

Sent: Wed 07/23/2014 06:47 AM
From: "German, Tom - BCPL"
<Tom.German@wisconsin.gov>
To: "Smith, Jim R"
<JSmith@pinkertlawfirm.com>,"McNeil,
Stephen
(smcneil@sturgeonbaywi.org)"
<smcneil@sturgeonbaywi.org>,"Marty
Olejniczak
(molejniczak@sturgeonbaywi.org)"
<molejniczak@sturgeonbaywi.org>
CC: "Nesbitt, Randy J"
<RNesbitt@pinkertlawfirm.com>,"Correll,
Megan E - DNR"
<Megan.Correll@wisconsin.gov>
Subject: RE: City of Sturgeon Bay west side waterfront
redevelopment
Attachments:SturgeonBayAnalysis-USWarDepartment-MARKUP (4).pdf Meeting Recap 2014 July 8.docx

Dear Jim,

I have attached the summary you requested along with a copy of the composite map I brought to our last meeting.

Sincerely,

Tom German, Deputy Secretary
Board of Commissioners of Public Lands
101 E. Wilson Street, 2nd Floor
P.O. Box 8943
Madison, WI 53708
(608) 267-2233 (direct line)
(608) 267-2787 (fax)

Sturgeon Bay Waterfront Analysis
T27 R26 E S 07, Door County, WI



INTERNAL USE ONLY

Original Survey
Shore Meander

Orthance 460 Shore
Line (Bulkhead Line)

Original Survey
Shore Meander

INTERNAL USE ONLY

Overlays:

Georeferenced 1925 US War Department Map Image
2010 WROC Ortho Photo

This map is for informational purposes and may not have been prepared for or be suitable for legal applications or recording purposes.
It does not represent a wet-line-ground survey and represents only the approximate relative location of property boundaries.

BCPL I/T
06/04/2014

It was good to see all of you again last week. Pursuant to Jim's request, I have attempted to compile a summary of our discussion. I apologize for my wordy letter, but I thought it was important to be thorough enough to keep us all on the same page.

As promised, I have attached an electronic copy of the composite map I brought with me to the meeting. The map was created by our information systems employee by "layering" and coordinating different historical maps onto one consolidated document. The different maps have different degrees of transparency that allow us to see different features from different times on the same map. I do have to include a small disclaimer here. Please note, this map is only an estimate of the exact locations of points. This composite map and some of the underlying maps were created by geographic information systems technology, not by licensed surveyors. That said, I think the map does a decent job of showing the approximate location of different points of interest in that area.

IMPORTANT MAP DISCLOSURES

- The original meander line of the bay noted by the original surveyor in 1835 appears to run through the current location of the intersection of Maple Street and Neenah Avenue. This meander line is marked in pale blue. Please note, the original plat map used in this composite was created in 1836.
- In 1925, The US War Department issued a map depicting the waterfront area of Sturgeon Bay. This map showed the location of the shoreline at that time, the names of certain docks and the depth of the water in the bay. The upland areas from this 1925 map show up as lighter areas on the overlay map. The 1925 map shows the Teweles & Brandeis Wharf on which now stands the vacant grain elevator. The map also shows that some of the areas between the docks were dry land and the water depths between the docks were very shallow (1- 4 feet). This might be interpreted as "littoral drift" and accretion between the docks.
- In December 1955, the City of Sturgeon Bay adopted a bulkhead line ordinance which was approved later that month by the Wisconsin Public Service Commission. The paperwork at that time showed that the shoreline had moved North and East to the broken line marked in light blue on the composite map. The bulkhead line is marked in a darker blue on the composite map.
- The City of Sturgeon Bay is now seeking to acquire merchantable title to a certain area outlined in red on the composite map. This area lies between the original meander line as noted in the 1835 survey and the shoreline as it existed in 1955 prior to the adoption of the bulkhead line and additional filling.

