

Ad hoc Settlement Committee Report and Joint Statement  
July 12, 2017

On May 2, the City Council voted unanimously to engage in negotiated settlement talks with plaintiffs in the westside waterfront lawsuit against the City of Sturgeon Bay and Waterfront Redevelopment Authority.

On June 12 and June 14, Alderpersons Laurel Hauser and David Ward, along with City Attorney Randy Nesbitt and City Administrator Josh Van Lieshout, met at Madison College with plaintiffs Carri Andersson, Nancy Aten, Kathleen Finnerty and Christie Weber. The City's attorney, John Greene, and the plaintiffs' attorneys, Mary Beth Parenteau and Sarah Geers, were also present. The meetings were facilitated by Mr. Jeremy Kautza of Madison College.

After twelve hours of meetings over two days, all eight individuals, who were authorized to represent the two parties involved in the negotiations, unanimously agreed to the following:

“Predicated on the 1835 U.S. surveyed shore meander line, [we] agree to an Ordinary High Water Mark (OHWM) for parcel 92 that is 60 feet waterward of meander line. Further agree to end any litigation on this property, administrative and appellate, except to the extent we need DNR and circuit court agreement to lift injunction. When this line meets parcel 100, it will follow the DNR concurrence line on parcel 100. There will be an inclusive public process to determine what happens to the public area. City council will withdraw its request for legislation on this parcel 92.

“City will have a process, provide for public input, and strive for a view and public use on parcel 100.”

For the following reasons, we believe this agreement is beneficial to the City of Sturgeon Bay and serves the overall interests of our community.

1. The agreement provides an approximately 64,000-square-foot lot above the OHWM for private development to generate increment for TID #4. (For reference, Bay Lofts is built on a 47,366-square foot lot; the Maritime Museum sits on a 30,819-square foot lot.)
2. The agreement on the watermark needs DNR approval. In a meeting on June 30 with the City's attorneys present, the DNR was receptive to the line set by the negotiating team. Once it receives letters from the City and the WRA, it will begin the process to make the determination official. Once there is agreement on the watermark, the plaintiffs and the City will request that Judge Huber remove his injunction against using parts of Parcel 92 for private development. It is

- reasonable to think that the injunction could be lifted this fall if an agreement to settle the lawsuit is made in July.
3. The proposed agreement stipulates that all litigation will cease. After being mired in lawsuits and appeals since 2015 and facing the possibility of this continuing for years into the future, this agreement allows three legal actions to go away – the lawsuit brought by the Friends of Sturgeon Bay’s Public Waterfront, the appeal of the March ruling by Judge Huber, and the DNR proceeding for a declaratory ruling.
  4. We can begin to talk with developers. Once the OHWM is determined and the injunction removed, developers can be courted for TID 4. TID 4 is projected to have about \$17 million in increment and bring in roughly \$9.6 - \$9.8 million in tax revenue over its lifetime. Every month that we delay a development contract because we have unresolved legal issues costs us tens of thousands of dollars in lost tax increment and perpetuates an environment that is unwelcoming to developers...in addition to the money we’re spending on ongoing legal fees.
  5. If we do not settle the lawsuit in the very near future, then the injunction will continue, the DNR will hold a declaratory hearing on the OHWM, and the City’s appeal of Judge Huber’s ruling will continue. With possible appeals of any or all of these legal situations, the timeline to getting clear title to Parcel 92 is estimated to be at least two years (2019). It is also possible that any of these legal proceedings could result in legal precedent(s) that are unfavorable to the City and other communities around the state that are doing developments on or near the water. It should be noted that an unfavorable outcome from legal proceedings has already happened as the DNR changed its mind on the OHWM from the property lines to a notched-out boundary version in its preliminary ruling.
  6. Our community is ready for resolution of this matter. Most residents of the City don’t have (and don’t want to have) an understanding of all of the nuances surrounding legal proceedings. They would like to see the waterfront development completed.

We feel that the above agreement allows the community to move forward in a positive direction and that it is in the City’s best interest.

We request and recommend that the WRA and the Common Council vote to approve the settlement agreement.

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Laurel Hauser, alderperson District 7

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David Ward, alderperson District 3