

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 2, 2026**

Samuel A. Christensen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2025AP1753  
STATE OF WISCONSIN**

**Cir. Ct. No. 2024CV680**

**IN COURT OF APPEALS  
DISTRICT II**

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**MARTIN J. MURPHY,**

**PETITIONER-APPELLANT,**

**V.**

**DEPARTMENT OF NATURAL RESOURCES,**

**RESPONDENT-RESPONDENT.**

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APPEAL from an order of the circuit court for Walworth County:  
ESTEE ELIZABETH SCHOLTZ, Judge. *Affirmed.*

Before Lazar, P.J., Gundrum, and Grogan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Martin J. Murphy appeals from an order of the circuit court upholding the Wisconsin Department of Natural Resources’ (Department) decision dismissing his application for a pier permit. We affirm.

## BACKGROUND

¶2 In 2024, Murphy purchased property several hundred feet from Geneva Lake. The deed to the property includes a perpetual exclusive easement (created in 1985) to a 40- by 50-foot parcel of land abutting Geneva Lake, including the “Riparian Rights Appurtenant thereto.”

¶3 The previous owners of the property applied for a permit to construct a new expanded pier in the water abutting the easement, and Murphy, after purchasing the property, took over the application. The Department received comments from two neighboring property owners expressing concerns about the permit application, including an owner of the servient estate of Murphy’s easement, who opposed the application. After a public hearing, the Department notified Murphy that it was dismissing his application because, as a non-riparian owner, he was not eligible to obtain a permit for a pier under WIS. STAT. § 30.12 (2023-24).<sup>1</sup> The Department explained that “[r]egardless of whether an easement grants riparian rights to a non-riparian owner, ... the Department may not issue [a non-riparian owner] a pier permit under WIS. STAT. § 30.12 ....”

¶4 Murphy filed a petition for administrative review, challenging the Department’s interpretation of WIS. STAT. § 30.12 and the agency’s dismissal of his application. After briefing, the circuit court affirmed the Department’s

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

decision, noting that the case law recognizes “an important distinction between riparian rights and riparian ownership.” The court recognized that riparian rights include access to waters and reasonable use of the waters and shoreline; however, it determined that the right to apply for a permit for a pier is conditioned by statute, and § 30.12(3)(a) limits those who can request a permit to build a pier to “riparian owner[s].” Relying on *Stoesser v. Shore Drive Partnership*, 172 Wis. 2d 660, 665, 494 N.W.2d 204 (1993), the court concluded that “[a] riparian owner is one who holds *title* to land abutting a body of water.” (Emphasis added.) Because Murphy “does not have title or ownership to the land,” the court continued, he “is not a riparian landowner,” and “[t]he exclusivity of the easement does not change the fact that it is still an easement and not ownership.” Ultimately, the court upheld the Department’s decision.

¶5 Murphy appeals.

## STANDARD OF REVIEW

¶6 This is a review of an agency decision under WIS. STAT. § 227.52. “When an appeal is taken from a circuit court order reviewing an agency decision, we review the decision of the agency, not the circuit court.” *Clean Wis., Inc. v. DNR*, 2021 WI 71, ¶14, 398 Wis. 2d 386, 961 N.W.2d 346. We review an agency’s interpretation and application of a statute de novo. See *Tetra Tech EC, Inc. v. DNR*, 2018 WI 75, ¶84, 382 Wis. 2d 496, 914 N.W.2d 21. While our review is de novo, we “benefit from the administrative agency’s analysis” in light of the relevant facts. *Id.* Unless we “find[] a ground for setting aside, modifying, remanding or ordering agency action or ancillary relief under a specified provision” of § 227, we shall affirm the agency’s action. Sec. 227.57(2).

## DISCUSSION

¶7 The ultimate question we must answer in this case is whether Murphy is a “riparian owner” for purposes of WIS. STAT. § 30.12(3)(a) so he can apply for a pier permit. The Department concluded Murphy’s easement did not make him a “riparian owner,” and therefore he was ineligible for a permit, dismissing his application for a permit to expand the existing pier. Murphy’s challenge to the Department’s decision is two-fold: (1) the Department’s interpretation is contrary to case law and § 30.12; and (2) the Department’s interpretation is contrary to the public trust doctrine.

### I. “Riparian Owner” under WIS. STAT. § 30.12

¶8 WISCONSIN STAT. § 30.12 limits those who can apply for a permit to construct a pier to “riparian owner[s].” Under Wisconsin law, “[a] riparian owner is one who holds title to land abutting a body of water.” *Stoesser*, 172 Wis. 2d at 665.

