

# Protecting Sturgeon Bay's West Waterfront

— A proposed hotel development would have put Public Trust land in private hands and limited public access to Lake Michigan's shoreline.

## Latest News

Jan 3rd DNR ruling is a victory for Sturgeon Bay advocates working to protect public land and uphold the Public Trust Doctrine.

## Case Summary

Door County has more miles of shoreline than any other county in the country. The shoreline is cherished whether you have been in Door County for three generations or only three hours. It's a unique place where tourism, shipbuilding, art, agriculture, and water-based recreation drive its economy. Local citizens recognize that development on the peninsula must achieve a balance between economic growth and protection of the natural resources that make the area such a special place to live and to visit.

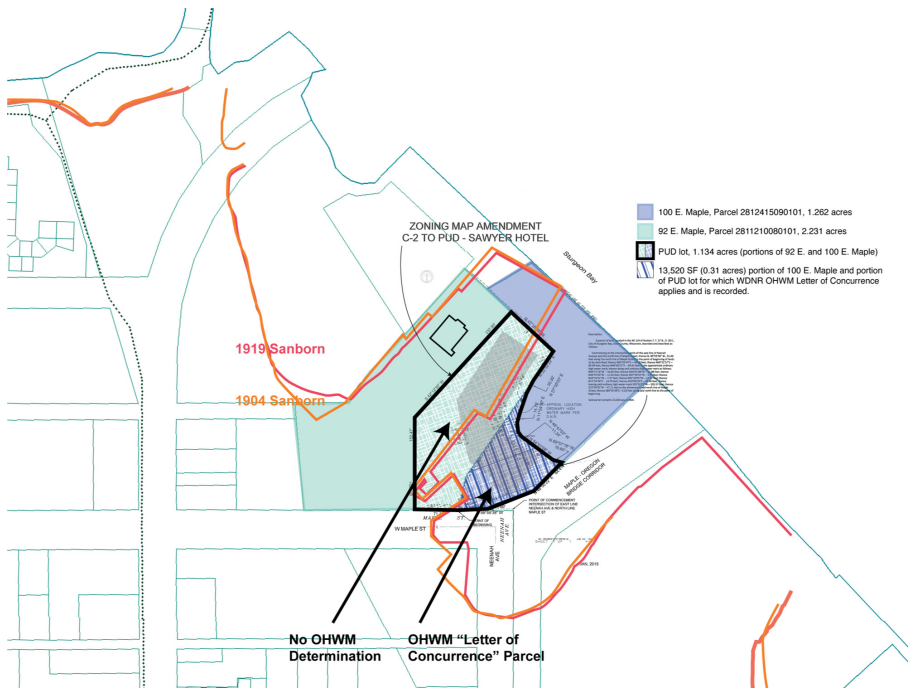
That's why Midwest Environmental Advocates joined attorneys from Wheeler, Van Sickle & Anderson to represent Sturgeon Bay residents and Friends of the Sturgeon Bay Public Waterfront in an action against the City of Sturgeon Bay and its Waterfront Redevelopment Authority regarding the City's proposed sale of Public Trust land. The city of Sturgeon Bay planned to sell the shorefront property to a developer for a private hotel. The proposed hotel project's footprint would have included land that was submerged lakebed at the time of Wisconsin's statehood, which means the state holds title to that lakebed under the Public Trust Doctrine.

The City obtained an ordinary high water mark determination from the Wisconsin Department of Natural Resources for *only part* of the newly drawn lot that the City plans to sell for development. This is significant because the ordinary high water mark sets the boundary between public trust lakebed and shoreline that landowners are free to develop. Wisconsin's constitution mandates that the State to protect and preserve Public Trust Land for public use. The City's plan to sell Public Trust property to a private developer for private use violates the public's right to use and enjoy land protected by our state constitution.

[On May 8, 2015, Midwest Environmental Advocates sent a letter to the DNR explaining why the Public Trust Doctrine protects some of the land that the City of Sturgeon Bay plans to sell to a hotel developer.](#) The letter clarifies the historic role of the ordinary high water mark in this area and explains why even filled land over what once was submerged lakebed does not extend property rights to the exclusion of public access to our shared rights to navigable waters.

