

Schultz, Josie M - DNR

From: Nelson, William J - DNR
Sent: Friday, July 5, 2019 12:09 PM
To: Natalie Bussan; Schultz, Josie M - DNR; Diana Campbell
Cc: 'pvantreeck@co.marquette.wi.us'; Gary Sorensen
Subject: RE: Skrzypek Property - Request for Deed Resolution

Good morning everyone,

I am following up to Josie's email on June 24 and Natalie's reply on June 25.

I agree with Natalie's extensive review of the applicable statute that the local government unit exemption did not apply to the County's acquisition in 2013 because it was not a tax delinquency acquisition. We understand that the County reviewed the transaction and found protocols were not followed in 2013 for transferring the property. That said, real estate records indicate:

The County currently owns the property.

The County did not acquire the property through a specific LGU exemption, such as Wis. Stat. § 292.11(9)(e)(a).

The DNR is supportive of a cleanup addressing the historic contamination and environmental pollution at the site. The DNR is supportive of a collaboration between the County and Whitemarsh Properties, LLC to define and address the environmental pollution and restoration of the environment. We look forward to hearing from the County by end of August.

Best,
Bill

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Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

William J. Nelson

Phone: (608) 267-7456

william.nelson@wisconsin.gov

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From: Natalie Bussan <nbussan@cjmmlaw.com>
Sent: Tuesday, June 25, 2019 7:34 AM
To: Schultz, Josie M - DNR <josie.schultz@wisconsin.gov>; Diana Campbell <dcampbell@co.marquette.wi.us>
Cc: Nelson, William J - DNR <William.Nelson@wisconsin.gov>; 'pvantreeck@co.marquette.wi.us' <pvantreeck@co.marquette.wi.us>; Gary Sorensen <gsorensen@co.marquette.wi.us>
Subject: RE: Skrzypek Property - Request for Deed Resolution

Hello,

Needless to say, the County's preferred response is to have an exception apply. I have reviewed the exceptions listed in 292.11(9)(e), and it does not appear that any would apply, unless the DNR agrees that this acquisition was essentially a tax delinquency acquisition. Any thoughts? See my notes in bold italics on each section below.

(e) 1. In this paragraph, "local governmental unit" means a municipality, a redevelopment authority created under s. [66.1333](#), a public body designated by a municipality under s. [66.1337 \(4\)](#), a community development authority or a housing authority.

1m. Except as provided in subds. [2.](#), [4.](#), [6.](#) and [7.](#), a local governmental unit is exempt from subs. [\(3\)](#), [\(4\)](#) and [\(7\) \(b\)](#) and [\(c\)](#) with respect to discharges of hazardous substances on or originating from property acquired by the local government unit before, on or after October 29, 1999, if any of the following applies:

a. The local governmental unit acquired the property through tax delinquency proceedings or as the result of an order by a bankruptcy court **(originally, yes)**

b. The local governmental unit acquired the property from a local governmental unit that is exempt under this subdivision with respect to the property. **(not applicable)**

c. The local governmental unit acquired the property through condemnation or other proceeding under ch. [32](#). **(we did not)**

d. The local governmental unit acquired the property for the purpose of slum clearance or blight elimination. **(there are no structures on the property, nor has any adjacent area been declared a slum or blight – I would assume DNR would need to agree this applies.)**

e. The local governmental unit acquired the property through escheat. **(I have found two definitions in the statutes for this term – abandoned/unclaimed property (177.41) and property that does not have heirs of the decedent – 852.01 – this does not appear to apply unless the DNR agrees that it was "abandoned" to us)**

f. The local governmental unit acquired the property using funds appropriated under s. [20.866 \(2\) \(ta\)](#) or [\(tz\)](#). **(I believe these are special funds and we did not utilize those funds to acquire the property)**

1s. Except as provided in subds. [2.](#) and [4.](#) to [6.](#), an economic development corporation described in section [501](#) (c) of the Internal Revenue Code, as defined in s. [71.22 \(4\)](#), that is exempt from federal taxation under section [501](#) (a) of the Internal Revenue Code, or an entity wholly owned and operated by such a corporation, is exempt from subs. [\(3\)](#), [\(4\)](#) and [\(7\) \(b\)](#) and [\(c\)](#) with respect to property acquired before, on or after October 14, 1997, if the property is acquired to further the economic development purposes that qualify the corporation as exempt from federal taxation. **(The County does have an Economic Development Corporation, but I am not sure that it would agree to acquire the property for "further economic development purposes". If we did transfer the property to this group, would this solve the problem? What if the entity acquires the property and then does nothing with it to "further" economic development? What if the entity dissolves?)**

