

DATE: September 28, 2012 FILE REF: Milwaukee Transit Center

TO: File

FROM: Attorney Kris Hess, Bureau of Legal Services

SUBJECT: Timeline of Real Estate Title for T7N-R22E-Section 28

CONTEXT OF TIMELINE

The current Milwaukee (County) Transit Center site is located is what is legally described as:

Parts of Lots 1, 2, 3, 4 and Lot 9, Block 99 all in the Plat of the Division of 13.30 Acres off the East end of Government Lot 3 and 17.10 Acres off the East end of Government Lot 4 of Section 28, Township 7 North, Range 22 East, in the City of Milwaukee.

This memo attempts to detail the real estate history of property in question to help determine if a portion of the site is located on what may have previously been submerged lands of Lake Michigan.

EVENTS PRIOR TO WISCONSIN STATEHOOD OF MAY 29, 1848

- 1834-1835: Original Government Land Survey for Township 7 North, Range 22 East performed and completed. The original Government Land Survey includes Government Lots 3 and 4 of Section 28, Township 7 North, Range 22 East.
- The current Milwaukee Transit Center site is located in the northerly portion of what was platted out as Government Lot 3 of Section 28, Township 7 North, Range 22 East.
 - According to the original Government Land Survey the south line of Government Lot 4 (which is also the south line of Government Lot 28), was described to be a distance of 27 chains, 17 links or 1,793.22 feet from the South quarter section corner (or west line) of Section 28 to Lake Michigan.
 - The original Government Land Survey does not give the distance of the north line of Government Lot 4 (which is also the south line of Government Lot 3) from the west section line of Section 28 to Lake Michigan.
 - The original Government Land Survey does not give the distance of the north line of Government Lot 3 from the west section line of Section 28 to Lake Michigan.
 - The original Government Land Survey does described the distance for the center line of Section 28 (which is the north boundary of Government Lot 1) as 48 chains, 72 links or 3,215.52 feet from the west section line to Lake Michigan.
- 1835: Morgan L. Martin assignee of Peter Juneau deposits in the General Land Office of the United States at Green Bay a Certificate of the Register of the Land whereby it appears that full payment has been made by the said Peter Juneau for Government Lots 3 and 4 (a/k/a the fractional SW $\frac{1}{4}$), Section 28, Township 7 North, Range 22 East containing 120.45 acres according to the official plat of the Government Land Survey.
- 11-28-1835: Morgan L. Martin conveys by Warranty Deed an undivided $\frac{1}{2}$ interest in Government Lots 3 and 4, S28-T7N-R22E to Solomon L. Juneau as recorded in Volume A, Page 39, Milwaukee County Register of Deeds records.

- 1835-1848: During these years there was various conveyance of the property in question in Government Lot 3, S28-T7N-R22E (Block 99). A brief synopsis is given for informational purposes.
- Martin to Sherman
 - Sherman to Smith
 - Smith to Gilipin
- 8-22-1837: Morgan L. Martin and Solomon L. Juneau record "Plat of Milwaukee" (a/k/a "Plat of the Town of Milwaukee on the East Side of the River") in Volume E, Page 186, Milwaukee County Register of Deeds.
- Said plat includes Government Lots 3 & 4, Section 28, Township 7 North, R 22 East and other lands lying between the Milwaukee River and Lake Michigan. Said plat creates Blocks and Lots for the majority of lands in Government Lots 3 and 4, but leaves some lands as unplatted.
- 11-14-1842: The previously unplatted portions of the Plat of Milwaukee were subsequently platted out as the "Plat of the Division of 13.30 Acres off the East end of Government Lot 3 and 17.10 Acres off the East end of Government Lot 4 of Section 28, Township 7 North, Range 22 East" in Law Docket "C", Page 525, City of Milwaukee Records and recorded in Volume 24 City Plats, Page 5, Milwaukee County Register of Deeds office.
- This plat created Lots 1 through 9 of Block 99. It is part of these Lots in Block 99 where the current Milwaukee Transit Center site is located.
- 12-21-1842: Patent from United States of America to Morgan L. Martin for Government Lots 3 & 4, Section 28, Township 7 North, Range 22 East for a total of 120.45 acres, recorded in Volume 36, Page 570, Milwaukee County Register of Deed records.

