

2013 DRAFTING REQUEST

Bill

Received: 1/6/2014 Received By: rkite
Wanted: As time permits Same as LRB:
For: Joe Sanfelippo (608) 266-0620 By/Representing: Larry Konopacki
May Contact: Drafter: rkite
Subject: Nat. Res. - nav. waters Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Sanfelippo@legis.wisconsin.gov
Carbon copy (CC) to: larry.konopacki@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Establishment of Milwaukee shoreline

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 1/13/2014			_____			
/1		wjackson 1/14/2014	rschluet 1/14/2014	_____	lparisi 1/14/2014	srose 1/24/2014	

FE Sent For:

<END>

NONE
NEEDED

2013 DRAFTING REQUEST

Bill

Received: 1/6/2014 Received By: rkite
Wanted: As time permits Same as LRB:
For: Joe Sanfelippo (608) 266-0620 By/Representing: Larry Konopacki
May Contact: Drafter: rkite
Subject: Nat. Res. - nav. waters Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Sanfelippo@legis.wisconsin.gov
Carbon copy (CC) to: larry.konopacki@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Establishment of Milwaukee shoreline

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 1/13/2014			_____			
/1		wjackson 1/14/2014	rschluet 1/14/2014	_____	lparisi 1/14/2014		

FE Sent For:

<END>

2013 DRAFTING REQUEST

Bill

Received: 1/6/2014 Received By: rkite
Wanted: As time permits Same as LRB:
For: Joe Sanfelippo (608) 266-0620 By/Representing: Larry Konopacki
May Contact: Drafter: rkite
Subject: Nat. Res. - nav. waters Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Rep.Sanfelippo@legis.wisconsin.gov
Carbon copy (CC) to: larry.konopacki@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Establishment of Milwaukee shoreline

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
--------------	----------------	-----------------	--------------	----------------	------------------	-----------------	-----------------

/? rkite

1 WJ 1/13

9
1/10/14
JF

FE Sent For:

<END>

Milwaukee Shoreline - Drafting Instructions for Rep. Sanfelippo

1. Repeal and recreate all of s. 30.2038, Stats., with the following changes:

"30.2038 Milwaukee shoreline established. (1) (a) The shoreline of Lake Michigan in the city of Milwaukee is fixed and established to extend from approximately the line of East Lafayette Place extended easterly, on the north, to the present north harbor entrance wall of the Milwaukee River, on the south, as specified in the agreement between the Chicago and Northwestern Railway Company and the city of Milwaukee and in conformance with the conveyance to the City of Milwaukee recorded with the office of the register of deeds of Milwaukee County on April 23, 1913, in volume 662, pages 326-330, as document number 762955.

(b) The shoreline described under par. (a) constitutes the ~~division~~ boundary line between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan.

(2) Any restrictions, conditions, reverters, or limitations imposed on the use of land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929, chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not apply to land located to the west of the shoreline described under sub. (1) (a)."

(3) Any party seeking to establish that the shore boundary in the area of the 1913 Agreement is at any location other than as set by the 1913 Agreement and section 1 may do so only by an action brought under Chapter 841, and such party shall have the burden of proving such alternate claimed shore boundary by clear and convincing evidence of its location as of the date of enactment of chapter 389, laws of 1915. in any such action, section 9132 (4e) of 2013 Wisconsin Act 20 and 2013 Wisconsin Act [This Act] shall create a rebuttable presumption that the city of Milwaukee ceded any lake bed lying easterly of the line set by the 1913 Agreement to the Chicago and Northwestern Railway Company in fee simple, under authority granted to it by the State, as the sole consideration for the conveyance by the railroad to the city of Milwaukee of valuable lands westerly of the line set by the 1913 Agreement."

Formatted: Font: Not Bold, No underline

Formatted: Font: Not Bold, No underline

2. Repeal and recreate all of section 9132 (4e) of 2013 Wisconsin Act 20 with the following changes:

"MILWAUKEE SHORELINE. (a) if any area west of the shoreline established under section 30.2038 of the statutes is located on what was historically lake bed of lake Michigan, The the state declares all of the following:

1. ~~That if any part of the shoreline established under section 30.2038 of the statutes, as created by this act, is located on any part of the lake bed of Lake Michigan, the~~ The ceding of that lake bed by the city of Milwaukee to a private party under the agreement described in section 30.2038 (1) (a) of the statutes, as created by this act, was necessary to foster the public purposes for which the lake bed was ceded to the city of Milwaukee, ~~as affirmed by the Wisconsin supreme court in City of Milwaukee v. State of Wisconsin, 193 Wis. 423 (1927).~~

2. ~~That the~~ The public purposes for which the lake bed was ceded as described in subdivision 1. were to construct a park and boulevard, to establish and maintain breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, and for other purposes that are not inconsistent with the improvement of navigation and fisheries in Lake Michigan and its tributaries and determined by the city of Milwaukee to be expedient.

3. The state ratifies the findings and reasoning of the Wisconsin supreme court, in City of Milwaukee v. State of Wisconsin, 193 Wis. 423 (1927), which found that an act by which the state granted to the City of Milwaukee a nominal portion of the bed of Lake Michigan, and further permitted the City to "convey to the owner or owners of the shore land adjacent thereto any or all of said lands in fee simple," furthered rather than violated the trust in favor of the public under which such lake bed is held by the state, by aiding in the greater purpose of navigation on the lake and the construction of an extensive protected harbor. The court declared that the conveyance of submerged lands to the private party in furtherance of the Milwaukee harbor project was not a private purpose but "part and parcel of the larger scheme, purely public in its nature, designed to enable the city to construct its outer harbor in aid of navigation and commerce."

4. Similarly, the public purposes of the city of Milwaukee's harbor and parks project undertaken between 1880 and 1930 were fostered and advanced by the agreement between the Chicago and Northwestern Railway Company and the city of Milwaukee, and the conveyance by the railroad to the City of Milwaukee contained therein, which is the subject of 30.2038 of the statutes (the "1913 Agreement"). Some of the bed of Lake Michigan area that was ceded to the city of Milwaukee by various acts of the state abutted shore land then owned in fee simple by the Chicago and Northwestern Railway Company. The railroad's rights along the shore included ownership of land formed by accretion, as well as the right to place docks and piers. These littoral rights had been recognized and preserved by the state in Chapter 200, Laws of 1897. In 1907, the Wisconsin Supreme Court held that land at McKinley Park had been formed by accretion due to the filling of lake bed by the city of Milwaukee pursuant to grants from the state, and that some of such accreted land was owned in fee simple by the Chicago and Northwestern Railway Company and not the City of Milwaukee. Hathaway v. City of Milwaukee, 132 Wis. 249 (1907); referenced in Milwaukee County v. Milwaukee Yacht Club, 256 Wis. 475, 477 (1950). The 1907 Hathaway decision threatened the city's park and harbor project. The decision confirmed that the railroad would become the owner of land that would form naturally due to the city's harbor and park improvements then under construction, for which the city would be required to pay the railroad condemnation awards if the city were to take ownership of the land.

5. The City negotiated the 1913 Agreement after the Hathaway decision was issued. Under the 1913 Agreement, the railroad conveyed all of its right, title and interest in all land lying east of a fixed boundary line set by the 1913 Agreement. The 1913 Agreement referred to the 1907 Hathaway decision.

6. The state is satisfied with the evidence presented to it that the 1913 Agreement validly conveyed to the city of Milwaukee substantial amounts of land then owned by the Chicago and Northwestern Railway Company along the shore, and also the right to land that would have accrued to the railroad by

accretion due to the city's park and harbor project, eliminating the city's obligation to pay condemnation awards to the railroad for such accreted land. In this further respect, the state finds that the 1913 Agreement enhanced rather than diminished the greater public purpose of navigation, harbor and park use for which the state had ceded lake bed to the city of Milwaukee.

7. The boundary line set by the 1913 Agreement was along the location of the then-existing Chicago and Northwestern Railway Company breakwater, except for an area between approximately Mason Street on the north and Chicago Street on the south, which was set at a new location approximately 100 feet east of the then-existing breakwater (the "1915 Seawall Area"). The railroad built a new breakwater or seawall enclosing the 1915 Seawall Area between 1913 and June of 1915, according to railroad records.

8. The state is satisfied that the 1915 Seawall Area was an inconsequential portion of land or lake bed that was small in size and had no utility in aid of commerce or navigation, or any other public purpose, and the fill of this area did not affect materially the rights of the public in the free use of the waters of Lake Michigan. That The 1915 Seawall Area area was considerably smaller than the amount of open water lake bed conveyed by deed to a private party, which conveyance was found to be valid in City of Milwaukee v. State of Wisconsin, 193 Wis. 423 (1927) in furtherance of the same harbor project. The public trust purposes served by the completed city of Milwaukee harbor and park project, including the opportunities created for navigation, fishing, swimming, recreation and enjoyment of scenic beauty, substantially outweigh any loss of public trust purposes that existed in the lake bed area lying westerly of the boundary line set by the 1913 Agreement.

9. Further, the state is satisfied that the 1913 Agreement was not a conveyance by the city of Milwaukee of lake bed because the 1915 Seawall Area either already had or would shortly have become dry land owned by the Chicago and Northwestern Railway Company by the process of accretion. Maps show that, in 1913, the city had erected timber cribbing projecting several hundred feet into Lake Michigan along a line at Wisconsin Avenue extended, and was filling in the lake bed north of the timber cribbing. Later maps show extensive accretion caused by the buildup of alluvion south of that cribbing due to natural wave action. The city of Milwaukee installed rubble mound breakwaters in the lake bed east of the 1915 Seawall Area, causing further accretion to form. If the Chicago and Northwestern Railway Company had not made the conveyance in the 1913 Agreement, the railroad it would have acquired considerable lands east of the line set by that agreement.

