

"Public Access Strips in Northwoods Beach Subdivision" Compiled Information

For Review

- 1) As ordered and adjudged by the Circuit Court for Sawyer County, Wisconsin, dated December 15th 1967 found at VOL. 213 PG. 137, the land now known as "Public Access Strips in Northwoods Beach Subdivision" was legally described as:

"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 said Grindstone Lake and Lac Courte Oreilles Lake, Sawyer County, Wisconsin, to wit:

- *Lots 1-16, Block 1, Community Beach*
- *Lots 1-16, Block 1, Dixon Beach*
- *Lots 1-13, 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 1-6, Block 18, First Addition to Abendpost Beach*
- *Lots 1-21, Block 22, First Addition to Abendpost Beach*
- *Lots 1-20, Block 23, First Addition to Abendpost Beach"*

- A) The said above described lands comprise the "Public Access Strips in Northwoods Beach Subdivision" which were dedicated to the public by plats in 1925, 1926, and 1927.
- B) The said above lands comprising the "Public Access Strips in Northwoods Beach Subdivision" were surveyed in 2015.
- C) The adjoining property owners' lots (of the above described lots located in the Northwoods Beach Subdivision adjacent to said Grindstone Lake and Lac Courte Oreilles Lake, Sawyer County, Wisconsin) are not lakeshore, the lot descriptions are "from the centerline of road" with no reference to an "ordinary high water mark".
- 2) As ordered and adjudged by the Circuit Court for Sawyer County, Wisconsin, dated December 15th 1967 found at VOL. 213 PG. 137, the land now known as "Public Access Strips in Northwoods Beach Subdivision" was legally determined to be dedicated to and reserved for public use and the Town of Bass Lake has title to and in said lands for such use:

"That said lands or beach areas located between the waters edge and the platted lot lines of the above enumerated lots have been dedicated to and reserved for public use subject to the provisions, agreements, restrictions and limitations contained in the aforementioned stipulations and that the plaintiff, Town of Bass Lake, thereby has title to and in said lands for such use."

- A) The public-access ways, named and described in the 1967 lawsuit, were found by judicial determination to have been dedicated to public use; they now (after 1988) may only be discontinued by statute.

An analysis by Sarah Williams titled *Riparian Landowners Versus The Public: The Importance Of*

Roads And Highways For Public Access To Wisconsin's Navigable Waters, published in the *Wisconsin Law Review*, Volume 2010, No.1, provides such guidance with legal citations:

"A public-way created under the common law or by prescriptive use or dedication may now only be discontinued by statute.¹ Prior to 1998, public-access ways created under the common law could have been discontinued under the common-law right of reversion.² Under this old common-law method, a highway created by prescriptive use or dedication automatically reverted back to the adjacent landowner if that highway was altered or discontinued prior to 1998.³ If a public highway was altered, the portion of the old highway that was no longer part of the new highway was considered discontinued.⁴ Under the old common law, the adjacent landowners did not need an order discontinuing a highway from the local government in order for that land to revert to previous ownership.⁵ The common law right of reversion was codified,⁶ and in 1998, the Wisconsin Legislature amended and renumbered this statute and made it applicable to public ways that provide access to navigable waters.⁷ Therefore, after 1998, public ways to water may only be discontinued by statute.⁸"

- B) The "town highway statute" does not apply to public-access roads. The "town-highway discontinuance statute" explicitly states that it does not apply to highways that provide public access to navigable waters. The "Public Access Strips in Northwoods Beach Subdivision" clearly provide public access to navigable waters.

