

VI B.1.

CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511

Date: May 6, 2008

MEMORANDUM

TO: Board of Parks Commissioners
FROM: James M. Voss, Assistant City Attorney
Larry D. Nelson, City Engineer
RE: Removal of Unlawful Pier On Monona Bay Owned by
Seth and Megan Nicholson, 814 West Shore Drive

Seth and Megan Nicholson own a single-family house located at 814 West Shore Drive across from the park strip leased to the City for park purposes under a certain 1908 Lease for 999 years. There is a 12-foot wide public corridor extending from a 12-foot wide unnamed alley between the 700 and 800 blocks of West Shore Drive, and the City of Madison is the exclusive owner of that 12-foot wide portion of the park strip. Circuit Court Judgment in Case No. 07CV3352, entered on April 3, 2008, a copy of which is attached hereto.

The City's Park Street Reconstruction and Construction of Relief Storm Sewer project, Project No. 53W0445, Contract No. 5999, the ("Project"), calls for installation of a public storm sewer outfall under the City's 12-foot corridor and into Monona Bay. The Project is currently in final phases of work on Park Street and the installation of storm water management facilities under West Shore Drive and the 12-foot wide corridor are to begin on May 12, 2008. The Nicholsons have a pier installed from a point within the City's ownership area that must be removed in order to complete the Project.

Seth Nicholson is a co-plaintiff/appellant in Case No.07CV3352, and the case has been appealed to the Wisconsin Court of Appeals. The plaintiffs/appellants requested relief pending appeal from the Circuit Court that would have stayed the completion of the Project and would have allowed the Nicholsons to continue to maintain their pier from the City's property pending the outcome of the appeal. However, on May 6, 2008, the Circuit Court issued a ruling from the bench denying the motion and refusing to issue a stay. This request to order removal of the pier is in the public interest.

The City Engineer and Office of the City Attorney do hereby request that the Park Commission immediately issue an order to remove the Nicholson's pier, pursuant to Sec. 14.05(2), Madison General Ordinances.

James M. Voss *Larry D. Nelson*

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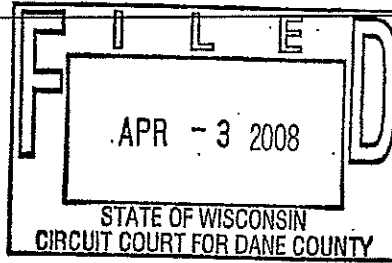
STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 9

DANE COUNTY

LOUIS MARINO, as Personal
Representative of the Estate of
Joel Marino, and,
SETH NICHOLSON,

Plaintiffs,



Case No. 07CV3352

v.

CITY OF MADISON,
Judgment; Other
a municipal corporation
Order:

Defendant.

Classification: 30701
Declaratory

Injunction or Restraining

30704

JUDGMENT

This action having come on to be heard on December 21, 2007, and having been tried by the court, Hon. Richard G. Niess, Circuit Judge, presiding, and the court, on March 25, 2008, having made and filed its Findings of Fact, Conclusions of Law, and Order for Judgment, a copy of which is attached hereto,

On motion of Assistant City Attorney James M. Voss, attorney for the defendant,

It is adjudged: 1. Judgment is ordered in favor of defendant City of Madison and against plaintiffs Louis Marino, as personal representative of the estate of Joel Marino, and Seth Nicholson DENYING the permanent injunction intended to prohibit the City of Madison from constructing/installing the storm sewer, outfall, and related structures in the subject 12-foot alley (as extended by accretion to the current Monona Bay shoreline) and lakebed of Monona Bay, together with statutory costs and disbursements; and

2. That the defendant, as against the plaintiffs Louis Marino, as personal representative of the estate of Joel Marino, and Seth Nicholson does recover the amount of \$ 1577.50, as the costs and disbursements recoverable by the prevailing defendant, as directed by the court.

Dated: April 3, 2008

By the court:

Judge Richard G. Niess