

DATE: 8/23/2018 FILE REF: NA 351 E

TO: Terry Bay, Diane Brusoe and Jim Lemke

FROM: Kaylin Helm

SUBJECT: **Administrative Owner Question:** State Natural Area Douglas #2 – proposed name St. Louis River State Habitat Area – Closed to Public

History

1. January 1989: DNR approves the purchase of a fee simple parcel in the City of Superior for the Statewide Natural Areas project (Wisconsin Point). That same transaction included a closed to the public limited development easement for the Statewide Fisheries Habitat program (Statewide Habitat Area acquisition authority).
2. March 1 1989, the department's Limited Development Easement is recorded (Vol 482, Page 878).
 - a. No title insurance can be found for this transaction. Real Estate Staff have indicated that this small easement from the City probably didn't warrant a title policy (practice at the time).
3. Both the fee simple and easement lands were coded to the Statewide Natural Areas program in the Land Records System. Thus, establishing NHC as the program owner of both parcels.
4. On November 20, 1992, the property was sold by the City of Superior to Frederick Paine and Nancy Paine. There is mention in the deed of a reversionary clause to the City if the Frederick's do not pave and install concrete curb and gutter improvements by a certain date. There is no mention to easements of record or specifically the Department's easement.
5. Based on aerial photography from the Historical Aerials View, a home was built on the property after 1992 and before 1997, not complying with the requirements of the limited development easement. At that same time, what appears to be a garage was built to the south of the home, which may also be on the easement area.
6. On April 20 1994, a the deed from 1992 was re-recorded to correct an erroneous description on the 1992 deed. There is no change mentioning the Department's easement.
7. Based on aerial photography from the Historical Aerials View, after 2008 aerial photography was flown and before 2009 aerial photography was flown, additional development occurred to the south of the home, adjacent to the existing (apparent) garage structure. This structure may be on the easement.
8. On February 10, 2009, a deed was recorded from Frederick Paine and Nancy Paine to Frederick Paine and Dawn Paine, husband and wife as survivorship marital property. This deed does include "Subject to easements, exceptions, restrictions and reservations of record" on it.

SSAAP/Master Planning

9. 2018: Real Estate staff hold a statewide acquisition authority property naming meeting and requested that staff name this closed to public access conservation easement. Most staff were unaware of the easement's existence. At and after the meeting, the original NRB approval

memo was brought up and it was questioned why the easement had not been coded to the Fisheries program, as the memo stated the conservation easement was for fish habitat.

10. Real Estate staff requested input from NHC and Fisheries program as to a possible administrative owner change from NHC to Fish, to more closely match the original intent of the easement.
11. NHC feels that the easement should be owned by the Fish program.
12. Fish is willing to take on the easement, but only after the easement compliance issue is resolved (home built on the property). This resolution would not occur until after the master plan is completed/approved.
 - a. Fish program stated that staff resources couldn't be allocated to assist with this compliance issue at this time, especially since the compliance issue occurred under NHC's watch.
13. Land Liaisons, Thomas Meyer and Paul Cunningham have briefed their superiors on the issue. Program ownership of the easement will need to be determined at the bureau director level.
14. The master plan is the place to change the administrative ownership of this easement, if it's decided a change should take place. If not, RE staff will need direction/approval to keep the parcel under NHC ownership.
 - a. **Draft of master plan to be released to the public end of October.**
15. Discussions with legal on 10/5/2018 (Rick Henneger) indicate that little program staff time will be needed to resolve this issue. Legal has been working on this issue since it was first discovered at the end of summer 2018. Time estimate of program staff time might be 1-2 hours for a possible site visit. The rest of the issue would be resolved by Legal and Real Estate. The "owning" bureau would be kept apprised of progress/end decisions etc. similar to other issues like this.

Attachments:

Approval Memo, easement, map, underlying owner deeds/CSM

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
101 S. Webster Street
Box 7921
Madison WI 53707-7921

Scott Walker, Governor
Daniel L. Meyer, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



October 25, 2018

Mr. Frog Prell
City Attorney
1316 North 14th Street
Superior WI 54880

Subject: Easement Violation

Dear Attorney Prell:

Many years ago, I was involved with the Department of Natural Resources' de-designation of the Barker's Island Bird Sanctuary with the City of Superior (Steve Schweppe was the City Attorney at that time.). In consideration for the de-designation, the City of Superior conveyed title and an easement to certain tracts of land to this agency. I have enclosed copies of the recorded quit claim deed and the easement for your reference. In particular, the Limited Development Easement stated in pertinent part "The City, its successors and assigns, shall not perform any alteration of the easement area; shall not place any structure or material on, over, or under the easement area; shall not remove or destroy any plants within the easement area; shall not convey any other easement for any purpose, including but not limited to road or utility easements upon the easement area without the prior written authorization of the Grantee."