An analysis by Sarah Williams titled *Riparian Landowners Versus The Public: The Importance Of Roads And Highways For Public Access To Wisconsin's Navigable Waters*, published in the *Wisconsin Law Review*, Volume 2010, No.1, provides such guidance with legal citations:

"The public-way vacation statute⁹ provides the requirements for a city, village, or town—but not county—board to discontinue any type of public way.¹⁰ A city, village, or town board may discontinue a public way when petitioned by the adjacent landowners, or by resolution on its

¹ Wis. Stat. § 82.19(c); *City of Prescott*, 2006 WI App 172, ¶ 10; 1997 Wis. Act 172 § 2. While statutes in derogation of the common law are strictly construed, the Legislature show a clear intent to change the common law through a statutory revision. *Ervin v. City of Kenosha*, 159 Wis. 2d 464, 476, 464 N.W.2d 654, 659 (1991). The Wisconsin Legislature clearly demonstrated in Wisconsin Act 172 its intent to prevent the automatic discontinuance of right-of-ways to public waters by making that statute specifically inapplicable to these public ways. The only reasonable interpretation that avoids conflict in the law is that the Legislature intended to make both the common-law and statutory right of reversion inapplicable to public ways to water. *See Clean Wis., Inc. v. Pub. Serv. Comm'n of Wis.*, 2005 WI 93, ¶ 175, 282 Wis. 2d 250, 700 N.W.2d 768; *State v. Hackbarth*, 228 Wis. 108, 120–22, 279 N.W. 687, 693–94 (1938) (stating that inconsistency and conflict in the law should be avoided if possible). Thus, as a result of this amendment, public ways to water may only be discontinued by statute and the common-law right of reversion no longer applies. WIS. STAT. § 82.19(c); *City of Prescott*, 2006 WI App 172, ¶ 10.

² *Miller v. City of Wauwatosa*, 87 Wis. 2d 676, 680, 275 N.W.2d 876, 878 (1979).

³ *Id.* at 680, 275 N.W.2d at 878. A highway is "altered" if the local government changes the course or the size of the highway so there is some portion of the previous highway that is taken out of use as a public way. *Id.* at 681, 275 N.W.2d at 878. A highway can be "discontinued" by an act of a local unit of government, WIS. STAT. § 82.10 (2007–08), and also could have been legally determined to be "discontinued" under the common-law right of reversion before 1998, *City of Prescott*, 2006 WI App 172, ¶ 10; *Miller*, 87 Wis. 2d at 680, 275 N.W.2d at 878; 1997 Wis. Act 172 § 2; *see also supra* note 50 and accompanying text.

⁴ *Miller*, 87 Wis. 2d at 681, 275 N.W.2d at 878.

⁵ *Id.* at 681, 275 N.W.2d at 878.

⁶ WIS. STAT. § 80.32 (1997–98).

⁷ *See supra* note 1 and accompanying text.

⁸ *See supra* note 1 and accompanying text.

⁹ WIS. STAT. § 66.1003 (2007–08).

¹⁰ Under this statute a public way includes "all or any part of a road, street, slip, pier, lane or paved alley," but not a highway. *Id.* § 66.1003(1).

*own initiative.*¹¹ *The public-way vacation statute does not require the local government to consider any particular factors when deciding whether to vacate a public way.*¹² *However, if a local government wants to vacate or discontinue a public way on its own initiative, it must provide public notice and a hearing.*¹³ *If a town board seeks to discontinue a public way that provides access to water, DNR approval is also required, as outlined in the public-access statute.*¹⁴

*Town-highway law provides two ways for a town board to vacate a public highway.*¹⁵ *First, the town-highway statute*¹⁶ *provides that a town board may pass a resolution to discontinue a highway on its own initiative or in response to a petition by at least six residents.*¹⁷ *To discontinue a highway under the town-highway statute the town board must provide public notice and a hearing.*¹⁸ *Second, the town-highway discontinuance statute contains the requirements for the abandonment of town highways.*¹⁹ *For a highway to be discontinued under this statute, two conditions for abandonment must be met. First, the roadway must have been “entirely abandoned as a route of . . . travel.”*²⁰ *Second, the roadway must be one on which the town has not spent any highway funds for five years.*²¹ *This does not apply to public-access roads, however, as the town-highway discontinuance statute explicitly states that it does not apply to highways that provide public access to navigable water.*²² *This demonstrates the Legislature’s intent to provide additional protections for public-access sites by bringing those sites under the additional protections in the public-access statute.*²³

