

AGENDA
CITY OF STURGEON BAY
WATERFRONT REDEVELOPMENT AUTHORITY

Wednesday, November 10, 2021

3:00 p.m.

Council Chambers, City Hall
421 Michigan Street

1. Roll call.
2. Adoption of agenda.
3. Approval of minutes from September 29, 2021.
4. Public Comment on agenda items only.
5. Consideration of: License for balcony encroachment by Maritime Museum into WRA property
6. Consideration of: Easements for fiber optic line and heating line at West Waterfront
7. Consideration of: Consent to assignment of development agreement from Skipper Marine Development to Marine Max (Harbor Club Marina)
8. Update on current waterfront redevelopment activities.
9. Adjourn.

Notice is hereby given that a majority of the Common Council may be present at this meeting to gather information about a subject over which they have decision-making responsibility. If a quorum of the Common Council does attend, this may constitute a meeting of the Common Council and is noticed as such, although the Common Council will not take any formal action at this meeting.

11/4/21
1:00 p.m.
SM

WRA Members
Chris Jeanquart
Ryan Hoernke
Dan Williams
Spencer Gustafson
Barbara Pfeifer
John Hauser
Carrie Tjernagel

MINUTES
WATERFRONT REDEVELOPMENT AUTHORITY
Wednesday, September 29, 2021

A meeting of the Waterfront Redevelopment Authority ("WRA") was called to order at 3:00.m. by Secretary Martin Olejniczak in the Council Chambers, City Hall, 421 Michigan Street, Sturgeon Bay.

Roll Call (#1): Members present: Chris Jeanquart, Dan Williams, Spencer Gustafson, Barbara Pfeifer, John Hauser, and Carrie Tjernagel were present. Member Ryan Hoernke was excused. Also present were Mayor David J. Ward, Community Development Director Marty Olejniczak, Zoning/Planning Administrator Christopher Sullivan-Robinson, City Administrator Josh VanLieshout, and Administrative Assistant Suzanne Miller.

Adoption of agenda (#2): Motion was made by Mr. Williams and seconded by Mr. Hauser to adopt the following agenda:

1. Roll call.
2. Adoption of agenda.
3. Election of Officers.
4. Review of role and responsibilities of Waterfront Redevelopment Authority.
5. Update on current waterfront redevelopment activities.
6. Upcoming issues for the Waterfront Redevelopment Authority.
7. Establish future meeting date(s).
8. Adjourn.

All ayes. Motion carried.

Election of Officers (#3):

1. Chairperson: Mr. Gustafson moved to nominate Mr. Williams as chairperson. Mr. Hauser seconded the nomination. All ayes. Motion carried.
2. Vice-chairperson: Mr. Hauser moved to nominate Mr. Hoernke as vice-chairperson. Mr. Williams seconded the nomination. All ayes. Motion carried.
3. Secretary: Chairperson Williams recommended Mr. Olejniczak be reaffirmed as secretary. Mr. Jeanquart moved to nominate Mr. Olejniczak as secretary. Ms. Pfeifer seconded the nomination. All ayes. Motion carried

Review of role and responsibilities of Waterfront Redevelopment Authority (#4):

Mr. Williams explained the WRA name remains attached to property, easements, etc. and actions are required to complete and untangle things, such as transfer of ownership. He views the process as taking two years.

Mr. Olejniczak gave a brief history of the WRA, describing it as a powerful and efficient means to redevelop blighted areas within the city. The WRA was authorized by the Common Council in 1990 and given all the statutory powers except the authority to spend money or acquire property without Council approval. Subsequently, boundaries for waterfront redevelopment were set and a redevelopment plan approved. Mr. Olejniczak stated the WRA may consider updating their by-

laws. He described the WRA's accomplishments and explained though Common Council passed a resolution to discontinue the WRA in 2018 and took over the existing redevelopment projects itself, the WRA was not dissolved. No action was necessary.

Update on current waterfront redevelopment activities (#5):

Mr. Olejniczak described ongoing redevelopment projects as follows:

1. Development agreement with Sturgeon Bay Historical Society (SBHS) to renovate, at a minimum, the 1st floor of the Teweles and Brandeis Grain Elevator, including an addition to house public restrooms, on the original site.
2. The 53-unit Breakwater Residences by Northpointe Development Corp.
3. The Terrace (formerly The Plaza), a 3-level space with deli, bar, roof-top patio, and a residence for use as a manager's apartment or short-term rental.
4. A parking lot by the City meant to provide overflow parking from the Breakwater Residence, and parking for Granary events, The Terrace, and the park/green space.

No action was necessary.

Upcoming issues for the Waterfront Redevelopment Authority (introduction) (#6):

Mr. Olejniczak reviewed multiple short-term (property encroachment, transfers, sales, etc.) and long-term (divesting ownership, future of WRA) which require resolution. No action was taken.

Public Comment on non-agenda Plan Commission related items:

Chris Kellems of 120 Alabama Street encouraged all members read the WI Statutes and recommended the WRA change its name to "Community Redevelopment Authority". She questioned whether any members might profit from condemning and redeveloping properties. She suggested the WRA handle all blighted properties in the city and enforce existing nuisance laws.

Establish future meeting date (#7):

Mr. Williams suggested meeting once a month. By consensus, the group tentatively set the monthly meetings on the 2nd Wednesday of each month at 3:00pm. Agendas (with materials and staff reports) will be sent out five days prior to the meeting. Resources addressing open meetings law and conflicts of interest will be distributed to the group prior to the October meeting.

Adjourn (#8):

Mr. Jeanquart made a motion to adjourn. Ms. Pfeifer seconded the motion. All ayes. Motion carried. The meeting was adjourned by Mr. Williams.

Respectfully submitted,


Suzanne Miller
Administrative Assistant

EXECUTIVE SUMMARY

Door County Maritime Museum – Balcony Encroachment

Background: The Door County Maritime Museum (DCMM) recently completed a major addition to their facility on the waterfront. The project includes a balcony that extends toward the water on the northeast side. The balcony encroaches on the waterfront strip of property that is titled to the Waterfront Redevelopment Authority.

The Museum requested a license agreement with the City to allow the encroachment. Both the Plan Commission and Common Council approved the encroachment and it was built. But this issue was never acted upon by the WRA and, therefore, an actual agreement has not been drafted or recorded.

The balcony does not impact the WRA property at ground level as the supports are all within the Museum's property. It is very unlikely that a building or other structure would be constructed by the City or WRA in the vicinity of the balcony.

Fiscal Impact: If approved, the City Attorney would draft the formal license agreement. DCMM will be billed these costs; therefore, there is no fiscal impact to the City.

