



A PERFECT ENVIRONMENT

Residential ♦ Recreational ♦ Responsible

Chair
Larry Krause
Supervisors
Pete Van Horn
Christopher Smith
Edward Kranick
Ron Troy
Clerk/Treasurer
Mary Elsner

**TOWN OF DELAFIELD BOARD OF SUPERVISORS MEETING
TUESDAY, FEBRUARY 26, 2019 – 7:00 P.M.
DELAFIELD TOWN HALL – W302 N1254 MAPLE AVENUE, DELAFIELD, WI**

AGENDA

1. Call to Order
2. Pledge of Allegiance
3. Citizen Comments – During the Public Comment period of the agenda, the Town Board welcomes comment from any member of the public, other than an elected Town Board member, on any matter not on the agenda. Please be advised that pursuant to State law, the Board cannot engage in a discussion with you but may ask questions. The Board may decide to place the issue on a future agenda for discussion and possible action. Each person wishing to address the Board will have up to five (5) minutes to speak. Speakers are asked to submit to the Town Clerk, a card providing their name, address, and topic for discussion.

The Board will also take comment from the public on agenda items as called by the Chair, but not during the Public Comment. Please note that once the Board begins its discussion of an agenda item, no further comment will be allowed from the public on that issue.

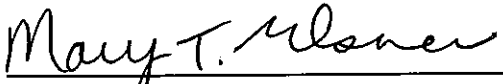
4. Approval of February 12, 2019, Town Board Minutes
5. Action on vouchers submitted for payment:
 - A. Report on budget sub-accounts and action to amend 2019 budget
 - B. 1) Accounts payable; 2) Payroll
6. Communications (*for discussion and possible action*)
 - A. Cynthia Wagner and others: The Board will consider concerns raised about stormwater drainage in the vicinity of W284 N3298 Lakeside Road
7. Unfinished Business
 - A. 2020 Town Budget Planning
 - B. Park and Recreation Commission Update
8. New Business
 - A. Gary Meerschaert, SAFEbuilt, discussion re: permits for building modifications

- B. **Closed Session:** Upon motion duly made, seconded and adopted by roll call vote, the Town of Delafield Town Board **will convene in closed session** to consider the following:
1. Pursuant to authorization conferred by Section 19.85(1)(e), Wisconsin Statutes, to deliberate or negotiate the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session; and by Section 19.85(1)(g), Wisconsin Statutes, to confer with counsel for the governing body with respect to litigation in which it is or is likely to become involved; more particularly with regard to complaints raised concerning stormwater drainage in the vicinity of W28 N3298 Lakeside Road. Participating in the closed session will be the Town Board, Town Clerk, Town Engineer, and Town Attorney. **Following the closed session, the Town Board may convene into open session** and take action on the matters discussed in closed session.

9. Announcements and Planning items

- A. Next Plan Commission Meeting – March 5 (and April 3 – due to Spring Election)
- B. Next Park and Recreation Commission Meeting – March 7
- C. Next Town Board Meeting – March 12

10. Adjournment



Mary T. Elsner, CMC, WCMC
Town Clerk/Treasurer

TOWN OF DELAFIELD BOARD OF SUPERVISORS MEETING
February 12, 2019

Members Present: L. Krause, P. Van Horn, E. Kranick, C. Smith

Members Absent: R. Troy

Others Present: T. Dunker, *Waukesha County Sheriff's Department, 2 citizens*

First order of business: Call to Order

Chairman Krause called the meeting to order at 7:00 p.m.

Second order of business: Pledge of Allegiance

Third order of business: Citizen Comments

There were no citizen comments.

Fourth order of business: Approval of January 22, 2019, Town Board Minutes

MOTION MADE BY MR. SMITH, SECONDED BY MR. KRANICK TO APPROVE THE MINUTES AS PRESENTED BY THE CLERK. MOTION CARRIED.

