Help Us Stop the Grab of Sturgeon Bay

"This Court is convinced that the law is clear that a riparian owner can't retain title to lakebed property by filling that is done by that riparian owner. And that's what's happened with Lot 92." said Judge Huber as he ruled from the bench in Door County Circuit Court in February regarding Sturgeon Bay's west waterfront.

The mayor's reaction to this clear ruling blocking the sale of public land is to entrench his position and enrich the developer. Aided by local legislators the mayor plans to chip away at your rights through an attempt to enact a law that undermines the Judge's ruling. The court's ruling was based on the public trust doctrine which is founded in our state constitution. This attempt by the mayor and local legislators is a "grab" of your lakebed trust lands and of your constitutional rights.

The public and members of the Friends of the Sturgeon Bay Public Waterfront find this idea flawed in concept and structure.

The conceptual flaw is self-evident. The mayor wants to change a law to "go back in time and fix" his conduct which was exposed in court. The public and the Friends see the mayor's trolling this legislation through our state capital as a fundamental admission of his flawed process and resulting mistakes.

Structurally this idea is flawed, as well. The beds of navigable lakes are public lands that cannot be sold for private usage. This is according to the Wisconsin Constitution's public trust doctrine. Artificially filled lakebed remains public trust property, regardless of how long ago the fill was placed, and is prohibited from being sold or developed for private purposes. This constitutional principle has been upheld by courts in cases spanning over a century.

Asking for legislation from Madison is an unnecessary overreach. The mechanism is already in place to allow DNR professionals to make an Ordinary High Water Mark (OHWM) determination using appropriate analysis based on local conditions. As Judge Huber stated *"… but never has the Department made an actual determination of the ordinary high water mark on Parcel 92. That is a parcel that was filled by the riparian owner. That means that the owner of that property cannot claim title to that dryland."*

This legislative action would set a problematic precedent. It is an overreach available to those that are politically connected. If successful, it could upend the existing DNR process. Once used here in Sturgeon Bay, such legislation could allow developers to build on other lakebeds in Door County and elsewhere, lakebeds which should be held in trust for the public.

Using legislation to take public lakebeds for private development is a conservation issue that will activate significant opposition from Wisconsin's bipartisan conservation community. Conservation of public resources has broad support and a proud history in Wisconsin.

The State Legislature is charged with not only preventing the endangerment of the public trust, but it must also take affirmative steps to protect the trust. The public trust language clearly states that any legislation that would alter the provisions of the trust must be done only to enhance or improve the public benefit. The proposed development in Sturgeon Bay's West Waterfront clearly does not meet this constitutional litmus test.

The Wisconsin legislature has acted only once in the recent past to redefine the OHWM. In the Milwaukee Transit Center case the legislature acted to reaffirm a 1913 contract with the railroad, where the historic agreement drew a boundary that the legislature recognized as the OHWM. The Sturgeon Bay hotel development bears no resemblance to this. There is no historic agreement that could be recognized as a basis for the legislature to find that the Westside Waterfront property is not part of the public trust. Legislation would remove public trust lands at no gain to the public, in areas that have always been devoted to navigation-related and harbor improvements.

The Sturgeon Bay hotel development has no public components and bears no resemblance to the Milwaukee Harbor, Monona Terrace or Chicago Lakefront cases. Unlike other cases; the hotel would not be owned or controlled by a public entity, it would not provide or enhance public access to public waters, and it is primarily a for-profit commercial enterprise, it is not a recreational facility providing public access for enjoyment of natural scenic beauty.

The legislature's frightening consideration of approval of the Sturgeon Bay private commercial development on filled lakebed would, for the first time, sanction a giveaway of public property for a private purpose with no corresponding benefit to the public. The Mayor's rationale that development is needed to fund a tax increment is completely untethered from any navigation-related public purpose. If the legislature accepts this rationale, not grounded in recognized public trust purposes, there would be no principled basis to refuse any claim by any municipality that selling public trust lands is necessary for private development objectives.

The mayor's notion that now, while having just lost a lawsuit in court that a legislative "fix" is needed is wrong-headed and should be stopped.

Sincerely,
Dan Collins
Friends of the Sturgeon Bay Public Waterfront