- C) The determination that this land was dedicated to and reserved for public use, and dedicated by plats in 1925, 1926, and 1927, is further documented in a sales brochure from approximately the late 1920's/early 1930's soliciting sale of the properties located in the Northwoods Beach Subdivision. This sales brochure further illustrates that the "Public Access Strips in Northwoods Beach Subdivision" were not left over land due to poor or incompetent surveyors. It seems more likely than not that these strips were dedicated so as to maximize the sale price of all the lots in the Northwoods Beach Subdivision by guaranteeing all lots in Northwoods Beach Subdivision have lake access. It would be note worthy to point out that this time-frame would be before the construction of Billy Boy Dam and during the droughts of the 1920's & early 1930's, which would have resulted in larger beach areas:

"NORTHWOODS BEACH"

"Located on a plateau between two of the most beautiful lakes of sparkling, clear as crystal water, with sandy beaches, stretching out several hundred feet. Lake Court Oreilles is ten miles long, and Lake Grindstone is four miles long. Each location is GUARANTEED to be High, Dry, and Well Wooded, and ALL lot owners have full beach right to over two miles of

¹¹ *Id.* § 66.1003(2)–(4).

¹² *Id.* § 66.1003(2).

¹³ *Id.* § 66.1003(4).

¹⁴ *Id.* § 66.1006 (2007–08).

¹⁵ *Id.* §§ 82.10, 82.19 (2007–08). As discussed in the previous paragraph, the public-ways vacation statute, § 66.1003, provides the requirements for a town to discontinue a public way, and since that does not include highways, towns may only discontinue a highway under town-highway law, *id.* §§ 82.10, 82.19. *See also id.* § 66.1003(1) (defining public way under that section, which does not include highways).

¹⁶ *Id.* § 82.10.

¹⁷ *Id.* § 82.10(1)–(2).

¹⁸ *Id.* § 82.10(3)–(4).

¹⁹ *Id.* § 82.19.

²⁰ *Id.* § 82.19(2)(b)2; *Lange v. Tumm*, 2000 WI App 160, ¶ 6, 237 Wis. 2d 752, 615 N.W.2d 187.

²¹ WIS. STAT. § 82.19(2)(b)2; *Lange*, 2000 WI App 160, ¶ 6.

²² WIS. STAT. § 82.19(c).

²³ *Id.* § 66.1006 (2007–08).

beach, which has a valuation of \$75,000.00."

As stated in the above sales brochure quote, every lot owner in Northwoods Beach Subdivision (not just the adjacent property owners to the "Public Access Strip in Northwoods Beach Subdivision") was GUARANTEED full beach rights to over two miles of beach with a valuation of \$75,000.00. This means that all lot owners in the Northwoods Beach Subdivision (not just adjacent landowners) would have to agree in order for a court to allow the vacating of the "Public Access Strips in Northwoods Beach Subdivision".

An analysis by Sarah Williams titled *Riparian Landowners Versus The Public: The Importance Of Roads And Highways For Public Access To Wisconsin's Navigable Waters*, published in the *Wisconsin Law Review*, Volume 2010, No.1, provides such guidance with legal citations:

"The platting statute has two provisions under which a city, village, town, or county board may discontinue a public way created by plat. First, the platted public-way vacation statute²⁴ provides that any public way created by plat that provides access to water may only be vacated according to the requirements in Wisconsin Statute section 236.43.²⁵ Under the platted public-access vacation statute,²⁶ public-access sites may only be vacated by a circuit court.²⁷ The court may only vacate a platted public-access site if it was recorded more than forty years ago, has never been improved as a public way, is "not necessary to reach other platted property," and all owners in the plat and the local unit of government have joined the application.²⁸

The public-access statute²⁹ is a critical tool to protect public access because it gives DNR the power to regulate and oversee the vacation of public-access sites. In 1997, the Wisconsin Legislature passed Wisconsin Act 172, which included the public-access statute, to provide stronger protections for public-access sites.³⁰ The public-access statute provides that a town or county board may not discontinue a road that provides public access to navigable waters without the written approval of the DNR.³¹ This statute only applies to town and county boards and does not apply to cities or villages.³² Though it is often overlooked, town or county boards that seek to vacate or discontinue a public-access site under the authority of another statute or law must still obtain the approval of the DNR under the public-access statute.³³

