STATE OF WISCONSIN **CIRCUIT COURT BRANCH 15** **MILWAUKEE COUNTY**

VILLAGE OF SHOREWOOD,

Plaintiff,

v. Case No. 26CV1769

PAUL W. FLORSHEIM,

Defendant.

DISCUSSION REGARDING PARTIES' BRIEFS FOR CIRCUIT COURT REVIEW

Introduction

The Court has reviewed the materials available in the record. The parties' post-trial briefs are not in the record.[1] Despite law permitting denial of briefing, the court will allow parties to brief any issues they wish to address in this Court's review of the record.[2] However, in order to avoid surprise or misdirected briefing, the Court will explain its perspective regarding the issues (*i.e.*, conclusions of law) before the Court on review.

Procedural Background

Neither party requested a trial *de novo* under Wis. Stat. 800.14(4). This court will not issue its own motion for a trial *de novo*. Thus, this case is governed by Wis. Stat. 800.14(5), which states in part:

> If there is no request under sub. (4), or if the appeal is from a judgment or decision in which a trial has not been held, the appeal shall be based upon a review of the proceedings in the municipal court, and the municipal court shall transmit to the circuit court a copy of the entire record, including any electronic recording created under s. 800.13 (1).

The Village has filed the record and submitted a flash drive on 2/9/26.[3]

[1] *See* Document 1, p. 6.
[2] *See City of Middleton v. Hennen*, 206 Wis. 2d 347, 355, 557 N.W.2d 818 (Ct. App. 1996). "We conclude that defendants are neither statutorily nor constitutionally entitled to brief or argue orally before the circuit court when pursuing a transcript review appeal from a municipal court judgment under § 800.14(5), STATS."
[3] Documents 1-2.

> We conclude that "an appeal ... based upon a review of a transcript of the proceedings" under sec. 800.14(5), Stats., does not permit the circuit court to review the record *de novo* and to substitute its judgment for that of the municipal court. Subsection (4) of sec. 800.14, Stats., specifically provides either party with the option for a trial *de novo* without a jury to the circuit court. If there is no such request or motion and if the circuit court does not order a trial *de novo* on its own motion, then subsec. (5) provides for a review of the transcript. Construing sec. 800.14 as a whole, we conclude that subsec. (5) limits the circuit court to an examination of the transcript to determine whether the evidence supports the municipal court decision. (Citation omitted). Review under subsec. (5) is analogous to appellate review of a trial to the court under sec. 805.17(2), Stats.[4] As a result, findings of fact of the municipal court should not be set aside by the circuit court unless clearly erroneous and due regard should be given to the opportunity of the municipal court to judge the credibility of the witnesses." *Village of Williams Bay v. Metzl*, 124 Wis. 2d 356, 361, 369 N.W.2d 186, 189 (Ct. App. 1985).

The record shows that there are no disputes of fact. Florsheim admitted that he walked on the beach *below* the ordinary high-water mark and the water's edge of Lake Michigan. *The issues before the Court involve the municipal judge's interpretation of the law and its conclusions of law.*

The Village of Shorewood issued a municipal ordinance violation against Florsheim, pursuant to Shorewood Code § 409-1M. The Shorewood Code adopted Wis. Stat. § 943.13(1m)(b), which states in part:

> Wis. Stat. 943.13 – Trespass to land.
>
> (1m) Whoever does any of the following is subject to Class B forfeiture:
>
> (b) Enters or remains on any land of another after having been notified by the owner or occupant not to enter or remain on the premises. [...]

The municipal court found that *Doemel v. Jantz*, 180 Wis. 225, 193 N.W. 393, 394 (1923) was the key legal authority guiding the municipal court's ruling.[5] *Doemel* is distinguishable from this case. *Doemel* was a lawsuit between two private citizens, a riparian land owner and an alleged trespasser. The issue was whether a riparian land owner could sue for trespass against a stranger because the stranger's conduct constituted trespass or an infringement

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[4] In all actions tried upon the facts without a jury or with an advisory jury, *the court shall find the ultimate facts and state separately its conclusions of law thereon.* The court shall either file its findings and conclusions prior to or concurrent with rendering judgment, state them orally on the record following the close of evidence or set them forth in an opinion or memorandum of decision filed by the court. In granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee may be adopted in whole or part as the findings of the court. *If an opinion or memorandum of decision is filed, it will be sufficient if the findings of ultimate fact and conclusions of law appear therein.* If the court directs a party to submit proposed findings and conclusions, the party shall serve the proposed findings and conclusions on all other parties not later than the time of submission to the court. The findings and conclusions or memorandum of decision shall be made as soon as practicable and in no event more than 60 days after the cause has been submitted in final form. Wis. Stat. 805.17(2). (Emphasis supplied).