EVENTS AFTER WISCONSIN STATEHOOD OF MAY 29, 1848

- 3-13-1851: The Legislature grants a charter to Green Bay, Milwaukee and Chicago Rail Road Company, Chapter 262 of Private and Local Laws of 1851.
- Section 2 granted this railroad company the right to ascertain the most advantageous route whereon to construct a railroad and the right to construct a railroad with one or more tracks from some convenient point in the city of Milwaukee to the cities of Racine and Kenosha and then on to some convenient point on the southern line of the State of Wisconsin between the Fox River and Lake Michigan; and also from a point in the city of Milwaukee, via the village of Grafton or Cedarburg or both, Port Washington, Sheboygan, Manitowoc and DePere to some convenient point at Green Bay.
 - Section 9 granted this railroad company the right to construct the railroad across any public or private road, highway, stream of water or water course as necessary subject to the condition that they restore the same to its former state or not impair the usefulness of said road, highway, stream of water or water course.
- 3-24-1852: The Legislature grants a charter to Green Bay & Lake Superior Railroad, Chapter 262 of Private and Local Laws of 1851.
- 1855: Chicago & North Western Railway subsidiary Green Bay, Chicago & Milwaukee Rail Road completes construction of 40.4 miles of track from Milwaukee to the Illinois border.

- 3-4-1856: The Legislature grants a charter to Milwaukee and Superior Railroad Company, Chapter 79 of Private and Local Laws of 1856.
- Section 26 granted this railroad company all of the powers, rights, privileges and franchises previously granted to Green Bay, Milwaukee and Chicago Rail Road Company to this newly chartered railroad and granted additional rights not previously conveyed to Green Bay Milwaukee & Chicago.
 - Section 8 granted this railroad the right to locate, and from time to time to alter, change and relocate, so as not to materially change the route, construct and reconstruct and fully to finish, perfect and maintain a railroad with one or more tracks from the depot of Green Bay Milwaukee & Chicago railroad in the city of Milwaukee.
 - Section 9 granted this railroad the power and authority to lay out, designate, and establish their road, not exceeding 100 feet in width, through the entire line thereof and may take, have and appropriate to their use, such lands so designated for the line, or construction of their said road, and for the purpose of cuttings and embankments, and for the proper construction and security of the said road, and for constructing shops, wharves, depots, and other proper, suitable and convenient fixtures, in connection with, and as appurtenances to the said road; may take, have, use and occupy any land on either side of or adjacent to said railroad, which may be required for the convenience of said company, taking and holding all such lands as gifts, or by purchasing, or making satisfaction for the same in the manner hereinafter provided; and said company may receive, hold or dispose of all or any lands or property that may by any means be given, granted, or transferred to said company, to aid them in the construction of their said road and its appurtenances.
 - Section 17 granted this railroad company the right to construct the railroad across any public or private road, highway, stream of water or water course as necessary subject to the condition that they restore the same to its former state or not impair the usefulness of said road, highway, stream of water or water course.
- 3-6-1857: The Green Bay, Milwaukee & Chicago Rail Road is reorganized as the Milwaukee & Chicago Railroad.
- 4-29-1856: Henry & Eliza Gilipin convey to Richard & Mary Ann Owens, Lots 1 through 9, Block 99 (and other lands) as recorded in Volume 51, Page 554, Milwaukee County Register of Deeds office.
- 3-14-1859: The Legislature grants a charter to Chicago and North Western Railway Company under the Private and Local Laws of 1859.
- The official name of this railroad is “Chicago and North Western Railway Company”, but it is often referred to as the Chicago and Northwestern Railway or Chicago & Northwestern Railway and the names are used interchangeably throughout this memo, but are meant to refer to the same company
 - This railroad has a long, long history in Wisconsin and entered the railroad business through a number of subsidiary railroads that it either created or acquired at various times. Some of the subsidiaries included:
 - ❖ Chicago, St. Paul & Fond du Lac Rail Road (fully consolidated into Chicago & North Western on July 1, 1859)
 - ❖ Dixon, Rockford & Kenosha Railway
 - ❖ Galena & Southern Wisconsin Railway (narrow gauge)

