

Property owners file lawsuit against Town of St. Germain

Claim flooding caused by neglect of town road

By Fred Williston

SPECIAL TO THE LAKELAND TIMES

On July 5, an attorney representing property owners Bob and Kathy Radostits filed suit in Vilas County Court against the Town of St. Germain, claiming the town's neglect of No Fish Bay Road has led to repeated flood damage on the Radostits' land.

The Radostitses, who hail from Naperville, Ill., purchased land be-

tween Little St. Germain Lake and a natural wetland in 1997. In 2011, they razed the existing structures on the property and built a new house. According to their suit, they received approvals from the town, the county, and the Wisconsin Department of Natural Resources (DNR) to do so. "Because" the complaint states, "The home sits between a lake and a wetland, the builders and architects were careful to account for both environmental rules and regulations, as well as water drainage patterns."

The wetland adjacent to the property has

ground elevation which runs south-to-north, and historically, the water in the wetland has flowed in the same direction.

At some point in the mid-20th century, No Fish Bay Road was constructed. It is the property of the Town of St. Germain. The road runs east-to-west through the wetland, dividing it into two sections on the north and south sides of the road.

The suit claims the Radostitses experienced no flooding on their property for the first 18 years of their ownership. In 2015, they noticed mild water retention for the first time, and since 2018, the flooding has become significant and the situation worsens each year. The flooding coincides with the spring thaw and with heavy rains which come at any point in spring, summer, or fall.

The Radostitses share an easement road on the south side of No Fish Bay Road with two other landowners, according to their suit. That easement road has been flooding each year since 2018, suffering consistent wash-out damage. In addition, the high water has caused trees on the Radostits' property to die and require removal, and on multiple occasions the floodwater has threatened the integrity of their septic system.

The complaint reads "For many years, enough water has been

able to pass through No Fish Bay Road to prevent flooding on the southern side. In the last few years, No Fish Bay Road has become a natural dam. There is now over two feet of standing water in the south side wetland, and the north side wetland is bone dry."

The lawsuit also states "The problems from the flooding go beyond just the Radostits family and their neighbors. The pavement on No Fish Bay Road is cracked and in poor condition. Because of the heightened water table, the Road ices over every winter, (creating) a public safety problem."

Bill Radostits attended a town board meeting on November 24, 2020 and apprised the supervisors of the situation. The complaint says "Bill asked the Board to restore the wetland's natural water flow by installing a simple and inexpensive culvert system."

The board's consensus was to wait for guidance from the DNR before taking any action, and the issue was tabled.

The following spring, after flooding occurred on his property again, Radostits contacted the DNR and spoke with Water Management Specialist Kathleen Kramasz.

After their conversation, Kramasz emailed Radostits and explained no DNR permit would be required to

repair any existing culvert and/or install new culverts to restore the natural hydrology of the wetland.

On April 5, 2021, Radostits emailed members of the board and said (in part) "I ask that you please take action to remedy this situation by scheduling a repair to that specific section of No Fish Bay Road and include the addition of a culvert or side-by-side culverts underneath...where it is collapsed to bring the wetland water levels back to their normal and natural state. Please have a representative of the town board contact me on my cell phone...to acknowledge my request and the sense of urgency I have to fix it to prevent further damage."

In that email, Radostits included official DNR wetland maps confirming the north and south sides of No Fish Bay Road as one contiguous system.

At a board meeting on April 12, 2021, Radostits again asked the board to take action. During that meeting, Greg Maines, a surveyor based in Arbor Vitae, spoke to the issue.

As paraphrased in the complaint, Maines "Explained that the Radostits' home is at a low elevation point, and that the Radostits' driveway should have been raised higher when it was constructed. In other words, the property

damage was our clients' fault. Of course, no engineering study was completed to support those conclusions. Mr. Maines went on to assert that, if a culvert were installed, flooding would occur on the north side of No Fish Bay Road."

According to the meeting minutes, the board "has not made decision that (building a culvert) is the correct path to take using taxpayers money. To get an engineer's perspective for resolution, this would have to be paid from taxpayers to assess private piece of property and private roadway."

The board voted unanimously to take no action.

