

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