10. However, To the extent that the city of Milwaukee granted fee simple title to the 1915 Seawall Area or in any other portion of the bed of Lake Michigan to the Chicago and Northwestern Railway Company by the 1913 Agreement, in exchange for the conveyance to the city by the railroad, the state finds that such grant of a small inconsequential area of lake bed served the greater public purpose for which the state granted submerged lands to the city. In addition, to the extent that chapter 358, laws of 1909 did not explicitly authorize the city of Milwaukee to convey the 1915 Seawall Area to the railroad in fee simple, the state hereby amends such statute to so provide, and ratifies such conveyance by the city of Milwaukee of lake bed ceded to it under chapter 358, laws of 1909.

11. The state hereby declares that the reference to a breakwater constructed by the railroad in chapter 389, laws of 1915, was a reference to the breakwater as modified in the 1915 Seawall Area. Chapter 389, laws of 1915, ceded additional lake bed to the city of Milwaukee. That law was adopted in July of 1915. The Chicago and Northwestern Railway Company completed construction of a breakwater or seawall in the 1915 Seawall Area one month before that law was adopted, in June of 1915.

12. The state further declares that the state, Milwaukee County, the city of Milwaukee and residents of the state have relied on the boundary line set by the 1913 Agreement since its adoption and recording, and that the state and all other parties are estopped from asserting that the shore boundary is at any other location. ~~The city of Milwaukee has filled the lake bed extensively along the entire length of the line set by the 1913 Agreement.~~ That line represents the best evidence of the ~~Evidence of the original~~ natural shore line in that area at the time the state made lakebed grants to the city of Milwaukee, other indications of the natural shore line having ~~has long since~~ disappeared. Since 1913, the city of Milwaukee has placed extensive fill on the lake bed easterly of the entire length of the line set by the 1913 Agreement. Since 1913, all land lying westerly of the line set by the 1913 Agreement has been conveyed by deed, including deeds between the state and Milwaukee County. ~~The city of Milwaukee has filled the lake bed extensively along the entire length of the line set by the 1913 Agreement.~~ Some of the parcels lying immediately west of the line are owned by private parties. The line set by the 1913 Agreement has been explicitly recited in submerged land grants since Chapters 150 and 151, Laws of 1929. The Department of Natural Resources and the United States Army Corps of Engineers have prepared comprehensive mapping of the various lake bed grants to the city of Milwaukee and the Milwaukee harbor and lake shore, all of which depict the shore boundary at the line set by the 1913 Agreement. The state, Milwaukee County and others have relied on those maps in determining their respective rights. ~~Accordingly, the state and all other parties are estopped from asserting that the shore boundary is at any other location.~~

13. These findings are made in support of the declaration in 30.2038 of the statutes that sets the boundary line between the lake bed of Lake Michigan and land that is not part of the bed of Lake Michigan at the line set by the 1913 Agreement.

14. These findings are made after the presentation of testimony and evidence at public hearings of committees of the legislature.

(b) The declaration under paragraph (a) is made in lieu of, and has the same effect as, a final judgment entered by a court under chapter 841 of the statutes.

(c) The department of natural resources is not required to prepare a report under section 13.097 (2) of the statutes with regard to the establishment of the shoreline of Lake Michigan under section 30.2038 of the statutes, as created by this act."

Milwaukee Shoreline - Drafting Instructions for Rep. Sanfelippo

1. Repeal and recreate all of s. 30.2038, Stats., with the following changes:

"30.2038 Milwaukee shoreline established. (1) (a) The shoreline of Lake Michigan in the city of Milwaukee is fixed and established to extend from approximately the line of East Lafayette Place extended easterly, on the north, to the present north harbor entrance wall of the Milwaukee River, on the south, as specified in the agreement between the Chicago and Northwestern Railway Company and the city of Milwaukee and in conformance with the conveyance to the City of Milwaukee recorded with the office of the register of deeds of Milwaukee County on April 23, 1913, in volume 662, pages 326-330, as document number 762955.

(b) The shoreline described under par. (a) constitutes the boundary line between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan.

(2) Any restrictions, conditions, reverters, or limitations imposed on the use of land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929, chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not apply to land located to the west of the shoreline described under sub. (1) (a).

(3) Any party seeking to establish that the shore boundary in the area of the 1913 Agreement is at any location other than as set by the 1913 Agreement and section 1 may do so only by an action brought under Chapter 841, and such party shall have the burden of proving such alternate claimed shore boundary by clear and convincing evidence of its location as of the date of enactment of chapter 389, laws of 1915. In any such action, section 9132 (4e) of 2013 Wisconsin Act 20 and 2013 Wisconsin Act [This Act] shall create a rebuttable presumption that the city of Milwaukee ceded any lake bed lying easterly of the line set by the 1913 Agreement to the Chicago and Northwestern Railway Company in fee simple, under authority granted to it by the State, as the sole consideration for the conveyance by the railroad to the city of Milwaukee of valuable lands westerly of the line set by the 1913 Agreement.

2. Repeal and recreate all of section 9132 (4e) of 2013 Wisconsin Act 20 with the following changes:

"MILWAUKEE SHORELINE. (1) The Legislature finds all of the following:

(a) *(Robin, add explanation of the Legislative function as trustee as compared to general Legislative function, etc.)*

(am) That the boundary line of the shore of Lake Michigan as provided under s. 30.2038, Stats., as created by this Act, represents the best evidence of the location of the natural and historical shore line in that area. The state, Milwaukee County, the City of Milwaukee and residents of the state have relied on this boundary line since the execution and recording of the agreement between the City of Milwaukee and the Chicago and Northwestern Railway Company that established the boundary line in 1913 (the "1913 Agreement"). Since 1913, the City of Milwaukee has placed extensive fill on the lake bed easterly of the entire length of this boundary line. Since 1913, all land lying westerly of the

"Count you can do this"

("estoppel")

maybe leave i (take out all other "historical")

boundary line has been conveyed by deed, including deeds between the state and Milwaukee County. Some of the parcels lying immediately west of the line are owned by private parties. The boundary line has been explicitly recited in submerged land grants since Chapters 150 and 151, Laws of 1929. The Department of Natural Resources and the United States Army Corps of Engineers have prepared comprehensive mapping of the various lake bed grants to the City of Milwaukee and the Milwaukee harbor and lake shore, all of which depict the shore boundary at the boundary line. The state, Milwaukee County and others have relied on those maps in determining their respective rights.

(b) That the 1913 Agreement included a transfer of a small area that was submerged and connected with Lake Michigan at the time the agreement was executed, from the City of Milwaukee to the Chicago and Northwestern Railway Company. This submerged area was located between approximately Mason Street on the north and Chicago Street on the south, and extended approximately 100 feet eastward of the breakwater that existed at that time. The railroad built a new breakwater or seawall enclosing this submerged area between 1913 and June of 1915 and the area was filled. This formerly-submerged area has been upland since that time.

Explains
of the
submerged
area

(c) That the submerged area described in par. (b) ¹⁵ should not be considered part of the historical lake bed of Lake Michigan because the area already had or would shortly have become upland owned by the Chicago and Northwestern Railway Company by the process of accretion. In support of this finding, the state finds all of the following:

would
have been

Counts,
you can
do this

1. The Chicago and Northwestern Railway Company was the owner of the riparian land abutting the submerged area.
2. Maps show that, in 1913, the city of Milwaukee had erected a timber cribbing projecting several hundred feet into Lake Michigan along a line at approximately Wisconsin Avenue extended, and the City was filling in lake bed north of this timber cribbing.
2. Later maps show extensive accretion caused by the buildup of alluvion south of the timber cribbing due to the effects of this cribbing on natural wave action.
3. The city of Milwaukee installed rubble mound breakwaters in the lake bed east of the submerged area causing further accretion to form.

(d) If it is determined under s. 30.2038 (3) that the formerly- submerged area described in par. (b) was ~~historical~~ lake bed of Lake Michigan, the state finds all of the following:

1. That the Legislature has the authority as trustee of the public trust in navigable waters to convey a nominal area of lake bed to a private party for private purposes if such a conveyance furthers the trust in favor of the public under which such lake bed is held by the state and the conveyance is not for a private purpose but is part and parcel of the larger scheme, purely public in its nature, as articulated by the Wisconsin Supreme Court, in *City of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927).

Leg
auth.

2. That the conveyance of lake bed by the City of Milwaukee to the Chicago and Northwestern Railway Company under the 1913 Agreement was a conveyance of a nominal area of lake bed and was necessary in consideration of the conveyance by that railroad company to the City of Milwaukee contained therein, and that the conveyance of lake bed both fostered and advanced the public purposes for which the lake bed was ceded to the City of Milwaukee and was part and parcel of a larger scheme, purely public in its nature. In support of this finding, the state finds all of the following:

- a. That the public purposes of the City of Milwaukee's harbor and parks project undertaken between 1880 and 1930 included to construct a park and boulevard, to establish and maintain breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, to create opportunities for improved navigation, fishing, swimming, recreation and enjoyment of scenic beauty in Lake Michigan and its tributaries.
- b. That these purposes were threatened and frustrated by the rights of the Chicago and Northwestern Railway Company, which owned land abutting areas ceded to the City of Milwaukee by various acts of the state, to take ownership of the likely accretion of land caused by the City's park and harbor project and to construct docks and piers, access Lake Michigan, and exercise other riparian rights.
- c. That under the 1913 Agreement the Chicago and Northwestern Railway Company conveyed to the City of Milwaukee substantial amounts of riparian land along the location of the City's park and harbor project and all riparian rights connected to that land.
- d. That under the 1913 Agreement the City of Milwaukee conveyed to the Chicago and Northwestern Railway Company the submerged area referenced in par. (b). and that this area was nominal in size, consisting of _____ (square feet/acres).
approximately 7 acres
- e. That this submerged area had no utility in aid of commerce or navigation, or any other public purpose, the transfer and fill of this area did not affect materially the rights of the public in the free use of the waters of Lake Michigan, and the public trust purposes served by the completed city of Milwaukee harbor and park project described in subd. par. a. substantially outweigh any loss of public rights in navigable waters that existed in the submerged area that was conveyed.
- f. That any public rights in navigable waters that existed in the submerged area that was conveyed had or would shortly have been lost when that area became upland owned by the Chicago and Northwestern Railway Company by the process of accretion, as described in par. (c).

