jim Smith and I were invited to City Hall to sit in on a phone conference between Marty Olejniczak, Steve McNeil and Tom German of the Board of Commissioners of Public Lands. We had an opportunity to participate in the discussion with Mr. German. Overall, he was very sincere and helpful in that he wanted to do what he could to assist the City of Sturgeon Bay.

We quickly learned, however, that the authority of the Board of Commissioners of Public Lands is very limited. While they have the authority to lease land owned by the state, they are limited under Wis. Stats. §24.39 (4) to entering into leases of no more than 50 years upon land which is upon or under a navigable waterway, and the purpose can only be for harbor or navigational improvements or, if to a municipality, for recreational purposes. There is no authority to enter a lease for commercial purposes.

The lease authority of his agency only comes into play when DNR makes a finding that the lease would be consistent with the public trust doctrine.

Mr. German indicated that they have no authority to convey title to such property. He noted that, in the past, the legislature has had two lakebed grants to the City of Sturgeon Bay. He responded to a question about another lakebed grant for the current purpose and indicated that, while this is outside of his agency's jurisdiction, he believed that Article IX of the Wisconsin Constitution would probably prevent a grant of lakebed for uses other than public purposes, harbor, navigational improvements or recreation. He also suggested that there are groups which would likely oppose such a grant and may go so far as to file a lawsuit to challenge such a grant.

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Mr. German suggested that Megan Correll, a DNR attorney, would be the best source for discussing a lakebed lease. He suggested that if the city was going to construct improvements beyond the ordinary high water mark, it may be in their best interest to have a lakebed lease.

Following this meeting, it was the feeling of all four of us in the room that proceeding further with the Board of Commissioners of Public Lands was not a good option. Their involvement is triggered by the location of the ordinary high water mark. It seems that the key to this entire issue is trying to get DNR to move the ordinary high water mark to the existing bulkhead line. It is my belief that we should focus on that effort. Given that local DNR has expressed an unwillingness or inability to do so, it seems that at this point we ought to be looking at assistance from the governor's office. I suggested to Steve and Marty that it may be wise to confer with Jean Romback-Bartels of our intent to discuss this with the governor's office to find a way to assist DNR in arriving at a remedy for the city, so that we are not going behind her back. We obviously would like your thoughts in where to proceed from here.

Sincerely,

PINKERT LAW FIRM LLP



Randall J. Nesbitt

RJN:hb

Via Email (artswa@charter.net)

cc: Mr. Steve McNeil
Mr. Marty Olejniczak
Atty. James R. Smith

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