Fifth order of business: Action on vouchers submitted for payment:

A. Report on budget sub-accounts and action to amend 2018 budget

B. 1) Accounts payable; 2) Payroll

Accounts Payable

MOVED TO APPROVE PAYMENT OF CHECKS #61432 – #61500 THE AMOUNT OF \$179,728.65

Payroll

MOVED TO APPROVE PAYMENT IN THE AMOUNT OF \$58,417.47

MR. SMITH/MR. KRANICK

MOTION CARRIED.

Sixth order of business: Communications (*for discussion and possible action*)

A. Karen Schuh (1/24/19), Re: Waukesha County Shoreland Ordinance & General Zoning Code Amendments

Chairman Krause stated that this item will be addressed with Item 8A.

B. Hon. Timothy T. Kay (2/4/19), Re: Lake Country Municipal Court, 2018 Year in Review

The general consensus of the Town Board is that Lake Country Municipal Court has done and is continuing to do a great job. The subject report was very informative.

Seventh order of business: Unfinished Business

A. 2020 Town Budget Planning

Supervisor Smith stated that he, along with Supervisor Troy, attended the Waukesha County Unit Meeting and one topic discussed was budgeting re: referenda. It was made clear that the way the law is structured, the town cannot go for an amount absent, but specifically state the reason for the increase, i.e., add additional police and fire services, etc. Do we want to combine fire and police services? If the Town's budget is in the shortfall due to road costs, do we want to borrow? This item will remain on future agendas.

Eighth order of business: New Business

A. Consideration and possible action on Waukesha County's proposed modifications to their Shoreland & Floodland Protection Ordinance

Chairman Krause stated that Engineer Barbeau reviewed the subject modifications, has worked with Waukesha County and has no suggested changes. The Town Board is in agreement that there is no need to partner with the Town of Vernon, due to the fact that the Town Attorney has also reviewed the subject document.

B. Park and Recreation Commission update

Mr. Smith stated that the Park and Recreation Commission will meet on Thursday evening. The primary agenda item will be to formally start the 5-year planning process. Also, during the budgeting process, it was discussed that attempts be made to increase baseball revenue. The issue of sponsorships will be addressed.

C. Consideration and possible action on Operator's License for the period of 7/1/18 to 6/30/20:

1. Wyatt Michaud – Buck Rub Outfitters

MOTION MADE BY MR. KRANICK, SECONDED BY MR. SMITH TO APPROVE AN OPERATOR'S LICENSE FOR THE PERIOD OF 7/1/18 TO 6/30/20 FOR WYATT MICHAUD – BUCK RUB OUTFITTERS. MOTION CARRIED.

2. Brian Blau – Buck Rub Outfitters

MOTION MADE BY MR. KRANICK, SECONDED BY MR. SMITH TO APPROVE AN OPERATOR'S LICENSE FOR THE PERIOD OF 7/1/18 TO 6/30/20 FOR BRIAN BLAU – BUCK RUB OUTFITTERS. MOTION CARRIED.

D. Consideration and possible action on Act 190 Ordinance

Chairman Krause stated that, currently, first dollar credit and shared revenue payments are sent directly to Waukesha County and then to the town. They are disbursed the 3rd Monday of July, and the County has until August 15 to share the payment with the town. Act 190 allows for any municipality reaching the monetary credit payment threshold of \$3,000,000 or more, with the approval of the majority of the members of the municipality's governing body, to notify the DOR and DOA to distribute the amount directly to the municipality. The benefit of receiving the payment directly, is that the town could earn interest on the funds for approximately 45 days.

MOTION MADE BY MR. SMITH, SECONDED BY MR. KRANICK TO APPROVE THE ORDINANCE ACCORDING TO ACT 190 AND AUTHORIZE THE TOWN CHAIRMAN AND CLERK TO WORK WITH LEGAL COUNSEL TO PREPARE SUCH VERY SIMILAR OR IDENTICAL ORDINANCE IN THE FORMAT PRESENTED THIS EVENING SUBJECT TO FINAL REVIEW AND APPROVAL BY THE TOWN ATTORNEY. MOTION CARRIED.

