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June 10, 2016

Mr. Justin Hall, Chairman
Town of Bass Lake
9327 N. Ski Hill Road
Hayward, WI 54843

Ms. Erica Warshawsky, Clerk
Town of Bass Lake
14412 W. County Road K
Hayward, WI 54843

Re: **Penalty section, Bass Lake Reserve Strips Ordinance**

Dear Mr. Hall and Ms. Warshawsky:

The following is a review of the provisions of the Lawsuit filed in 1987 by the Town of Bass Lake, Paul Paulson and C. F. Grove, against a list of landowners of properties in the Northwoods Beach Subdivision who own properties which are adjacent to Grindstone Lake and Lac Courte Oreilles Lake in Sawyer County.

In the Complaint filed in that action, the purpose of the lawsuit was “to seek a *Judicial determination of the right of the public, and more specifically the right of residents of Bass Lake and property owners in said Northwoods Beach Subdivision whose property does not abut on the on the above named lake shore beaches, to free use and access of the lake shore or beaches along the above named lots located on Grindstone Lake and Lac Courte Oreilles Lake in said Northwoods Beach Subdivision, and to determine and declare that under the plats approved by duly elected town Boards, said beaches are reserved and dedicated to the use of the public and that the defendants have no private-right or interest therein.*”

The named defendants were served with copies of the summons and complaint. Except for nine persons, no one filed a formal legal answer to the summons and complaint.

Accordingly, the Town of Bass Lake was entitled to a Default Judgment against all of the landowners who were served, except for the nine persons. The Judgment was filed with the Court on December 18, 1987. Its provisions provided:

1. All of the landowners who did not file an answer (except for the nine who did) *“are forever barred from all private right, title, or interest in the lands located between the waters edge of Grindstone Lake and Lac Courte Oreilles Lake and the platted lot lines of the following described lots located in the Northwoods Beach Subdivision adjacent to Grindstone Lake and Lac Courte Oreilles Lake, Sawyer County, Wisconsin.”*

The lots, whose owners were affected by the extinguishment of any rights which they might have had, were the owners of the following Lots:

Lots 1-16, Block 1, Community Beach
Lots 1 – 16, Block 1, Dixon Beach
Lots 1-15, 1A-4A, Block 1, Rockford Beach
Lots 1-13, Block 1, Janesville Beach
Lots 1-9, Block 18, Janesville Beach
Lots 1-23, Block 1, Malar Beach
Lots 1-25 and 27, Block 1, Abendpost Beach
Lots 1-19, Block 5, First Addition to Abendpost Beach
Lots 1-14, Block 13, First Addition to Abendpost Beach
Lots 1-20, Block 14, First Addition to Abendpost Beach
Lots 1-4, Block 18, First Addition to Abendpost Beach
Lots 1-31, Block 22, First Addition to Abendpost Beach
Lots 1-20, Block 23, First Addition to Abendpost Beach

In other words, the Court found that none of the landowners of lands bordering the two lakes (except for the Nine who filed an answer), had no right to the strips whatsoever.

2. The Court determined that the lands or beach areas located between the waters edge and the platted lot lines of the lots listed above were dedicated or reserved to public use, and that the Town of Bass Lake has title to the strips for such use.

3. As to the nine persons who filed an answer to the complaint, namely Fred A. Rudy, Maurice DeMarie, Mrs. J. Miraglia, Carl J. Notaro, John Karner, Merle Gary , Clarence Bankert, Arnold J. Hill, Florence E. Watts, their spouses, *and any and all persons claiming under them* shall have the right to maintain structures now existing on said lands subject to the provisions, agreements , restrictions, and limitations contained in the aforementioned Stipulation on file herein. (The above persons and their heirs are referred to in this letter as “the Nine”.)

4. The stipulation, as it affected the lands owned by the nine persons above, provided that the Town was the owner of the strips, but that the ownership of the structures existing on the strips were the private property of the nine owners listed, and that they would continue to have the right to use and maintain those structures perpetually, *provided that free and continuous passage for the public across said structures and over said lands shall be provided, where there is sufficient suitable space between the lake shore and said lots for such passage to be near the waters, edge, it shall be maintained at that place rather than at the top level of any embankment.* (Italics added)

The stipulation further provided that the Town shall erect and maintain on each roadway leading to the waters edge substantial signs showing the following restrictions pertaining to the public use of such beaches: Such lands are to be used for passage only and may not be used for camping, picnics, vehicles or loitering.

In addition, the stipulation also provided:

The Township agrees to maintain public boat landings, picnic grounds, and bathing beaches on said lakes at appropriate places with sufficient and adequate signs directing the public thereto.

The Township agrees that they will permit no private person, to build any structures on said land between the lakeshore and abutting property except abutting property owners and then subject to the restrictions in Paragraph 1.

The Township is to assume full responsibility for the policing and maintenance of the area hereby approved for public use.

In my opinion, the stipulation is very poorly drafted. Firstly, it is a stipulation between the Town and the nine property owners identified. Such a stipulation or agreement would primarily address the rights and obligations of the persons entering into the stipulation, which, again, were the Town and the Nine.

While such an agreement or stipulation addresses the rights and obligations of the Town and the Nine, the stipulation can have provisions which require the town to perform certain acts and take certain responsibilities for areas beyond the lands owned by the Nine.

However, it is clear that the provisions above, which address the signage on each roadway affecting the and usage of the beaches, the maintenance of public boat landings, picnic grounds, bathing beaches, and the obligation of the town to prevent any person other than the Nine and their heirs and assigns to build on the strips, and to police and maintain the area approved for public use, are intended to affect **all** of the lands in the Northwoods Beach Subdivision which are adjacent to the strips and which are identified above.

It appears that the following conclusions for interpretation of the Judgment and the Stipulation are as follows:

1. For the non-answering defendants, they have no rights to the strips other than the same rights as the general public, addressed below.
2. The Nine have the right to maintain all structures existing thereon. The term “structures” is not defined in the Judgment or in the Stipulation.

The Cambridge Dictionary defines the noun, “Structure” as follows:

- **structure noun (BUILDING)**

[C] something built, such as a building or a bridge: The bridge is the longest steel structure in the world.

Regarding the rights of the Nine, the lack of clarity and specificity of what a structure is may lead to arguments over what is a structure and what is not, and suggests that a case by case analysis may be necessary.

3. No one, including the Nine, may build a new structure on the strip. The Nine may only rebuild the structures as they existed in 1987, the time that the Judgment was granted and the stipulation was entered into.

4. The town is required to police or enforce the non-construction provision. However, there is again, the same lack of clarity as to what a structure is as suggested above. Under the requirement that the town police and maintain the area

approved for public use, the Town would have the authority to enact an ordinance specifying how that is to be done.

5. The use of the strips by the public is defined under the stipulation and judgment, as being for passage, only. Hence, the strips are not to be used for campfires, fire pits, garbage dumps, camping, placement of fuel oil tanks, propane tanks, dead cars, fences, and so on. The town does maintain picnic and swimming areas and access points at which activities such as picnicking, swimming, and camping are permitted, however.

6. Finally, there is a question of who has the legal standing to bring a suit against the Town to require it to perform its duties under the stipulation. The stipulation contains the requirement for signs, for policing and maintenance. While the judgment incorporated the stipulation within it, it appears to me, in reviewing the document, that only the Nine who filed answers to the Town's lawsuit (and their heirs and assigns – the present owners of the lands owned by the Nine) and who entered into the Stipulation would have the legal standing to take the action to force the Town to comply with the Stipulation.

Please review and let me know if there are any changes.

Sincerely,

Ward Wm. Winton
Attorney at Law
www:fc