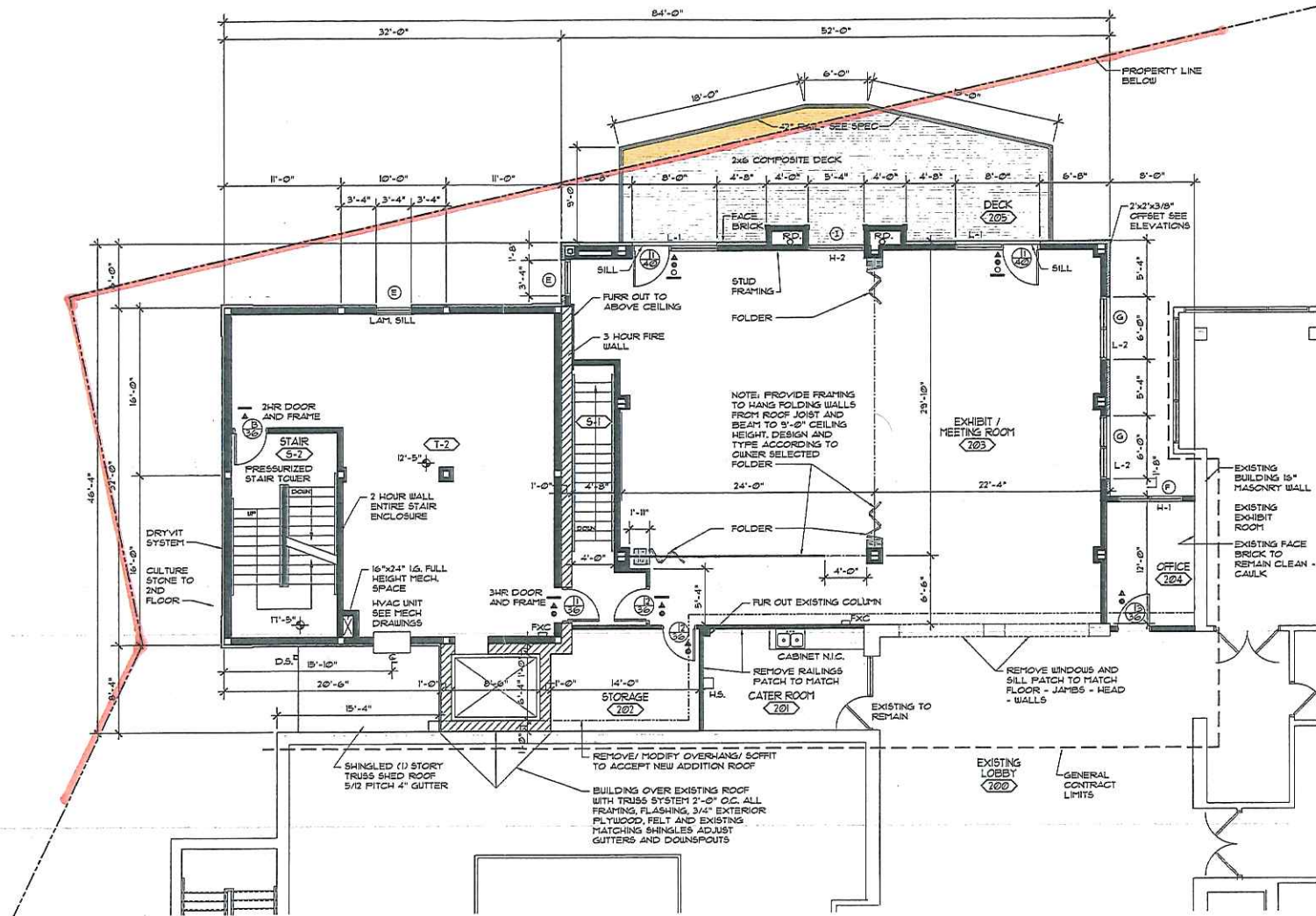
Recommendation: Approve the balcony encroachment and direct the City attorney to draft the license agreement at the Maritime Museum's expense.

Prepared by: Marty Olejniczak
Marty Olejniczak
Community Development Director

11-3-2021
Date

Reviewed by: Josh Van Lieshout
Josh Van Lieshout
City Administrator

11/3/2021
Date

[illegible]

SECOND FLOOR PLAN

SCALE: 3/16" = 1'-0"



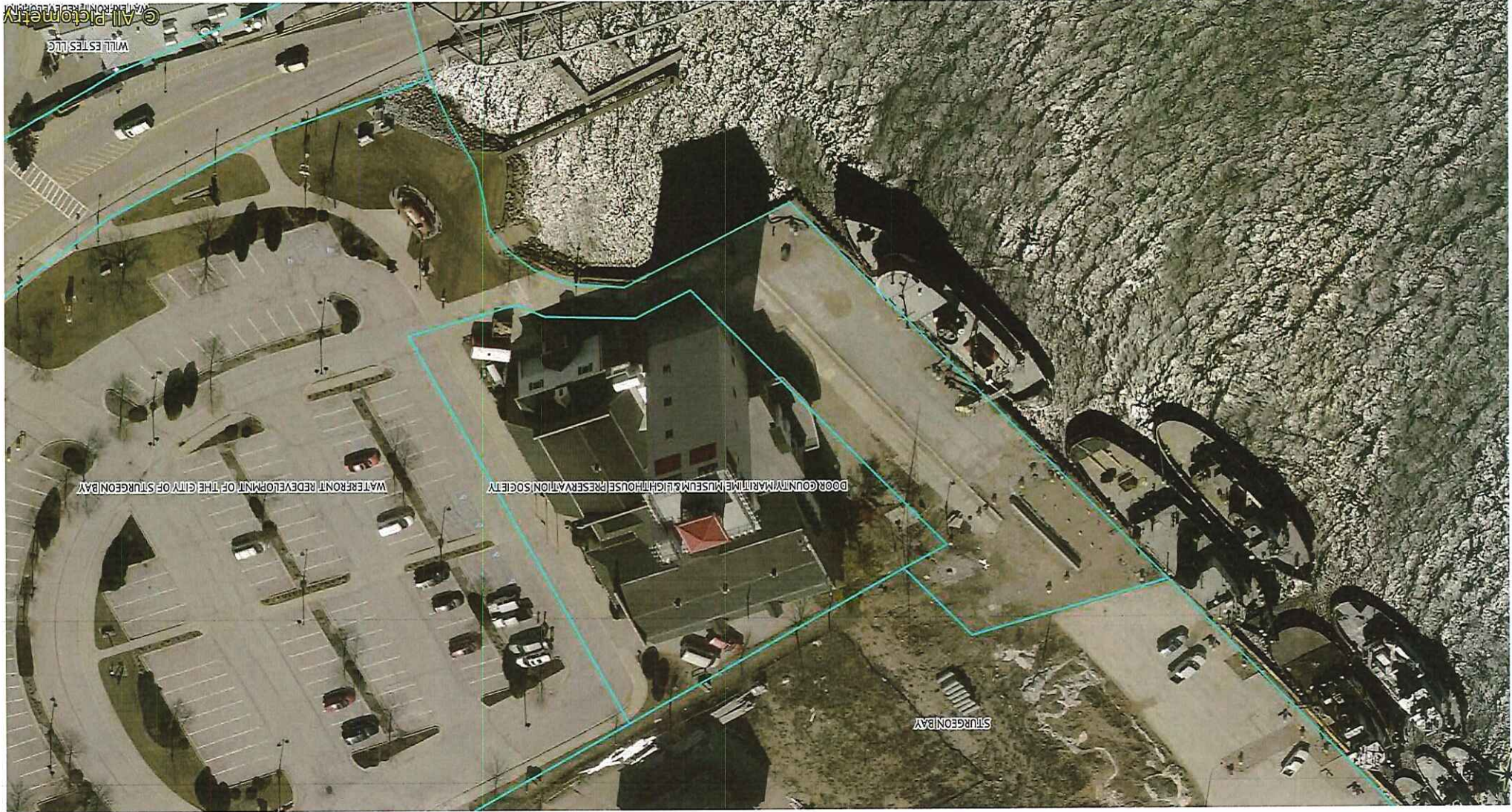
**OBSERVATION TOWER AND ADDITION TO
DOOR COUNTY MARITIME MUSEUM**
120 N. MADISON AVE.
STURGEON BAY, WI 54235

