

**CITY OF TONKA BAY
ITEM NO. 9B**

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JAMES G. PENBERTHY

MEMORANDUM

TO: Members of the Tonka Bay City Council and Joe Kohlmann
FROM: James G. Penberthy *JGP*
DATE: July 19, 2012
RE: Land Title Summons in Application for Registration of Land, 90 Wildhurst,
Michael H. Maney and Karen A. Maney

I have reviewed the Land Title Summons and Report of Examiner included in your packets. We have also included a portion of the half section sheet showing the property in question.

This registration proceeding seeks to include vacated Willow Street in the legal description of the land owned by the Applicants (See paragraph 4 (a) of the Examiner's Report).

Since the vacated street was entirely within the plat of Wildhurst, the vacated street accrued to the Applicants' property and none accrued to the city owned property to the east, the wetland between Applicants' property and County Road 19 (See paragraph 4(b) of the Examiner's Report).

The City of Tonka Bay was named as a defendant to determine what interest, if any, the City may have in the vacated street.

It is my opinion that the City has no interest in the vacated street.

I recommend that the City Council pass a motion to not contest the proceeding and not interpose an Answer to the Land Title Summons.

STATE OF MINNESOTA
COUNTY OF HENNEPIN

NO. 27-ET-CV-12-458

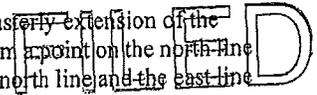
DISTRICT COURT
FOURTH JUDICIAL DISTRICT

LAND TITLE SUMMONS IN APPLICATION FOR REGISTRATION OF LAND

In the Matter of the Application of Michael H. Maney and Karen A. Maney

to register the title to the following described real estate situated in Hennepin County, Minnesota, namely:

That part of vacated Willow Street dedicated in the plat of Wild Hurst lying North of the easterly extension of the south line of the north half of the south half of Lot 23, said plat and South of a line drawn from a point on the north line of said lot, distant 153 feet West of the point of intersection of the easterly extension of said north line and the east line of Willow Street, to a point on said east line distant 100.6 feet South of said point of intersection.



JUL 17 2012

Applicant(s) vs.

City of Tonka Bay;
Matthew L. Levitt;
Sharon Levitt;

HENNEPIN CO. DIST. CT.
ADMINISTRATOR CLERK

BY _____ DEPUTY

also all heirs and devisees of any of the above-named persons who are deceased; and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the Application or amendments herein.

Defendants.

THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANTS:

You are hereby summoned and required to answer the Application of the Applicant(s) in the above-entitled proceeding and to file your answer to the said Application in the office of the District Court Administrator in said County, within 20 days after service of this Summons upon you exclusive of the day of such service, and if you fail to answer the Application within the time aforesaid, the Applicant(s) in this proceeding will apply to the Court for the relief demanded therein.

Witness, District Court Administrator of said Court,
and the seal thereof, at Minneapolis, in said

County, this 17th day of July, 2012.

