

Letter to the Editor: Oppose Flawed Legislation that Would Give Away Public Lands

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By [Door County Pulse](#), [Peninsula Pulse](#) – November 3rd, 2016

The City of Sturgeon Bay has informally requested that elected officials enact a state law that would impact Sturgeon Bay's public waterfront and permit a sale to a private developer. This is based on multiple sources from a recent event.

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

The conceptual flaw is self-evident. If legislation is needed to sell a filled lakebed to a private developer, then doing so without legislation is outside the law. The Friends see the requested legislation as the City's fundamental admission of its own transgressions.

Structurally this idea is flawed. The beds of navigable lakes are public lands that generally cannot be developed 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. The City has not asked for, or obtained, an OHWM determination for 92 East Maple (one of two parcels the hotel plans to build on).

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.

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 legislature has acted only rarely with regard to the ordinary high water mark, and none of those rare instances resemble the Sturgeon Bay hotel development (for further information, see friendsofsturgeonbaypublicwaterfront.com).

The legislature's 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.

Finally, another hotel location option that was acceptable to both the Friends group and the developer, was proposed to the city but has since been rejected by the city.

The city's idea that now, while they are on the losing end of a lawsuit, a legislative "fix" is needed is wrong-headed on many levels.

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Article Comments