CONNECTICUT
WISCONSIN
MASSACHUSETTS

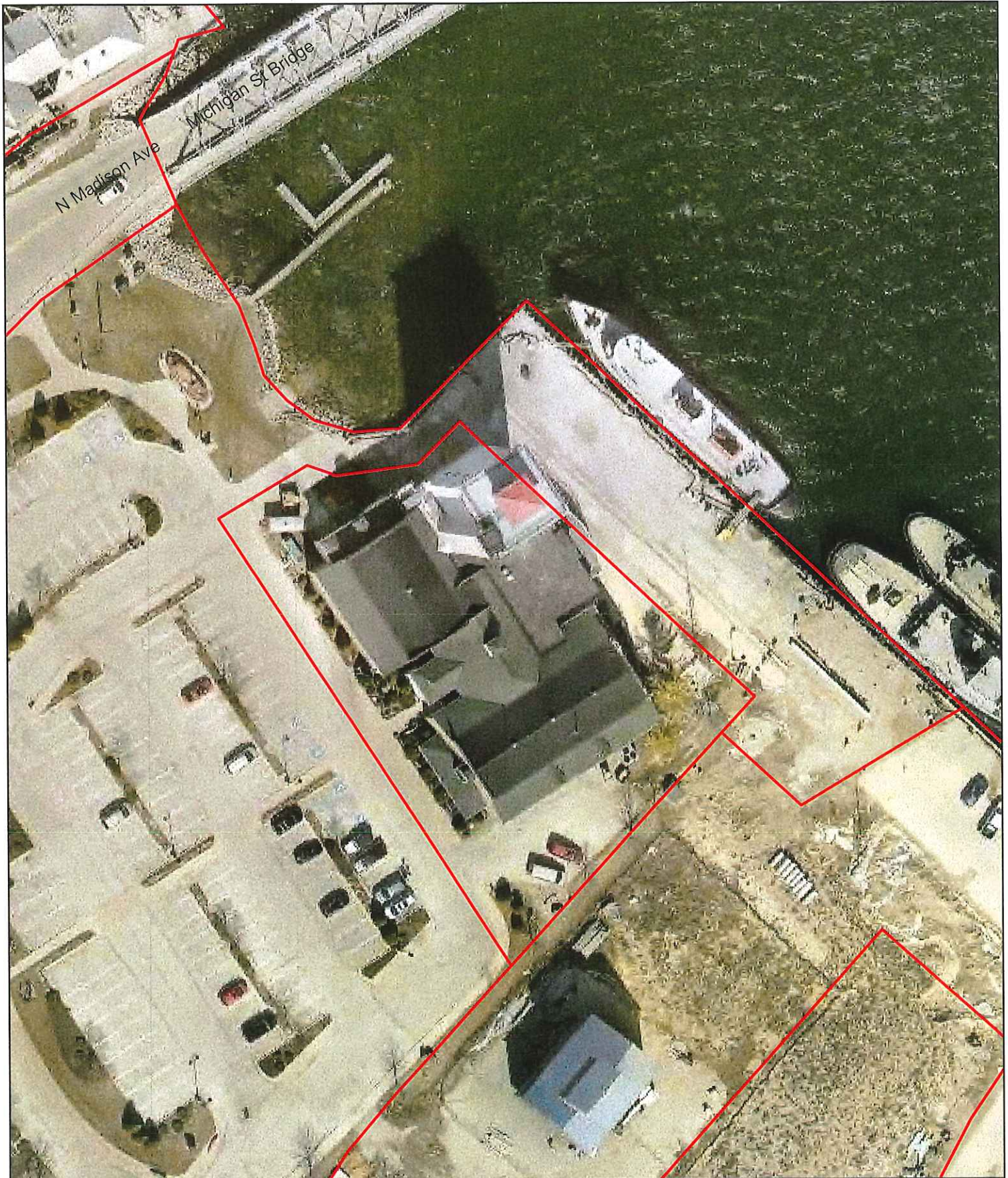
BEN SCHENKELBERG
ARCHITECT
3309 SPUR LANE, GREEN BAY, WI 54313
PHONE: (920)662-2001 FAX: (920)662-2242
E-mail: bmsarchitect@aol.com



DRWN BY:	MMN
DATE:	11/30/2016
SCALE:	AS NOTED



Maritime Museum



6

EXECUTIVE SUMMARY

Title: Exchange of Easements on West Waterfront

Background: The promenade along the dock wall on the West Waterfront was recently completed. This included the installation or upgrading of several underground facilities. The Maritime Museum installed a conduit to support heating of the Tug Purves. The conduit crosses the waterfront property titled to the Waterfront Redevelopment Authority. In addition, fiber optic cable was run to the Maritime Museum to support the City's port security camera network.

An exchange of easements between the Museum and the City for these facilities was proposed. The exchange of easements was approved by the Finance Committee and Council and the facilities were installed. But since the WRA was not constituted at that time and the work needed to be completed prior to the promenade being finished, the facilities were installed without waiting for WRA approval.

The formal easements still need to be recorded. The WRA is requested to approve the easements. Additional information regarding this issue is attached.

Recommendation: Approve the easement for the Maritime Museum's heating conduit in exchange for the easement for fiber optic cable from the Museum.

Prepared by: Martin Olejniczak
Martin Olejniczak
Community Development Director

11/3/21
Date

Reviewed by: Josh Van Lieshout
Josh Van Lieshout
City Administrator

11/3/21
Date



Josh Van Lieshout
City Administrator

421 Michigan Street • Sturgeon Bay, WI 54235
Phone: 920-746-2900 • Fax: 920-746-2905
jvanlieshout@sturgeonbaywi.org • www.sturgeonbaywi.org

Memorandum

To: Finance Committee

From: Josh Van Lieshout
Marty Olejniczak
Tim Dietman

Re: Exchange of easements, City of Sturgeon Bay-Door County Maritime Museum

Date: October 9, 2020

The City of Sturgeon Bay and Door County Maritime Museum routinely join forces and work cooperatively on needs and issues. Since at least 2008, the City has maintained a port security camera on the top of the museum as part of the overall port security camera network. This network has operated using wireless technology, that at times relays a less than optimal image or is out of service.

The construction of the maritime tower presents a new opportunity to install a modern port security camera with a better view of the harbor. Door County Maritime Museum has agreed host a camera and install fiber optic cable and conduit at their expense in exchange for use of the fiber. Additionally, the Museum would like to install a conduit under the walkway between the museum and Tug Purves. The purpose of the conduit is to serve as chase for a future hot water loop for heating the tug in the winter months. Currently the tug is heated by diesel heaters, which are expensive to operate and inefficient.

Below is a summary of the general terms, the City Attorney will prepare the actual agreement.

Heating loop conduit:

- The Museum coordinates the work with Peters Concrete (contractor for West Waterfront Promenade) separately from the City's contract, this is for coordination and cost accounting purposes).
- The work gets completed prior to the start of the above ground improvements in that area (the seating steps and limestone wall). This is critical because it is doubtful the City would allow the work to occur at a later date unless the heating line was directionally bored instead of trenched.
- The Museum pays for the asphalt patch that will be needed in the area of the trench that will remain asphalt. City Engineer Chad Shechik's initial estimate is about \$2,000 based upon the unit price in the bid.

Port Security Camera, Conduit and Fiber Cable:

- Door County Maritime Museum provides access to the facility for placement of fiber entry, fiber demarcation, camera mounting, and all related cabling.
- City utilizes the fiber connection and provides access to DCMM not exceeding a 100 Megabits.
- DCMM covers the fiber install cost, including splicing to make the fiber link active.
- City allow access of the internet at no cost to DCMM. This is only for connection and does not include any other services.

Staff strongly recommends approval of the general terms in order to draft the necessary easements and agreements. The port security network is a frequently used tool in investigations involving matters on the waterway and bridges by the City and other agencies. The hot water loop will mitigate the need the for fuel trucks to have access along the waterfront walkway and reduce the potential for vehicle conflict.