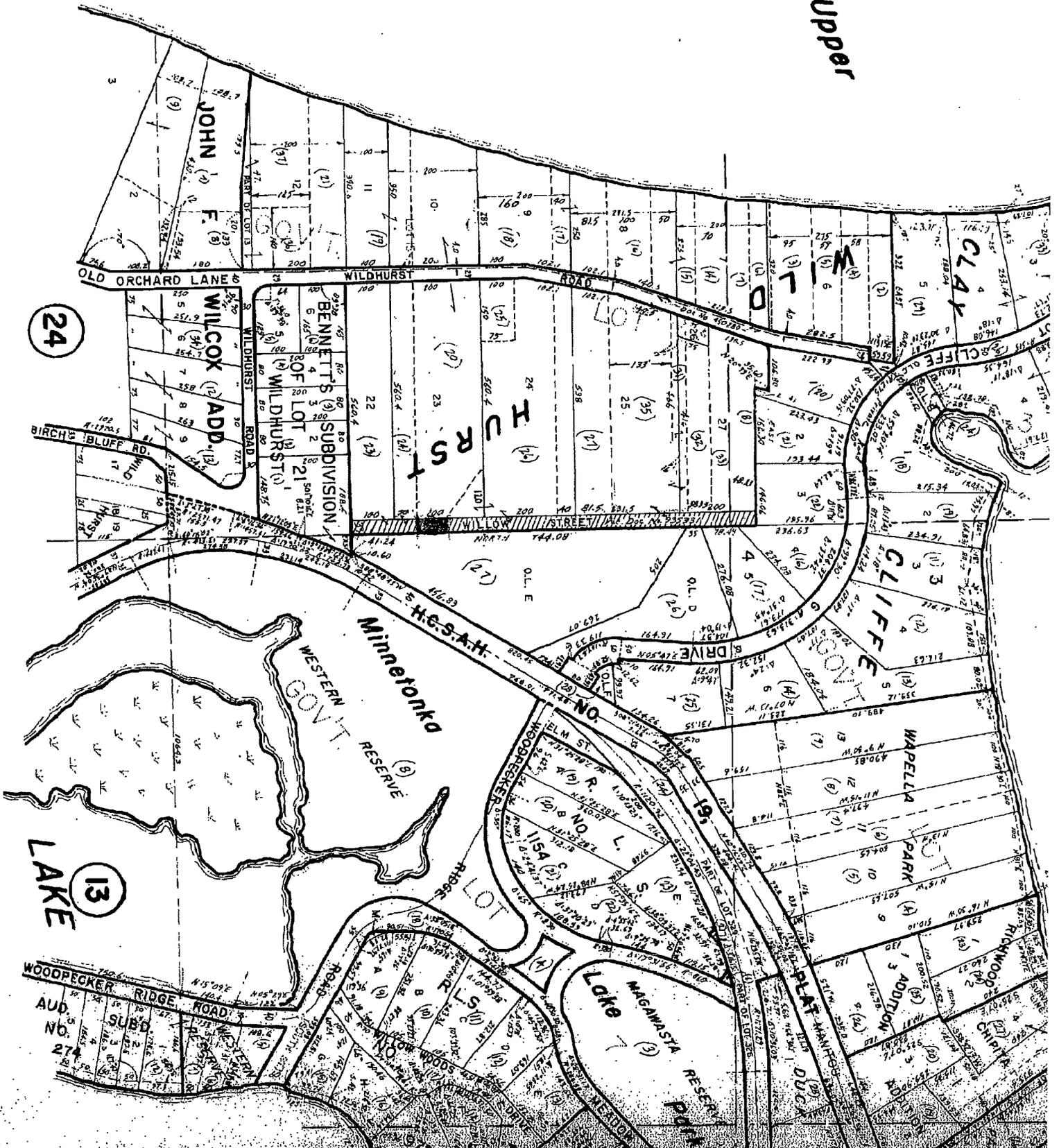
By [Signature]
SUSAN K. THOMPSON Deputy

Attorney(s) for Applicant(s)
Wade T. Anderson
500 IDS Center
80 South 8th Street
Minneapolis, MN 55402
612-632-3005

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mjt vl

LAKE

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No. 27-ET-CV-12-458

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

App. & Last Doc. No. 9767805

N 1/2 28-117-23

In the Matter of the Application of)
Michael H. Maney and Karen A. Maney)
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REPORT OF EXAMINER

To Register the Title to Certain Land.

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF HENNEPIN COUNTY:

Pursuant to Minn. Stat. § 508.13, the undersigned Examiner of Titles has examined the title of the Applicant to the land described in the Application, investigated the truth of all matters set forth therein, determined whether or not the land is occupied, and, if occupied, the nature thereof and by what right the occupation is held, and also whether or not any judgments against the Applicant or those through whom the Applicant claims title may be a lien upon the land described in the Application. I have searched the public records, and fully investigated all facts brought to my notice pertaining to the title, including an inspection report by the County Surveyor. This report to the Court contains the substance of the proof and a Certificate of Opinion upon the title.

1. At the time of the filing of the Application herein, the Applicants were the record owners, except as herein noted, in fee simple of the land in the County of Hennepin and State of Minnesota described in the Application and as follows:

That part of vacated Willow Street dedicated in the plat of Wild Hurst lying North of the easterly extension of the south line of the north half of the south half of Lot 23, said plat and South of a line drawn from a point on the north line of said lot, distant 153 feet West of the point of intersection of the easterly extension of said north line and the east line of Willow Street, to a point on said east line distant 100.6 feet South of said point of intersection.

2. According to the Application, the land is occupied by the Applicants. As part of his inspection, the County Surveyor was unable to determine occupants.

3. The mortgage identified in Paragraph F of the Application is addressed in Paragraph 4(d), below.

4. I note the following encumbrances, defects and irregularities:

(a) The land being registered is a portion of a vacated street, dedicated in the plat of

Wild Hurst. It was vacated on June 26, 1919, by a Resolution of the Board of the Village of Tonka Bay. It accrues to the land owned by the Applicants and shown on Certificate of Title No. 1343173, registered in Torrens File No. 1919. For reasons unknown, the vacated street was not included in the land sought to be registered, even though the Application was dated September 29, 1919, after the official act by the Village to vacate the street. And, the abstract of title did not include a record of the vacation resolution, recorded on July 12, 1919, as County Recorder Document No. 935331.