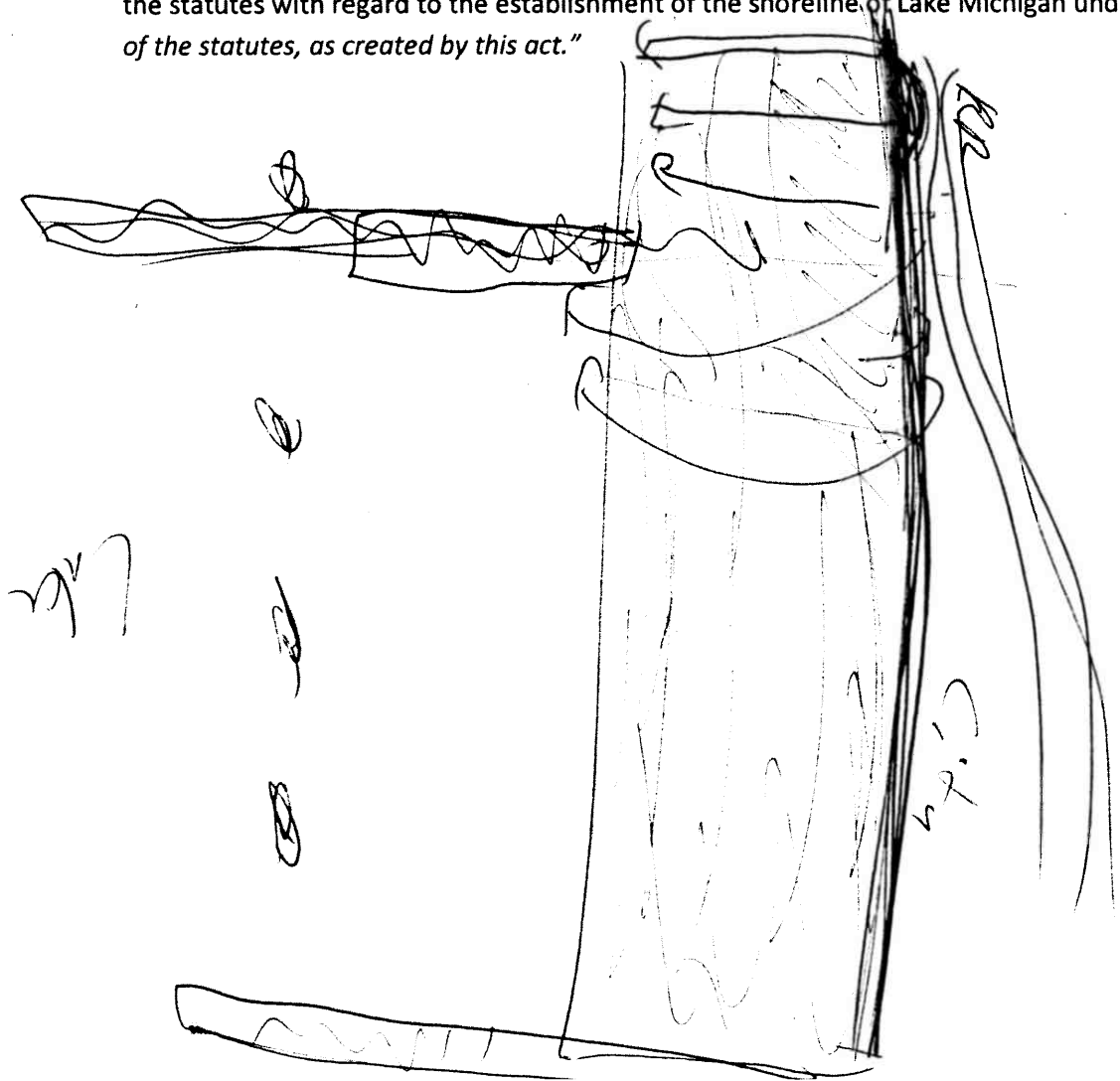
g. That the conveyance of this submerged area served the greater public purpose for which the state granted submerged lands to the City of Milwaukee. ^{authorized} ^{and} ~~To the extent that chapter 358, laws of 1909 did not explicitly authorize the City of Milwaukee to convey the submerged area to the Chicago and Northwestern Railway Company in fee simple, the state hereby amends such statute to so provide, and ratifies such conveyance by the City of Milwaukee.~~ _{the state}

h. That this conveyance from the Chicago and Northwestern Railway Company to the City of Milwaukee was made in exchange for the conveyance of the submerged area here at issue and that the 1913 Agreement would not have been executed but for the inclusion of the conveyance of the submerged area.

3. That the declaration under this paragraph is made in lieu of, and has the same effect as, a final judgment entered by a court under chapter 841 of the statutes.

(e) That the reference to a breakwater constructed by the railroad in chapter 389, laws of 1915, was a reference to the breakwater that enclosed the submerged area under the 1913 agreement, as described in par. (b).

(f) The department of natural resources is not required to prepare a report under section 13.097 (2) of the statutes with regard to the establishment of the shoreline of Lake Michigan under section 30.2038 of the statutes, as created by this act."



Milwaukee Shoreline - Drafting Instructions for Rep. Sanfelippo

1. Repeal and recreate all of s. 30.2038, Stats., with the following changes:

"30.2038 Milwaukee shoreline established. (1) (a) The shoreline of Lake Michigan in the city of Milwaukee is fixed and established to extend from approximately the line of East Lafayette Place extended easterly, on the north, to the present north harbor entrance wall of the Milwaukee River, on the south, as specified in the agreement between the Chicago and Northwestern Railway Company and the city of Milwaukee and in conformance with the conveyance to the City of Milwaukee recorded with the office of the register of deeds of Milwaukee County on April 23, 1913, in volume 662, pages 326-330, as document number 762955. *Act 20*

(b) The shoreline described under par. (a) constitutes the boundary line between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan. *Act 20*

(2) Any restrictions, conditions, reverters, or limitations imposed on the use of land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929, chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not apply to land located to the west of the shoreline described under sub. (1) (a). *Act 20*

(3) Any party seeking to establish that the shore boundary in the area of the 1913 Agreement is at any location other than as set by the 1913 Agreement and section 1 may do so only by an action brought under Chapter 841, and such party shall have the burden of proving such alternate claimed shore boundary by clear and convincing evidence of its location as of the date of enactment of chapter 389, laws of 1915. In any such action, section 9132 (4e) of 2013 Wisconsin Act 20 and 2013 Wisconsin Act [This Act] shall create a rebuttable presumption that the city of Milwaukee ceded any lake bed lying easterly of the line set by the 1913 Agreement to the Chicago and Northwestern Railway Company in fee simple, under authority granted to it by the State, as the sole consideration for the conveyance by the railroad to the city of Milwaukee of valuable lands westerly of the line set by the 1913 Agreement." *New*

2. Repeal and recreate all of section 9132 (4e) of 2013 Wisconsin Act 20 with the following changes:

"MILWAUKEE SHORELINE. (a) If any area west of the shoreline established under section 30.2038 of the statutes is located on what was historically lake bed of lake Michigan, the state declares all of the following:

1. The ceding of that lake bed by the city of Milwaukee to a private party under the agreement described in section 30.2038 (1) (a) of the statutes, as created by this act, was necessary to foster the public purposes for which the lake bed was ceded to the city of Milwaukee. *Act 20*

2. The public purposes for which the lake bed was ceded as described in subdivision 1. were to construct a park and boulevard, to establish and maintain breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, and for other purposes that are not *Act 20*

inconsistent with the improvement of navigation and fisheries in Lake Michigan and its tributaries and determined by the city of Milwaukee to be expedient.

3. The state ratifies the findings and reasoning of the Wisconsin supreme court, in *City of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927), which found that an act by which the state granted to the City of Milwaukee a nominal portion of the bed of Lake Michigan, and further permitted the City to "convey to the owner or owners of the shore land adjacent thereto any or all of said lands in fee simple," furthered rather than violated the trust in favor of the public under which such lake bed is held by the state, by aiding in the greater purpose of navigation on the lake and the construction of an extensive protected harbor. The court declared that the conveyance of submerged lands to the private party in furtherance of the Milwaukee harbor project was not a private purpose but "part and parcel of the larger scheme, purely public in its nature, designed to enable the city to construct its outer harbor in aid of navigation and commerce."

4. Similarly, the public purposes of the city of Milwaukee's harbor and parks project undertaken between 1880 and 1930 were fostered and advanced by the agreement between the Chicago and Northwestern Railway Company and the city of Milwaukee, and the conveyance by the railroad to the City of Milwaukee contained therein, which is the subject of 30.2038 of the statutes (the "1913 Agreement"). Some of the area that was ceded to the city of Milwaukee by various acts of the state abutted shore land then owned in fee simple by the Chicago and Northwestern Railway Company. The railroad's rights along the shore included ownership of land formed by accretion, as well as the right to place docks and piers. These littoral rights had been recognized and preserved by the state in Chapter 200, Laws of 1897. In 1907, the Wisconsin Supreme Court held that land at McKinley Park had been formed by accretion due to the filling of lake bed by the city of Milwaukee pursuant to grants from the state, and that some of such accreted land was owned in fee simple by the Chicago and Northwestern Railway Company and not the City of Milwaukee, *Hathaway v. City of Milwaukee*, 132 Wis. 249 (1907); referenced in *Milwaukee County v. Milwaukee Yacht Club*, 256 Wis. 475, 477 (1950). The 1907 Hathaway decision threatened the city's park and harbor project. The decision confirmed that the railroad would become the owner of land that would form naturally due to the city's harbor and park improvements then under construction, for which the city would be required to pay the railroad condemnation awards if the city were to take ownership of the land.