EASEMENT AND USE AGREEMENT

This Easement and Use Agreement is entered into as of the ____ day of _____, 2021, among the Door County Maritime Museum & Lighthouse Preservation Society, Inc., a Wisconsin non-profit corporation (the "Museum"), the Sturgeon Bay Waterfront Redevelopment Authority (the "WRA"), and the City of Sturgeon Bay, a Wisconsin Municipal Corporation (the "City"), (the City, the WRA and the Museum are sometimes individually referred to herein as a "Party" and collectively as the "Parties").

RECITALS

A. The Museum operates a Maritime Museum at 120 North Madison Ave, on the Sturgeon Bay west side waterfront.

B. For many years the Museum has permitted the City to maintain a wireless port security camera on the Museum building as part of the City's port security camera network.

C. The wireless network serving the security camera has at times relayed a less than optimal image and has occasionally gone out of service.

D. The Museum recently constructed the Jim Kress Maritime Museum Lighthouse Tower (the "Tower"), a ten-story structure immediately adjacent to the existing Museum facility.

E. The Tower presents an opportunity to install a modern port security camera (the "Camera") with a better view of the harbor and more reliable technology.

F. The Museum has orally agreed to permit the City to place and operate the Camera at the top of the Tower and to provide fiber optic cable and conduit to that device (the "Camera Conduit"), at the Museum's expense, in exchange for use of some of the capacity of the fiber cable and the easements granted in this Agreement.

G. As one of its historic attractions, the Museum maintains the John Purves, a restored 1960's era great lakes tugboat adjacent to Museum property on the waters of Lake Michigan (the "Tug").

H. Currently, the Tug is heated by inefficient diesel heaters.

I. To more effectively heat the Tug, the Museum desires to install a conduit underground in real estate owned by the WRA between the Museum and the Tug (the "Real Estate") to provide hot water pipe loop to heat the Tug (the "Heating Conduit"). A map showing the location of the Heating Conduit is attached hereto as Exhibit B.

J. The City is undertaking certain development of the west side waterfront that would need to be coordinated with the construction necessary for the Heating Conduit.

K. The Museum has requested that the WRA and the City allow the placement and maintenance of the Heating Conduit across its property.

L. The Parties desire to set forth the terms by which the Camera Conduit and Heating Conduit will be installed.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follow:

I. INCORPORATION OF RECITALS

The recitals set forth above are hereby incorporated into and made a part of this Agreement.

II. MUSEUM EASEMENT

A. Grant of Easement. The WRA and the City hereby grant the Museum, its successors and assigns, a non-exclusive easement over, under and through the Real Estate described on the attached Exhibit A (the "Easement Parcel") and as depicted on the attached Exhibit B, for the limited purpose of the right of ingress to and egress over and through the Easement Parcel and such parts of adjacent tracts of lands of the WRA and the City, as necessary, for the purposes of surveying and clearing the Easement Parcel of constructing, operating, inspecting, repairing, maintaining, replacing, protecting, testing, patrolling, reconstructing, altering, relocating, removing and, if the WRA and the City consent, abandoning in place, the Heating Conduit, appurtenances and equipment of the Museum located thereon, in whole or in part (the "Easement").

B. Public Use of the Easement Parcel. No exercise of any right granted to the Museum in the Easement shall interfere with the WRA's, City's or general public's use and enjoyment of the Easement Parcel, except as specifically allowed herein. The WRA and the City shall continue to use the surface of the Easement Parcel for general municipal purposes that do not unreasonably interfere with the use of the Easement by the Museum as granted herein.

II. TEMPORARY CONSTRUCTION EASEMENT

A. Grant of Temporary Construction Easement. In addition to the Easement, the WRA and the City hereby grant the Museum a temporary construction easement over that part of the Real Estate that is ____ feet from the north boundary of the Easement Parcel and is ____ feet from the south boundary of the Easement Parcel (the "Construction Easement Property") as depicted on the attached Exhibit B, for purposes of ingress, egress and such construction activities as are necessary to construct the Heating Conduit (the "Construction Easement"). As soon as construction of the Heating Conduit is complete, the Museum will give notice to the WRA and the City, and the Construction Easement shall terminate. Upon completion of construction, the Museum will restore the surface of all disturbed areas on the WRA Real Estate as nearly as practicable to the original contour existing immediately prior to commencement of such construction or maintenance activities.

B. Public Use of the Construction Easement Parcel. Except as required for the

construction of the Heating Conduit and for public safety purposes, no exercise of any right granted to the Museum in the Construction Easement shall interfere with the WRA's, the City's or the general public's use and enjoyment of the Construction Easement Property, except as specifically allowed herein. The WRA and the City may continue to use the surface of the Construction Easement Parcel for general municipal purposes that do not and will not interfere with the use of the Construction Easement by the Museum for any of the rights granted herein.

C. Conditions Precedent to Work pursuant to Construction Easement. Before the Museum allows or directs any contractor to go upon or perform any work on the Construction Easement Property or the Construction Easement, the Museum shall:

(i) give notice to the City and the WRA of the Museum's projected date of commencement of construction;

(ii) obtain all necessary permits and approvals from the City, but the City is under no obligation to issue any such permits or approvals in an expedited manner for construction to begin by the projected commencement date;

(iii) identify each such contractor in writing to the WRA and the City;

(iv) provide the WRA and the City with copies of the construction contracts for the construction of the Heating Conduit;

(v) deliver to the City a certificate of insurance from each such contractor issued by an insurance company acceptable to the WRA and the City demonstrating (1) general liability coverage of not less than \$1,000,000 per occurrence and \$2,000,000 umbrella for damage to persons and property, (2) casualty insurance covering the Tower to its replacement value, (3) worker compensation insurance in amounts as required by statute. Both the WRA and the City are named as additional insureds on the general liability and casualty policies, neither of which shall be cancellable, except upon 30 day prior notice to the WRA and the City; and

(vi) provide the City and the WRA with such other documents and assurances as they may reasonably request.

III. FUTURE WORK ON HEATING CONDUIT

A. Notice. The Museum shall give prior, written notice to the WRA and the City before commencing any future work upon the Heating Conduit.

B. Conditions Precedent. Before any future work on the Heating Conduit commences, the Museum will have fulfilled all of the applicable requirements set forth in Section II.C above.

C. Cleanup. Upon completion of any work on the Heating Conduit, the Museum will restore the surface of all disturbed areas on the Easement Parcel and the

Construction Easement Property as nearly as practicable to the original contour existing immediately prior to commencement of such construction or maintenance activities.

IV. TERMINATION/ABANDONMENT OF EASEMENT

- A. Termination of Easement/Notice of Intention to Abandon. The Easement shall terminate upon the cessation of the use of the Heating Conduit by the Museum. The Museum shall give the WRA and the City not less than 120 days' notice of any intention to abandon the Easement, in which case, the WRA and the City shall notify the Museum within 60 days of receipt of the notice if the abandonment will be accepted or if the WRA and the City will require the Museum to remove the pipeline. If the WRA and the City require removal of the pipeline, the Museum shall remove the pipeline.
- B. Restoration of Property upon Termination. Before termination of this Agreement, the Museum shall restore the Easement Parcel as nearly as practicable to the original contour existing immediately prior to commencement of such removal activities.

V. INDEMNIFICATION OF THE WRA AND THE CITY

The Museum will defend, indemnify and hold the WRA and the City and their respective board members, officers, employees, contractors, agents, insurers and attorneys, and their respective successors and assigns, harmless from and against any and all costs, expenses, damages or injuries to property or persons caused by the construction, inspection, repair, maintenance, operation, replacement, protection, testing, patrolling, reconstruction, alteration, relocation, enlargement, removal, abandonment in place, and any other activities relating to the Easement or the Construction Easement. The Museum's obligations under this section shall survive termination of this Agreement.

