



May 5, 2021

Marquette County
Attn: Jody Myers, Treasurer
P O Box 186
Montello WI 53949

Sent Via E-Copy Only

Subject: Responsible Party Clarification for Skrzypek Property (former)
Parcel #251-00782-0000, County Highway B and State Highway 23, Montello, WI
DNR BRRTS Activity # 02-39-001676
ACTION REQUESTED BY JUNE 1, 2021

Ms. Jody Myers,

The Department of Natural Resources is in receipt of a letter from Attorney Wayne Maffei sent on the behalf of Marquette County dated March 1, 2021. The Department writes this letter to clarify the responsibilities of the County under applicable environmental regulations and requests the County to take action to address the title of Skrzypek property as soon as possible. The Department is seeking the County's intended next actions at this site, please see "Next Steps" for more information.

The Department and the County both agree the County was within its authority to both (1) acquire the Skrzypek property through its ordinance concerning tax delinquent properties in 2007 and (2) subsequently transfer the parcel to Whitemarsh Properties LLC (Whitemarsh) in 2011.

Separate Conveyance, not the Invalidation or Cancellation of Tax Deed

The additional and separate action in 2013 where the County accepted a quit claim deed between the County and Whitemarsh that returned the property to the County is at issue. This separate action, if authorized and valid, returned the property to the possession and control of the County in 2013. This was a separate conveyance in the form of a quit claim deed. This was not a contract where the terms of the 2011 deed were rescinded. There is no land sale contract or terms that were violated by either party to the quit claim deed. The 2013 transaction went beyond the "sale" of the property to Whitemarsh in 2011.

In his letter, Attorney Maffei discusses the effect of a rescinded contract in Wisconsin, however the single authority cited is an unpublished opinion and not applicable. Attorney Maffei does not discuss controlling Wisconsin law concerning a County rescinding tax deeds. County actions to invalidate tax deeds are found in Wisconsin Statute section 75.22 and discussed extensively in Jackson County v. State, Dep't of Nat. Res., 2006 WI 96. "Wisconsin Stat. § 75.22 is uniformly applicable to every county in the state. In it, **the legislature expressly limited the circumstances under which a tax deed can be cancelled**. The legislature has decided that *no* certificate or tax deed 'shall be deemed invalid ... by reason of **any** mistake or irregularity in **any** of the tax proceedings not affecting the groundwork of the tax.' (emphasis added) Jackson Cty. v. State, Dep't of Nat. Res., 2006 WI 96, ¶ 32. As in Jackson

County, Marquette County has attempted to rescind the quit claim deed from Whitemarsh to the County because of environmental obligations that exist at a property, not because of an issue affecting the groundwork of the tax. This 2013 rescission was a separate act, not a part of the tax delinquency proceeding of 2007 and “the sale thereof [the parcel subject to the tax deed] under County Ordinance § 2.09(F)(4). Therefore, tax deed rescissions (cancellations) by Marquette County are subject to the limited procedure in § 75.22 and the 2013 rescission was invalid. The quit claim deed was not a cancellation but a separate action taken after the property was transfer to Whitemarsh. The 2013 transfer was not approved or authorized by applicable County ordinance and applicable Wisconsin statutes.

Marquette County Board Actions in 2019

As Attorney Maffei discusses in his letter: “[The Department contends] . . . the 2013 Quit Claim Deed rescinding the 2011 transfer to Whitemarsh back constituted a new conveyance, not part of the original tax delinquency proceeding. Though I disagree with this conclusion, I do agree that if it is correct, then the Property Committee did not act within its authority when it rescinded the 2011 transfer. In that event, the 2013 Quit Claim Deed was invalid as not properly authorized or executed and title to the property would still be with Whitemarsh. . .” This is the Department’s position and appears to also be Marquette County’s position according to publicly available County Board meeting minutes from the August 20, 2019 meeting.¹ The County Board voted to affirm the following: “the Property Committee was without authority to accept a quit claim deed on behalf of the County, or to rescind a deed previously issued by the County.”

The Department has been waiting since fall 2019 for the County to initiate the action to correct the title which will clarify and remove all doubt as to which entity is in possession and control of the environmental contamination at the Skrzypek property.

LGU Exemption Does Not Apply to Marquette County after the 2011 Transfer to Whitemarsh

Failing to take any action to correct this 2013 transfer, the County remains in possession and control of a hazardous substance discharge under Wis. Stat. § 292.11(3) and subject to Wis. Admin. Code chs. 700 – 799. As discussed in the responsible party letter, as of the date of this letter, the County is still the legal owner of the property according to County tax deed records. Each day the property ownership is not addressed potentially subjects the County to per day penalties of up to \$5,000 per day under Wis. Stat. § 292.99(1). The County’s transfer of a property to a third party and acceptance of a quit claim deed (returning possession to the County) is not a means for acquiring real property that is contemplated by the local governmental unit (LGU) exemption under Wis. Stat. § 292.11(9)(e)1m.

¹ <https://www.co.marquette.wi.us/home/showpublisheddocument/12454/637039846791270000>

“Motion/second by Rosenthal/Kemnitz to declare null and void and of no further effect the Quit Claim Deed from Properties LLC to Marquette County dated January 29, 2013, and recorded as Document Number 293979 with the Marquette County Register of Deeds, and a purported rescinding of a prior deed from Marquette County to Properties LLC dated October 28, 2011. The Quit Claim Deed from Properties LLC to Marquette County was not approved or authorized by the County Board as required by Statute. The purported rescinding of the prior deed was not approved or authorized by the County Board.

The Property Committee was without authority to accept a quit claim deed on behalf of the County, or to rescind a deed previously issued by the County. Motion carried on a voice vote, not unanimous.

Motion/second by Sheller/Walters to direct the Corporation Counsel to take such action as necessary to correct the referenced title as in accordance with the preceding motion. Motion carried on a voice vote, not unanimous.”

subparts a through f. Therefore, without the LGU exemption able to shield the County from potential per day penalties and environmental liability at this site, the Department strongly recommends the County taking one of the two courses of action.

Next Steps

The Department encourages the County to either (1) take the necessary actions to address the contamination at the property, as discussed in the responsible party letter dated February 19, 2021, or (2) take all actions necessary to correct the title of the property so the Department may rescind its February 2021 letter. **Please let the Department know your course of action by June 1, 2021.** The Department is mindful the County Board meets only one or two times per month to decide on this matter.

All correspondence regarding this site should be directed to:

Gwen Saliars
Remediation and Redevelopment Program
Wisconsin Department of Natural Resources
625 E CTH Y STE 700
Oshkosh, WI 54901-9731
gwen.saliars@wisconsin.gov

If you have questions, please call Gwen Saliars at 920-510-4343 for more information.

Thank you for your cooperation.

Sincerely,



Roxanne N. Chronert
Team Supervisor, Northeast Region
Remediation and Redevelopment Program

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