ACTION ITEMS

1. It is my understanding that as of this date, the local title company has declined to issue any title insurance on the parcel outlined in red and described above. It is my understanding that Attorney Smith will set up a conference call with title company officials, City Officials, DNR staff and BCPL staff to determine what documentation the title company requires in order to issue a title commitment and policy for the parcel. (Please note that I will be out of the office for meetings the week of July 21, but may be able to participate by phone). BCPL and DNR staff will work to the best of their abilities (but within their authority and jurisdiction) with the City and title company to provide or acquire the necessary documentation to enable the title company to issue such commitment and policy.
 - a. Please note, if the City intends to be the lessee of the proposed submerged lands lease described below, the City will have to retain a thin strip of ownership on the Northeastern edge of this parcel so that the City remains the riparian owner in that area. You may recall that BCPL may only lease to the riparian owner. If the City conveys all of its interest in this parcel, the new owner would then be considered the riparian and be the only entity eligible to lease in this area.

2. It is further my understanding that the City of Sturgeon Bay is interested in obtaining a submerged lands lease from the State of Wisconsin, Board of Commissioners of Public Lands for the area lying between the shoreline as it existed in 1955 and the bulkhead line. This proposed lease area was filled subsequent to the adoption of the bulkhead line in December 1955.
 - o The City will need to confirm its request for the lease in writing to DNR and BCPL. Megan Correll and Tom German will be the appropriate contacts for such letter.

 - o The City will need to provide some evidence of its status as the riparian owner across the leasing area since BCPL may only lease to the riparian owner.
 - For the Eastern part of proposed lease area, it is my understanding that there is no other entity currently holding any title or interest Northeastward of Maple Avenue. Confirmation of this fact will not only serve as the starting point for Action Item #1 above, but also provide support for leasing authority in this area.

 - For the Western part of the proposed lease area, the picture is a bit murkier. The City has not asked for DNR or BCPL assistance on clearing title to the area that now holds the vacant grain elevator as it is my understanding that the City had previously obtained title insurance for such parcel. However, it is further my understanding that the policy contained the standard exception for areas "lying below the ordinary high water mark." This exception may significantly impair the value of the policy if most or all of such parcel is deemed to be below

the ordinary high water mark. From an initial review of the maps and documents covering this area, there is a very strong likelihood that this is the case. In any event, it is critical to resolve the ordinary high water mark and ownership issues in this area in order for the City to:

- Determine whether or not it has merchantable title to this parcel;
 - Finalize its development plans for the area,
 - Determine the riparian owner in this area so that the Western waterfront area might be included in the submerged lands lease, and
 - Give proper guidance to the surveyor as to the dimensions of the proposed lease area.
- The City will need to engage a surveyor to survey the boundaries of the proposed lease area.
- In the Eastern part of the proposed lease area, it appears that the Northeastern boundary of the parcel discussed in Action Item #1 above would likely be the same as the Southern boundary of the proposed lease area.
 - The bulkhead line could serve as the Northern boundary of the lease area. However, I do not know where the current dock improvements are located with respect to the bulkhead line. (The City would want to make sure that the fill and dock wall improvements are located within the proposed leased area). The City may want to push the lease area line out a few more feet to give the City some additional room for dock wall improvements or reinforcements if necessary.
 - The location of the Western boundaries of the lease area needs a bit more discussion as there are some significant uncertainties here. There should be another discussion between the parties to confirm the location of the plot points of this survey before the City incurs the cost of the survey.
- A submerged lands lease requires the DNR to make certain findings that the improvements are consistent with the public interest in the navigable waters. Megan Correll will begin work on coordinating the drafting of the findings and provision of the requisite public notice. Megan's work is partially contingent upon her receipt of the completed survey and also the delivery of a detailed description from the City as to the proposed uses of the leased area. (As we discussed, the scope of BCPL's statutory leasing authority is very limited and the proposed uses must fall within that authority)
- Tom German of BCPL will commence work on drafting a submerged lands lease for the City. This work is contingent on the City's and the DNR's responsibilities described

above. However, Tom will begin work while those other matters are in process so as not to delay the project.

I look forward to working with everyone on resolving the challenges we have discussed. I believe that we are on the same page with most of the issues. However, as you can probably tell by my tone above, I remain concerned regarding the status of the area containing the vacant grainery as that issue may have the capacity to negatively impact the overall development plans.

Again, I apologize for the length of the letter. If you have any questions, please do not hesitate to ask. I look forward to our conference call with the title company. My thoughts and prayers are with you and your community in the days ahead as you deal with the aftermath of the recent storm.