VI. ASSIGNMENT OF AGREEMENT

This Agreement may not be assigned or otherwise conveyed in whole or in part, by the Museum without the express, written prior approval of the City. Any such assignment shall be void ab initio. The WRA will assign all of its rights and obligations under this Agreement to the City upon the expiration of TIF No. __, which is scheduled to expire on _____, 202__.

VII. EASEMENT RUNS WITH THE LAND

The Easement and all rights, privileges and obligations created herein shall run with the land and shall inure to the benefit of and be binding and obligatory upon the legal representatives, successors and assigns of the Parties.

VIII. TOWER SECURITY CAMERA

- A. Camera Conduit Installation, Payment and Maintenance.

(i) The Museum shall contract with a provider of its choosing to provide and install the Camera Conduit. The capacity of the Camera Conduit service to the Tower shall be at the discretion of the Museum provided that sufficient capacity shall be provided and maintained for the use of the Camera. The Museum shall determine the manner and placement of the Camera Conduit and connections thereto, including the provision of a connection point for the Camera.

(ii) The Museum shall pay all costs for the materials and installation involved in the installation of the Camera Conduit.

(iii) The Museum shall maintain the Cable Conduit in good repair without interference or discontinuance of service to the Camera and shall timely pay all costs of installation, operation and maintenance of the Camera Conduit.

B. Acquisition, Placement, Payment and Connection of Camera.

(i) The City shall select and pay for the Camera.

(ii) At its expense, the City shall install the Camera on the roof of the Tower in a place and manner determined at the City's discretion.

(iii) The Museum shall permit the City to connect to and use the Camera Conduit, without cost to the City, which connection shall be at a point acceptable to the Parties, provided such connection point shall not obstruct or interfere with the Camera's use, operation, repair, maintenance or replacement thereof.

(iv) The City and its contractors and agents are hereby granted the right in ingress and egress to the Tower for the purpose of maintaining, repairing and replacing the Camera, provided the City gives the Museum not less than 24 hours' prior notice. All costs associated with the maintenance, repair or replacement of the Camera shall be borne by the City.

C. Termination of Access and Use Rights. The City shall be permitted to operate and maintain the Camera in the manner provided herein for a period of 60 years.

IX. INDEMNIFICATION OF THE MUSEUM

The City shall indemnify and hold the Museum harmless from and against any liability associated with the City's placement, use and operation of the Camera, and any damages to the Museum property or facilities caused by the same, except where such liability arises from the negligence or willful misconduct of the Museum or its contractors and assigns. The foregoing notwithstanding, the City reserves the immunity and damage limitations afforded it under applicable statutes, including, without limitation, §893.80 of the Wisconsin Statutes. The City's obligations under this section shall survive termination of this Agreement.

X. MISCELLANEOUS

- A. Notices. Notices or other communication hereunder shall be in writing and shall be sent by (i) certified or registered mail, return receipt requested, (b) national overnight courier company, (c) personal delivery, or (d) email to the respective addresses set forth below. Notice shall be deemed given upon receipt or refusal to accept delivery. In the case of email, notice shall be deemed to have been received on the day given (except if the email was sent after 5:00 p.m. Central Time, in which case receipt shall be the next day the City is open for business), provided in either case, the sender of the email does not receive a notice of transmission failure. The addresses below shall be presumed correct until a Party sends notice of a different address. Addresses are as follows:

If to City: City of Sturgeon Bay
421 Michigan Street
Sturgeon Bay, WI 54235
Attn: Mayor
Email: _____

If to WRA: Sturgeon Bay Waterfront Redevelopment Association
421 Michigan Street
Sturgeon Bay, WI 54235
Attn: Chairperson
Email: _____

If to Museum: Door County Maritime Museum &
Lighthouse Preservation Society, Inc.
1809 Oak Leaf Drive
Green Bay, WI 54304
Attn: President

- B. Entire Agreement. This document and exhibits hereto contain the complete understanding of the Parties hereto with respect to all matters referred to herein, with all contrary representations, negotiations, and understandings being superseded by this Agreement.
- C. Interpretation. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against the City, the WRA or the Museum. Without limitation, any ambiguity in this Agreement shall not be construed against the drafter, the City, the WRA and the Museum having materially participated in the negotiation and drafting of this Agreement.
- D. Parties Bound. This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.
- E. No Waiver. No waiver of any default of any obligation by the City or the Museum shall be implied from any omission by the other Party to take any action with respect to such default. Every waiver must be in writing. No waiver of a present

default shall constitute a waiver of any other default present or in the future, nor shall any such waiver constitute a waiver of the same default in the future, unless the waiver explicitly indicates as such.

- F. No Agency. Nothing in this Agreement shall be deemed or construed to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the City and the Museum.
- G. Severability. Each provision of this Agreement is independent of and severable from the remainder of this Agreement. If any provision contained herein is held to be invalid or to be unenforceable, such holding shall not affect the validity or enforceability of the remainder of this Agreement, unless the determination of illegality would deprive either of the Parties of the material benefits of this Agreement.
- H. Governing Law. The laws of the State of Wisconsin shall govern the interpretation, validity, performance, and enforcement of this Agreement.
- I. Authority. Each person signing this Agreement represents and warrants that he or she has been duly authorized by all municipal, corporate or other authority to execute and deliver this Agreement on behalf of the entity for which he or she has purported to represent and to bind such entity to the terms of this Agreement.
- J. Recitals and Exhibits. The Recitals set forth above, and the exhibits attached hereto, are incorporated herein and made a part of this Agreement.
- K. Counterparts and Copies. This Agreement may be signed in counterparts. Copies of this Agreement shall have the same effect as originals, the best evidence rule not applying to this Agreement.

[Signature page(s) and Exhibits A and B follow.]

IN WITNESS WHEREOF, the Parties have caused this Easement and Use Agreement to be executed effective the date first written above.