Following that meeting, the Radostitses hired Quest Civil Engineers of Wisconsin Rapids to assess the cause of the flooding and overall hydrology of the wetland and to propose a solution.

Brian Kronstedt, the Environmental Department Head at Quest, researched the issue. He inspected the site in-person. His final report stated "Although no culvert was located, the pinch point where No Fish Bay Road bisects the wetland is typical of the scenario where culverts would be found and needed."

Kronstedt also wrote "The pavement is exhibiting wheel rutting and longitudinal cracking within the limits of the wetland crossing

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AUCTIONS

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(Sun. July 17) (Starts 10:30 AM)
(View 9:30) (Lunch)

Dave & Jean Wickham are moving! (Most items excellent)

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(Friday, July 22) (Starts 10:30 AM)
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David Hafele passed away
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Cars: (2) Lincoln Town Cars **Trailer:** Rugged Road trailer w/sides
Boats/Etc.: Starcraft Ray JR with 115 H.P. outboard, canoe, alum row boat, paddle boat **Tools:** battery charger, jacks, joiner, shop heaters, circular saw, vise, sanders, Dewalt drill & grinder, air compressor, paint sprayer, Milw. Drill & impact, chop saw, table saw, radial arm saw, jump pac, shop vac, air tank & more! **Sporting/Yard:** blower, trimmer, wheelbarrow, snow-blower, power washer, pole saw, Johnsred chainsaw, push mower, grill, trolling motor, bikes, coolers, fire pit, swing, water toys, Buffalo Bill collector knife & more! **Home Contents/Antiques:** freezer, refrig, sofa, love seat, recliners, corner hutch, dining table, 2- bedroom sets, desk & chair, flat screen tv, sm. appliances, microwave & more!

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ANOTHER AUCTION WITH COL. RENÉ BRASS
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(Sun. July 24) (Starts 10:30 AM)
(View 9:30) (Lunch)

Harold Zellmer is moving to Veterans Assisted living
(Most items excellent)

2 mile East of **Crandon WI** on Hwy. 8 to County Rd. W, follow to (3631)

Like New Tractor: Mahindra E-Max 20S HST w/loader and factory glass cab, only 50 hours! (Pd 18K) 3pt back blade. **SUV:** Equinox LT AWD **11 Guns:** (see website) Browning, Henry, Remington, Taurus, Century Arms & more! **Boats:** canoe, kayak **ATV:** Arctic Cat 454 **Bee Equipment:** 10 Bee hive brood boxes, bee fogger, honey extractor **Tools/Sporting/Yard:** grinders, impact, paint sprayer, A.C. gauges, toolbox, saw sharpener, battery charger, floor jack, table saw, Werner ladder, jack stands, air compressor, Husqvarna chain saw, otter sled, lantern, fish poles, yard tools, propane tanks, ramps & more! **Home Contents/Antiques:** refrig, washer, dryer, snow shoes, new crib, beds, treadle sew machine, chest, sofa, loveseat, book shelf, knick knacks & more **Firewood:** cut/split

