

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

RANDY PLEW, MARC ROTH,)	Administrative Cause
RICH PRESSER, and MARCIA PRESSER,)	Number: 17-054W
Petitioners,)	
)	
vs.)	
)	PL-23034
EPWORTH FOREST ADMINISTRATION)	
COMMITTEE, INC. and DEPARTMENT)	
OF NATURAL RESOURCES,)	
Respondents.)	

REPORT OF TELEPHONE STATUS CONFERENCE

Attendance and Participation

A Telephone Status Conference was conducted as scheduled on October 17, 2017. Petitioners, Randy Plew, Marc Roth, Rich Presser and Marcia Presser, appeared by counsel, Michael M. Yoder. Respondent, Epworth Forest Administration Committee, Inc. (*EFAC*), appeared by counsel, Matthew R. Shipman. Respondent, Department of Natural Resources, appeared by counsel, Elizabeth A. Gamboa, who was joined by Division of Water representatives Mary Taitano and Andrea Gromeaux-Schnaith. All party representatives appeared by teleconference.

Identity of Proper Respondent

Administrative Law Judge (*ALJ*) Jensen recognized that the Department had filed clarification as to the identity of the permittee. Based upon the Department's representation, the previously identified Respondent, Epworth Forest Foundation, Inc., will be replaced with the Epworth Forest Administration Committee, Inc.

The caption has been altered to reflect this correction.

Identification of Issues

ALJ Jensen observed that the Petitioners filed their Amended Petition for Review and Stay of Effectiveness (*Amended Petition*) on September 20, 2017.

ALJ Jensen inquired about certain issues raised by the Petitioners. Particularly the ALJ noted, and Mr. Yoder agreed, that unless the Petitioners in this case are personally aggrieved or adversely affected by the alleged non-compliance with ADA requirements they may lack standing to have those matters considered. Further, ALJ Jensen recognized that the Commission may lack jurisdiction to consider those matters in any event.

Further ALJ Jensen questioned, and Mr. Yoder confirmed that none of the Petitioners are owners of Governor's Island or Kline Island. ALJ Jensen questioned how the Petitioners were personally aggrieved or adversely affected by the alleged failure of EFAC to notify the owners of those properties of the permit application. Mr. Yoder agreed that the Petitioners lack standing with respect to the alleged notice failure but maintained that the Petitioners remain aggrieved and adversely affected by the diminishing natural scenic beauty that will be caused to the shorelines of those properties as well as by the eco-system changes that will result in the area due to deteriorated water quality impacts upon vegetation and marine life.

Ms. Gamboa and Mr. Shipman sought no further clarification with respect to the issues raised in the Amended Petition.

Mr. Yoder confirmed that the request for stay hearing may continue to be deferred.

Procedural Discussion

ALJ Jensen observed that the issues raised by the Petitioners appear to be extremely fact-based making summary judgment appear an unlikely avenue towards disposition. The parties agreed that an administrative hearing will be required to obtain final resolution of the issues surrounding the Department's issuance of Permit PL-23034.

Mr. Shipman explained that Permit PL-23034 was sought and obtained by EFAC as a precautionary measure based upon the belief that property owners adjacent to the current group pier intended to seek declaratory action to have the pier removed from its present location. Mr. Shipman explained that he expects that action to be commenced within a week and offered that the outcome of that may be dispositive of this proceeding. He elaborated that EFAC would likely not proceed with its plans to construct a group pier under Permit PL-23034, at issue here, if it the existing group pier is allowed to be maintained in its present location. ALJ Jensen observed that action to terminate the Permit PL-23034 would effectively render this proceeding moot.

Mr. Yoder expressed concern with the uncertainty of EFAC's situation and offered that this proceeding involves issues that regardless of EFAC's intentions remain viable for a determination by the Commission.

Mr. Yoder stated that 90 days would be necessary to complete discovery. Ms. Gamboa concurred. Mr. Shipman sought 120 days to allow a period of time to seek a stay of this proceeding in the event the declaratory relief cause was initiated. After some discussion the parties agreed that they want this proceeding resolved before spring 2018. ALJ Jensen observed that to complete the proceeding within that time, discovery would need to be completed in 90 days. ALJ Jensen observed that a Petition filed by Respondents to stay the proceeding, if filed, would be addressed immediately.

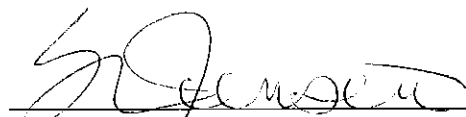
The parties selected agreeable dates for future activities in preparation for an administrative hearing.

Prehearing Orders

1. All discovery will be completed within 90 days of October 17, 2017.
2. A telephone status conference is scheduled for January 19, 2018 at 2:30 p.m. EST (1:30 p.m. CST). Unless otherwise advised, the ALJ will initiate calls to the parties or representatives as follows:

Michael M. Yoder (260) 347-9400
Matthew R. Shipman (260) 248-8900
Elizabeth A. Gamboa (317) 232-4137
3. The parties shall file final witness and exhibit lists not later than January 29, 2018.
4. An administrative hearing will be conducted on February 21, 2018 commencing at 9:00 a.m. EST (8:00 a.m. CST) in the Commission's Division of Hearings, Hearing Room, Indiana Government Center North, 100 North Senate Avenue, Room N103, Indianapolis, Indiana 46204.

Dated: October 17, 2017



Sandra L. Jensen
Administrative Law Judge
Natural Resources Commission
Indiana Government Center North
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A copy of the foregoing was sent to the following:

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