The DNR promulgated rules to implement the public-access statute that declare its policy to protect public access and outline what is required in an application to vacate a public-access site.³⁴ When a town or county board notifies the DNR of an application to vacate public access, the DNR must determine whether doing so is consistent with the DNR's policy to protect valuable public access.³⁵ The rules also require the DNR to provide public notice of

²⁴ *Id.* § 236.16(3) (2007–08).

²⁵ *Id.* § 236.16(3)(b).

²⁶ *Id.* § 236.43 (2007–08).

²⁷ *Id.*

²⁸ *Id.* § 236.43(1).

²⁹ *Id.* § 66.1006 (2007–08).

³⁰ *Vande Zande v. Town of Marquette*, 2008 WI App 144, ¶¶ 23–26, 314 Wis. 2d 143, 758 N.W.2d 187.

³¹ WIS. STAT. § 66.1006 ("No resolution, ordinance, order, or similar action of a town board or county board, or of a committee of a town board or county board, discontinuing any highway, street, alley, or right-of-way that provides public access to any navigable lake or stream shall be effective until such resolution, ordinance, order, or similar action is approved by the department of natural resources.").

³² *Id.*

³³ *Id.*

³⁴ WIS. ADMIN. CODE NR § 1.90–1.92 (2008).

³⁵ *Id.* § 1.90.

an application for discontinuance and an opportunity for a hearing.³⁶ The Department may only grant an application to discontinue public access if one of the two following conditions are met.³⁷ First, the applicant must have provided comparable replacement access.³⁸ Either the applicant must have provided comparable replacement access, or the applicant must show that the access to be discontinued “does not contribute to the quality or quantity of public access on that body of water.”³⁹”

The discontinuance of the "Public Access Strips in Northwoods Beach Subdivision" would not pass the DNR conditions as:

- The Town of Bass Lake does not have comparable replacement access on both Grindstone Lake and Lac Courte Oreilles Lake for the unique and sizeable "Public Access Strips in Northwoods Beach Subdivision".
- Discontinuance of the unique and sizeable "Public Access Strips in Northwoods Beach Subdivision" would reduce the quality and severely decrease the quantity of public access on both Grindstone Lake and Lac Courte Oreilles Lake.

The "Public Access Strips in Northwoods Beach Subdivision" at various points in time, since the 1920's up to today, have been improved as a public way. The earliest improvement being developed and used as public beaches, while the most recent being the addition of the Grindstone Overlook.

Additionally, the Town cannot create "substandard lots" or "land-locked lots". Lakeshore lots on Grindstone Lake and Lac Courte Oreilles Lake must be 100' wide and 200' long. The creation of any lots within the "Public Access Strips in Northwoods Beach Subdivision" would more than likely result in a majority of lots being land-locked. Additionally, the lots would have to be put up for public auction, not offered solely to adjacent landowner, further pointing to land-locked lots which can not be created.

- 3) As ordered and adjudged by the Circuit Court for Sawyer County, Wisconsin, dated December 15th 1967 found at VOL. 213 PG. 137, there is no right to place or maintain any structure on said land by named owners, their spouses, or any and all persons claiming under them by virtue of their title in said lands of below cited properties, except for nine (9) named. All but the nine (9) named were forever barred from all private right, title, or interest in said lands.

"That all of the above named defendants, their spouses, and any and all persons claiming under them by virtue of their title in said lands, after the filing of the Notice of Pendency of this action, be and the same 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 said Grindstone Lake and Lac Courte Oreilles Lake, Sawyer County, Wisconsin, to wit:

³⁶ *Id.* § 1.92(1).

³⁷ *Id.* § 1.92(2).