5. The City negotiated the 1913 Agreement after the Hathaway decision was issued. Under the 1913 Agreement, the railroad conveyed all of its right, title and interest in all land lying east of a fixed boundary line set by the 1913 Agreement. The 1913 Agreement referred to the 1907 Hathaway decision.

6. The state is satisfied with the evidence presented to it that the 1913 Agreement validly conveyed to the city of Milwaukee substantial amounts of land then owned by the Chicago and Northwestern Railway Company along the shore, and also the right to land that would have accrued to the railroad by accretion due to the city's park and harbor project, eliminating the city's obligation to pay condemnation awards to the railroad for such accreted land. In this further respect, the state finds that the 1913

Agreement enhanced rather than diminished the greater public purpose of navigation, harbor and park use for which the state had ceded lake bed to the city of Milwaukee.

7. The boundary line set by the 1913 Agreement was along the location of the then-existing Chicago and Northwestern Railway Company breakwater, except for an area between approximately Mason Street on the north and Chicago Street on the south, which was set at a new location approximately 100 feet east of the then-existing breakwater (the "1915 Seawall Area"). The railroad built a new breakwater or seawall enclosing the 1915 Seawall Area between 1913 and June of 1915, according to railroad records.

8. The state is satisfied that the 1915 Seawall Area was small in size and had no utility in aid of commerce or navigation, or any other public purpose, and the fill of this area did not affect materially the rights of the public in the free use of the waters of Lake Michigan. The 1915 Seawall Area was considerably smaller than the amount of open water lake bed conveyed by deed to a private party, which conveyance was found to be valid in *City of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927) in furtherance of the same harbor project. The public trust purposes served by the completed city of Milwaukee harbor and park project, including the opportunities created for navigation, fishing, swimming, recreation and enjoyment of scenic beauty, substantially outweigh any loss of public trust purposes that existed in the lake bed area lying westerly of the boundary line set by the 1913 Agreement.

9. Further, the state is satisfied that the 1913 Agreement was not a conveyance by the city of Milwaukee of lake bed because the 1915 Seawall Area either already had or would shortly have become dry land owned by the Chicago and Northwestern Railway Company by the process of accretion. Maps show that, in 1913, the city had erected timber cribbing projecting several hundred feet into Lake Michigan along a line at Wisconsin Avenue extended, and was filling in the lake bed north of the timber cribbing. Later maps show extensive accretion caused by the buildup of alluvion south of that cribbing due to natural wave action. The city of Milwaukee installed rubble mound breakwaters in the lake bed east of the 1915 Seawall Area, causing further accretion to form. If the Chicago and Northwestern Railway Company had not made the conveyance in the 1913 Agreement, the railroad would have acquired considerable lands east of the line set by that agreement.

10. To the extent that the city of Milwaukee granted fee simple title to the 1915 Seawall Area or in any other portion of the bed of Lake Michigan to the Chicago and Northwestern Railway Company by the 1913 Agreement, in exchange for the conveyance to the city by the railroad, the state finds that such grant of a small area of lake bed served the greater public purpose for which the state granted submerged lands to the city. In addition, to the extent that chapter 358, laws of 1909 did not explicitly authorize the city of Milwaukee to convey the 1915 Seawall Area to the railroad in fee simple, the state hereby amends such statute to so provide, and ratifies such conveyance by the city of Milwaukee of lake bed ceded to it under chapter 358, laws of 1909.

11. The state hereby declares that the reference to a breakwater constructed by the railroad in chapter 389, laws of 1915, was a reference to the breakwater as modified in the 1915 Seawall Area. Chapter 389, laws of 1915, ceded additional lake bed to the city of Milwaukee. That law was adopted in July of

1915. The Chicago and Northwestern Railway Company completed construction of a breakwater or seawall in the 1915 Seawall Area one month before that law was adopted, in June of 1915.

12. The state further declares that the state, Milwaukee County, the city of Milwaukee and residents of the state have relied on the boundary line set by the 1913 Agreement since its adoption and recording. That line represents the best evidence of the natural shore line in that area at the time the state made lakebed grants to the city of Milwaukee, other indications of the natural shore line having long since disappeared. Since 1913, the city of Milwaukee has placed extensive fill on the lake bed easterly of the entire length of the line set by the 1913 Agreement. Since 1913, all land lying westerly of the line set by the 1913 Agreement has been conveyed by deed, including deeds between the state and Milwaukee County. Some of the parcels lying immediately west of the line are owned by private parties. The line set by the 1913 Agreement has been explicitly recited in submerged land grants since Chapters 150 and 151, Laws of 1929. The Department of Natural Resources and the United States Army Corps of Engineers have prepared comprehensive mapping of the various lake bed grants to the city of Milwaukee and the Milwaukee harbor and lake shore, all of which depict the shore boundary at the line set by the 1913 Agreement. The state, Milwaukee County and others have relied on those maps in determining their respective rights.

13. These findings are made in support of the declaration in 30.2038 of the statutes that sets the boundary line between the lake bed of Lake Michigan and land that is not part of the bed of Lake Michigan at the line set by the 1913 Agreement.

(b) The declaration under paragraph (a) is made in lieu of, and has the same effect as, a final judgment entered by a court under chapter 841 of the statutes.

Act 21

(c) The department of natural resources is not required to prepare a report under section 13.097 (2) of the statutes with regard to the establishment of the shoreline of Lake Michigan under section 30.2038 of the statutes, as created by this act."

Act 20

Kite, Robin

From: Bushnell Nielsen <bnielsen@reinhardtlaw.com>
Sent: Monday, January 13, 2014 12:18 PM
To: Konopacki, Larry
Cc: Kite, Robin
Subject: RE: Shoreline draft

Larry:
I am checking on the document number. There is one document, which is an agreement that contains conveyance language. I am having it pulled and will send to you, and will highlight the conveyance portion of the agreement.
Bush

J. Bushnell Nielsen

Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhardtlaw.com | bio | vCard | reinhardtlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhardtlaw.com

From: Konopacki, Larry [<mailto:Larry.Konopacki@legis.wisconsin.gov>]
Sent: Monday, January 13, 2014 10:03 AM
To: Bushnell Nielsen
Cc: Kite, Robin
Subject: RE: Shoreline draft

Hi Bush, I is the doc. # 762955 instead of 2762955? I think that the first number is the one that is in the drafting instructions and in current law. Are the conveyance and the agreement the same thing? The language provided to us (and the language in current law) refer to an agreement *and* a conveyance, as if they are separate documents. If they are not, is it accurate to say that the conveyance was made in the agreement and it is the agreement that is recorded?
Thanks,
Larry

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Bushnell Nielsen [<mailto:bnielsen@reinhardtlaw.com>]
Sent: Friday, January 10, 2014 4:48 PM
To: Konopacki, Larry; eric.peterson@milwcnty.com
Subject: RE: Shoreline draft

The 1913 agreement was recorded on April 23, 1913 as Document No. 2762955.

J. Bushnell Nielsen

Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhardtlaw.com | bio | vCard | reinhardtlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhardtlaw.com

Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

Kite, Robin

From: Bushnell Nielsen <bnielsen@reinhardtlaw.com>
Sent: Monday, January 13, 2014 1:41 PM
To: Konopacki, Larry; Eric.Peterson@milwcnty.com; Kite, Robin; teig.whaley-smith@milwcnty.com
Subject: Shoreline draft
Attachments: 20140113123838.pdf

Dear Larry and Robin:

I attach the agreement and conveyance, as recorded. The conveyance begins on the third page, on the eighth line from the bottom. The correct document number is 762955.

Bush

J. Bushnell Nielsen

Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhardtlaw.com | bio | vCard | reinhardtlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhardtlaw.com

From: Karla S. Wyse
Sent: Monday, January 13, 2014 12:43 PM
To: Bushnell Nielsen
Subject: RE: Shoreline draft

It is 762955.

Karla S. Wyse, Paralegal
Reinhart Boerner Van Deuren s.c.
N16W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4543 | Fax: 262-951-4690 | Toll-Free: 800-928-5529
kwyse@reinhardtlaw.com | vCard | reinhardtlaw.com



From: Bushnell Nielsen
Sent: Monday, January 13, 2014 12:16 PM
To: Karla S. Wyse
Subject: FW: Shoreline draft

Please review our file and tell me which is the correct document number, and send a copy of the recorded 1913 agreement when you find it. Thanks.

J. Bushnell Nielsen

Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhardtlaw.com | bio | vCard | reinhardtlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhardtlaw.com

From: Konopacki, Larry [<mailto:Larry.Konopacki@legis.wisconsin.gov>]
Sent: Monday, January 13, 2014 10:03 AM
To: Bushnell Nielsen
Cc: Kite, Robin
Subject: RE: Shoreline draft

Hi Bush, I is the doc. # 762955 instead of 2762955? I think that the first number is the one that is in the drafting instructions and in current law. Are the conveyance and the agreement the same thing? The language provided to us (and the language in current law) refer to an agreement *and* a conveyance, as if they are separate documents. If they are not, is it accurate to say that the conveyance was made in the agreement and it is the agreement that is recorded?
Thanks,
Larry

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Bushnell Nielsen [<mailto:bnielsen@reinhartlaw.com>]
Sent: Friday, January 10, 2014 4:48 PM
To: Konopacki, Larry; eric.peterson@milwcnty.com
Subject: RE: Shoreline draft

The 1913 agreement was recorded on April 23, 1913 as Document No. 2762955.