Ninth Order of Business: Announcements and Planning Items

- A. Next Park and Recreation Commission Meeting – February 14
- B. Next Town Board Meeting – February 26
- C. Next Plan Commission Meeting – March 5 (and April 3 – due to Spring Election)

Tenth Order of business: Adjournment

MOTION MADE BY MR. KRANICK, SECONDED BY MR. SMITH TO ADJOURN AT 7:27 P.M. MOTION CARRIED.

Respectfully submitted,

Mary T. Elsner, CMC, WCMC
Town Clerk/Treasurer

Minutes approved on:

February 20, 2019

Delafield Town Board
Town of Delafield
W302 N1254 Maple Avenue
Delafield, WI 53018-7000

Re: W284N3298 Lakeside Road – Cynthia Wagner

Dear Members of Delafield Town Board:

In October of 2016, the Town of Delafield (Town) installed a catch basin and PVC piping along Lakeside Road which diverted rain, snow-melt and spring water onto Ms. Wagner's property which otherwise would not have flowed onto that property. Ms. Wagner respectfully asks the Town to discontinue that diversion and to compensate her for having deprived her of the full use of her property as a result of that diversion.

Ms. Wagner's request is scheduled to be addressed at the February 26, 2019, Town Board meeting. The following information is presented in support of her request.

Background

Cynthia Wagner lives at W284N3298 Lakeside Road, Town of Delafield, WI. Ms. Wagner's property is situated on the north side of Pewaukee Lake. Lakeside Road, a Town road, runs in a generally east-west direction along the northern side of Ms. Wagner's property. The roadway is virtually level in the vicinity of Ms. Wagner's property and in the areas immediately to the east and west of Ms. Wagner's property.

In the area where Ms. Wagner's property is located, including the properties to the east and west of Ms. Wagner's property, the land generally slopes downward toward the lake. Springs exist on the hillside to the north of Lakeside Road. Rain water, snow-melt water and spring water naturally flow toward the lake in a generally north to south direction which is roughly perpendicular to the lakeshore and to Lakeside Road.

Following its natural path, rain water, snow-melt water and spring water from the north side of Lakeside Road occasionally flowed over Lakeside Road on its way toward the lake. This was particularly the case in the area of the property to the east of Ms. Wagner's property. Figure 1, below, is a photo of Lakeside Road to the east of the Ms. Wagner's property in 2012. The photo, looking eastward, shows water flowing over the roadway from north to south.



Figure 1

In order to prevent water from flowing over Lakeside Road in the area of the property to the east of Ms. Wagner's property, the Town, in October of 2016, installed a catch basin on the north side of Lakeside Road, approximately 25 feet to the east of the eastern edge of Ms. Wagner's property. That catch basin is pictured in Figure 2. The photograph looks toward the west.

At the same time, without any notice to or permission from Ms. Wagner, the Town installed a PVC pipe to drain the water that collected in the catch basin. The pipe crossed under the road under the patched area shown in Figure 2. It then ran

parallel to the south edge of the road until it turned at an angle to the south near the western edge of Ms. Wagner's property. The pipe ended near the western edge of Ms. Wagner's property, allowing water from the catch basin to drain over the western side of Ms. Wagner's property to the lake. Figure 3 is a photograph of the outlet of the PVC drain pipe from the vantage point of the roadway, looking south toward the lake. The drain pipe terminus is aqua in color and Ms. Wagner's home is in the background.



Figure 2



Figure 3

A survey of Ms. Wagner's property and of the property to the east of Ms. Wagner's property was prepared by Keith Kindred of SEH. It documents the route of the PVC drain pipe. A copy of that survey appears below as Figure 4.

The survey includes a drawing of the exterior boundaries of Ms. Wagner's property and of the property to the east. That overall drawing appears on the left side of Figure 4. The property line between the two properties is highlighted in blue. Ms. Wagner's property is on the left. The route of the PVC piping is highlighted in yellow, with the catch basin to the right and the outlet to the left.

The survey also includes an enlarged detail drawing of the route of the PVC piping on the right side of the survey. Again, the property line between the two properties is highlighted in blue, and the route of the PVC piping is highlighted in yellow, with the catch basin to the right and the outlet to the left.