It has come to the Department's attention that the City of Superior conveyed title to the property encumbered by our easement on November 17, 1992 to Frederick and Nancy Paine. I have enclosed a copy of that quit claim deed also. You will note that the deed makes no reference to the Department's easement. It is my understanding that a residence was constructed in 1993 and a barge was towed to the site in 1995. There are several mowed and paved portions of the property including approximately 100 feet of river frontage. I have enclosed aerial photographs for your consideration. All of these improvements on and alterations of the property are in direct violation of the terms of the easement.

The purpose of this letter is to bring this matter to your attention in hopes of resolving these easement violations. Perhaps, a conference call with you, other city officials and Department representatives would be a start.

Please advise on how you would like to proceed.

Sincerely,

Richard Henneger
Attorney

618767

VOL 482 PAGE 878

DOCUMENT NO.

LIMITED DEVELOPMENT EASEMENT

RECORDING DATA

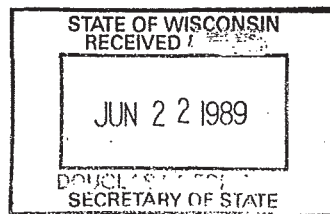
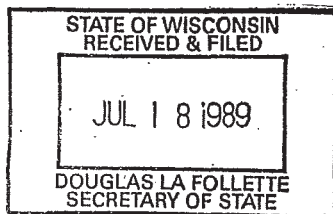
OFFICE OF REGISTER OF DEEDS
DOUGLAS COUNTY WISCONSIN

Received for record this

MAR 1 1989 at 11:00

o'clock A. M. and recorded
in Volume 482 of
Records on page 878

John P. Horvath REGISTER
RETURN TO:



THIS EASEMENT, made this 3rd day of October, 1988, by and between THE CITY OF SUPERIOR, WISCONSIN, (hereinafter also referred to as the City, and the STATE OF WISCONSIN (Department of Natural Resources), Grantee.

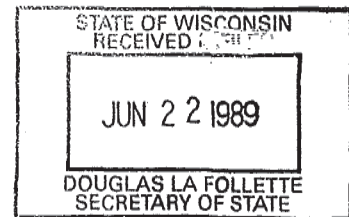
WHEREAS, the City is the owner in fee simple of certain submerged lands which lie beneath the St. Louis River in Douglas County, Wisconsin, and

WHEREAS, the Grantee wishes to protect these lands as fish and wildlife habitat; and

WHEREAS, the Grantee wishes to use these lands to enhance fish and wildlife habitat;

NOW, THEREFORE, in consideration of the conditions and covenants set forth below and upon the occurrence of the events set forth in Section (2) below, the City conveys to the Grantee, an easement for the purpose of maintaining and enhancing fish and wildlife habitat on, under, in, and over the following described real estate:

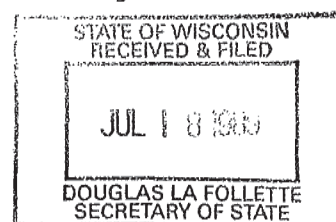
Government Lot 5 and that part of the Northeast Quarter (NE 1/4) of the Southwest Quarter (SW 1/4) lying southwesterly of the U.S. Highway 2 right-of-way, Section 16, Township 49 North, Range 14 West, City of Superior, Douglas County, Wisconsin, subject to any leases, easements or agreements of record.



It is understood that:

- A) This Easement grants no rights to the general public for access to or entry upon the easement area or access to or entry upon those adjacent lands owned by Grantor lying above the ordinary high water mark of the St. Louis River;
- B) Grantee, its agents, officers, and employees, shall have the right to enter the easement area by water for the purpose of inspection or maintenance of the easement area or for the purpose of placing or removing any material, fill, structures, or objects on or from the easement area;
- C) The City, its successors and assigns, shall not perform any alteration of the easement area; shall not place any structure or material on, over, or under the easement area; shall not remove or destroy any plants within the easement area; and shall not convey any other easement for any purpose, including but not limited to, road or utility easements upon the easement area without the prior written authorization of the Grantee;
- D) To the extent provided by law, the Grantee shall hold the City harmless for the negligent acts or omissions of the Grantee's officers or employees arising out of the Grantee's use and enjoyment of the premises.

