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Developer and lawsuit plaintiffs agree on alternate waterfront plan: One of several announcements made at Friends' Fall Social

By Laurel Hauser

The Friends of the Sturgeon Bay Public Waterfront held its second annual Fall Social October 27 at the Door County Fire Company. A crowd of 60 turned out to hear updates on the status of the group's lawsuit against the City of Sturgeon Bay and other efforts to keep the City's westside waterfront, located between the two downtown bridges, in public ownership. According to the Friends group – and a number of local and statewide nonprofits that have endorsed its efforts – the land in question is filled lakebed and cannot, by virtue of the Wisconsin State Constitution, be sold for private benefit. The City seeks to sell a portion of the property to Bob Papke of Sawyer Hotel Development, LLC.

Dan Collins, a member of the Friends group, provided the crowd with an overview of efforts made thus far by individuals and groups to maintain the public status of the waterfront since the announcement was made in the fall of 2014 that the land would be sold to a private developer. He listed, among other things, petitions; protests; creation of Smart Growth, Sturgeon Bay; a citizen-led research trip to Eau Claire; suggestions for alternative plans posted on www.centerlineforum.org; letters submitted on the groups' behalf by Midwest Environmental Advocates; establishment of a Friends' website: www.friendsofsturgeonbaypublicwaterfront.com; two pop-up art shows; proposals made to the Waterfront Redevelopment Authority; over \$100,000 raised from hundreds of supporters; and hundreds of statements made before the City Council.

Collins noted, "Each of these efforts takes 10 seconds to describe, but they've taken and continue to take countless hours of time and an inordinate amount of energy and funds to accomplish. No one is doing this work to get rich."

"At some point along the way," he continued, "it became clear that, no matter what we did, the City wouldn't listen, and that in order to protect public land, we had to sue." The Friends group hired Wheeler, Van Sickle and Anderson of Madison, Wisconsin, and filed a lawsuit against the City of Sturgeon Bay in January of 2016. The trial is set for February 2017. Both sides have recently filed briefs requesting summary judgment by presiding judge Ray Huber, Circuit Court Judge of Waupaca County.

Collins then announced that the plaintiffs and the developer had met recently and come to an agreement on an alternate location for the hotel 220 feet further from the bulkhead line. He explained, “Although only the DNR can determine the ordinary high water mark, our proposal uses the 1835 U.S. Government-surveyed shore meander line, which would normally be used by the DNR as one of the references for OHWM determination.” The plan would permanently preserve the land below the U.S. Government meander line – filled lakebed – with a conservation easement agreement.

The plan also includes space for a brewpub or other private development, in addition to the hotel. “We thought we had a win-win proposal,” said Collins. “The hotel developer was happy with the new location, the plaintiffs were happy, and the City still had two parcels it could develop for tax revenue purposes. The lawsuit could go away.” The City turned down the proposal in a letter from its attorney Randy Nesbitt. A map of the proposed plan is available on the Friends’ website.

Friends’ member Nancy Aten used a PowerPoint presentation of historic photos and maps to show changes that have been made to the shoreline over time as ship transport gave way to a railway, as fill was added for a wartime coal yard and other structures, as fire destroyed much of the waterfront in 1944, and as bridges were built in 1931 and 2008.

During the question and answer segment of the meeting, a member of the audience asked Aten how the fact that the waterfront property had been filled so long ago and had been developed in the past impacted today’s situation. Aten replied that the Public Trust Doctrine is unequivocal. “Filled lakebed is public land, no matter how long ago it was filled. One thing that makes this property different than Utopia Circle or any of the many other filled properties that exist is that it is currently clear of structures, and, it is owned by the City. It’s the City’s fiduciary duty, to protect the public’s rights.” She added, “This is one of Door County’s most iconic and valuable properties and it’s worth getting it right when we have a chance.”

Another member of the audience inquired about an alternate proposal the City had made to the plaintiffs that was turned down. According to Christie Weber, one of the plaintiffs, the City proposed moving the hotel 30 feet further back from the shoreline. “The 30-foot move left the hotel footprint on land that was still indefensible in terms of probable ordinary high water mark,” she explained. “It ignored public trust rights and left any private development at legal risk.”

In another announcement, members of the executive committee of a new nonprofit were on hand to share news of incorporation. Committee members Kelly Catarozoli, Hans Christian, Shawn Fairchild, Ame Thorson, and Christie Weber announced that the Sturgeon Bay Historical Society (SBHS) is in the process of incorporation. (Two additional founding members, Laura Kayacan and Elaine Carmichael were not present.) According to Fairchild, “There are many organizations devoted to preserving Door County’s history, but none solely focused on Sturgeon Bay. We feel there is a need to support efforts to preserve and celebrate our history, including the preservation and restoration of historic structures.”

Toward that end, the group has submitted a professionally prepared application to the National Register of Historic Places (NRHP) for designation of the Teweles and Brandeis grain elevator located on the westside waterfront. Historic preservation consultant Tim Heggland prepared the application and has successfully submitted over 100 NRHP applications. The application was pre-approved by the State before being submitted to the federal agency. Application materials are available on centerlineforum.org.

County Historian George Evenson applauded the group’s action. “The grain elevator, which was built in 1902, is a treasure. It’s the last surviving structure that tells the story of our agricultural heritage.”

Weber noted that SBHS will also seek to have the historic Cardy Paleoindian site on the City’s west side incorporated into the Ice Age Trail that runs just blocks from it. The Cardy site is one of the state’s most significant Ice Age-related sites and is listed on the Wisconsin and National Registers of Historic Places.

The meeting closed with the announcement by Collins that, according to a number of sources, the City is requesting that the state legislature act without precedent, to give away a public waterfront for a private purpose with no corresponding benefit to the public. Collins noted, “It’s an admission that the City is acting beyond its authority. If they weren’t trying to do something illegal, they wouldn’t have to change the law to make it happen.” Weber added, “Selling public trust land to private developers is a dangerous precedent to set. It should give everyone who treasures public land – here, throughout the County and across the state – cause for alarm.”

The Friends group reiterated its willingness and desire to meet with the City to continue pursuing alternate resolutions to the ongoing lawsuit.