³⁸ *Id.* § 1.92(2)(a)-(b). The rule does not define "comparable replacement access," but when making this determination, the DNR primarily considers whether there is alternative public access within one-half mile of the site the municipality seeks to discontinue. *In re the Petition of the Town of Oshkosh to Discontinue a Public Right of - Way to Lake Winnebago Located at the Terminal East End of the Highway Known as Sunneyview Road in the Town of Oshkosh, Winnebago County*, No. IH-99-04, at 4 (Wis. Div. of Hearings and Appeals June 7, 1999), available at <http://dha.state.wi.us/home/Decisions/DNR/1995-1999/1h-99/04.pdf>.

³⁹ *Id.* § 1.92(2)(a)-(b). The rule does not define "comparable replacement access," but when making this determination, the DNR primarily considers whether there is alternative public access within one-half mile of the site the municipality seeks to discontinue. *In re the Petition of the Town of Oshkosh to Discontinue a Public Right of - Way to Lake Winnebago Located at the Terminal East End of the Highway Known as Sunneyview Road in the Town of Oshkosh, Winnebago County*, No. IH-99-04, at 4 (Wis. Div. of Hearings and Appeals June 7, 1999), available at <http://dha.state.wi.us/home/Decisions/DNR/1995-1999/1h-99/04.pdf>.

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- *Lots 1-13, 1A-4A, Block 1, Rockford Beach*
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- *Lots 1-21, Block 22, First Addition to Abendpost Beach*
- *Lots 1-20, Block 23, First Addition to Abendpost Beach"*

ONLY Nine (9) named defendants, their spouses, and persons under them shall have the right to maintain the structures that existed on December 15th 1967 (48 years ago) on said lands.

"except that the defendants, Fred A. Rudy, Maurice DeWaele, Mrs. J. Miraglia, Carl J. Notaro, John Karner, Merle Gary, Clarence Benkert, Arnold J. Hill, and Florence E. Watts, their spouses, and persons 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."

Therefore, as ordered and adjudged above, the only structures that can be located on the "Public Access Strips in Northwoods Beach" are the structures of the nine (9) above that were in existence on December 15th 1967.

- 4) In reference to the "grandfathering" of any structures on the "Public Access Strips in Northwoods Beach Subdivision", the town should be following the guidance provided under the Wisconsin Justice Department and Wisconsin Department of Natural Resources (DNR) in their 1974 "public interest" interpretation that:

A) Private structures on public land is not in the public interest

B) Private structures on public land are inconsistent with public use

C) Private structures on public land provides a privileged use of public land by a select group of people

This guidance was utilized in requiring the removal of private hunting cabins from the Sawyer County Forests several years ago. Where the once permitted private structures were allowed in the County Forests, and then were required to be removed citing the above "public interest" interpretation. The DNR may not allow any grandfathering of private structures on public land, and may over-ride any grandfathering done by the Town and require removal of structures.

Further, "Lakeshore easements" such as the claimed verbal easement authorization, to place a private structure on the "public access strips", have no legal standing for "grandfathering". Under Wisconsin law, any claimed verbal easement approvals for structures on the "public access strips" must have been a written easement that was recorded on a deed prior to December 31, 1986.

- 5) The recent changes to Wisconsin Shoreland Zoning regulations do not affect the Town "self imposed" regulations, as approved, within the ordinance. The only changes to Wisconsin Shoreland Zoning that would require changes in the ordinance are if any more restrictive regulations are added.
- 6) The Town has chosen to manage the public shoreline in the "Public Access Strips in Northwoods Beach Subdivision" as mainly natural/wilderness with little or no intervention in the natural course.

- A) The "Buffer Zone" requirements within the Shoreland Zoning regulations are very restrictive on what can and can't be done. The majority of the "Public Access Strips in Northwoods Beach Subdivision" falls within this zone.
- B) A large portion of the "Public Access Strips in Northwoods Beach Subdivision" contains steep slopes which necessitate minimal intervention to keep intact.
- C) It does not serve the public interest to allow the individualized maintaining, repair, and changes to the "Public Access Strips in Northwoods Beach Subdivision" by individuals without written consent from Town Board. The individual qualifications and personal preferences would not serve to enhance the overall public interest.