The consideration for the granting of this easement is the issuance by the Grantee of a permit which discontinues a bird sanctuary on a parcel of land known as Barkers Island in the City of Superior, Wisconsin. Further consideration is the termination by grantee of any and all agreements between it and the City for the construction, management, maintenance, or use of said Barkers Island as a bird sanctuary. The consideration for the granting of this easement is the removal of all restrictions on use, conveyance, or title arising from the creation of said bird sanctuary in Division of Natural Resources Hearings Permits 3-NW-702, 3-NW-78-501, and 3-NW-78-005 issued on April 17, 1978 by hearing examiner Joseph Schaeve.



IN WITNESS WHEREOF, the said City has caused these presents to be signed by Herbert W. Bergson, its Mayor, and countersigned by Margaret Ciccone, its Clerk, at Superior, Wisconsin, and its corporate seal to be hereunto affixed this 3 day of October, A.D., 1988.

SIGNED AND SEALED IN PRESENCE OF

CITY OF SUPERIOR, WISCONSIN

Corporate Name

Janet M. Heckman

Herbert W. Bergson

Lisa Larson

Countersigned Margaret Ciccone

STATE OF WISCONSIN)

(ss.

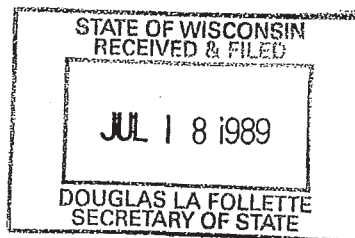
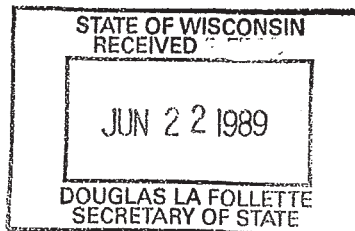
DOUGLAS COUNTY)

Personally came before me, this 3 day of October, 1988, Herbert W. Bergson and Margaret Ciccone, Mayor and City Clerk of the City of Superior respectively, and to me known to be Mayor and City Clerk of said City of Superior, and acknowledged that they executed the foregoing instrument as such officers as the deed of said City by its authority.

Theresa Hamstrup

Notary Public, Douglas, County, Wis
My commission expires 6-4-89

This instrument drafted by
Steven H. Schweppe



27

618767

GRANTOR

GRANTEE

TRACT

COMPANY

VOL 482 PAGE 878

Karl Hansen
Wisconsin Dept. of Natural Resources
Box 7921
Madison, Wi. 53707

\$8.00 chg

618768

VOL. 482 PAGE 881

DOCUMENT NO.

QUIT CLAIM DEED

RECORDING DATA
OFFICE OF REGISTER OF DEEDS
DOUGLAS COUNTY WISCONSIN
Received for record this

MAR 1 1989 at 11:00

o'clock ... A. M. and recorded
in Volume 482 ... of ...
Records ... on page 881 ...
James P. Howard REGISTER
DEPUTY

Return to:

THIS INDENTURE, Made by THE CITY OF SUPERIOR, WISCONSIN, a municipal corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, grantor of Douglas County, Wisconsin, hereby quit-claims to THE STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES, grantee, the following parcels of elevated land and submerged land (all of which are hereinafter referred to as the Premises:

Those parts of Lots Thirty-five (35), Thirty-seven (37), Thirty-nine (39), Forty-one (41), and Forty-three (43), Wisconsin Point Subdivision in Government Lot 1, Section 28, Township 49 North, Range 13 West, City of Superior, Douglas County, Wisconsin, described as follows:

Commencing at U.S. Government Station Monument #21 located on Wisconsin Point in the NW $\frac{1}{4}$ of Section 28, Township 49 North, Range 13 West; thence South 46°37'39" West 300.00 feet to a one-inch iron pipe; thence along a line South 13°43'21" East 265.00 feet to the Point of Beginning which is marked by a one-inch iron pipe located 20 feet more or less from the ordinary high water line of Allouez Bay; thence continuing along said line 220.50 feet to a one-inch iron pipe; thence South 34°01'21" East 396.30 feet to a one-inch iron pipe; thence North 65°58'39" East 300.00 feet; thence North 26°48'08" West 606.37 feet to a one-inch iron pipe; thence South 66°16'39" West to the Point of Beginning. Together with that elevated land lying between the ordinary high water line of Allouez Bay and the south and west lines of the above described tract of land. The above parcel consists of approximately 4.53 acres of elevated and submerged land.