[5] *See* Document 1, p. 14.

of the riparian owner's rights. "(A)ny invasion of such rights on the part of a stranger necessarily works an injury to the rights of the riparian owner, for which the law affords proper redress." *Doemel*, p. 397. Whereas, this case involves a municipality enforcing a municipal ordinance. *There are no riparian land owners attempting to enforce any rights regarding their riparian land in this case.*

Thus, the Court believes that an appropriate legal issue was not addressed in the municipal court's decision as part of its conclusions of law. The Court suggests (although the parties are free to pursue their own objectives) that the parties address this legal issue instead: Does the Village of Shorewood have the legal authority to regulate land between the ordinary high-water mark and the water's edge?

The Court's framing of the legal issue (*i.e.*, conclusions of law) differently from the municipal court is presented to as a guide to the parties to discuss (if they wish). The Court presents this brief exposition of the law to reduce misdirected briefing.

Legal Authority Guiding the Court's Framing of the Issue (Not Exhaustive)

Definition of the Ordinary High-Water Mark

Diana Shooting Club v. Husting (1914)

"By ordinary high-water mark is meant the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic. (Citation omitted). And where the bank or shore at any particular place is of such a character that it is impossible or difficult to ascertain where the point of ordinary high-water mark is, recourse may be had to other places on the bank or shore of the same stream or lake to determine whether a given stage of water is above or below ordinary high-water mark."[6]

Public Trust Doctrine

Rock-Koshkonong Lake Dist. v. State Dept. of Natural Resources (2013)

The public trust doctrine vests the ownership of land *under lakes*—i.e., lake beds—in the state. By contrast, the public trust doctrine in Wisconsin gives riparian owners along navigable streams a qualified title in the stream beds to the center of the stream, while the state holds the navigable waters in trust for the public.[7]

Federal Authority (persuasive though not controlling)

Kreuziger v. Milwaukee County, Wisconsin, 60 F.4th 391 (7th Cir. 2023)

In Wisconsin a riparian owner—that is, someone who owns land on a navigable waterway—has various riparian rights, such as "the right to use the shoreline and have access to the waters ... [and] the right to have water flow to the land without artificial obstruction." *Movrich v. Lobermeier*, 379 Wis.2d 269, 905 N.W.2d 807, 813–14 (2018) []. But riparian property rights are encumbered by and subordinate to the state's interest under the public-trust doctrine. Wisconsin holds the beds of its navigable lakes and rivers in trust for the benefit of the public, and riparian rights exist only insofar as they do not conflict with the public's interest in preserving navigable waters. *See R.W. Docks & Slips v. State*, 244 Wis.2d 497, 628 N.W.2d 781,

[6] *Diana Shooting Club v. Husting*, 156 Wis. 261, 145 N.W. 816, 820 (1914)
[7] *Rock-Koshkonong Lake Dist. v. State Dep't of Nat. Res.*, 2013 WI 74, ¶ 78, 350 Wis. 2d 45, 833 N.W.2d 800.

788 (2001). Riparian property owners cannot interfere with the public's navigation rights on the state's navigable lakes and rivers. *Doemel v. Jantz*, 180 Wis. 225, 193 N.W. 393, 398 (1923).[8]

"Navigation" is a term of art in this context and includes commercial transportation and noncommercial recreational activities, such as fishing, hunting, and boating. (Citation omitted). Accordingly, the public-trust doctrine is interpreted expansively to protect the public's interest in navigation, recreation, and the enjoyment of the scenic beauty of the state's lakes and rivers. *R.W. Docks & Slips*, 628 N.W.2d at 787–88.[9]

"Put more succinctly, the riparian rights of waterfront property owners are subordinate to the government's authority to regulate navigable waterways under the public-trust doctrine. And the government's regulatory authority over navigable waterways is not limited to "navigation" in the commonly understood sense; rather, it broadly includes the authority to regulate in furtherance of other public interests such as recreation and environmental preservation. *R.W. Docks & Slips*, 628 N.W.2d at 787–88."[10]

In sum, Wisconsin holds in trust its navigable waters, including the land below the ordinary high-water mark of its lakes and rivers, and "[t]he rights of riparian owners ... are qualified, subordinate, and subject to the paramount interest of the state and the paramount rights of the public in navigable waters." *R.W. Docks & Slips*, 628 N.W.2d at 788. The state legislature has delegated to the DNR substantial authority to administer this public trust. *Wis.'s Env't Decade, Inc. v. Dep't of Nat. Res.*, 85 Wis.2d 518, 271 N.W.2d 69, 72 (1978).[11]

The court will issue a briefing schedule at the status hearing.

Dated this 21st day of April 2026.

BY THE COURT:

J D Watts

Hon. J. D. Watts
Milwaukee County Circuit Court
Branch 15

CIRCUIT COURT OF MILWAUKEE CO. WISCONSIN SEAL

[8] *Kreuziger v. Milwaukee Cnty., Wisconsin*, 60 F.4th 391, 394–95 (7th Cir. 2023)
[9] *Id.*, at 395.
[10] *Id.*, at 396.
[11] *Id.*