Sincerely,

Tom

Sent: Mon 03/31/2014 04:16 PM
From: "German, Tom - BCPL" <Tom.German@wisconsin.gov>
To: "Olejniczak, Marty" <MOlejniczak@sturgeonbaywi.org>, "McNeil, Stephen" <smcneil@sturgeonbaywi.org>, "jsmith@pinkertlawfirm.com" <jsmith@pinkertlawfirm.com>, "rnesbitt@pinkertlawfirm.com" <rnesbitt@pinkertlawfirm.com>
CC: "Correll, Megan E - DNR" <Megan.Correll@wisconsin.gov>, "Johnson, Kenneth G - DNR" <Kenneth.Johnson@wisconsin.gov>
Subject: Sturgeon Bay waterfront redevelopment
Attachments:

Hi Folks,

It was nice to meet you all today. We appreciate the thought and effort that went into your revised waterfront development plans.

I thought it would be best to send you an email while everything from the meeting was still fresh in my mind.

- 1) I spoke with Dawn Vick at the Department of Administration regarding other possible grant options. Other than Coastal Zone Management (who you already talked to), she suggested that you contact Tom Clippert at DOA. He works with Community Development Block Grants and focuses on housing projects. Since you mentioned the nearby housing development, you may want to investigate this option further. Tom's phone number is (608) 261-7538.
- 2) I know you are looking for grant money, but if you need some flexible financing to bridge the gap on this or other community projects, please consider the State Trust Fund Loan program administered by BCPL. We have \$100 million available for lending right now. Our rates are competitive with the bond market but we don't charge any fees. (No application fees, no underwriting fees, no credit rating fees. No fees period) We can tailor the amortization of the loan to the expected cash flow of your project. We may be the easiest lender that you've ever dealt with. And since we make these loans from educational trust funds that we manage, 96 cents out of every dollar of interest you pay goes back to communities in the form of library aid. Last year, we gave Sturgeon Bay School District \$43,018 from the earnings of the Common School Fund. We like to think of ourselves as the Statewide Lender that pays local dividends. I have imbedded a link to the webpage for our loan program.
<http://bcpl.wisconsin.gov/section.asp?linkid=1438&locid=145>
- 3) It is my understanding that the City of Sturgeon Bay will hire a licensed surveyor to survey:
 - a. The line separating upland from lake bed according to the Public Service Commission determination made in the 1950s.
 - b. The metes and bounds of the parcel for which the City is seeking title insurance.
- 4) You are going to verify whether the City has good title to all of the upland that lies adjacent to the original meander line surveyed in the 1800s. For your convenience, I have imbedded a link to the BCPL website which contains the original plat maps and survey notes which show those meander lines.
<http://digicoll.library.wisc.edu/SurveyNotes/>
- 5) Based upon your survey and verification of the PSC information, the DNR may issue some document that confirms the location of the ordinary high water mark.
- 6) The statute we discussed regarding "boundaries of lands adjoining waters" is Wis. Stats. Section 30.10(4)(b) "The boundaries of lands adjoining waters and the rights of the state and of individuals with respect to all such lands and waters shall be determined in conformity to the common law so far as applicable, but in the case of a lake or

stream erroneously meandered in the original U.S. government survey, the owner of title to lands adjoining the meandered lake or stream, as shown on such original survey, is conclusively presumed to own to the actual shorelines unless it is first established in a suit in equity, brought by the U.S. government for that purpose, that the government was in fact defrauded by such survey. If the proper claims of adjacent owners of riparian lots of lands between meander and actual shorelines conflict, each shall have his or her proportion of such shorelands.”

- 7) With the information from above (and a map that hopefully BCPL's computer expert can generate), I will help the City request a disclaimer of interest from the Bureau of Land Management.
- 8) The City would record that disclaimer of interest with the Door County Register of Deeds.
- 9) The combination of that disclaimer of interest and the DNR's confirmation of the location of the ordinary high water mark should be sufficient for the title insurance company. (I would not be surprised if the title company wants to somehow record the DNR's confirmation of ordinary high water mark.)
- 10) Finally, Megan and I will talk within the next two weeks regarding the possible need for a lakebed lease. If we determine we need any additional information, we will let you know.

I hope you have a pleasant ride home. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Tom German, Deputy Secretary
Board of Commissioners of Public Lands
101 E. Wilson Street, 2nd Floor
P.O. Box 8943
Madison, WI 53708
(608) 267-2233 (direct line)
(608) 267-2787 (fax)