- ❖ Green Bay, Chicago & Milwaukee Rail Road
- ❖ Milwaukee, Lake Shore & Western Railroad
- ❖ Milwaukee, Lake Shore & Western Railway
- ❖ Milwaukee, Manitowoc & Green Bay Railroad
- ❖ Northwestern Union Railway
- ❖ Rock River Valley Union Railroad
- ❖ Sheboygan & Fond du Lac Rail Road
- ❖ Sheboygan & Mississippi Rail Road
- ❖ State Line & Union Railroad
- By 1871 Chicago & Northwestern Railway completed construction of four lines in Wisconsin: 49.45 miles between Fort Howard (Green Bay) and Marinette; 35.4 miles from Fond du Lac to Princeton through subsidiary Sheboygan & Fond du Lac Rail Road; 8.7 miles from Genoa to Lake Geneva through subsidiary State Line & Union Railroad; and 21.3 miles between Manitowoc and Brillion through subsidiary Appleton & New London Railway.

1872: Chicago & North Western Railway subsidiary Milwaukee, Manitowoc & Green Bay Railroad completes construction of 48.5 miles of track between Lake Shore Junction and Sheboygan.

6-1-1872: The Milwaukee, Manitowoc & Green Bay Railroad purchases a line of the Appleton & New London Railway that connected Manitowoc and Appleton; the railroad is reorganized as the Milwaukee, Lake Shore & Western Railroad.

7-11-1879: Richard & Mary Ann Owens convey to Northwestern Union Railway Company all of Lot 1, Block 99 and parts of Lots 2, 3 and 4, Block 99 (and other lands) as recorded in Volume 162, Page 6 as Document No. 21604, Milwaukee County Register of Deeds office.

1889: Chicago & North Western Railway opens the Lake Front Depot and Train Shed at the east end of Wisconsin Avenue.

- This building and train shed is the main depot for C&NW and is just north of the subject property and said building stands until approximately 1968.

4-22-1893: Chapter 197 which is an act to grant to the City of Milwaukee a certain portion of submerged land lying along and adjacent to the shore of Lake Michigan on the eastern frontage of the city of Milwaukee for public park and boulevard purposes.

- Section 1 granted the right, title and interest of the state of Wisconsin in and to a strip of submerged land 300 feet in width, along and adjacent to the shore of Lake Michigan, constituting the bed of said lake, being on the eastern frontage of the city of Milwaukee, having for its westerly boundary the easterly face of the breakwater constructed by the Chicago & Northwestern Railway company, for its south boundary the south line of Mason Street in the 7th ward in the city of Milwaukee, extended and for its north boundary the extension of the east and west quarter section line, running through Section 21, Township 7 North, Range 22 East, in the 18th ward of said city of Milwaukee.
- This submerged land grant is north of the property in question however it uses the breakwater as the dividing line between lakebed and upland.

- In 1893 the legislature also granted additional submerged lands to the city under Chapter 206, but again which are further north of the Milwaukee Transit Center site and so are only referenced in passing because they do not impact the lands in question.

8-22-1893: Milwaukee Lake Shore & Western Railway Company convey to Chicago & Northwestern Railway Company all interest in tracks and lines in Wisconsin as recorded in Volume 9, Railroad Mortgages and Trust Deeds, Page 514, Secretary of State's office.

4-13-1897: Chapter 200, an Act to amend Section 1 of Chapter 197 of the laws of 1893 to change 300 feet to 600 feet.

- The legislature also enacted Chapter 191 which was an Act to amend Section 1 of Chapter 206 of the laws of 1893 to change 300 feet to 600 feet.
- Again, both of these amendments to the original acts were for land that is north of the subject property.