¶9 Our supreme court has recognized a distinction between riparian owners and those who merely hold riparian rights. See *Stoesser*, 172 Wis. 2d at 665. In *Stoesser*, a party that did not own land abutting the water claimed riparian rights by way of an easement. *Id.* at 666. The *Stoesser* court recognized that although riparian rights can be conveyed to non-riparian owners by easement, riparian *ownership* cannot be conferred by easement.<sup>2</sup> *Id.* at 668-70. When

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<sup>2</sup> In response to this decision, the legislature in 1994 enacted WIS. STAT. § 30.133(1), which prohibits the transfer of riparian rights through an easement “except for the right to cross the land in order to have access to the navigable water.” See *Konneker v. Romano*, 2010 WI 65, ¶36, 326 Wis. 2d 268, 785 N.W.2d 432.

riparian rights are conveyed via easement, “title does not pass but only the right to a limited use of the land of another.” **Stoesser**, 172 Wis. 2d at 667; *see also Konneker v. Romano*, 2010 WI 65, ¶25 n.8, 326 Wis. 2d 268, 785 N.W.2d 432.

¶10 In the instant case, Murphy does not own the land abutting the lake, nor does he hold title to the land. Instead, the deed to Murphy’s property includes an easement granting him riparian rights. Riparian rights do not equal ownership. **Stoesser**, 172 Wis. 2d at 667; *see also Konneker*, 326 Wis. 2d 268, ¶25 n.8. Because WIS. STAT. § 30.12(3m)(a) limits the application of a permit to expand a pier specifically to a “riparian owner,” Murphy is not eligible to apply for a permit under § 30.12.<sup>3</sup>

¶11 Wisconsin case law makes clear that title does not pass hands when riparian rights are conveyed by easement. **Stoesser**, 172 Wis. 2d at 667; *see also Konneker*, 326 Wis. 2d 268, ¶25 n.8. The Department correctly interpreted WIS. STAT. § 30.12 in dismissing Murphy’s application.

## II. Public Trust Doctrine

¶12 The State of Wisconsin “holds the navigable waters and the beds underlying those waters in trust for the public.” **Lake Beulah Mgmt. Dist. v. DNR**, 2011 WI 54, ¶32, 335 Wis. 2d 47, 799 N.W.2d 73. This “public trust” duty requires the state to “promote navigation but also to protect and preserve its waters for fishing, hunting, recreation, and scenic beauty.” **Id.** Although “it is primarily

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<sup>3</sup> This was so even at the time of the initial conveyance of the easement in this case. *See* WIS. STAT. § 30.12(2) (1985-86) (“The department... may grant to any *riparian owner* a permit to build ....” (emphasis added)); § 30.12(3)(a) (1985-86) (“The department, upon application and investigation, may grant to a *riparian owner* a permit ....” (emphasis added)).

the State’s duty to protect and preserve public resources, ... ‘the legislature has delegated substantial authority over water management matters to the [Department].’” *Id.*, ¶33 (citation omitted).

¶13 Here, the legislature enacted WIS. STAT. § 30.12, which regulates the placement of structures on the beds of navigable waterways. See § 30.12(1)(a) (requiring a permit to place any structure upon the bed of any navigable water where no bulkhead line has been established). The Department, acting in accordance with its authority from the legislature and the public trust doctrine, properly dismissed Murphy’s application that was not allowed by statute. As recognized in *R.W. Docks & Slips v. State*, 2001 WI 73, ¶28, 244 Wis. 2d 497, 628 N.W.2d 781, the Department holds the authority to deny permit applications for structures to protect the rights of the public and the rights of neighboring riparian owners. The public’s right to use Geneva Lake is protected when the Department carries out its duties, including the proper dismissal of permit applications, in accordance with applicable law. Thus, the Department’s dismissal of Murphy’s permit application is consistent with the public trust doctrine.

## CONCLUSION

¶14 For the reasons stated above, we conclude that the Department properly dismissed Murphy’s permit application for a pier. WISCONSIN STAT. § 30.12(3m)(a) expressly limits those eligible to apply for pier permits to “riparian owner[s].” Because Murphy acquired his riparian rights via an easement, and holds no title to the land at issue, he is not a “riparian owner.” Accordingly, we affirm the circuit court’s order.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT.  
RULE 809.23(1)(b)5.

