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

Tony Evers, Governor
Preston D. Cole, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711

WISCONSIN
DEPT. OF NATURAL RESOURCES

May 9, 2019

Attorney Frog Prell
City Attorney
1316 N. 14th Street
Superior, WI 54880

Frederick and Nancy Paine
11 Belknap Shores
Superior, WI 54880

Subject: Easement Violation

Dear Attorney Prell and Mr. & Mrs. Paine:

I represent the Department of Natural Resources (DNR's) real estate program, and am writing to follow up on a letter that my now-retired colleague, Richard Henneger, sent to Attorney Prell in October 2018 (attached). In this letter, Attorney Henneger pointed out that the City had sold to the Paines land that is subject to a DNR easement prohibiting development, and that the Paines have nevertheless constructed improvements on this property. This is obviously a problem for all of us, and it needs to be resolved.

I ask that you please respond to this letter by May 24, 2019, with dates during June when you are free to discuss resolving this matter. We are seeking a resolution that makes the State whole, and we presume that the Paines will want to clear the title to their property. When you write back with your dates, I invite you to please share potential solutions.

I can be reached at diane.milligan@wisconsin.gov or (608)266-0155, and I thank you for your prompt attention to this matter.

Sincerely,

Diane L. Milligan

Diane L. Milligan
BLS Attorney

c: Jim Lemke, Peter Wolter, Sonja Margitan, Kaylin Helm, Aubrey Johnson and Kathy Shubak

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

WISCONSIN
DEPT. OF NATURAL RESOURCES

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

VOL. 482 PAGE 878

618767

DOCUMENT NO.

LIMITED DEVELOPMENT EASEMENT

RECORDING DATA
OFFICE OF REGISTER OF DEEDS
DOUGLAS COUNTY WISCONSIN
Received for record this . . . . . .
MAR 1 1989 at 10:00
o'clock . . . . . A. . M. and recorded
in Volume 482 . . . . of . . . . . .
Records . . . on page . 878 . . . . .
REGISTER
DEPUTY
RETURN TO:

STATE OF WISCONSIN
RECEIVED & FILED
JUL 1 8 1989
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

STATE OF WISCONSIN
RECEIVED
JUN 2 2 1989
SECRETARY OF STATE

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.

STATE OF WISCONSIN
RECEIVED & FILED
JUN 22 1989
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

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.

STATE OF WISCONSIN
RECEIVED & FILED
JUL 18 1989
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

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
Mayor

Lois Larson

Countersigned
Margaret Ciccone
Clerk

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 Ramstrup

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

This instrument drafted by
Steven H. Schweppe

STATE OF WISCONSIN
RECEIVED
JUN 22 1989
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

STATE OF WISCONSIN
RECEIVED & FILED
JUL 18 1989
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

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 . . . .
Diane P. Holman 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 NW¼ 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.

FEE
77.25 (2)
EXEMPT

and

Commencing at the U.S. Government Station monument #21 located on Wisconsin Point in the NW¼ 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

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 sancturary 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

Lois Larson

CITY OF SUPERIOR, WISCONSIN
Corporate Name

Herbert W. Bergson
Mayor

Countersigned
Margaret Ciccone
Clerk

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

STATE OF WISCONSIN
RECEIVED & FILED
JUL 18 1989
DOUGLAS LA FOLLETTE
SECRETARY OF STATE

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 A M. and recorded o'clock in Volume 539 of records on page 464

REGISTER

RETURN TO
Frederick Paine
104 E. 5th Street
Superior, WI. 54880 $10.00

CITY 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, Pag 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 within 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 (is) (is not) homestead property.

Dated this 17th day of November, 19 92.

(SEAL) Herb W. Bergson (SEAL)
Herb W. Bergson, Mayor

(SEAL) Margaret Ciccone (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, 19 92 the above named Herb W. Bergson, Mayor and Margaret Ciccone, City Clerk of the City of Superior,

to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Rani Gill

Rani Gill

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

Printed on Recycled Paper