CITY OF STURGEON BAY

By: _____
David J. Ward, Mayor

By: _____
Stephanie Reinhardt, Clerk

**STURGEON BAY WATERFRONT
REDEVELOPMENT AUTHORITY**

By: _____
_____, _____

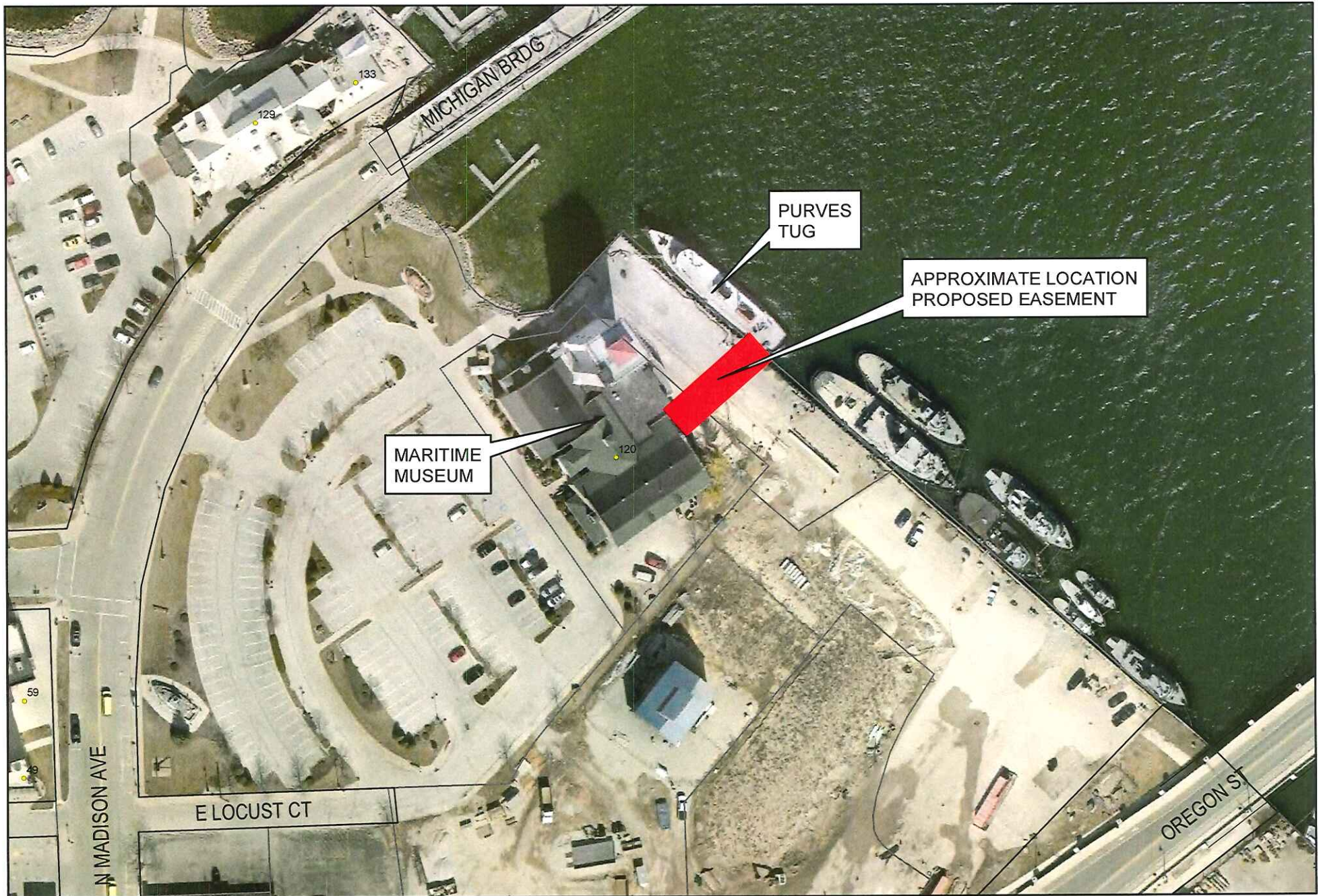
By: _____
_____, _____

**DOOR COUNTY MARITIME MUSEUM &
LIGHTHOUSE PRESERVATION SOCIETY, INC.**

By: _____
_____, President

EXHIBIT A
LEGAL DESCRIPTION OF EASEMENT PARCEL

(to be added)

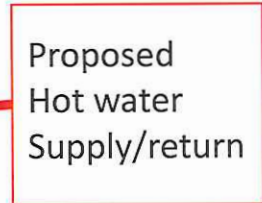


0 50 100
Feet

PROPOSED UTILITY EASEMENT FOR PURVES TUG



NOV, 2021



EXECUTIVE SUMMARY

Title: Assignment of development contract for Harbor Club Marina from Skipper Marine Development to Marine Max

Background: The City and Waterfront Redevelopment Authority has a development contract (agreement) with Skipper Marine Development to construct and operate The Harbor Club marina. Marine Max is in the process of purchasing the marina from Skipper Marine Development. Section 11.b. of the contract specifies that any assignment of the agreement requires the approval of WRA.

Skipper Bud's has requested the approval of the assignment of the agreement to Marine Max. They will create the assignment document. Marine Max is a nationwide firm that clearly has the capability to operate the marina consistent with the agreement. Staff sees no issue with approving the assignment.

Recommendation: Approve the assignment of the development contract for The Harbor Club marina from Skipper Marine Development to Marine Max.

Prepared by: Martin Olejniczak
Martin Olejniczak
Community Development Director

11-4-21
Date

Reviewed by: Josh Van Lieshout
Josh Van Lieshout
City Administrator

11/4/21
Date

Olejniczak, Marty

From: Mark D. Ellerbrock <mark@skipperbuds.com>
Sent: Monday, July 12, 2021 4:36 PM
To: Olejniczak, Marty
Subject: assignment of development agreement to marinemax

Marty:

As per our telephone conversation this afternoon, Just wondering what I need to do (and timeline) to get WRA approval of the assignment of the Harbor Club development agreement to MarineMAX . We are contemplating a sale to MarineMAX of the HarborClub on October 1st, 2021.

Thanks

Mark
Mark D. Ellerbrock
SkipperBud's
215 Northpoint Drive
Winthrop Harbor, IL 60096
Office: 847-872-0292 ext. 1081
Cell :262-496-8013
Fax :847-872-2072

Note: Entire contract is included for reference. The assignment provision is within section 11.6. on page 5.

DEVELOPMENT CONTRACT FOR MARINA FOR STURGEON BAY WATERFRONT REDEVELOPMENT

AGREEMENT made by and between the Waterfront Redevelopment Authority of the City of Sturgeon Bay, Sturgeon Bay, Wisconsin, hereinafter referred to as "WRA" and Skipper Marine Development, 215 North Point Drive, Winthrop Harbor, Illinois, 60096, hereinafter referred to as "SMD".

RECITALS

A. WHEREAS, the City of Sturgeon Bay (City) has created a Waterfront Redevelopment Authority pursuant to the provisions of §66.431, Wis. Stats., for the purpose of development of areas on the East and West sides of the ship canal bisecting the City of Sturgeon Bay and the Door Peninsula in Door County, Wisconsin;

B. AND WHEREAS, as part of the Waterfront Redevelopment, there will be developed a marina, hotels, restaurants, and other facilities;

C. AND WHEREAS, the WRA has determined that it is in the best interests of the WRA and the City to enter into contracts with developers for the exclusive development of such facilities, and by this Agreement wishes to enter into an agreement with SMD for the development of a marina to be located on the West side of the Sturgeon Bay ship canal.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties as hereinafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged by both of the parties hereto, the parties agree as follows:

1. Facility to be Developed.

a. Marina Facility Described. SMD will develop, in a workmanlike manner, on the site located between the former Ahnapee & Western railroad spur, the Michigan Street Bridge and the west shore of the Sturgeon Bay Ship Canal, a marina facility, including boat slips and a land based operation.

b. Operations. After development, SMD, and its successors or assigns, shall maintain, at its sole expense, and operate in a workmanlike manner, the marina facility. "Workmanlike manner" means to the standards usual and customary for the operation of a marina facility.

c. Limitation on Use of Premises. The operations of this marina shall be as determined by SMD or its assigns; however, the use of the site hereinafter mentioned shall be for a marina facility only, unless otherwise agreed to in writing by the WRA.

d. Exclusive Right to Develop. SMD is hereby granted the exclusive right to develop the facility, except as provided in ¶10. of this Agreement. By entering into this Agreement SMD hereby expresses its commitment to the development of the facility within the time set forth in ¶10.