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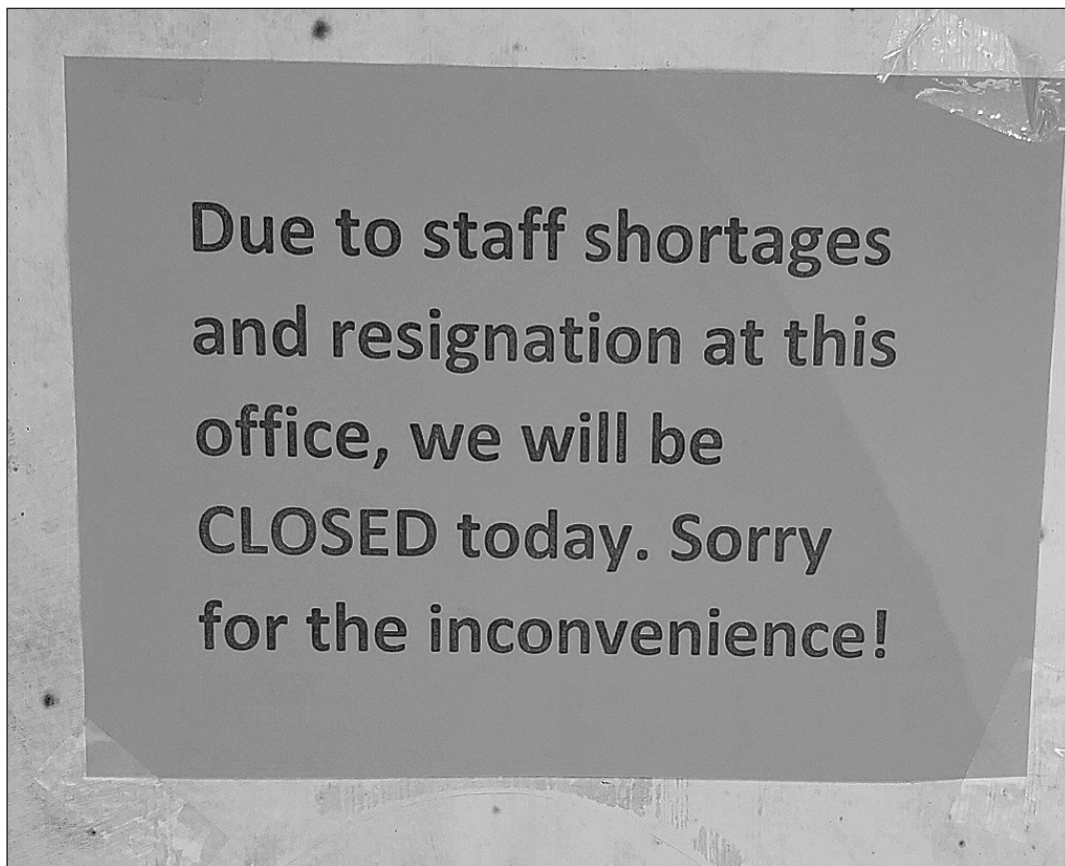
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DAVE CARDELL/LAKELAND TIMES

ST. GERMAIN POST OFFICE STRUGGLES WITH STAFF

The St. Germain Post Office was closed Tuesday with a sign posted to the front door explaining why: "Due to staff shortages and resignation at this office, we will be CLOSED today. Sorry for the inconvenience." Residents who receive mail by delivery are not expected to be affected, because mail carriers for the town operate out of the Eagle River Post Office. Residents who use the office's PO Boxes will still be able to obtain their mail from the 24-hour lobby the same day, but it may not be available at the time customers are accustomed to.

Flooding

From page 11

due to groundwater being present within the base course and pavement."

The DNR could neither confirm nor deny to Radostits whether a culvert had been in place under No Fish Bay Road at any point in time. It is common for old culverts to cave in and become clogged without anyone noticing unless flooding results.

During his inspection in July of 2021, Kronstedt noted the standing water on the south side of No Fish Bay Road was two-and-a-quarter feet higher than on the north side.

He reviewed aerial photos dating back to 2005 and did not find "visible flooding of the roadway" had occurred until 2015, as the Radostits had reported.

Among his conclusions, Kronstedt stated No Fish Bay Road is acting as a dam and interrupting the natural

hydrology of the wetland, and he said the construction of the Radostits' home was not a cause of the flooding problems.

According to the lawsuit, "Kronstedt confirmed that the No Fish Bay Road flaws are causing public and private property damage, including killing trees at the Radostits' home, creating a safety hazard on their easement road and No Fish Bay Road, and threatening the home's underground septic tanks."

"Finally, Mr. Kronstedt confirmed that a simple culvert would restore the water flow in the wetland, stop the flooding problems, and would be unlikely to cause new flooding problems in the northern part of the wetland."

On November 4, 2021, the Radostits served notices of claim to the Town of St. Germain under two different state statutes, but the town did not act on either claim, so both were constructively denied.

According to the suit, "St. Germain asked the Radostits to hold off on filing a lawsuit until the spring. Assessing No Fish Bay Road would be difficult during the winter months when the ground was frozen, and St. Germain wished to send out its own engineers after the spring thaw."

The Radostits, believing that the Town was acting in good faith, held off on filing suit."