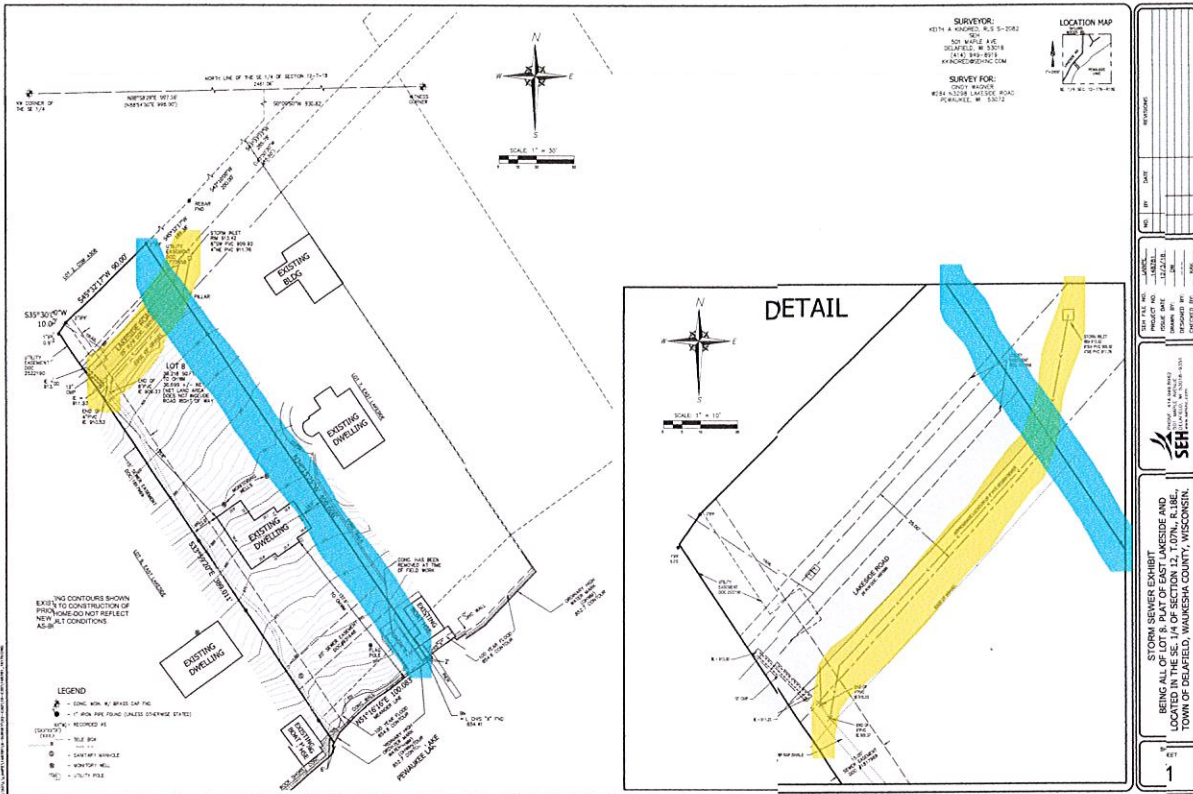


Figure 4

The detail drawing from the survey has been enlarged and appears as Figure 5, below. It is highlighted in the same manner as were the drawings in Figure 4. It shows that the catch basin is approximately 25 feet to the east of Ms. Wagner's property. It shows that the water from that catch basin is diverted across the entire width of Ms. Wagner's property through the PVC piping to be discharged along the western side of Ms. Wagner's property.

The PVC piping extends approximately six feet outside of the Town's right of way and onto Ms. Wagner's property. The Town does not have an easement or

other right to extend piping onto Ms. Wagner's property. The placement of that piping is, therefore, a trespass.

