

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

IN THE MATTER OF:	)	Administrative Cause
	)	Number: 17-054W
RANDY PLEW, MARC ROTH,	)	
RICHARD PRESSER and MARCIA PRESSER,	)	PL-23034
Petitioners	)	
	)	
v.	)	
	)	
EPWORTH FOREST ADMINISTRATION COMMITTEE)	)	
and DEPARTMENT OF NATURAL RESOURCES,	)	
an Agency of the government of the State of Indiana,	)	
Respondents	)	

**MOTION TO STAY**

COMES NOW Epworth Forest Administration Committee, by counsel, and hereby files their Motion to Stay, and in support thereof states the following:

1. The Epworth Forest Administration Committee (“E.F.A.C.”), was created by Order of the Kosciusko Circuit Court under Cause Number 43C01-9109-CP-732 on April 15, 2014 (hereinafter the “Order”)(See Exhibit A attached hereto).
2. That Order stated that E.F.A.C. would be set up with by-laws, rules and regulations, and that E.F.A.C. would develop, establish, and maintain community piers where possible. (Exhibit A, ¶14(p)).
3. Since the Order, the community pier established by E.F.A.C. has been on property adjacent to property owned by Kokomo Grace United Methodist Church, Inc. (hereinafter the “Church”).
4. Recently, the Church acquired the strip of land immediately adjacent to the lake front of Webster Lake from the Church’s property.

5. On October 17, 2017, under Cause No. 43C01-1710-PL-000105, the Church filed a Complaint for Declaratory Judgment and Damages related to the location of the community pier on or adjacent to the Church property. (hereinafter the "Lawsuit")(See Exhibit B attached hereto).
6. The Lawsuit challenges the current location of the community pier maintained by E.F.A.C.
7. Prior to the Lawsuit being filed by the Church, the Church had requested over the course of several years that E.F.A.C. relocate the community pier.
8. As a result, E.F.A.C. has initiated the process of getting a group pier permit from the Indiana Department of Natural Resources. That group pier permit was approved on April 28, 2017, and the Petitioners hereunder are challenging the legitimacy of that permit.
9. Prior to continuing to litigate the group pier permit approved by the Indiana Department of Natural Resources, E.F.A.C. needs to determine whether the Kosciusko Circuit Court will continue to allow the community pier to be located in its current location.
10. By litigating these matters one at a time, it will preclude inconsistent judgments from the Natural Resource Commission and the Kosciusko Circuit Court and will likely affect the necessity of the parties to continue to litigate this matter.
11. Further, it makes sense, in the interest of the parties, and judicial economy, to resolve the lawsuit filed by the Church first, as the court's determination as to the location of the community pier either at its current location or at the location currently pending

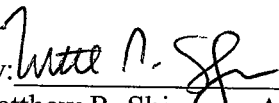
between the Natural Resource Commission will have significant bearing on the evidence presented in this matter.

12. This motion is not meant to hinder or delay the proceedings, but is instead intended to eliminate the possibility of inconsistent results between the Natural Resources Commission and the Kosciusko Circuit Court.

WHEREFORE, E.F.A.C. hereby requests a stay of this matter until such time as the Kosciusko Circuit Court enters a judgment on the declaratory judgment action filed under Cause Number 43C01-1710-PL-000105.

Respectfully submitted,

BLOOM GATES SHIPMAN & WHITELEATHER, LLP

By:   
Matthew R. Shipman, Attorney No. 20664-49  
BLOOM GATES SHIPMAN & WHITELEATHER, LLP  
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ATTORNEYS FOR THE RESPONDENT

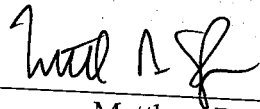
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the above and foregoing has been served upon the following via e-mail, on the 24<sup>th</sup> day of October, 2017 at the address of record as follows:

Elizabeth Gamboa  
Legal Counsel  
Department of Natural Resources  
egamboa@dnr.in.gov

Michael Yoder  
YODER & KRAUS, P.C.  
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Patrick Jessup  
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Matthew R. Shipman

STATE OF INDIANA )  
 ) SS:  
COUNTY OF KOSCIUSKO )

IN THE KOSCIUSKO CIRCUIT COURT  
WARSAW, INDIANA

DOROTHY V. BARNES, )

CAUSE NO. 43C01-9109-CP-00732

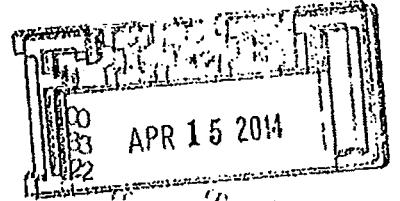
Plaintiff, )

Honorable Michael Reed

vs. )

NORTH INDIANA ANNUAL )  
CONFERENCE OF THE UNITED )  
METHODIST CHURCH, )  
FRED AND JOYCE PHANEUF, and )  
NUMEROUS INTERVENING )  
DEFENDANTS, )

Defendants. )