It goes on to state in the spring of 2022, "The Radostits experienced emergency levels of flooding at their home. The easement road was submerged under at least a half foot of water, as were other parts of the Radostits property. At its highest mark, the water rose into the Radostits' yard all the way up to the septic tanks."

At that time, the homeowners asked for emergency assistance from the town, but "St. Germain refused. The Radostits were left to solve a problem on

their property created by a public road."

The Radostits rented equipment from a contractor and — with permission from the DNR — pumped floodwater from the south side of No Fish Bay Road to the north side.

The suit says "Relieving the flooding did not create standing water on the North side of No Fish Bay Road. It does not take an engineer to realize this simple solution, moving a small amount of water (in relative terms) across No Fish Bay Road, would if accomplished through a culvert, relieve the flooding at the Radostits property without harming property owners on the North side of No Fish Bay Road."

The town hired MSA Engineering to inspect the site and to file a report. On May 5, engineers conducted an on-site inspection.

According to the lawsuit "Importantly, MSA acknowledges that the wetland used to be contiguous and

that No Fish Bay Road is trapping water on the South side of the wetland. This leads to over two feet of standing water on the South side of the wetland and flooding at the Radostits property."

"MSA used elevation levels to calculate how a few possible culvert configurations would affect the water in the wetland. The calculations show that, under the worst flooding conditions, a small amount of water (about 3/8 of an inch) would still be present on the Radostits' easement road, and that adding a culvert would lead to water on the North side of No Fish Bay Road."

Contrary to Quest's proposed solution of a culvert under No Fish Bay Road, MSA recommended the Radostits raise the level of their easement road so it would act as a second dam and trap water in a smaller portion of the wetland.

On June 10, board members made a visual inspection of the area.

According to the complaint, their consensus was the same as MSA's conclusions, and they recommended the Radostits raise the easement road at their own expense.

The Radostits claim such an undertaking would cost them in excess of \$100,000 and present ongoing maintenance costs.

Further, they state "Raising the easement road would likely increase the water elevation in the wetland, and water would likely overtop No Fish Bay Road at its low point in the area. St. Germain would just be trading one problem for another."

The lawsuit demands the town pay the Radostits actual and compensatory damages "In an amount to be determined at trial"; an injunction requiring the town to abate flooding caused by No Fish Bay Road; restitution for the Radostits' losses; pre- and post-trial interest; other expenses; and attorneys' fees.

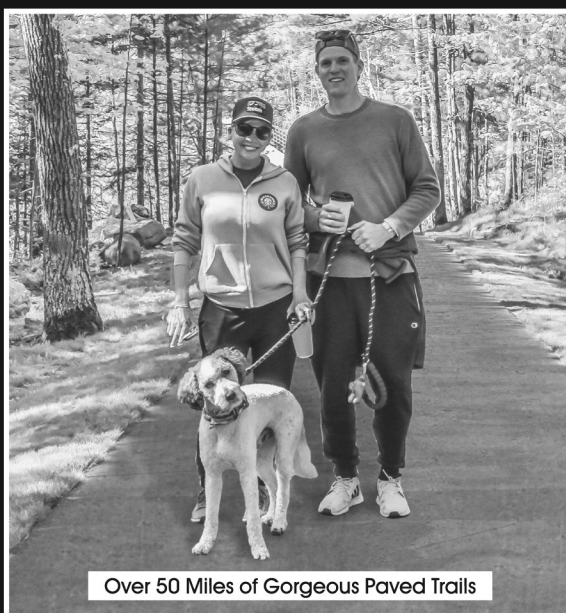
The plaintiffs have demanded trial by 12-person jury. Stephen E. Kravit of the Milwaukee-based law firm of Kravit, Hovel, and Krawczyk represents the Radostits.

St. Germain town board chairman told *The Lakeland Times* the town will not retain its usual attorney, Steve Garbowicz, in this case, but will be represented by attorneys chosen by the town's insurance carrier.

He declined to comment further on the lawsuit.

In a written statement, the Radostits said "We were expecting the Town of St. Germain to recognize the problem with its road and make the necessary changes. It is very disappointing that we have to seek court action to require the Town to maintain its infrastructure."

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