and

Commencing at the U.S. Government Station monument #21 located on Wisconsin Point in the NW $\frac{1}{4}$ of Section 28 Township 49 North, Range 13 West; thence South 46°37'39" West 300.00 feet to a one-inch iron pipe which is the Point of Beginning; thence North 13°43'21" West a distance of 432.00 feet to an iron post; thence North 63°53'54" East a distance of 193.00 feet to an iron post; thence South 10°48'06" East a distance of 712.50 feet to a point; thence South 66°16'39" West a distance of 156.00 feet to an iron pipe; thence North 13°43'21" West a distance of 265.00 feet to the Point of Beginning. Together with the elevated land lying between the ordinary high water line of Allouez Bay and the west line of the tract of land

FEE

77.25 (2)
EXEMPT

described in this paragraph. The above parcel consists of approximately 2.82 acres of elevated land.

The consideration for the conveyance of the Premises is the issuance by the grantee of a permit which discontinues a bird sanctuary on a parcel of land known as Barkers Island in the City of Superior, Wisconsin. Further consideration is the termination by grantee of any and all agreements between it and the grantor for the construction, management, maintenance, or use of said Barkers Island as a bird sanctuary. The consideration for the conveyance of the Premises is the removal of all restrictions on use, conveyance, or title arising from the creation of said bird sanctuary in Division of Natural Resources Hearings Permits 3-NW-78-702, 3-NW-78-501, and 3-NW-78-005 issued on August 17, 1978 by hearing examiner Joseph Schaeve.

IN WITNESS WHEREOF, the said grantor has caused these presents to be signed by Herbert W. Bergson, its Mayor, and countersigned by Margaret Ciccone, its Clerk, at Superior, Wisconsin, and its corporate seal to be hereunto affixed this 3rd day of October, A.D., 1988.

SIGNED AND SEALED IN PRESENCE OF

Janet M. Heckman

Lisa Larson

CITY OF SUPERIOR, WISCONSIN

Corporate Name

Herbert W. Bergson

Countersigned

Margaret Ciccone

STATE OF WISCONSIN)

(ss.

DOUGLAS COUNTY)

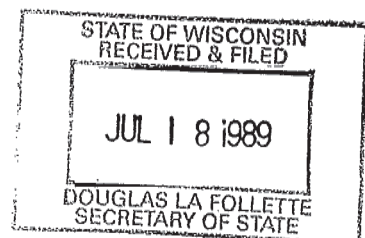
Personally came before me, this 3 day of October, 1988, Herbert W. Bergson and Margaret Ciccone, Mayor and City Clerk of the City of Superior respectively, and to me known to be Mayor and City Clerk of said City of Superior, and acknowledged that they executed the foregoing instrument as such officers as the deed of said City by its authority.

Theresa L. Gramstrup

Theresa L. Gramstrup.....

Notary Public, Douglas, County, Wis
My commission expires 6-4-89

This instrument drafted by
Steven H. Schweppe



618768

GRANTOR _____ ✓
GRANTEE _____ ✓
TRACT _____ ✓
COMPARED _____ ✓

VOL 482 PAGE 881

Karl Hansen
Wisconsin D.N.R.
Box 7921
Madison, Wi. 53707

\$6.00 chg

DOCUMENT NO.

649265

STATE BAR OF WISCONSIN FORM 3--1982
QUIT CLAIM DEED

THIS SPACE RESERVED FOR RECORDING DATA

VOL 539 PAGE 464

OFFICE OF REGISTER OF DEEDS
DOUGLAS COUNTY WISCONSIN

Received for record this

NOV 20 1992 at 8:00

o'clock ... 539 ... M. and recorded

in Volume ... 539 ... of

records on page ... 464 ...