2. Subdivisions [1m.](#) and [1s.](#) do not apply to a discharge of a hazardous substance caused by any of the following:

a. An action taken by the local governmental unit or corporation.

b. A failure of the local governmental unit or corporation to take appropriate action to restrict access to the property in order to minimize costs or damages that may result from unauthorized persons entering the property.

c. A failure of the local governmental unit or corporation to sample and analyze unidentified substances in containers stored aboveground on the property.

d. A failure of the local governmental unit or corporation to remove and properly dispose of, or to place in a different container and properly store, any hazardous substance stored aboveground on the property in a container that is leaking or is likely to leak.

4. Subdivisions [1m.](#) and [1s.](#) do not apply if, after considering the intended development and use of the property, the department determines that action is necessary to reduce to acceptable levels any substantial threat to public health or safety when the property is developed or put to that intended use, the department directs the local governmental unit or corporation to take that necessary action and the local governmental unit or corporation does not take that action as directed.

5. Subdivision [1s.](#) does not apply if the corporation fails to do any of the following:

a. Respond to a discharge of a hazardous substance that poses an imminent threat to public health, safety or welfare or to the environment, on or off of the property.

- b. Enter into an agreement with the department to conduct any necessary investigation and remediation activities at the property no later than 3 years after acquiring the property.
6. Subdivisions [1m.](#) and [1s.](#) only apply if the local governmental unit or the economic development corporation agrees to allow the department, any authorized representatives of the department, any party that possessed or controlled the hazardous substance or caused the discharge of the hazardous substance and any consultant or contractor of such a party to enter the property to take action to respond to the discharge.
7. Subdivision [1m.](#) does not apply to property described in subd. [1m. f.](#) unless the local governmental unit enters into an agreement with the department to ensure that the conditions in subds. [2.](#) and [4.](#) are satisfied.

Natalie T. Bussan | Attorney
Cross, Jenks, Mercer & Maffei LLP
221 Third Avenue
P.O. Box 556
Baraboo, WI 53913
Office: (608) 356-3981
Direct: (608) 402-8008
Fax: (608) 356-1179
Website: www.cjmmlaw.com
Email: nbussan@cjmmlaw.com



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From: Schultz, Josie M - DNR <josie.schultz@wisconsin.gov>
Sent: Monday, June 24, 2019 10:31 AM
To: Natalie Bussan <nbussan@cjmmlaw.com>; Diana Campbell <dcampbell@co.marquette.wi.us>
Cc: Nelson, William J - DNR <William.Nelson@wisconsin.gov>; 'pvantreeck@co.marquette.wi.us' <pvantreeck@co.marquette.wi.us>; Gary Sorensen <gsorensen@co.marquette.wi.us>
Subject: RE: Skrzypek Property - Request for Deed Resolution

Hi Natalie,

I believe the best route at the moment would be to proceed with a Phase II ESA, as you have suggested, to grab soil and groundwater samples to confirm historic contamination.

If the County determines the deed is void, they wouldn't be held liable because they wouldn't be the property owner. If the County decides to acquire the property after determining the deed is void, they could obtain it via one of the acquisition methods that would give them the local governmental unit (LGU) exemption (listed under [Wis. Stat. § 292.11\(9\)\(e\)](#)), and technically wouldn't have to do anything then, unless they planned to convert the property to a different end use.

As far as grants/funding goes, Wisconsin Assessment Monies (WAM) is what's available for this kind of work; however, since it is woodland, I don't believe this would meet the definition of a Brownfield. Also, WAM is generally used for site assessments as a start for future redevelopment interest, so unless the county plans to redevelop this area it wouldn't be an eligible site. I will also look into other potential sources for funding, such as state lead, however it's unlikely that the state would spend money on this unless there was a threat to public health.

The DNR will allow for an extension onto the July 19th deadline in order for the County to meet with Whitemarsh Properties, LLC. The county shall provide the DNR with their decision on or before August 27, 2019. If a decision isn't made by this date, the DNR will issue a responsible party (RP) letter to Marquette County.