J. Bushnell Nielsen
Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhartlaw.com | bio | vCard | reinhartlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhartlaw.com

Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

its corporate seal to be hereunto affixed, this 21st day of April, 1913

Signed, Sealed and Delivered

in Presence of

Arthur H. Fairchild
Herman H. Harrow

(Seal)

Bayley Manufacturing Company,
Loyal Golrick, President
Anton J. Gauschler, Secretary

Personally came before me this 21st day of April, A.D. 1913, Loyal Golrick, President, and Anton J. Gauschler, Secretary of the above named corporation to me known to be the persons who executed the foregoing instrument, and to me known to be such President and Secretary of said corporation, and acknowledged that they executed the foregoing instrument as such officers of the said corporation.

Recorded Apr 23, 1913
at 4th ordinal P.M.
Edwin H. Mueller, Register } 762991

(Seal)

C. F. B. Wittermore, Notary Public,
Milwaukee County, Wis.
My Commission Expires April 21, 1915

C. F. B. Wittermore

with

City of Milwaukee

Agreement

Resolution Adopted By The Board Of Directors Of The Chicago And North Western Railway Company April 9th, 1913.

Whereas, the Legislature of the State of Wisconsin has granted to the City of Milwaukee a portion of the bed of Lake Michigan easterly of and abutting upon property of this Company in Milwaukee, Wisconsin; and Whereas, said City of Milwaukee in the execution of the purpose of said grant is about to fill in such portion of the bed of Lake Michigan for park and boulevard purposes; and Whereas, such fill will extend to present shore of Lake Michigan easterly and thereby cut off such riparian rights as this Company has appurtenant to its shore property; and Whereas, said City of Milwaukee desires to acquire from this Company, by purchase or condemnation, the right to so fill in the bed of said lake adjoining the property of this Company; and Whereas, this Company owns by right of accretion a parcel of land abutting upon Lake Michigan, which adjoins Park property upon the North and South owned by the City of Milwaukee and used as a public park which parcel of land so owned by this Company is now occupied by the City for Park purposes (which parcel of land is shown on the map submitted herewith); and Whereas, said City of Milwaukee desires to acquire the legal title to said parcel of land owned by this Company; and Whereas, it is desirable to come to an agreement with said City of Milwaukee with respect to these matters and thereby acquire certain privileges in said City of Milwaukee which will advantage this Company; and Whereas, an agreement relating thereto has been tentatively submitted by the officers of this Company to said City of Milwaukee and agreed to by the Common Council of said City by proper vote on the 25th day of March, 1913, a copy of which agreement is now submitted to the Board; Therefore Resolved, that said agreement be, and the same is hereby adopted and approved and that the President and Secretary of this Company be, and they are thereby directed

to execute and deliver this agreement on the part of this company, when the same shall be properly executed and delivered by said City of Milwaukee.

I, John H. Baldwin, Secretary of the Chicago and North Western Railway Company, do hereby certify that the above and foregoing is a full and true copy of a resolution adopted by the Board of Directors of the Chicago and North Western Railway Company at a meeting held in New York on April 9th, 1913, as the same appears in the record of the proceedings of said Board of Directors now in my custody as Secretary, and that I am the keeper of the same. Witness my signature and the seal of said Chicago and North Western Railway Company this 17th day of April, 1913.

John H. Baldwin

Secretary, Chicago and North Western Railway Company

This Agreement, made and entered in to this 10th day of April, 1913, by and between Chicago and North Western Railway Company, of the first part and the City of Milwaukee and the Board of Park Commissioners of the City of Milwaukee, of the second part; Witnesseth, that Whereas, the State of Wisconsin has granted to the City of Milwaukee a certain strip of submerged land, six hundred feet in width, along and adjacent to the shore of Lake Michigan, constituting the bed of said lake, bounded on the south by the extended harbor entrance to the said City of Milwaukee, and on the north by the extension of the East and West Section line running through Section Twenty-one of Town Seven North, Range Twenty-two East, for Park and boulevard purposes, and Whereas, the said City of Milwaukee desires to fill in and improve said strip of land; and Whereas, Chicago and North Western Railway Company is a public railroad corporation, organized and existing under and by virtue of the laws of the State of Wisconsin, and has interest in certain lands hereinafter mentioned; and Whereas, said City of Milwaukee desires to acquire from said Chicago and North Western Railway Company, its interest in the land hereinafter conveyed; and Whereas, the parties hereto desire to fix and establish a division line indicating the right of public use for park and boulevard purposes on the east, and for public use by Chicago and North Western Railway Company on the west. Now Therefore, it is hereby agreed by and between the parties hereto that said division line so fixed and established hereby is described as follows: Commencing at a point on the south line of Block Two hundred and thirty-two of the continuation of A. L. Kane's Subdivision in the First and Eighteenth Wards of the City of Milwaukee extended easterly, and distant four hundred sixty-one and seventeen one-hundredths (461.17) feet easterly of the easterly line of Prospect Avenue; running thence north forty-one degrees and forty-three minutes (41° 43') east five hundred thirty-seven and thirty-one one-hundredths (537.31) feet to a point; thence north thirty-nine degrees and fifty-two minutes (39° 52') east four hundred fifteen and sixty-eight one-hundredths (415.68) feet to a point; thence north thirty degrees and sixteen minutes (30° 16') east one hundred ninety-four and seventy-eight one-hundredths (194.78) feet to a point; thence north twenty-seven degrees and eleven minutes (27° 11') east one hundred fourteen and eight one-hundredths (114.08) feet to a point; thence north fifteen degrees and forty-two minutes (15° 42') east three hundred thirty-three and ten one-hundredths (333.10) feet to a point on the north line of a line of Lafayette Place, which is twenty-three and four tenths (23.4) feet

west of the northwest corner of Lot Twelve (12), of Block Nine (9) of Shedd
& Lockwood's Addition in the Eighteenth Ward of the City of Milwaukee. Also,
commencing at a point on the extended southeasterly line of Block Two
hundred and thirty-two of the continuation of A. P. Kane's Subdivision afore-
said, four hundred sixty-one and seventeen one-hundredths (461.17) feet
southeasterly at right angles from the southeasterly line of Prospect Avenue
running thence southwesterly in a straight line six hundred sixty-eight
and eighty-four one-hundredths (668.84) feet to a point three hundred eighty-
three and four-tenths (383.4) feet southeasterly at right angles from the south-
easterly line of Prospect Avenue, thence southwesterly in a straight line to a
point in the extended southwesterly line of Lot Eight (8), in Block One
Hundred and Ninety-nine (199) of Rogers Addition in the First and Eight-
eenth Wards of the City of Milwaukee, Four hundred two and forty-five one-
hundredths (402.45) feet southeasterly of the southeasterly line of Prospect
Avenue, measured along said lot line; thence southwesterly in a straight
line to a point in the extended center line of Juneau Avenue, five hundred
thirty-seven and eighteen one-hundredths (537.18) feet easterly, measured
along said center line of Juneau Avenue from its intersection with the southeasterly
line of Prospect Avenue extended southerly; thence southwesterly in a straight
line to a point in the extended center line of Biddle Street, five hundred
fifty-eight and fifty-eight one-hundredths (558.58) feet easterly, measured
along said center line of Biddle Street, from the intersection of said center line
of Biddle Street with the east line of Astor Street extended south; thence
southwesterly in a straight line to a point in the extended north line of Mason Street
Five Hundred thirty-five and two-tenths (535.2) feet easterly, measured along said
north line of Mason Street from the east line of Marshall Street, running thence
southerly in a straight line to a point Four Hundred and Ninety-two (492) feet
easterly from the east line of Marshall Street, measured along the center line
of Wisconsin Street extended easterly; thence southerly in a straight line to a
point in the easterly line of the break-water on the shore of Lake Michigan, six
hundred sixty-one and five-tenths (661.5) feet easterly from the east line of Jackson
Street, measured along the north line of Chicago Street extended easterly; running
thence southerly in a straight line to a point three hundred thirty-one and
three-tenths (331.3) feet easterly from the east line of Jackson Street, measured
along the center line of Polk Street extended easterly, thence southerly on a
straight line to a point in the extended south line of Lot Three (3), Block One
Hundred and Seventy-four (174), in the Third Ward of the City of Milwaukee, Two
Hundred and Seventy-one (271) feet easterly from the easterly line of Erie Street
vacated; and in consideration, of One Dollar (\$1.00) to it in hand paid,
and of other good and valuable considerations, receipt of which is hereby
acknowledged, said Chicago and North Western Railway Company hereby quit
claims to said City of Milwaukee, all right, title and interest which it has in
and to all lands lying easterly of said fixed and established line and
abutting thereon. For the consideration aforesaid, the City of Milwaukee and its Board
of Park Commissioners hereby agree that said Railway Company may locate, construct,
maintain and operate across the park or public grounds formerly known as 7th and

Park, one additional railway track, to be located to the east of and immediately adjacent to the three tracks now laid across said park, to be used exclusively for the running of trains and not for making up trains, storing or keeping rolling stock or any other purpose of a railroad yard or depot grounds, or any other purposes whatever than that of its business of carrying passengers and freight to and from the said city. The Railway Company may also construct, maintain and operate such additional railway tracks west of the line above described, east of its west property line and north and south of said park property as it may consider necessary or desirable. The execution of this agreement is authorized by Resolution of the Board of Park Commissioners, by Resolution of the Common Council of the City of Milwaukee, and by Resolution of the Board of Directors of Chicago and North Western Railway Company. All other agreements made between the city and Chicago and North Western Railway Company are in full force and effect except where they expressly contradict the provision herein contained. In Witness, whereof, the City of Milwaukee has caused its corporate seal to be affixed hereto and these presents to be signed by its Mayor and countersigned by its City Clerk; the Board of Park Commissioners of the City of Milwaukee have severally hereunto signed their names, and Chicago and North Western Railway Company has caused to be affixed hereto its corporate seal, and these presents to be signed by its President and attested by its Secretary the day the year first above written.