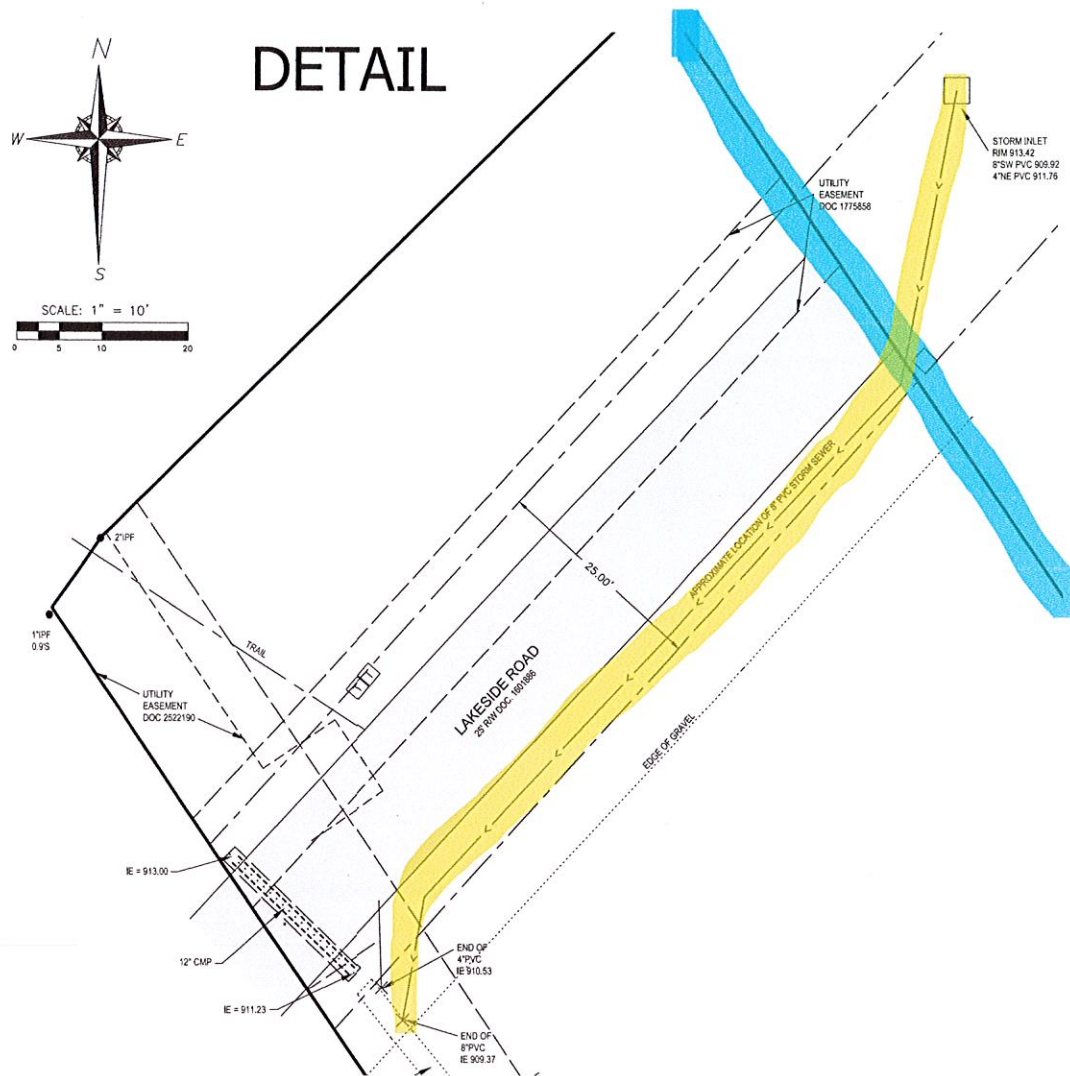


Figure 5

A primary source of water in the catch basin is from springs in the hillside to the east of Ms. Wagner's property. Recent maintenance in the area immediately surrounding the catch basin disclosed spring water flowing into the catch basin at the rate of water flowing from a garden hose. Figure 6, below, is a photograph of that flow; Figure 7, below, shows the location of the spring water flow in relation to

the catch basin. The water in the catch basin is not water that would have naturally flowed over Ms. Wagner's property; instead, it would have flowed over the property to the east of Ms. Wagner's property, as shown in Figure 1¹.