Please contact me with any additional questions you may have.

Sincerely,
Josie Schultz

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Josie M. Schultz

Hydrogeologist – Northeast Region Remediation and Redevelopment Team

Wisconsin Department of Natural Resources

2984 Shawano Avenue, Green Bay, WI 54313-6727

Phone: 920-662-5424

Cell: 920-366-5685

Josie.Schultz@Wisconsin.gov



From: Natalie Bussan <nbussan@cjmmlaw.com>

Sent: Thursday, June 20, 2019 3:54 PM

To: Schultz, Josie M - DNR <josie.schultz@wisconsin.gov>; Diana Campbell <dcampbell@co.marquette.wi.us>

Cc: Nelson, William J - DNR <William.Nelson@wisconsin.gov>; 'pvantreeck@co.marquette.wi.us' <pvantreeck@co.marquette.wi.us>; Gary Sorensen <gsorensen@co.marquette.wi.us>

Subject: RE: Skrzypek Property - Request for Deed Resolution

Good afternoon,

The County Board met regarding this matter on Tuesday, June 18, 2019. As you are aware, this situation is somewhat unique and several factors require careful consideration by the County before taking action. First, declaration of the deed as void will likely result in legal action against the County for the Property Committee's action in accepting transfer of the property (when only the County Board had the legal authority to accept transfer of the property). The County's insurer is not willing to commit, at this point, to defending such a claim against the County.

Further complicating the County's decision is the fact that the Phase II is very old (I believe it is from the 1980s) and does not outline what remediation is necessary at the property. MSA (the firm that conducted the first Phase II) has advised that another Phase II will need to be conducted in order to know what contamination remains on the property, as well as what remediation will likely be required, and the cost of remediation. Although MSA anticipates that the cost will be high, it cannot say for sure until another Phase II is complete. However, there is always a chance that the cost of remediation is manageable. MSA has advised that some grants or other programs may be available to the County to assist with the remediation, however, we do not know for certain that we could obtain such a grant.

The County is requesting a meeting with the prior/actual owner, Whitemarsh Properties, LLC, to discuss cost sharing the expense of a Phase II to provide the parties with more information as to exactly what is involved in cleaning up this property. Such an agreement would not constitute an admission by Marquette County that it was the owner of the property. We plan to meet with Whitemarsh in the month of July. The County Board will then need to meet in August to consider Whitemarsh's response. The County only meets one time a month and its decision making process is slow.

As such, we are requesting some additional time to pursue this option. We request that the County have until the end of August 27, the week following the County Board meeting, to respond to you with our plan or our declaration that the deed is void. Any information that you could provide us regarding grants that may be available for clean up, and the realistic probability of the County obtaining such a grant, would be greatly appreciated and will be a factor considered by the County in making its final decision.

If you wish to discuss this matter on the phone, I will be available through June 27. After that I will be on vacation and will not be available until July 15.

Thank you,

Natalie T. Bussan | Attorney
Cross, Jenks, Mercer & Maffei LLP
221 Third Avenue
P.O. Box 556
Baraboo, WI 53913
Office: (608) 356-3981
Direct: (608) 402-8008
Fax: (608) 356-1179
Website: www.cjmmlaw.com
Email: nbussan@cjmmlaw.com



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From: Schultz, Josie M - DNR <josie.schultz@wisconsin.gov>
Sent: Monday, May 20, 2019 3:37 PM
To: Diana Campbell <dcampbell@co.marquette.wi.us>
Cc: Natalie Bussan <nbussan@cjmmlaw.com>; Nelson, William J - DNR <William.Nelson@wisconsin.gov>
Subject: Skrzypek Property - Request for Deed Resolution

Diana,

Please find attached to this email a request for deed resolution for the Skrzypek Property, BRRTS # 02-39-001676. Feel free to contact me and/or the DNR's attorney, Bill Nelson, with any questions you may have.

Sincerely,
Josie Schultz

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Josie M. Schultz
Hydrogeologist – Northeast Region Remediation and Redevelopment Team
Wisconsin Department of Natural Resources
2984 Shawano Avenue, Green Bay, WI 54313-6727
Phone: 920-662-5424
Cell: 920-366-5685
Josie.Schultz@Wisconsin.gov



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