In presence of
Chas. A. Howe
Harlow J. Blunkham

In presence of
Cornelius Cocoran
William J. Fiebrentz
In presence of

Frank O. Schumacher
Charles Hauserman

State of Illinois } ss Personally appeared before me this 19th day of April 1913, the above named
County of Cook } William A. Gardner, President, and John M. Baldwin, Secretary, of Chicago
and North Western Railway Company, to me known to be the persons who executed the
foregoing instrument and acknowledged the same.

State of Wisconsin }
Milwaukee County } ss Personally appeared before me this 19th day of April 1913, the
above named J. A. Bading, Mayor, and Peter F. Leuch, City Clerk, of the City of Milwaukee
to me known to be the persons who executed the foregoing instrument and acknowledged
the same.

State of Wisconsin }
Milwaukee County } ss Personally came before me this 19th day of April 1913, the above named

(Notary Seal) Chicago and North Western Railway Company
By H. A. Gardner President
Attest John M. Baldwin Secretary

(Notary Seal) City of Milwaukee
By E. L. Bading Mayor
Countersigned Peter F. Leuch City Clerk
Henry Kiber
Alfred C. Blas
A. J. Howalaki
James Currie
Benjamin Poes
Board of Park Commissioners

(Notary Seal) Edith E. Olson Notary Public
My commission expires April 2, 1917

(Notary Seal) Edith E. Olson Notary Public
My commission expires April 2, 1917

named Henry Hiber, Alfred C. Lee, A. F. Kowalski, James Currie and Benjamin Poe, constituting the Board of Park Commissioners of the City of Milwaukee, and to me known to be the persons who executed the foregoing instrument as such, and acknowledged the same.

(Not Not Seal)

Charles Hauserman Notary Public,
Commission Expires Aug. 21th. 1916.
April 14th, 1913.

I hereby certify that the following is a correct copy of a resolution adopted by the Board of Park Commissioners of the City of Milwaukee on the 14th day of April, 1913

Frank A. Schumacher Secretary.

Whereas, The City of Milwaukee by its duly authorized officers has pursuant to a resolution adopted by the Common Council on the 31st day of March, 1913, entered into an agreement with the Chicago & North Western Railway Company, dated April 10th, 1913, wherein said Chicago & North Western Railway Company quit-claims to said City of Milwaukee all right, title and interest which it has in and to all certain lands which are particularly described in said agreement; and Whereas, and by said agreement it is provided that the Board of Park Commissioners shall, by resolution authorize the execution of said agreement on its behalf; and, Whereas, The Common Council of the City of Milwaukee has deemed it for the welfare and interest of the city to make and enter into said agreement. Now Therefore, Be It Resolved, By the Board of Park Commissioners of the City of Milwaukee that it shall execute said agreement on behalf of said Board

Recorded Apr. 23-1913
at 2⁵⁵ o'clock P.M. } 762955
Edw. H. Mueller Registrar

J. J. Schieler & H.

to

M. Soos
H. Reed

J. Joseph Schieler and Evelyn Schieler his wife grantors of Milwaukee County, Wisconsin, hereby convey and warrant to Michael Soos grantee of Milwaukee County Wisconsin, for the sum of One dollar and other valuable considerations the following tract of land in Milwaukee County, State of Wisconsin, to-wit: Lot numbered Thirteen (13) and the North Ten feet (or 10 ft) of lot numbered Fourteen (14) in Block numbered Nine (9), in the Public Park Land Association Subdivision, in the North East Quarter (N. E. 1/4) of Section numbered Twenty-three (23), in Township numbered Seven (7) North of Range numbered Twenty-one (21) East in the Twenty-second (22nd) Ward of the City of Milwaukee. Also a part of the North East Quarter (N. E. 1/4) of said Section Twenty-three (23) bounded as is described as follows, to-wit: Commencing at a point in the North-West corner of said Lot Thirteen (13), in said Block Nine (9), running thence West on a line parallel to the North line of said Quarter (1/4) Section Seventy-two and Twenty-two hundredths (72.22) feet to a point;

Kite, Robin

From: Konopacki, Larry
Sent: Monday, January 13, 2014 9:06 AM
To: Kite, Robin
Subject: FW: land measure?

FYI

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Bushnell Nielsen [<mailto:bnielsen@reinhardtlaw.com>]
Sent: Friday, January 10, 2014 4:51 PM
To: Konopacki, Larry; eric.peterson@milwcnty.com
Cc: Hoisington, Joshua
Subject: RE: land measure?

Thanks for all of your help, Larry. Bush

J. Bushnell Nielsen
Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhardtlaw.com | bio | vCard | reinhardtlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhardtlaw.com

From: Konopacki, Larry [<mailto:Larry.Konopacki@legis.wisconsin.gov>]
Sent: Friday, January 10, 2014 2:28 PM
To: Bushnell Nielsen; eric.peterson@milwcnty.com
Cc: Hoisington, Joshua
Subject: RE: land measure?

Thanks Bush, this is good information.

While I have a quick second here, I thought that I would send an update to the two of you about where we are in this process. I have been working with Robin Kite in the LRB extensively this week to transform the revised document we last discussed into legislative format. In particular, we have done some reorganization and other changes intended to fit the non-stat provisions into the requirement under s. 7.11 (2) (b) below. The version of this proposal that you will see early next week will look quite different from what we last discussed, but it is my hope that we have carefully included every point that was in the last version in a way that meets with the requirements of (2) (b). I understand that there are time constraints here, so at this point we are both keeping this at the top of our lists.

Thanks,
Larry

From the state legislative drafting manual:

7.11(2)

Exceptions. There are two exceptions to the general rule that inclusion of a statement of legislative intent, purpose, or findings is inappropriate. (Even if an exception applies, however, the statement should not include promotional language; should not grant rights, prohibit actions, establish substantive standards, or otherwise create substantive law; should not be so narrowly drawn that it fails to address all of a bill's potential constitutional infirmities; and should not be equivocal or ambiguous. The statement should pertain only to the particular provision in question and relate directly to it. Facts set forth in a statement of intent, purpose, or findings should be accurate and should not appear to be susceptible to significant change unless they relate directly to an emergency condition that necessitates a specific provision.) The exceptions are:

(a) Recodification. If you determine that a bill is intended to restate the law without making any substantive change, a statement of legislative intent or purpose may aid in clarifying this fact.

(b) Constitutionality. If you believe that there is a reasonable probability that a provision of a bill may be declared unconstitutional and that it may help to sustain the provision if the courts are aware of the asserted constitutional basis for the provision or if the courts are aware of certain facts or policy, a statement of legislative intent, purpose, or findings may indicate compliance with constitutional requirements that is not otherwise apparent. For example, with respect to the home rule amendment to the constitution, the following has been used: "This section is an enactment of statewide concern for the purpose of providing a uniform regulation of the sale of fermented malt beverages." See sec. 13.01 (4), Drafting Manual. Also, a statement of legislative purpose or intent may counter an allegation of unreasonableness or arbitrariness by indicating a rational basis for action by the legislature. See Sutherland Stat Const (6th Ed), s. 20.4. Lastly, a statement of intent, purpose, or findings may sustain legislation that is enacted in instances of emergency or necessity.

NOTE: See chapter 121, laws of 1979. Generally, in attempting to uphold a statute challenged as unconstitutional, a court will find that a declaration of legislative intent or purpose is persuasive, although not necessarily conclusive. See *State ex rel. Thomson v. Giessel*, 265 Wis. 558 (1953) and *Overlook Farms v. Alternative Living*, 143 Wis. 2d 485, 497-499 (Ct. App. 1988). A standard that is articulated in a statement of findings or intent to justify a statute must be related to the fundamental purpose for which the statute is intended. See *Funk v. Wollin Silo & Equipment, Inc.*, 148 Wis. 2d 59, 77 (1989). Although a court may find that a legislative purpose statement identifies a legitimate public purpose, the statute to which it pertains must be reasonable and appropriate. See *State ex rel. Cannon v. Moran*, 111 Wis. 2d 544 (1983). If the facts upon which a statement of findings is based are susceptible to significant change, the statement may later fail to justify an allegedly unconstitutional provision. See *Leary v. United States*, 395 U.S. 6, 89 S. Ct. 1532 (1969) and *Ferdon v. Wisconsin Patient's Comp. Fund*, 2005 WI 125, 284 Wis. 2d 573. A statement of general policy may not substitute for explicit statutory substantive powers [see *A.L.A. Schechter Poultry Corporation v. United States*, 295 U.S. 495, 55 S. Ct. 837 (1935)], nor may a policy statement confer substantive powers that equal those in a substantive statutory provision [see *Lyng v. Northwest Indian Cemetery Protective Assn.*, 485 U.S. 439, 108 S. Ct. 1319 (1988)]. See also *Wisconsin's Environmental Decade, Inc. v. P.S.C.*, 69 Wis. 2d 1, 18 (1975) and *Schilling v. Crime Victim Rights Bd.*, 2005 WI 17, 278 Wis. 2d 216, 224-25, 229-30 [court looked at statement of legislative intent as intrinsic guide to meaning]. An ambiguous legislative purpose statement may fail to articulate a sufficiently reasonable basis for a legislative determination. See *Wipperfurth v. U-Haul Co. of Western Wis., Inc.*, 101 Wis. 2d 586 (1981).

Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Bushnell Nielsen [<mailto:bnielsen@reinhartlaw.com>]
Sent: Friday, January 10, 2014 10:53 AM
To: Konopacki, Larry
Cc: eric.peterson@milwcnty.com; Hoisington, Joshua
Subject: RE: land measure?

Dear Larry, Eric and Josh:

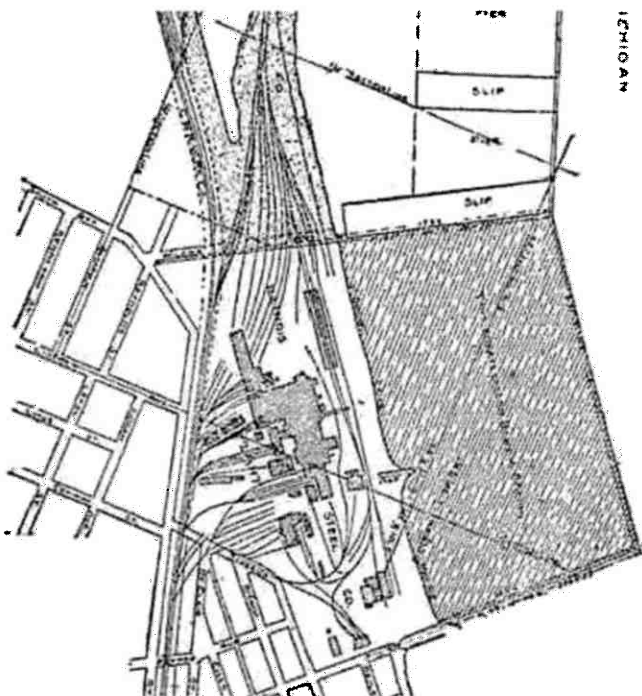
The 1913 agreement stated that the 1915 Seawall Area was "an area altogether amounting to approximately seven acres..." The agreement also stated that "a considerable portion of land" was being conveyed by the railroad to the city, allowing the city "to acquire and make land amounting to approximately 280 acres which are in part at the present time and will become in the future of inestimable value."

By comparison, the EPA has calculated the entire area of Lake Michigan as being 22,300 square *miles*, which (at 640 acres per square mile) is a total area of 14,272,000 acres. Thus, it is almost an understatement to describe seven acres as being nominal in proportion to the total.

The conveyance to Illinois Steel that our Supreme Court approved in the *Milwaukee v. State* decision was a conveyance of an area about 1,500 feet by 3,000, or about 100 acres. It included the bed of Lake Michigan out to a depth of 26 feet. That area is still filled in and clearly visible on any aerial photo of the shoreline. Compare the map of the area that was made part of the 1927 decision to the attached current aerial photo of that area.

I hope this helps.

Bush



J. Bushnell Nielsen

Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhartlaw.com | bio | vCard | reinhartlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhartlaw.com

From: Konopacki, Larry [<mailto:Larry.Konopacki@legis.wisconsin.gov>]
Sent: Thursday, January 09, 2014 3:55 PM
To: Bushnell Nielsen
Cc: eric.peterson@milwcnty.com; Hoisington, Joshua
Subject: land measure?

Any idea what the acreage/square footage of the 1915 seawall area is?

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.

Kite, Robin

From: Konopacki, Larry
Sent: Monday, January 13, 2014 8:57 AM
To: Kite, Robin
Subject: FW: Shoreline draft

See below, thanks!

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Bushnell Nielsen [<mailto:bnielsen@reinhardtlaw.com>]
Sent: Friday, January 10, 2014 4:48 PM
To: Konopacki, Larry; eric.peterson@milwcnty.com
Subject: RE: Shoreline draft

The 1913 agreement was recorded on April 23, 1913 as Document No. 2762955.

J. Bushnell Nielsen
Reinhart Boerner Van Deuren s.c.
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097
bnielsen@reinhardtlaw.com | bio | vCard | reinhardtlaw.com
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhardtlaw.com

From: Konopacki, Larry [<mailto:Larry.Konopacki@legis.wisconsin.gov>]
Sent: Friday, January 10, 2014 4:40 PM
To: Bushnell Nielsen; eric.peterson@milwcnty.com
Subject: FW: Shoreline draft

Can you guys help with the question below?

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Kite, Robin
Sent: Friday, January 10, 2014 4:39 PM
To: Konopacki, Larry
Subject: RE: Shoreline draft

If it isn't recorded, I'm not sure how to refer to it (I'm trying to define it). If you could find out if it was recorded, that would be helpful.

From: Konopacki, Larry
Sent: Friday, January 10, 2014 4:35 PM
To: Kite, Robin
Subject: RE: Shoreline draft

I don't know. Do you want me to find out?

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

From: Kite, Robin
Sent: Friday, January 10, 2014 4:28 PM
To: Konopacki, Larry
Subject: Shoreline draft

Larry:

I probably won't have anything to show you until Monday morning but I am almost finished with the draft. Do you know if the 1913 agreement was recorded along with the conveyance to the city? The language in s. 30.2038 in current law, and in the repealed and recreated text, is not clear on this issue. If it wasn't recorded, I think the draft needs to describe it more specifically.

Thanks.

Robin

Robin N. Kite
Senior Legislative Attorney
Wisconsin Legislative Reference Bureau
1 E. Main St., Suite 200
Madison, WI 53703
(608) 266-7291

Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

This e-mail and any attachments may contain privileged or confidential information. This e-mail is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, distribution, dissemination or action taken in relation to the contents of this e-mail and any of its attachments is strictly prohibited and may be unlawful. If you have received this e-mail in error, please notify the sender immediately and permanently delete the original e-mail and destroy any copies or printouts of this e-mail as well as any attachments. To the extent representations are made herein concerning matters of a client of the firm, be advised that such representations are not those of the client and do not purport to bind them.



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Please
check
auto-refs.
in
nonstats.
Tx.

D-Note

Gen Cat

- 1 **AN ACT** ...; **relating to:** establishing the shoreline of Lake Michigan in the city
- 2 of Milwaukee.

Analysis by the Legislative Reference Bureau

This bill fixes and establishes the shoreline in the city of Milwaukee (city) in accordance with an agreement entered into in 1913 (agreement of 1913) between the Chicago and Northwestern Railway company and the city. The bill provides that this shoreline constitutes the boundary line between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan. The bill specifies than any restrictions or other conditions imposed on the use of land or conveyance of land under various enactments of the legislature conveying a part of the lake bed of Lake Michigan do not apply to land located to the west of the shoreline as established under the bill. The bill provides that a person may challenge the shoreline boundary as established under the bill only by bringing an action in court for a declaratory judgment.

The bill also makes legislative findings and declarations with respect to the authority of the legislature to act as representative of the state in exercising the function of the trustee of the public trust in navigable waters established under the Wisconsin Constitution. The bill contains other findings that describe land conveyances under the agreement of 1913 and under other legislative enactments

↑ various

Article IX, section 1, 19

and that describe other activities that occurred after 1913 ^{that} establish ^{to} the shoreline in the city of Milwaukee, ^{is} as described in the agreement of 1913. ^{that}

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

*created
^ as affected by 2013 Wisconsin Act 20 ^*

1 SECTION 1. 30.2038 of the statutes is repealed and recreated to read:

2 **30.2038 Milwaukee shoreline established.** (1) (a) The shoreline of Lake
3 Michigan in the city of Milwaukee is fixed and established to extend from
4 approximately the line of East Lafayette Place extended easterly on the north to the
5 present north harbor entrance wall of the Milwaukee River on the south as specified
6 in an agreement between the Chicago and Northwestern Railway Company and the
7 city of Milwaukee recorded with the office of the register of deeds of Milwaukee
8 County on April 23, 1913, in volume 662, pages 326–330, as document number
9 762955.

10 (b) The shoreline described under par. (a) constitutes the boundary line
11 between the lake bed of Lake Michigan and land that is not part of the lake bed of
12 Lake Michigan.

13 (2) Any restrictions, conditions, reverters, or limitations imposed on the use of
14 land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of
15 1915, chapter 284, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929,
16 chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985
17 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not
18 apply to land located to the west of the shoreline described under sub. (1) (a).

19 (3) A person challenging the boundary as described under sub. (1) (a) may do
20 so only by bringing an action under ch. 841. The person bringing the action under

1 ch. 841 has the burden of proving, by clear and convincing evidence, that the
2 boundary is not as described under sub. (1) (a).

3 **SECTION 2. Nonstatutory provisions.**

4 (1) In this ~~subsection~~ ^{e SECTION ← CS}:

5 (a) "Agreement of 1913" means the agreement described in section 30.2038 (1)
6 (a) of the statutes, as affected by this act.

7 (b) "City" means the city of Milwaukee.

8 (c) "Railroad" means the Chicago and Northwestern Railway Company.

9 (2) The legislature declares that the state is the trustee of the public trust
10 established under article IX, section 1 of the Wisconsin Constitution and that the
11 legislature is authorized as representative of the state to exercise the function of the
12 trustee of that public trust in matters of specific application.

13 (3) The legislature finds that the best available evidence confirms that the
14 boundary line established under section 30.2038 (1) (a) of the statutes, as affected
15 by this act, is the location of the natural and historical shore line of Lake Michigan.
16 The legislature further finds all of the following:

17 (a) That this state, Milwaukee County, the city, and residents of this state have
18 relied on this boundary line since the execution and recording of the agreement of
19 1913.

20 (b) That since 1913, the city has placed extensive fill on the lake bed easterly
21 of the entire length of this boundary line.

22 (c) That since 1913, all land lying westerly of the boundary line has been
23 conveyed by deed, including by deeds conveyed by this state to Milwaukee County.