D. P. ... REGISTER

RETURN TO
Frederick Paine
104 E. 5th Street
Superior, WI. 54880 \$10.00pCITY OF SUPERIOR, a Municipal corporation,
GRANTOR,quit-claims to FREDERICK PAINE, a married man and
NANCY K. PAINE, his wife. GRANTEES.the following described real estate in DOUGLAS County,
State of Wisconsin:

Tax Parcel No:

FEE

77.25 (2)

EXEMPT

All that part of the NW 1/4 - SW 1/4, NE 1/4 - SW 1/4,
SE 1/4 - SW 1/4 and the SW 1/4 - SE 1/4 of Section 16,
Town 49 North, Range 14 West, City of Superior, Douglas
County, Wisconsin, lying north of the north line of
Belknap Street and south of the south line of USH 2
EXCEPT those parcels described in Volume 222, Page 240,
Volume 243, Page 451, Volume 297, Page 172, Volume 289,
Page 151, Volume 87, Page 127, Volume 310, Page 98.

This conveyance is subject to the following: Grantees shall pave and
install concrete curb and gutter improvements, in accordance with City
of Superior Code and specifications, for a distance of approx. 600 feet
on New York Avenue, North of Belknap Street. Grantees shall provide and
pay for sanitary sewer and water connections pursuant to City of Superior
specifications. In the event Grantees do not perform the foregoing with-
in two (2) years from the date of this conveyance, the above described
property shall revert to the Grantor, and Grantees shall have no right,
title or interest in the same.

This is not homestead property.
(is) (is not)

Dated this 17th day of November, 1992.

(SEAL)

Herb W. Bergson, Mayor

(SEAL)

Margaret Ciccone, City Clerk

AUTHENTICATION

Signature(s)

authenticated this day of, 19.....

TITLE: MEMBER STATE BAR OF WISCONSIN

(If not
authorized by § 706.06, Wis. Stats.)

THIS INSTRUMENT WAS DRAFTED BY

Tom Hayden

City Attorney

(Signatures may be authenticated or acknowledged. Both
are not necessary.)

ACKNOWLEDGMENT

STATE OF WISCONSIN

ss.

Douglas County,

Personally came before me this 17th day of
November, 1992 the above named
Herb W. Bergson, Mayor and
Margaret Ciccone, City Clerk of
the City of Superior.

to me known to be the person S. I. who executed the
foregoing instrument and acknowledge the same.

Rani Gill

Notary Public Douglas County, Wis.
My Commission is permanent (if not, state expiration
date: 11-14-93, 19.....)





From: [Henneger, Richard W - DNR](#)
To: prellf@ci.superior.wi.us
Cc: [Milligan, Diane L - DNR](#)
Subject: City of Superior Easement Issue
Date: Monday, December 10, 2018 2:56:48 PM
Attachments: [image001.gif](#)
[image002.gif](#)
[image003.gif](#)
[image004.gif](#)
[image005.gif](#)
[image006.gif](#)

Frog – thanks for taking my call today. All future communication regarding the City of Superior – DNR easement issue should be directed to Diane Milligan (608-266-0155). Same address as mine.

We are committed to service excellence.

Department clients visit our survey at <http://intranet.dnr.state.wi.us/int/legal/> to evaluate how I did.

Richard Henneger

Staff Attorney – Bureau of Legal Services

Wisconsin Department of Natural Resources

101 S Webster St

Phone: (608) 266-8254

Richard.Henneger@Wisconsin.gov



dnr.wi.gov



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From: [Prell, Frog](#)
To: [Henneger, Richard W - DNR](#)
Cc: [Milligan, Diane L - DNR](#); [Serck, Jason](#)
Subject: RE: City of Superior Easement Issue
Date: Monday, December 10, 2018 3:02:02 PM
Attachments: [image001.gif](#)
[image002.gif](#)
[image003.gif](#)
[image004.gif](#)
[image005.gif](#)
[image006.gif](#)

Thanks, Richard, and congratulations on your upcoming retirement.

I am copying Planning Director Jason Serck on this as he will be instrumental in identifying any other parcels of property that might be used to off-set the easement that seems to have been compromised.

Thanks,

Frog

From: Henneger, Richard W - DNR [mailto:Richard.Henneger@wisconsin.gov]

Sent: Monday, December 10, 2018 2:57 PM

To: Prell, Frog

Cc: Milligan, Diane L - DNR

Subject: City of Superior Easement Issue

Frog – thanks for taking my call today. All future communication regarding the City of Superior – DNR easement issue should be directed to Diane Milligan (608-266-0155). Same address as mine.

We are committed to service excellence.

Department clients visit our survey at <http://intranet.dnr.state.wi.us/int/legal/> to evaluate how I did.

Richard Henneger

Staff Attorney – Bureau of Legal Services

Wisconsin Department of Natural Resources

101 S Webster St

Phone: (608) 266-8254

Richard.Henneger@Wisconsin.gov



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