2. Land Based Operations of Marina.

a. Space in Restaurant for Marina. The land based portion of this marina will be located in a 10,000 square foot restaurant facility being constructed by the restaurant developer (hereinafter referred to as "RD") adjacent to the marina site. RD will make available to SMD approximately 2000 sq. ft. in the restaurant building for use by patrons of the marina for showers, rest rooms and an office for the operator of the marina.

b. Lease of Space. Said 2,000 sq. ft. space will be leased by RD or WRA to SMD upon terms to be negotiated between RD or WRA and SMD. If said space is leased to a person or entity other than the WRA and the lessee abandons the property or defaults such that RD takes the leased space back, RD shall then lease the space to WRA upon the same terms and conditions it was rented to the lessee.

c. Water Taxi. WRA hereby informs SMD that it intends to have available in the area of the aforementioned west-side marina and east-side marina, whether or not the marinas are developed, sites for a water taxis. Such taxis would be used to transport patrons of the facilities in the Waterfront Redevelopment area between the east and west sides of the ship canal. SMD understands, though, that the WRA is under no obligation to develop such sites.

d. Easement. There will be included an easement by WRA and the City for ingress and egress from Madison Avenue to the site through a parking lot to be developed to the west of the site to enable SMD to have access for delivery vehicles necessary to operate the marina and for customers.

3. Boat Slips.

a. Exclusive Right to Install and Operate Boat Slips. WRA (or City) as owner of the land next to which the boat slips will be located hereby grants to SMD the exclusive right to install approximately 150 boat slips on the south side of the portion of the former Ahnapee & Western railroad spur that projects eastward into the Sturgeon Bay Ship Canal. The exact location of the boat slips will be listed on a plan made by SMD that is approved by WRA and the City.

b. Personal Property. The aforesaid boat slips will be floating docks and will be considered personal property and taxed by the City as such.

c. 15 Foot Walkway. It is understood that the WRA or the City will retain title to a fifteen foot (15') strip of land located between the real estate upon which the marina facility's land based operation will be located and the waters of the ship canal, which fifteen foot (15') strip will be used for the development of a public walkway.

d. Cost of Construction & Maintenance of Walkway. It is understood that the cost to construct, landscape, light and maintain the Waterfront walkway and other public access walkways is the City's responsibility.

e. Bulkhead. All costs of repair, construction and maintenance of the bulkhead or water's edge shall also be the City's responsibility.

f. Completion of Work on Walkway. It is anticipated by WRA that the work on the aforesaid public walkway will be completed on or before the completion date of the marina facility.

4. Term of Agreement.

a. The term of this contract and the aforesaid right to install and operate boat slips shall commence as provided in ¶17.d. following and continue for the life of the Tax Increment Financing District (TID) referred to in ¶12.a. following, but not less than twenty (20) years, except as provided in ¶4.c. below.

b. SMD, at its option, may review this Agreement upon the initial expiration date set forth in ¶4.a. above, for an additional twenty-five (25) years and at the expiration of that twenty-five (25) years, for a second twenty-five (25) year period, both such renewals on the same terms and conditions as set forth herein, unless otherwise modified by the parties in writing signed by both parties.

c. This Agreement shall sooner terminate if SMD, its successors or assigns, become in default or breaches any condition of this Agreement, which are not cured, as provided in ¶16.a. following. In such case WRA and the City shall be under no obligation to purchase any property of SMD on the site as described in ¶4.d. following. SMD may remove all such property upon default at its expenses, provided all City property on the site described in this Agreement is cleaned up and any damage to the City property caused by SMD repaired at SMD's expense.

d. Upon termination of the initial period above, or upon termination of any renewal period, the City agrees to purchase all improvements of SMD on the site described herein, at the then fair market value as determined by an appraiser agreed upon by both of the parties hereto, or if the parties cannot agree on an appraiser, at such price determined by a court of law. Costs of the appraisal and court action shall be shared by the parties equally.

5. Parking.

a. Parking for Marina. There will be located in an area adjacent to the property to be purchased by RD parking lots that will be owned by the City. WRA and the City will make available to the marina facility at no cost to the marina at least two hundred (200) parking spaces for use by patrons of the marina, of which one hundred (100) may be controlled by the marina for marina operations only. Such spaces shall be used for vehicle parking only (no storage of boats).

b. Additional Public Parking. WRA represents that additional parking within the west side Waterfront District will be made available for public parking needs.

6. Madison Avenue Street Crossing.

It is anticipated that the restaurant and marina will attract walking patrons from various areas of the Waterfront District, including the Waterfront, the Maritime Museum and Sawyer Park area. The WRA represents that the City will provide a crossing on Madison Avenue so as to allow such pedestrian traffic to cross Madison Avenue from facilities located on the opposite side of Madison Avenue from the marina.

7. Utilities.

Sewer, water, electrical, and gas service shall be supplied to the shoreline of the site of the boat slips by WRA with SMD's only cost being the cost of the connection to its operations and those utilities.

8. Environmental.

WRA had a Phase I Environmental Study and soil boring on the site to be conveyed to RD, and in addition had soil borings on the Bayview Park Site, and at the rear of the auto parts store nearby, done by OMNNI Associates, Environmental engineers, the report on the testing stating that there was no reportable contamination. A copy of such report will be furnished to SMD upon request.

9. Licenses/Permits/Zoning.

a. Building Permits/Approvals. SMD shall obtain, directly or through its agents, a building permit from the City and approval from the State of Wisconsin for such facility. Such facility shall be constructed in accordance with all applicable federal, State of Wisconsin, County of Door, and City of Sturgeon Bay laws, ordinances and regulations.

b. Inability to Obtain Permits/Approvals. If SMD is unable to obtain any necessary permits or approval for the construction of the facility then SMD shall be under no obligation to develop the facility and this Agreement shall be null and void.

10. Completion.

a. Completion Date. SMD shall complete the facility and site, in accordance with SMD's plans, so that it will be an operating marina, open to the public by May 1, 1997. Time is of the essence as to this date.

b. Penalties.

i. SMD shall use its best efforts to complete the development as set forth in subparagraph a. above by May 1, 1997.

ii. If despite such best efforts, SMD should fail to complete the facility within ninety (90) days after May 1, 1997, unless excused for impossibility of performance, which excuse will not be unreasonably withheld, or because the Hotel and/or Restaurant Complex are not completed then, WRA shall have the right to enter upon the premises and complete all necessary items and assess the cost thereof to SMD as a lien thereon.

iii. If SMD abandons the project, the exclusive right to install the boat slips, per Section 3.a. of this Agreement shall terminate and all right, title and interest in the boat slips shall vest in the City.

11. Sale/Lease/Assignment.

a. Sale/Lease. Neither SMD, nor its successors, assigns or agents, may sell the boat slips nor sublease the land based site without the prior written approval of the WRA, which approval will not be unreasonably withheld.

b. Assignment. Neither SMD, nor its successors, assigns or agents, may assign any rights under this Agreement or the Agreement itself without the prior written approval of the WRA, which approval will not be unreasonably withheld.

c. Construction/Operating Entity. Nothing contained herein, though, shall prohibit SMD from creating another corporation or other entity for the purpose of constructing and/or operating the facility. Any such entity, though, shall construct the facility and/or operate the facility in accordance with all of the terms of this Agreement and will be bound by the terms thereof as well as SMD.

12. Taxation.

a. SMD understands that the ability of the WRA to develop the Waterfront District is dependent upon expectations of tax assessment of the facilities developed in the Tax Increment Financing District (TID) of which the Waterfront District is a part. It is necessary, therefore, that the owners of facilities in the District pay the tax assessments made by the City for the life of the District.

b. SMD estimates the cost of the property, real estate, and personal property to be \$1.0 million dollars. Upon completion of the facility, SMD agrees to pay an annual amount at least equal to the assessment based on that cost, regardless of whether the current year's assessment is less than the original contemplated \$1.0 million cost.

The amount of the current year's tax assessment and bill shall be paid to the city and the difference, if any, between that amount and the amount of tax as would be paid on cost of \$1.0 million shall be paid to WRA as a lease payment.