24 (d) That some of the parcels of land lying immediately west of the boundary line
25 are owned by private parties.

1 (e) That the boundary line has been explicitly recited by the legislature in
2 chapter 150, laws of 1929, chapter 151, laws of 1929, and in subsequent enactments
3 of the legislature.

4 (d) That the department of natural resources and the U. S. Army Corps of
5 Engineers have prepared comprehensive maps of the lake bed grants to the city that
6 concern the city harbor and lake shore of Lake Michigan, all of which depict the
7 shoreline as described under section 30.2038 (1) (a) of the statutes, as affected by this
8 act.

9 (e) That this state, Milwaukee County, and others have relied on those maps
10 in determining their respective rights.

11 (4) The legislature finds that the agreement of 1913 included a transfer from
12 the city to the railroad of a small area of land that was submerged and connected to
13 Lake Michigan at the time the agreement of 1913 was executed. The legislature
14 further finds all of the following:

15 (a) That this submerged area of land was located between approximately
16 Mason Street on the north and Chicago Street on the south and extended
17 approximately 100 feet eastward of the breakwater that existed at that time.

18 (b) That the railroad built a new breakwater or seawall enclosing this
19 submerged area between 1913 and June 1915 that the area was filled, and that the
20 area has been upland since that time.

21 (5) The legislature finds that the submerged area described in subsection (4)
22 is not lake bed of Lake Michigan because it had become or shortly would have become
23 upland owned by the railroad by the process of accretion. In support of this finding,
24 the legislature further finds all of the following:

25 (a) That the railroad owned the riparian land abutting the submerged area.

create A.R. +



STET

create A.R. w



1 (b) That maps show that in 1913 the city had erected a timber cribbing
2 projecting several hundred feet into Lake Michigan along a line at approximately
3 Wisconsin Avenue extended, and the city was filling in lake bed north of this timber
4 cribbing.

5 (c) That later maps show extensive accretion caused by the buildup of alluvion
6 south of the timber cribbing as a result of the effects of this cribbing on natural wave
7 action.

8 (d) That the city installed rubble mound breakwaters in the lake bed east of the
9 submerged area causing further accretion.

10 (6) If a court finds under section 30.2038 (3) of the statutes, as affected by this
11 act, that the ^{Submerged} area described in subsection (4) ^{Use A.R.X} was lake bed of Lake Michigan, the
12 legislature declares all of the following:

13 (a) That the legislature has the authority as representative of the trustee of the
14 public trust in navigable waters to convey a nominal area of lake bed to a private
15 party for private purposes if such conveyance furthers the public trust and the
16 conveyance is not for a private purpose but is part and parcel of the larger scheme,
17 purely public in its nature, as declared by the Wisconsin Supreme Court in City of
18 Milwaukee v. State of Wisconsin, 193 Wis. 423 (1927).

19 ^{ital} ^{create A.R.Z} → (b) That the conveyance of lake bed by the city to the railroad under the
20 agreement of 1913 was a conveyance of a nominal area of lake bed and was necessary
21 in consideration of the conveyance by the railroad to the city contained in the
22 agreement of 1913 and the conveyance of lake bed both fostered and advanced the
23 public purposes for which the lake bed was ceded to the city and was part and parcel
24 of a larger scheme, purely public in its nature. The legislature further finds all of the
25 following:

create A.R. 22

1 → 1. That the public purposes of the city's harbor and parks project undertaken
2 between 1880 and 1930 included the construction of a park and boulevard, the
3 establishment and maintenance of breakwaters, bulkheads, piers, wharves,
4 warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, and
5 the creation of opportunities for improved navigation, fishing, swimming,
6 recreation, and enjoyment of scenic beauty in Lake Michigan and its tributaries.

7 2. That these purposes were threatened and frustrated by the rights of the
8 railroad, which owned land abutting areas ceded to the city by various acts of the
9 legislature, to take ownership of the likely accretion of land caused by the city's park
10 and harbor project, to construct docks and piers, to obtain access to Lake Michigan,
11 and to exercise other riparian rights.

12 3. That ~~under~~ the agreement of 1913^e the railroad conveyed to the city
13 substantial amounts of riparian land along the location of the city's park and harbor
14 project and all riparian rights connected to that land.

15 4. That under the agreement of 1913^e the city conveyed to the railroad the
16 submerged area described in subsection (4) which was nominal in size, consisting of
17 approximately 7 acres.

18 5. That this submerged area had no utility in aid of commerce or navigation or
19 any other public purpose, the transfer and fill of this area did not materially affect
20 the rights of the public in the free use of the waters of Lake Michigan, and the public
21 trust purposes served by the completed city harbor and park project described in ^epar. paragraph

22 Use A.R. 22 → (b) 1. substantially outweighed any loss of public rights in navigable waters that
23 Use AR 22 existed in the submerged area that was conveyed.

24 6. That any public rights in navigable waters that existed in the submerged
25 area that was conveyed had or would shortly have been lost when that area became

1 upland owned by the railroad by the process of accretion, as described in subsection
2 (5). ^(Use A.R.W)

3 7. That the conveyance of this submerged area served the greater public
4 purpose for which the state granted submerged lands to the city and that chapter
5 358, laws of 1909, explicitly authorized that conveyance.

6 8. That the conveyance from the railroad to the city was made in exchange for
7 the conveyance of the submerged area and that the agreement of 1913 would not
8 have been executed if ^{of the submerged area} the conveyance was not included in the
9 agreement of 1913.

10 9. That the findings under this paragraph are made in lieu of, and have the
11 same effect as, a final judgment entered by a court under chapter 841 of the statutes.

12 (7) The legislature finds that reference to a breakwater constructed by the
13 railroad in chapter 389, laws of 1915, was a reference to the breakwater that enclosed
14 the submerged area under the agreement of 1913 as described in subsection (4). ^(Use A.R. X)

15 (8) The department of natural resources is not required to prepare a report
16 under section 13.097 (2) of the statutes with regard to the establishment of the
17 shoreline of Lake Michigan under section 30.2038 (1) (a) of the statutes, as affected
18 by this act.

19 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3906?dn
RNK:.....

WJ

Date

This draft is based entirely on language provided to me in draft form. I cannot verify the accuracy of the factual assertions in this draft.

The nonstatutory provision in this draft recites legislative findings with regard to the location of the Lake Michigan shoreline in the city of Milwaukee. Ordinarily, it is inadvisable to include legislative findings in a draft except in very limited circumstances. One of those circumstances is if there is a reasonable probability that a provision of a bill may be declared unconstitutional and the findings may help to sustain the provision if a court is made aware of the asserted constitutional basis for the provision.

I understand that the purpose of including legislative findings in this draft is to help sustain a finding that s. 30.2038, ^{as} affected in this draft, does not violate the public trust doctrine as established under article IX, section 1 of the Wisconsin Constitution. I do not know whether there is a reasonable probability that the legislative findings in this draft are likely to help sustain the constitutionality of s. 30.2038. ^{stats}

The nonstatutory provision of the draft also recites that certain of the legislative findings in the draft are made in lieu of, and have the same effect as, a final judgment entered by a court under ch. 841, stats. This provision could be challenged under the separation of powers doctrine. Article IV, section 1, of the Wisconsin Constitution vests the legislative powers of the state in the senate and assembly. Article VII, sections 2, 5, and 8, vest the judicial powers of the state in a unified court system and grants ~~circuits~~ ^{original and appellate courts} courts and the courts of appeals original and appellate jurisdiction, respectively. ^{STAT}

Under the separation of powers doctrine, the constitution confers on each branch of government certain powers upon which the other branches may not intrude. It is possible that a court could find that a legislative declaration that certain legislative findings have the effect of a final judgment entered by a court confers judicial powers on the legislative branch in violation of the Wisconsin Constitution.

of the Wisconsin Constitution

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3906/1dn
RNK:wlj:rs

January 14, 2014

This draft is based entirely on language provided to me in draft form. I cannot verify the accuracy of the factual assertions in this draft.

The nonstatutory provision in this draft recites legislative findings with regard to the location of the Lake Michigan shoreline in the city of Milwaukee. Ordinarily, it is inadvisable to include legislative findings in a draft except in very limited circumstances. One of those circumstances is if there is a reasonable probability that a provision of a bill may be declared unconstitutional and the findings may help to sustain the provision if a court is made aware of the asserted constitutional basis for the provision.

I understand that the purpose of including legislative findings in this draft is to help sustain a finding that s. 30.2038, stats., as affected in this draft, does not violate the public trust doctrine as established under article IX, section 1, of the Wisconsin Constitution. I do not know whether there is a reasonable probability that the legislative findings in this draft are likely to help sustain the constitutionality of s. 30.2038, stats.

The nonstatutory provision of the draft also recites that certain of the legislative findings in the draft are made in lieu of, and have the same effect as, a final judgment entered by a court under ch. 841, stats. This provision could be challenged under the separation of powers doctrine. Article IV, section 1, of the Wisconsin Constitution vests the legislative powers of the state in the senate and assembly. Article VII, sections 2, 5, and 8, of the Wisconsin Constitution vest the judicial powers of the state in a unified court system and grants circuit courts and the courts of appeals original and appellate jurisdiction, respectively. Under the separation of powers doctrine, the constitution confers on each branch of government certain powers upon which the other branches may not intrude. It is possible that a court could find that a legislative declaration that certain legislative findings have the effect of a final judgment entered by a court confers judicial powers on the legislative branch in violation of the Wisconsin Constitution.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Rose, Stefanie

From: Hoisington, Joshua
Sent: Friday, January 24, 2014 9:47 AM
To: LRB.Legal
Subject: RUSH - Draft Review: LRB -3906/1 Topic: Establishment of Milwaukee shoreline

RUSH

Please Jacket LRB -3906/1 for the ASSEMBLY.