

FRIENDS OF THE STURGEON
BAY PUBLIC WATERFRONT,
SHAWN M. FAIRCHILD,
CARRI ANDERSSON,
LINDA COCKBURN,
RUSS COCKBURN,
KATHLEEN FINNERTY,
and
CHRISTIE WEBER,

Case No. 16-CV-23
Code: 30701

Plaintiffs,

vs.

CITY OF STURGEON BAY,
a Wisconsin municipal corporation,
and
WATERFRONT REDEVELOPMENT AUTHORITY
OF THE CITY OF STURGEON BAY
a municipal redevelopment authority,

Defendants.

JUDGMENT

This matter having come for trial on February 9 and 10, 2017, before the Door County Circuit Court, the Honorable Raymond S. Huber presiding without a jury, and there having been appearances by Attorneys Mary Beth Peranteau of Wheeler, Van Sickle & Anderson, S.C., and Sarah Geers of Midwest Environmental Advocates on behalf of the Plaintiffs, and by Attorneys Remzy Bitar and R. Valjon Anderson of Arenz, Molter, Macy, Riffle & Larson SC on behalf of the Defendants;

NOW, THEREFORE, upon the evidence admitted a trial, the briefs and arguments of the parties and the file and record herein, the Court hereby finds as follows:

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1. Defendants claim title to a parcel of real property located at 92 East Maple Street in the City of Sturgeon Bay ("Parcel 92"), more particularly described as:

Being a part of Lot One (1), Block Nine (9), according to the recorded Plat of Harris First Addition and also a part of Lots One (1), Six (6) and Seven (7), Block Eight (8) of Bay View Plat, and all of Lots Two (2), Three (3), Four (4) and Five (5), Block Eight (8), of Bayview Plat, and part of Subdivision 76, all 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, described as follows:

Commencing at the intersection point of the East line of Neenah Avenue and the North line of Maple Street; thence North 89 deg. 59 min. 38 sec. West, 91.92 feet along the North line of Maple Street to the point of beginning of lands to be described; thence North 13 deg. 34 min 55 sec. East, 47.11 feet; thence North 33 deg. 52 min. 22 sec. East, 263.80 feet; thence North 47 deg. 16 min. 59 sec. West, 200.38 feet; thence South 42 deg. 16 min. 00 sec. West, 229.08 feet; thence South 40 deg. 01 min. 00 sec. West, 33.71 feet; thence South 32 deg. 53 min. 44 sec. West, 33.77 feet; thence West 92.01 feet; thence South 06 deg. 01 min. 06 sec. East, 178.01 feet to the North line of Maple Street; thence South 89 deg. 59 min. 38 sec. East, 256.57 feet along said North line to the point of beginning.

Property Address: 92 E. Maple Street Sturgeon Bay, WI 54235

Tax Parcel Number: 281-12-10080101

2. Parcel 92 is basically the remnants of a dock and operating system started by prior riparian owners who extended the dock and filled beneath it.
3. Parcel 92 is largely or wholly owned by the State in trust for the benefit of the public under the public trust doctrine, Wis. Const., Art. IX, sec. 1, and may not be conveyed to a private party. In the course of this litigation, neither party has shown the Court where the ordinary high water mark will be, there may be some portion of Parcel 92 which may be above the ordinary high water mark.
4. The Wisconsin Department of Natural Resources has not made an Ordinary High Water Mark ("OHWM") determination on Parcel 92.
5. Subject to the findings in paragraphs 2 and 3 above, the Court is unable to make a determination of the location of the OHWM on Parcel 92. Absent some determination, at some point in time, by the Wisconsin Department of Natural Resources as to where the actual ordinary high water mark is, of which there is insufficient evidence in this action, Parcel 92 cannot be sold.

6. Defendants claim title to a parcel of real property located at 100 East Maple Street in the City of Sturgeon Bay formerly known as Tax Parcel No. 281-2415090101, consisting of parts of Document Nos. 318850 and 783268, excepting part of Document No. 580907 ("Parcel 100"). A portion of Parcel 100 is more particularly described as:

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 feet; 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°59'38"E -- 0.32 feet along said north line to the point of beginning.

7. The Wisconsin Department of Natural Resources issued a WDNR Concurrence With Approximate Location of the Ordinary High Water Mark for the City of Sturgeon Bay West Side Waterfront Project, recorded in the office of the Door County Register of Deeds on October 28, 2014, as Document No. 782928 (the "Concurrence"), which concurs in the location of the OHWM for Parcel 100.
8. The portion of Parcel 100 lying landward of the OHWM as found in the Concurrence, more particularly described in paragraph 6 above, is owned by the City of Sturgeon Bay.
9. The portion of Parcel 100 lying waterward of the OHWM, as found in the Concurrence, is owned by the State in trust for the benefit of the public under the public trust doctrine, Wis. Const., Art. IX, sec. 1, and may not be conveyed to a private party.

Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. Defendants are permanently enjoined from conveying Parcel 92 to a private party and from using Parcel 92 in a manner that is inconsistent with public or navigation-related uses as provided by Wisconsin statute and case law under the public trust doctrine, Wis. Const., Art. IX, sec. 1. This paragraph is subject to modification upon application to this

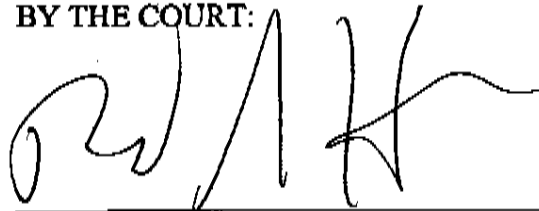
Court following a declaratory ruling by the Wisconsin Department of Natural Resources determining the OHWM for Parcel 92.

2. Defendants are permanently enjoined from conveying that portion of Parcel 100 lying waterward of the OHWM set forth in the WDNR Concurrence to a private party and from using said property in a manner that is inconsistent with public or navigation-related uses as provided by Wisconsin statute and case law under the public trust doctrine, Wis. Const., Art. IX, sec. 1.

This is a final judgment for purposes of appeal.

Dated this 8th day of March, 2017.

BY THE COURT:



Honorable Raymond S. Huber
Circuit Judge

This document drafted by:
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