

## Memo for the Plan Commission

To: Tim Parks and Brad Murphy, Planning division

From: Jeff Ekola, Office of Real Estate Services



Date: July 15, 2009

Subject: Peter Melone's, (the Owner), proposed Certified Survey Map for his property located at 1022 Sherman Avenue.

The question that I am addressing is whether or not the City (Plan Commission) should proceed to review Mr. Melone's proposed CSM or reject it because the owner does not appear to have clear title to all of the land in the proposed CSM. The question revolves primarily around the condition of title to the filled land located between what is shown on the proposed CSM as the "original shoreline" and the "dock line" which is at the current waters edge of Lake Mendota in this area.

Pertinent observations:

- The Owner is in possession of, and occupies, all the land in question and it would be likely that he and his predecessors in title have possessed the land in the same manner in excess of 20 years.
- Two surveyors have provided surveys of the Owner's property. Neither surveyor's description taken from recorded documents includes all of the filled land. One survey includes roughly half of it and extends to the waters edge. The other surveyor's description extends to what is thought to be the original shoreline. The "as measured" survey included with the proposed CSM includes all of the Owner's occupied property, but refers to a 1905 City Dock Line document that does not appear to exist upon examination of the City's 1905 Ordinances.
- The legal descriptions in the deeds provided to us in the title reports and surveyor's materials are not clear or well written.
- In the memo from the Owner to City Plan Commission, the Owner's note to identify a 1905 City Ordinance whereby the City supposedly created the dock line does not identify a relevant ordinance. No dock line ordinance was found for this location on Lake Mendota.
- As to filled land in an original lake bottom behind an established dock line or bulk head, there ought to be a document in record title executed by the State of Wisconsin (Executive Secretary of the Board of Commissioners of Public Lands) stating that the State of Wisconsin has no interest in the subject land as it relates

to that portion of filled land in the actual lake bed. See Doc. No. 3164422 for an example of such a document.

- There apparently has been a dam at the outlet of Lake Mendota since approximately 1850. The dam creates an artificial head of water on Lake Mendota of several feet. This raises the question as to where was the actual original shoreline of Lake Mendota? What is the significance of the “original shoreline” defined in the surveyor’s material? What is the actual lakebed of Lake Mendota? What are the conditions of title for filled land within a flowage area?
- In discussion with WisDNR staff, they indicate that obviously in a case like this they are not going come and take back the land.
- Neighboring properties in the Owner’s location occupy what must be filled land in a manner similar to the owner’s occupancy.
- What is needed is an opinion from an attorney to clarify whether or not the Owner, together with his predecessors in title, have established ownership of the filled land between the “original shoreline” and the “dock line”; and/or what must be done to complete establishing the Owner’s title to the filled land, if further action if found to be necessary.

I recommend that the Plan Commission approve the CSM subject to the Owner providing sufficient evidence that he has title to the filled land to the satisfaction of the Office of Real Estate Services in consultation with the City Attorney’s office.

With that being accomplished, the City’s Office of Real Estate Services can approve the CSM for sign-off.