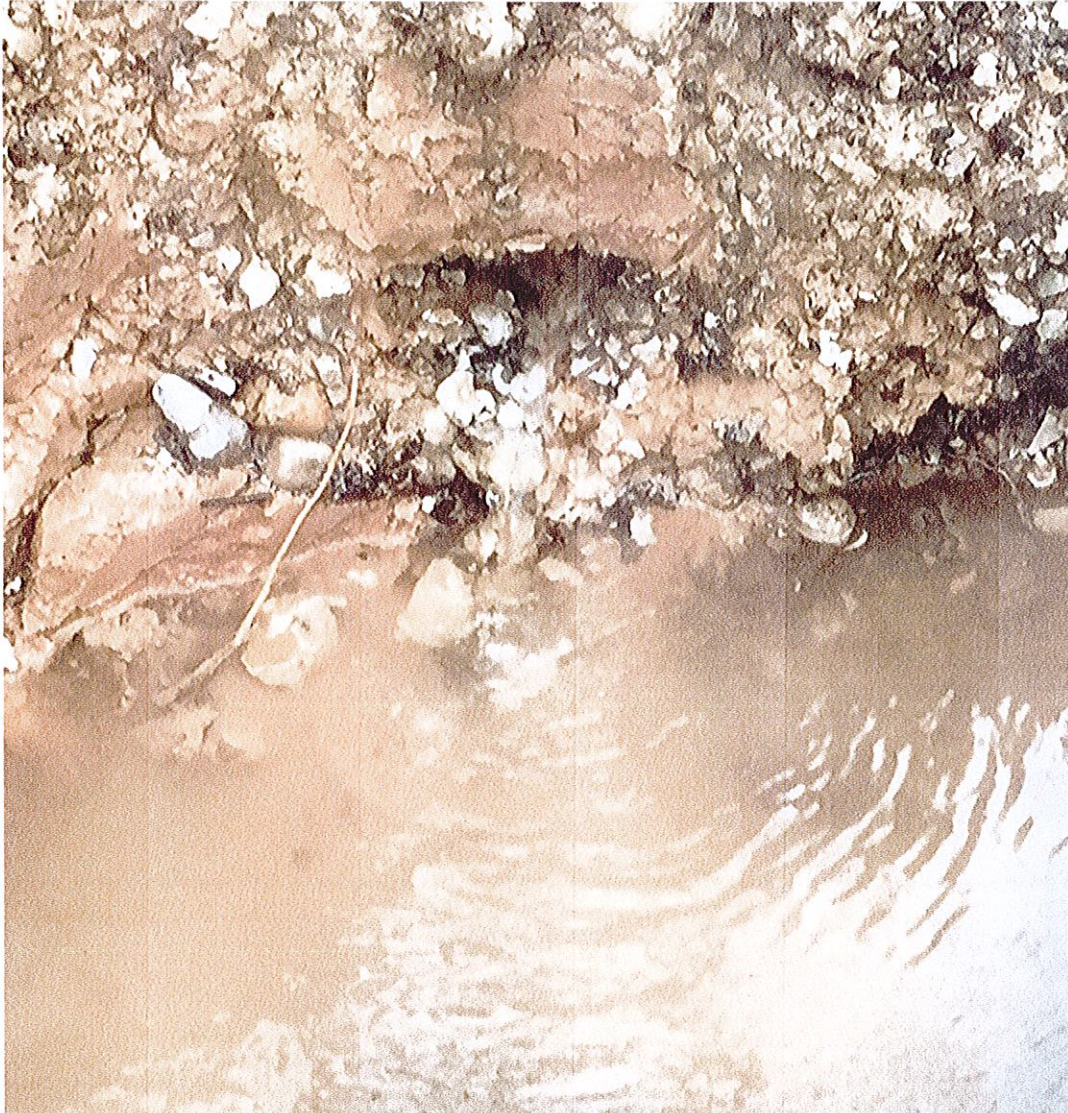


Figure 6

¹ In addition to the photographic evidence in Figure 1, the engineering drawing prepared by the Town's engineer, RA Smith & Associates, Inc., (hereinafter Smith) for the road work performed in 2000 (Job No. 1001600, Sheet 7 of 8), shows that the roadway on the property to the east of Ms. Wagner's property, including the area where the catch basin was installed, slopes to the east, not toward Ms. Wagner's property.