1909: The legislature enacted three separate laws under Chapter 358, 359 and 360 regarding submerged land grants for Lake Michigan to the city of Milwaukee.

- Chapter 358 was for 1500 feet between the present harbor entrance and Russell Street extended for public slips, basins, docks, wharves, structures, roads, highways, railroads and railroad terminals and lake and rail facilities and spurs for shipping. This area is south of the land in question and is mentioned for reference.
- Chapter 359 amended Chapter 197 by changing the south boundary to the harbor entrance.
- Chapter 360 was from Russell Street south for a 1000 foot submerged land grant and is just mentioned for reference.

5-3-1910: Map of Shore, Park and Boulevard by the U.S. Secretary of War to the City of Milwaukee authorizing filling in Lake Michigan from the present shoreline as shown on the blueprint a distance of 600 feet from Mason Street as extended south to the Harbor Entrance as recorded in Document No. 66597, Milwaukee County Register of Deeds office.

- Blueprint map shows "present shoreline" east of Block 99 as platted out in the 1842 plat

3-13-1913: Resolution of City of Milwaukee Common Council to enter into an agreement with Chicago & Northwestern Railway Company for a line by agreement to establish the boundary line between the city of Milwaukee and Chicago & North Western Railway.

4-23-1913: Agreement between City of Milwaukee and Chicago & Northwestern Railway Company to establish a division line indicating the right of the public use for park and boulevard purposes on the east and for public use by Chicago & Northwestern Railway Company on the west recorded in Volume 662, Page 326 as Document No. 762955, Milwaukee County Register of Deeds office.

- This line by agreement is further east than the breakwater constructed by Chicago & North Western Railway company and creates a straight line rather than the zigzag line of the breakwater constructed by Chicago & North Western Railway.
- The northerly point of the line by agreement begins a point which is 492 feet east from the center of Wisconsin Avenue and the eastern line of Marshall Street extended.

- This line by agreement establishes where the city of Milwaukee is going to begin to fill in the submerged lands of Lake Michigan as authorized by the legislature in the vicinity of the Milwaukee Transit Center site.

1913: Pursuant to Chapter 183 the legislature amended Chapter 197 of 1893 by extending the south boundary to the harbor entrance.

7-13-1915: Chapter 389 which is an act to amend Section 1 of Chapter 197, Laws of 1893, as amended by Chapter 200, Laws of 1897, Section 1 of Chapter 359, Laws of 1909 and Section 1 of Chapter 183, Laws of 1913 relating to granting to the city of Milwaukee a certain portion of submerged lands for park and boulevard purposes.

- Section 1 amends Chapter 197, Laws of 1893, as amended by Chapter 200, Laws of 1897, Section 1 of Chapter 359, Laws of 1909 and Section 1 of Chapter 183, Laws of 1913 to read the right, title and interest of the state of Wisconsin in and to a strip of submerged land 1500 feet in width, along and adjacent to the shore of Lake Michigan, constituting the bed of said lake, being on the eastern frontage of the city of Milwaukee, having for its westerly boundary the easterly face of the breakwater constructed by the Chicago & Northwestern Railway company, for its south boundary the south line of Wisconsin Street extended easterly into Lake Michigan and for its north boundary the extension of the east and west quarter section line, running through Section 21, Township 7 North, Range 22 East, in the 18th ward of said city of Milwaukee.
- Also grants, the right, title and interest of the state of Wisconsin in and to a strip of submerged land 600 feet in width, along and adjacent to the shore of Lake Michigan, constituting the bed of said lake, being on the eastern frontage of the city of Milwaukee, having for its westerly boundary the easterly face of the breakwater constructed by the Chicago & Northwestern Railway company, for its north boundary, the south line of Wisconsin Street of said city extended easterly into Lake Michigan; for its south boundary the extended harbor entrance of said city of Milwaukee.
- This submerged land grant is adjacent to the property in question and again uses the breakwater as the dividing line between lakebed and upland.