This formula shall be used in the Agreements with the Hotel and Restaurant developers previously referred to.

13. Insurance.

a. SMD shall maintain fire and other casualty insurance on the premises in an amount at least equal to the fair market value of the property as shown on the past year's tax bill.

b. In addition, SMD shall maintain public liability insurance on the premises to be conveyed herein, including the marina operation, in an amount of at least \$1,000,000.00.

c. SMD shall at least annually furnish to WRA either a copy of such policy or a certificate of insurance showing such converge.

d. Any insurance proceeds received for fire or other casualty loss to the premises shall be used to rebuild, restore, or replace (as the use may be) property damaged by such fire or other casualty. This applies to both real and personal property.

14. Hold Harmless/Indemnification.

SMD hereby holds harmless and will indemnify WRA, its commissioners, officers, employees and agents, and the City, its mayor, council members, officers, employees and agents, from any and all claims, demands, lawsuits or judgments that may be made, filed or brought against the WRA, its commissioners, officers, employees and agents, or the City, its mayor, council members, officers, employees and

agents, for death, injury or damage as a result of any work or action taken by SMD, his employees, contractors or other agents, successors and assigns, on the site and the facility covered by this Agreement, including defending the WRA, its commissioners, officers, employees and agents, and the City, its mayor, council members, officers, employees and agents, on all such claims, demands, lawsuits or judgments including payment of costs of defense, including court costs and reasonable attorneys fees.

15. Cooperation with Other Developers.

a. The parties hereto recognize that the facility developed pursuant to this Agreement is a part of the development of a number of facilities that will comprise the Waterfront District on the West side of the Michigan Street Bridge. SMD agrees, therefore, to cooperate with such developers, and in particular, the developers of the restaurant and hotel on the West side of the Michigan Street Bridge and the City in connection with parking on the West side of the Michigan Street Bridge.

b. WRA represents that this same requirement shall be a term of the agreements with the other developers of the facilities on the West side of the Michigan Street Bridge.

16. Enforcement of Agreement.

a. A party to this Agreement unless otherwise herein provided, shall be in default or breach of the Agreement if, after 90 days' written notice, sent certified mail return receipt, to that party to perform obligations herein, that party fails to do so. Such default or breach shall result in termination of this Agreement upon expiration of said 90 day period.

b. This Agreement shall be enforced in accordance with the laws of the State of Wisconsin, with venue of any lawsuit to be in Door County, Wisconsin.

c. The prevailing party in any such action shall be entitled to its costs of enforcement of this Agreement, including court costs and disbursements and reasonable attorneys fees.

17. Miscellaneous.

a. Modifications. No modifications of this Agreement shall be made except in writing signed by the parties hereto.

b. Successors and Assigns. This Agreement shall extend to the successors, heirs, personal representatives and assigns of the parties hereto.

c. Authority to Execute Agreement. The undersigned represent that they are duly authorized to execute this Agreement on behalf of the parties hereto.

d. Approval by City/Effective Date of Agreement. This Agreement shall not become effective until approved by the City Council of the City of Sturgeon Bay as to all of the terms and conditions hereof, which terms and conditions shall be binding on the City to the extent allowed by law. The effective date shall be the date on which the contract is signed by the City.

e. Memorandum of Agreement. A memorandum of this Agreement setting forth its existence shall be recorded with the Register of Deeds for Door County, Wisconsin, and tracted indexed against the site described herein.

WHEREFORE, the parties have hereunto set their hands this 6th day of October, 1995.

WATERFRONT REDEVELOPMENT AUTHORITY "WRA"

by: Craig Ostlund, its Chairman

Countersigned by:

by: Kenneth J. Bue, its Secretary

SKIPPER MARINE DEVELOPMENT "SMD"

by: Dennis E. Elferbrock, its President

Countersigned by:

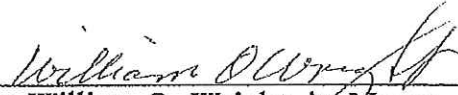
by: Robert D. Wohlrabe, its Secretary
Asst.

Approval by City of Sturgeon Bay


The City Council of the City of Sturgeon Bay, Wisconsin, pursuant to a vote by a majority of the members of the Council at a City Council Meeting duly noticed and held on the 3rd day of October, 1995, hereby approves the aforesaid Agreement and agrees to be bound by all of the terms and conditions of such Agreement as they pertain to the City, to the extent allowed by law.

Dated this 6th day of October, 1995.

CITY OF STURGEON BAY


by: William O. Wright, its Mayor

Countersigned by:


by: Kathryn I. Schultz, its Clerk-Treasurer

This Instrument Drafted By:
Attorney Jeffery M. Weir
Pinkert, Smith, Weir, Jinkins,
Nesbitt & Hauser
454 Kentucky Street, P. O. Box 89
Sturgeon Bay, WI 54235-0089
Telephone No.: (414) 743-6505

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AMENDMENT TO DEVELOPMENT CONTRACT FOR MARINA FOR STURGEON BAY WATERFRONT REDEVELOPMENT

THIS AMENDMENT made by and between the Waterfront Redevelopment Authority of the City of Sturgeon Bay, Sturgeon Bay, Wisconsin, hereinafter referred to as "WRA" and Skipper Marine Development, 215 North Point Drive, Winthrop Harbor, Illinois, 60096, hereinafter referred to as "SMD".

RECITALS

A. WHEREAS, the WRA, City and SMD entered into a development contract for a Marina dated October 6, 1995, which contract provided for a completion date in ¶10 of May 1, 1997;

B. AND WHEREAS, the parties all recognize that it is not now feasible to have the marina operating by that date and are agreeable to amending the contract to provide for a new completion date of May 1, 1998, and wish to reduce such amendment to writing.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties as hereinafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged by both of the parties hereto, the parties agree as follows:

1. ¶10.a. of the Agreement is amended to change the date of completion from May 1, 1997, to May 1, 1998.

2. ¶10.b.i. and ¶10.b.ii. of the Agreement is amended to change the date of completion from May 1, 1997, to May 1, 1998.

3. All other terms and conditions of the aforesaid Agreement shall remain in full force and effect.

WHEREFORE, the parties have hereunto set their hands this 17th day of December, 1996.

WATERFRONT REDEVELOPMENT AUTHORITY "WRA"


Cathy A. Wiese
by: Cathy A. Wiese, its Chairperson
Countersigned by:

Kenneth J. Brey, Jr.
by: Kenneth J. Brey, Jr., its Secretary

SKIPPER MARINE DEVELOPMENT "SMD"


by: Dennis E. Ellerbrock, its President

Countersigned by:

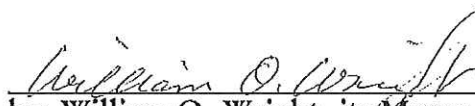

by: Amy Pretosky, its Secretary

Approval by City of Sturgeon Bay


The City Council of the City of Sturgeon Bay, Wisconsin, pursuant to a vote by a majority of the members of the Council at a City Council Meeting duly noticed and held on the 1st day of October, 1996, hereby approves the aforesaid Amendment and agrees to be bound by all of the terms and conditions of such Amendment as they pertain to the City, to the extent allowed by law.

Dated this 17th day of December, 1996.

CITY OF STURGEON BAY


by: William O. Wright, its Mayor

Countersigned by:


by: Kathryn I. Schultz, its Clerk-Treasurer

This Instrument Drafted By:
Attorney Jeffery M. Weir
Pinkert, Smith, Weir, Jinkins,
Nesbitt & Hauser
454 Kentucky Street, P. O. Box 89
Sturgeon Bay, WI 54235-0089
Telephone No.: (414) 743-6505

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