Figure 7

The second substantial source of diverted water through the catch basin and PVC piping is rain water and snow melt water. Again, as is the case with the spring water, before the diversion, the rain and snow melt water would naturally flow toward the lake in a direction approximately perpendicular to the roadway. That flow is demonstrated by the Figure 1 photo and is dictated by the slope of the roadway as documented in the Smith engineering drawing (Job No. 1001600, Sheet 7 of 8).

Consequences

The flow of spring water out of the catch basin PVC pipe and over Ms. Wagner's property is continuous and significant. Figure 3 shows that flow and Figure 8 shows that flow continuing through the winter.



Figure 8

In addition to the continuous spring water flow, diverted rain and snow melt water encumbers Ms. Wagner's property with a different and substantial burden. Landscaping that might be able to maintain some control over a continuous flow of water, is not capable of preventing damage to Ms. Wagner's property from the periodic voluminous flows of water from rain storms, concentrated and diverted to Ms. Wagner's property through the catch basin and piping.

The water diverted onto Ms. Wagner's property eroded the excavation for the construction of Ms. Wagner's home. In addition, Ms. Wagner was required to install several iterations of landscaping, at considerable expense to herself, to enable the completion of her home and to prevent damage to her property. Despite those efforts, further landscaping modifications are needed to manage the water flow, and, in particular, the periodic voluminous "flushes" of water from rain storms.

Moreover, the quantity of water diverted to Ms. Wagner's property has prevented the full use of that property. The water diverted to Ms. Wagner's property saturates the lakeshore to the extent that it is often unusable. Because the lake shore is the most valuable feature of a lake property, that taking of the property from Ms. Wagner is a significant loss.

Remedy

Municipalities are prohibited from unreasonably diverting the natural flow of surface waters through the construction or maintenance of roadways. Wisconsin Statute §88.87(1) recites the legislature's interest in protecting property owners from unreasonable diversion of the natural flow of surface waters:

The legislature finds that it is necessary to control and regulate the construction and drainage of all highways and railroad grades so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway or railroad grade construction

Section (2)(a) of Wisconsin Statute §88.87² expressly prohibits a municipality from unreasonably diverting the natural flow of surface waters through the construction or maintenance of roadways. It states, in relevant part:

² The relevant text of Wis. Stat. §88.87 reads more completely as follows:

88.87. Road grades not to obstruct natural drainage, landowners not to obstruct highway drainage; remedies

(1) It is recognized that the construction of highways and railroad grades must inevitably result in some interruption of and changes in the pre-existing natural flow of surface waters and that changes in the direction or volume of flow of surface waters are frequently caused by the erection of buildings, dikes and other facilities on privately owned lands adjacent to highways and railroad grades. The legislature finds that it is necessary to control and regulate the construction and drainage of all highways and railroad grades so as to protect property owners from damage to lands caused by unreasonable diversion or retention of surface waters due to a highway or railroad grade construction and to impose correlative duties upon owners and users of land for the purpose of protecting highways and railroad grades from flooding or water damage.

(2)(a) Whenever any county, town, city, village, railroad company or the department of transportation has heretofore constructed and now maintains or hereafter constructs and maintains any highway or railroad grade in or across any marsh, lowland, natural

Whenever any . . . town . . . has heretofore constructed and now maintains or hereafter constructs and maintains any highway . . . across any . . . natural or man-made . . . drainage course, it shall not impede the general flow of surface water or stream water in any unreasonable manner so as to cause . . . an unreasonable accumulation and discharge of surface waters flooding or water-soaking lowlands. All such highways and railroad grades shall be constructed with adequate ditches, culverts, and other facilities as may be feasible, consonant with sound engineering practices, to the end of maintaining as far as practicable the original flow lines of drainage.

