

1 STATE OF WISCONSIN CIRCUIT COURT DOOR COUNTY  
2 BRANCH 1

-----

3 FRIENDS OF THE STURGEON BAY PUBLIC  
4 WATERFRONT, SHAWN M. FAIRCHILD, CARRI  
5 ANDERSON, LINDA COCKBURN, RUSS COCKBURN,  
6 KATHLEEN FINNERTY and CHRISTIE WEBER,

7 Plaintiffs,

8 vs. Case No. 16-CV-23

9 CITY OF STURGEON BAY, a  
10 Wisconsin Municipal Corporation,  
11 and WATERFRONT REDEVELOPMENT AUTHORITY  
12 OF THE CITY OF STURGEON BAY, a  
13 municipal redevelopment authority,

14 Defendants.

-----

15 COURT TRIAL - RULING PORTION

-----

16 HONORABLE RAYMOND HUBER  
17 CIRCUIT JUDGE

18 February 10, 2017

19 Rachelle Lucero  
20 Official Court Reporter

21 APPEARANCES:

22 MARY PERANTEAU, Attorney-at-law, and SARAH GEERS,  
23 Attorney-at-law, appear in person on behalf of the  
24 Plaintiffs.

25 REMZY BITAR, Attorney-at-law, and R. VALJON ANDERSON,  
Attorney-at-law, appear in person on behalf of the  
Defendants.



1           been presented from a historical perspective, both  
2           Lot 100 and Lot 92 were, at least the majority of  
3           them, under water at statehood. In fact, under  
4           water for much of the time subsequent to  
5           statehood.

6                        As it relates to Lot 100, the City did  
7           seek and obtain a concurrence from the Department  
8           of Natural Resources as to the ordinary high water  
9           mark on that property. I know that the plaintiffs  
10          would argue that the soil borings and historical  
11          record would indicate that that decision of the  
12          Department probably is incorrect. I don't believe  
13          it's the duty of this Court to review the decision  
14          of the Department of Natural Resources, since  
15          that's not a party to this action at this time.  
16          There could have been a challenge to that  
17          concurrence determination, but there was none.

18                       In its concurrence letter, the  
19          Department did indicate that through natural  
20          accretion, the 2-foot depth of the shallow bay  
21          would have filled in. And so it is a filled  
22          parcel, but through natural accretion and then  
23          once the bulk line was established, I assume it  
24          was overfilled to the 13 or 14 feet that it may be  
25          presently, the bulkhead ordinance permitting the

1           filling to take place.

2                       Lot 92, though, is completely different.

3           Lot 92 was basically the remnants of a dock and  
4           operating system started by one of the original  
5           riparian owners. He extended it -- From the  
6           historical record, it's clear he extended the  
7           dock. He filled in underneath the dock. It  
8           wasn't third-party. It was the owners of the dock  
9           who were involved in the filling. The filling and  
10          that dock created the ability for the natural  
11          accretion that took place in Lot 100. So it is a  
12          completely different circumstance.

13                      This Court is convinced that the law is  
14          clear that a riparian owner can't retain title to  
15          lakebed property by filling that is done by that  
16          riparian owner. And that's what's happened with  
17          Lot 92. There may be some portion of that lot,  
18          which may be above the ordinary high water mark.  
19          No one has shown me exactly where the ordinary  
20          high water mark will be.

21                      I will say, though, I am satisfied that  
22          it is not as reflected on the 1955 bulkhead line.  
23          The testimony of, I believe it was Ms. Webb, makes  
24          it clear that perhaps there may have been a  
25          misunderstanding between the City and her as to



1 sale on Lot 100 waterward from the ordinary high  
2 water mark that is established by the DNR, which I  
3 know plaintiffs believe was improperly determined,  
4 but I'm going to find for purposes of this it was  
5 appropriately determined. And I'm going to enjoin  
6 the sale of any of 92 waterward of the ordinary  
7 high water mark, which has never been established.

8 And, quite frankly, from the evidence  
9 that at least has been arguably presented, may be  
10 the whole lot. I don't know. I can't make a  
11 determination. But that's obviously going to be  
12 an injunction subject to further testimony at some  
13 point in time to determine the appropriate high  
14 water mark. And it may be the whole lot. I don't  
15 know. But I'm enjoining the sale of that parcel  
16 until that can be established.

17 Do counsel have any questions about it?  
18 I know that's probably not the result either side  
19 is looking for, but I think that's consistent with  
20 the trust doctrine and the protection of the state  
21 and public in the beds of lakes. I understand  
22 that from testimony of the state cartographer,  
23 there may be lacustrine deposits under the entire  
24 county for all I know. Since 30,000 years ago,  
25 Lake Michigan went out into the entire region of

1 counties along the lake.