So, the current fee owners for the adjoining registered land (our Applicants) cannot add this land to their certificate of title by an examiner's directive. Minn. Stat. § 508.73, subd. 2, states in part that "a registered owner is entitled to have added to the legal description on the certificate of title that part of the vacated street or alley that accrues to it, **provided the vacation occurred after the land was originally registered.**" Emphasis obviously added. In this case, the Order was issued November 10, 1920, the Decree was entered on November 21, 1920, and the First Certificate of Title was issued on November 23, 1920.

I have waived the abstract requirements set out in Minn. Stat. § 508.11 and Rule 203 of the General Rules of Practice for the District Courts. The Applicants have provided the necessary searches on themselves, and the prior owner Edward M. Arundel (who took title in 1978) and his spouse, Mary R. Arundel. I have performed my own search of the public records and find no encumbrances that affect the street.

(b) Willow Street lies on the edge of the plat. The land to the east of the plat of Wild Hurst is now platted as Outlot E, Clay Cliffe, and is owned by the City of Tonka Bay, shown on Certificate of Title No. 580278. I recommend the City of Tonka Bay as a defendant to determine what interest, if any, it has in the land being registered. *An appropriate Finding should be included in the Order and Decree of Registration.*

(c) The northerly boundary of the land being registered is a continuation of the boundary line shown on Certificate of Title No. 1343173. To determine what interest, if any, they may have in the land being registered, I recommend as defendants the owners (there are no encumbrancers) of the land to the north, currently shown by the records of the county recorder to be **Matthew L. Levitt**, by deed recorded as Document No. 7327636. I also recommend as defendants **the occupants of this land, with PID 28-117-23-24-0026**, whose names should be determined by the Applicants' attorney. *There should be a Finding in the Decree of Registration as to the names of the occupants of this land, and a separate Finding identifying the interest, if any, of these owners, encumbrancers, and occupants in the land being registered.*

(d) The Applicants allege that the land being registered is encumbered by the mortgage recorded as Registrar of Titles Document No. 4901301. The legal description on the mortgage does not describe the vacated street; it does not even include the commonly used vague statement "together with any vacated street that accrues to it" or words to that effect. Nevertheless, I agree with the Applicants that the mortgage encumbers the land being registered but only because of the application of Minn. Stat. § 507.17, repeated below:

Every conveyance of real estate which abuts upon a vacated street, alley or other public right-of-way shall be construed to include that part of such right-of-way or street which, either by operation or presumption of law, attaches thereto upon such vacation, unless such conveyance expresses a contrary intention.

If the issue to be resolved in this registration proceeding is what part of the vacated street actually accrues to the land on Certificate of Title No. 1343173, that is why I recommend as defendants the neighbors. But I decline to reform the mortgage to include the vacated street in the legal description, and therefore I decline to recommend the mortgagee as a defendant.

(e) Following Minn. Stat. § 507.17, I decline to recommend the personal representative of the estate of Edward M. Arundel as a defendant. The personal representative's deed, Registrar of Titles Document No. 4901300, did not describe the vacated street but it certainly did not except any part of the vacated street from the land being conveyed.

For the same reason I decline to recommend the spouse of the prior owner, namely Mary R. Arundel, as a defendant. She consented to the personal representative's deed.

(f) The County Surveyor's Inspection Report discloses no encroachments on the land being registered.

(g) The Applicants will hold title to the land being registered as joint tenants, which complements the tenancy on the deed for the adjoining land, Registrar of Titles Document No. 4901300. The Order and Decree of Registration should include an additional order, immediately after the last concluding statement in the "subject clause" of the Decree of Registration:

IT IS FURTHER ORDERED, as follows:

That the Registrar of Titles, upon the issuance of the first certificate of title for the land described herein, merge the land on said first certificate of title with the land described on Certificate of Title No. 1343173, and do not carry forward to the new certificate of title the memorial of Document No. 4871788.

5. That the parties defendant in said cause should be:

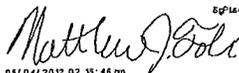
City of Tonka Bay
Matthew L. Levitt
(see Par. 4(c) for occupants)

"also all heirs and devisees of any of the above-named persons who are deceased; and all other persons or parties unknown claiming any right, title, estate, lien or interest in the real estate described in the Application or amendments herein."

6. That all the material allegations contained in the said Application are substantially true, as herein stated, except as hereinbefore found, and that the Applicants are entitled to the relief prayed for upon correcting the irregularities and defects above-named.

Respectfully submitted this 2nd day of May, 2012.

Kimball Foster, Examiner of Titles

By  ^{05/04/2012 02:13:46 pm}
Matthew J. Foli
Deputy Examiner of Titles