When a town unreasonably diverts a natural water flow to the damage of a property owner, the damaged property owner is entitled to relief from the town in the form of (1) the removal of the conditions causing the unreasonable water diversion and in the form of (2) compensation for the taking of the property by the diversion of the water flow. Wisconsin Statute §88.87(2)(c) states that when a property owner appropriately asserts a claim for such relief, the town:

depression, natural watercourse, natural or man-made channel or drainage course, it shall not impede the general flow of surface water or stream water in any unreasonable manner so as to cause either an unnecessary accumulation of waters flooding or water-soaking uplands or an unreasonable accumulation and discharge of surface waters flooding or water-soaking lowlands. All such highways and railroad grades shall be constructed with adequate ditches, culverts, and other facilities as may be feasible, consonant with sound engineering practices, to the end of maintaining as far as practicable the original flow lines of drainage. This paragraph does not apply to highways or railroad grades used to hold and retain water for cranberry or conservation management purposes.

* * *

(c) If a city, village, town, county or railroad company or the department of transportation constructs and maintains a highway or railroad grade not in accordance with par. (a), any property owner damaged by the highway or railroad grade may, within 3 years after the alleged damage occurred, file a claim with the appropriate governmental agency or railroad company. The claim shall consist of a sworn statement of the alleged faulty construction and a description, sufficient to determine the location of the lands, of the lands alleged to have been damaged by flooding or water-soaking. Within 90 days after the filing of the claim, the governmental agency or railroad company shall either correct the cause of the water damage, acquire rights to use the land for drainage or overflow purposes, or deny the claim. If the agency or company denies the claim or fails to take any action within 90 days after the filing of the claim, the property owner may bring an action in inverse condemnation under ch. 32 or sue for such other relief, other than damages, as may be just and equitable.

shall either correct the cause of the water damage, acquire rights to use the land for drainage or overflow purposes, or deny the claim. If the agency or company denies the claim or fails to take any action within 90 days after the filing of the claim, the property owner may bring an action in inverse condemnation under ch. 32 or sue for such other relief, other than damages, as may be just and equitable.

The Town's installation of the PVC drain pipe from the catch basin to the western edge of the Property unreasonably diverted rain water, snow melt water and spring water onto Ms. Wagner's property which otherwise would not have flowed onto that property. Therefore, under Wisconsin Statute §88.87, the Town is obligated to discontinue that diversion and to compensate Ms. Wagner for the taking of the portion of her property that was unusable because of the Town's diversion of water for the period of time that it was unusable.

Ms. Wagner has engaged extensively and over an extended period of time with Town representatives in an effort to resolve this matter. To date, she has received no relief.

This matter appears to be straightforward. The Town, without notice or permission, unilaterally diverted water onto the property of Ms. Wagner that would not naturally have flowed onto Ms. Wagner's property. That conduct has damaged Ms. Wagner. Wisconsin Statute §88.87 clearly requires that such a diversion be discontinued and that compensation for any taking of property be appropriately awarded.

Ms. Wagner has not yet commenced the claim process prescribed in Wis. Stat. §88.87. She has hope that a cooperative and amicable resolution of this matter can be achieved without resort to such adversarial procedures. Unfortunately, the time requirements of the claim process dictate that a claim, if necessary, must be filed in the near future. Ms. Wagner therefore asks that the Town be diligent in its efforts to resolve this matter cooperatively.

Ms. Wagner respectfully asks the Town to discontinue the described water diversion and to compensate her for expenses she incurred to protect her property from damage as a result of that diversion. Ms. Wagner looks forward to working with the Town to promptly accomplish that end.

Ms. Wagner and her counsel are happy to provide the Town with additional information it may need to address and resolve this matter. Thank you.

Very truly yours,

1st Terry Booth

Terry J. Booth