2 That said, though, we're looking at an  
3 ordinary high water mark as it exists today and  
4 that's based on a historical record that we know  
5 of since the last, say, the 1850s or so, 100, 150  
6 years of time. And during that time, we know in  
7 the one -- the one parcel, 100, it was being  
8 filled by a riparian owner. It's -- That doesn't  
9 convert the property, then, to the riparian  
10 owner's property and, therefore, it's not subject  
11 to sale.

12 Do counsel have any questions? I know I  
13 gave a very abbreviated decision, but I still need  
14 to fight with my jury for next week, so.

15 Yes, counsel.

16 MR. ANDERSON: A request for clarification,  
17 your injunction on the sale of anything waterward  
18 on Lot 100 and entire lot of 92 --

19 THE COURT: But subject to determination of  
20 the high water mark on 92.

21 MR. ANDERSON: Well, would the Court agree to  
22 fashion the injunction in such a fashion that if  
23 Lot 92 or property waterward on Lot 100 were to be  
24 used for public trust purposes, then a sale could  
25 go through?

1           THE COURT: Well, again, public trust  
2 purposes would require waterward on 100 -- would  
3 really require a lease from the -- You know, as  
4 long as it's Maritime public purposes, I guess  
5 that would be permitted. But I assume, then, the  
6 property owner would still be the City. It won't  
7 be a private party. It's going to be an arm of  
8 the State, subdivision of the State will own the  
9 waterward sign from the ordinary high water mark.

10           MR. ANDERSON: Well, without getting into the  
11 weeds too much, because of the existence of the  
12 bulkhead, it's out there.

13           THE COURT: Yes.

14           MR. ANDERSON: There could be the use without  
15 a lease in certain circumstances for Maritime use,  
16 so.

17           THE COURT: For Maritime use, yes.

18           MR. ANDERSON: So if the injunction is to  
19 prevent commercial use beyond the ordinary high  
20 water mark or in Lot 92, if that could be your  
21 injunction, that would still perhaps allow the  
22 property to be developed, but still honoring your  
23 injunction about not proceeding into the State's  
24 interest in the properties.

25           THE COURT: And I guess you've lost me there.

1           Certainly, Maritime uses would be appropriate  
2           within those properties.

3           MR. ANDERSON:  No, I'm saying as long as it's  
4           not put to commercial use.  That we don't put the  
5           hotel on Lot 92, for instance.

6           THE COURT:  Well, as long as you don't convey  
7           ownership to the hotel in the public properties.

8           MR. ANDERSON:  I understand.

9           THE COURT:  I mean, the hotel can't own the  
10          public's land.

11          MR. ANDERSON:  Correct.

12          THE COURT:  There could be uses that are in  
13          furtherance of Maritime purposes, such as boat  
14          docking.  I don't know what the -- what you're  
15          anticipating it is.  That could certainly be used.  
16          I'm not enjoining the property from being  
17          utilized.  I'm just enjoining the conveyance to a  
18          private party of any portion that is public trust  
19          property.

20          MR. ANDERSON:  Okay.  Very good.

21          THE COURT:  Anything else?

22          MS. PERANTEAU:  No, your Honor.

23          THE COURT:  Well, thank you, everyone.  I  
24          appreciate counsels' efforts in presenting the  
25          case.  I thought both sides did a wonderful job.

1 I expect you both are appealing, so good luck.

2 MR. BITAR: Thank you, your Honor.

3 MS. PERANTEAU: Thank you.

4 THE COURT: Who is doing the order? Are you,  
5 Ms. Peranteau?

6 MS. PERANTEAU: I'll take a stab at it.

7 THE COURT: Do it under five -- or ten-day  
8 rule depending if you want to make it long.

9 MS. PERANTEAU: Well, I have a vacation  
10 scheduled, so it might be. But I'll try to put  
11 that in as soon as I can.

12 THE COURT: Okay. Thank you.

13 MS. PERANTEAU: Thank you, your Honor.

14 MR. BITAR: Thank you, your Honor.

15 THE COURT: We are adjourned.

16

17 (THE PROCEEDINGS CONCLUDED AT 2:17 P.M.)

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

DOOR COUNTY )  
 ) ss  
STATE OF WISCONSIN )

I, Rachelle Lucero, Official Court Reporter for Door County, Wisconsin, hereby certify that the foregoing is a true and accurate transcript of my stenographic notes taken in the aforementioned matter.

Dated this 15th day of February, 2017.

\_\_\_\_\_  
Rachelle Lucero, CSR  
Official Court Reporter