12-15-1915: Owens, et al, convey to Chicago & Northwestern Railway Company a strip of land 10 feet in width west of previously conveyed land in Block 99 recorded in Volume 1047, Page 391 as Document No. 1323747, Milwaukee County Register of Deeds office.

9-18-1964: Chicago & Northwestern Railway Company conveyed to Milwaukee County 15 "Tracts" of land with numerous parcels for the sum of \$7,000,000 recorded in Reel 212, Image 331 as Document No. 4131379, Milwaukee County Register of Deeds office and recorded on August 18, 1964 in Volume 47 Railroad Mortgages, Page 387, Secretary of State office.

- Milwaukee County purchased approximately 66 acres of land between N. Bartlett Avenue on the north and E. Polk Street on the south for future redevelopment possibilities and/or public use.

7-18-1973: Milwaukee County conveyed to State of Wisconsin (Department of Transportation) 10 parcels of land for the I-794 Expressway recorded in Reel 734, Image 569 as Document No. 4778417, Milwaukee County Register of Deeds office.

- Land conveyed by Milwaukee County to WisDOT is identify as Parcel 4-YLF.

- 3-2-1988: State of Wisconsin, Department of Transportation conveyed to Milwaukee County approximately 14.538 acres of land recorded in Reel 2188, Image 1283 as Document No. 6149930, Milwaukee County Register of Deeds office.
- Land conveyed is part of the current subject property.

CONCLUSIONS FROM RESEARCH

The September 12, 2012 survey information presented by Preserve our Parks all predate statehood of Wisconsin in 1848 and do not definitely establish the exact location of the shore of Lake Michigan in the vicinity of the Milwaukee Transit Center site.

Because the legislature in the submerged lakebed grants all used the Chicago & Northwestern Railway breakwater as the westerly boundary line of that portion of Lake Michigan which was to be filled in as authorized by said lakebed grants and the former Chicago & Northwestern Railway breakwater is located on or near the easterly boundary of the current Milwaukee Transit Center site, it follows that the Milwaukee Transit Center site has not been demonstrated to be submerged lands.

The railroad charters of Chicago & Northwestern Railway (and its predecessors') clearly granted the right to locate railroad tracks, even if that meant going over water, as needed for the most direct route. Beginning sometime in the late 1850's to 1860's the initial railroad tracks were constructed in this vicinity. While it is not clear exactly when all the railroad tracks were constructed in the vicinity of the Milwaukee Transit Center site, it is clear by the early 1900's that the Chicago & Northwestern Railway company had numerous railroad tracks at this site including the main northbound and main southbound track and at least an additional 8 tracks. While the distance between these railroad tracks varied, on average it appears that they are approximately 15 feet between the tracks, with the breakwater by located east of these tracks. Sometime in the 1880's it appears that a breakwater was constructed in this vicinity. As of the 1915 lakebed grant in this vicinity all those tracks are located on "land" according to the railroad maps for that era, as well the 1910 blueprint map from the Secretary of War. The legislature by using the Chicago & Northwestern Railway breakwater as the "upland" boundary line of Lake Michigan for the submerged land grants clearly acknowledge that Chicago & Northwestern Railway had the right to do what was necessary to locate its' railroad tracks in the most direct and convenient route under the railroad charters.

The 1913 line by agreement between the city of Milwaukee and the Chicago & Northwestern Railway company clearly establish that particular line further easterly of the "breakwater constructed by Chicago & Northwestern Railway" as described in the previous submerged land grants and acknowledged the railroad as the riparian owner and have riparian rights. It was subsequent to this 1913 line by agreement, in 1915, that the legislature granted the city of Milwaukee the submerged lands of Lake Michigan in the vicinity of the Milwaukee Transit Center site. It stands to reason that the legislature of the time knew what it was doing with these submerged land grants and that they would not establish the westerly boundary of Lake Michigan as described in the submerged land grants if that boundary line was truly further to the west as suggested by Preserve our Parks.