The map below illustrates the prior property boundaries, the parcel that the City planned to sell for hotel development, the location of the proposed hotel, and the parcel of property for which the DNR has made an ordinary high water mark determination. The light green and light blue shaded parcels are those that used to be 92 E. Maple Street and 100 E. Maple Street, respectively. The light green parcel is sometimes known as the granary parcel, and the light blue parcel is what is sometimes referred to as what used to be the coast guard parcel. The bold black outline delineates the newly drawn property that the City plans to sell and the light grey shaded section is where the developer plans to build the hotel.

As the map illustrates, only a portion of that newly drawn parcel is covered by the DNR's determination of the ordinary high water mark, called the DNR ordinary high water mark "Letter of Concurrence."



*(right click to view larger image in detail)*

The DNR protects public trust land, and Wisconsin has vigorously defended public rights in navigable waters for over a century. We hope that the DNR will consider the available evidence so that the agency can continue to protect public shoreline in one of Wisconsin's most unique places.

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MEA and Wheeler, Van Sickle & Anderson previously filed federal court action to vindicate area residents' constitutionally protected right to due process and access to the lakebed property held in public trust by our state government. The federal court dismissed the federal lawsuit against the City of Sturgeon Bay and its Waterfront Redevelopment Authority because the court concluded that individual members of the public did not have due process rights in Public Trust land under the federal Constitution. The federal court decision on the due process claims does not impact the state court case that was subsequently filed to prevent the City from selling Public Trust land.

On Tuesday, June 16, around sixty area residents gathered in Sturgeon Bay to learn more about the Public Trust Doctrine and the state's obligation to protect our shared public trust resources such as Lake Michigan,

Sturgeon Bay, and the land underlying those waters. [The Door County Daily News covered the event and included a video clip.](#)

Many of these citizens attended because they were concerned about the City of Sturgeon Bay's plan to sell property for a large waterfront hotel. Questions arose regarding whether all of the property that the City plans to sell is private property or whether some of it might be filled-in lakebed that would still be subject to Public Trust Doctrine protections.

Staff Attorney Sarah Geers presented background on the Public Trust Doctrine and Wisconsin's Sunshine Laws that ensure public access to government decisions. The question and answer session that followed revealed some important questions that residents have for the City. As described in MEA's [May 8th letter to the Wisconsin Department of Natural Resources](#), the location of the ordinary high water mark has not been determined for part of the parcel that the City plans to sell for hotel development.

Then, in a victory for defending public land, on Friday, February 10, a district court Judge said “no” to the City of Sturgeon Bay’s plan to sell property on a historic dock—parcel 92 ([for more, see this map](#))—to a hotel developer and reiterated support for the plaintiffs' position that filled Lake Michigan lake bed is public land.

Judge Huber reaffirmed longstanding rules and concluded that the plaintiffs’ evidence showed that most or all of the parcel 92 property was lakebed below the ordinary high water mark at statehood. This Public Trust land must be held in trust for public use and cannot be sold to a private entity or used for a private commercial development.

In June, after two days of facilitated discussions between delegations of the City of Sturgeon Bay and Friends of the Sturgeon Bay Public Waterfront, the parties reached an agreement as to the location of the ordinary high water mark of 92 East Maple Street along Sturgeon Bay’s west waterfront. The parties jointly proposed to DNR that the OHWM be located parallel to and 60 feet waterward of the meander line (according to the US government land survey of 1835).

When the Waterfront Redevelopment Authority voted 5-2 against the settlement agreement. The Friends requested that DNR proceed with a declaratory ruling hearing.

On September 6, 2017, DNR held a public hearing regarding the location of the Ordinary High Water Mark (OHWM) for Parcel 92 along the west waterfront of Sturgeon Bay.

On February 5, 2018, DNR issued an [OHWM determination for Parcel 92](#), which DNR withdrew in May after the documents filed in an appeal of their line showed the line wasn't accurate.

The City of Sturgeon Bay and the Friends of Sturgeon Bay Public Waterfront subsequently agreed to negotiate a settlement regarding the location of the OHWM.

On January 3, 2019, DNR issued a Declaratory Ruling establishing the exact location of the Ordinary High Water Mark. The location of the OHWM at the US Government 1835 Meander Line for Parcel 92 has the support of both the City Council and the Friends.

MEA commends the hard work and dedication of the Friends of the Sturgeon Bay Public Waterfront to protect public rights and to uphold the Public Trust Doctrine.