*[Signature]*  
KOSCIUSKO COUNTY CIRCUIT COURT

**AGREED ORDER GRANTING RELIEF PURSUANT TO T.R. 60 THROUGH  
MODIFIED JUDGMENT**

1. Proceedings were held on the issues arising under T.R. 60 Motion filed by the North Indiana Conference of the United Methodist Church (the "Conference"). This Rule 60 Motion concerns the relative rights of the parties related to an Easement reserved in the plat of Epworth Forest and interpreted by the Kosciusko Circuit Court in its 1994 Judgment. The conference seeks to obtain relief from the 1994 Judgment and the subsequent orders and rulings of this Court (the "'94 Judgment").
2. The Court heard pertinent evidence on January 14-15, 2014 and on March 20, 2014, including the submission of the affidavit of Brent Williams by the Conference and the submission of Agreed Amended Contentions for Hearing on Trial Rule 60 Motion Submitted by the Conference, Certain On-Shore Owners, Certain Off-Shore Owners, et. al. All property owners in Epworth Forest have been duly served and have either appeared, have been defaulted or have indicated their acceptance of this Court's determination and this Order. All property owners in Epworth Forest are bound by this Order.
3. The court having reviewed the evidence, the arguments of those present, and being duly advised in the premises, now FINDS that it is no longer equitable that the Conference be subject to the prospective effect of the '94 Judgment and that pursuant to T.R. 60(D), it would be equitable (both for the Conference and all owners in Epworth Forest) for the Court to "alter, amend [or] modify" the '94 Judgment and, therefore, the Court now GRANTS the requested relief to the Conference and further ORDERS that this Court's prior Judgments and Orders are hereby ALTERED, AMENDED, MODIFIED OR CORRECTED as set out below.



4. The camp and conference center grounds are not situated on subdivided lots and the littoral in front of the camp and conference center is not subject to the Easement.
5. The Conference is hereby relieved of any financial, leadership, administrative or other duties, responsibilities and burdens associated with the management of the Easement, the Pier Committee, pier placements and/or all other functions performed by the Conference pursuant to the '94 Judgment (the "94 Duties") and is further released from any past, present and future liability arising out of, related to, or connected with its administration of the '94 Duties.
6. Consistent with this Court's June 7, 2012 Order, the nature of the Easement is "Appurtenant" and not "In Gross" and all owners of platted lots in Epworth Forest possess a dominant tenement in relation to the Easement, subject to any appeal of the June 7, 2012, if any, by the Easement Termination Plaintiffs on the sole issue of the nature of the Easement as "Appurtenant."
7. Until such time as there is a final judgment following an appeal, if any, that the Easement is appurtenant to the offshore owners' lots, the Conference shall take no action to divest itself of its interest in the Easement.
8. It is expressly acknowledged and agreed that any rights of the Easement Termination Plaintiffs (as defined below) to appeal the appurtenant easement issue are preserved and that nothing in this Order, or the Agreed Amended Contentions, shall be construed as an admission, implicit or otherwise, by the Easement Termination Plaintiffs that the Easement is appurtenant, and nothing in this Order, or the Agreed Amended Contentions, can be relied upon to oppose the Easement Termination Plaintiffs' contention that the Easement is in gross. It is understood by all parties that the Easement Termination Plaintiffs dispute any characterization of the Easement as appurtenant and that they intend to challenge that sole issue on appeal following the entry of this Order.
9. The Conference is hereby appointed as a temporary trustee of any funds or property which belong to the current Pier Committee (i.e., funds derived from and property purchased with pier fees) for a reasonable period of time (not to exceed 60 days from the entry of this Order) until the establishment of a suitable replacement not-for-profit corporation at which time the Conference will transfer such funds or property. The Conference is entitled to reimburse itself any funds loaned by the Conference for the administration of the Easement (for example, for payment of Bradley Management fees or other administrative expenses) prior to the Conference's release from its duties.
10. The Conference will establish an independent not-for-profit corporation to be the successor to the '94 Duties (the "Epworth Forest Administration Committee") and the Court hereby orders that '94 Duties are assigned to that corporation, consistent with the terms of this Order.

11. The Conference will produce financial books and records that may be needed by the Epworth Forest Administration Committee ("EFAC") to conduct its business.
12. For the 2014 season, there shall be no pier assignments on the properties set forth in this paragraph below (collectively, the "Easement Termination Plaintiffs") and commencing with the 2015 season, the owners of these properties must be given a 1 year written notice prior to any attempted assignment of any piers:
  - a. Lot or lots owned by Kevin Kelley (or any successor or assign);
  - b. Lot or lots owned by J. Richard & Rachel E. Presser (or any successor or assign);
  - c. Lot or lots owned by Richard & Rosemary Sanderson (or any successor or assign);
  - d. Lot or lots owned by Thomas & Mari Reis (or any successor or assign).

The Easement Termination Plaintiffs are always free to place their own piers in the water extending from their respective properties.

13. The claims in Cause Number 43C01-1108-PL-83 (the "Easement Termination Litigation") will be dismissed, without prejudice, after the expiration of 30 days from the entry of this Order if there is no appeal of the tolling provision below. If any party appeals the portion of the Order imposing the tolling provision below, the dismissal shall be tolled until such time as that portion of the Order is affirmed.
  - a. The status quo is preserved with respect to all claims alleged by the Easement Termination Plaintiffs in the Easement Termination Litigation (the "Claims"), as such Claims exist on the date of this Order. The status quo is further preserved with respect to the running of any applicable statute of limitations, statute of repose, contractual time limitation, the equitable defense of laches, and any other time related defense or bar (collectively and separately referred to as the "Time Defenses") for any and all Claims as such Time Defenses existed on the date the Easement Termination Litigation was filed, on August 24, 2011.
  - b. In the event an Easement Termination Plaintiff commences an action relating to the Claims, the time that passes while this Agreement remains in effect as to that Easement Termination Plaintiff, and since the Easement Termination Litigation was originally filed, shall not be taken into account in determining the timeliness of the Claims asserted by that Easement Termination Plaintiff. If the Easement Termination Plaintiff's Claims would have been timely filed and not subject to any Time Defenses as of the date the Easement Termination Litigation was originally filed, such Claims shall be deemed timely filed and not subject to any Time Defenses if timely filed within 90 days after the date of the termination or expiration of the Tolling Period as to that Easement Termination Plaintiff.

- c. The Easement Termination Plaintiffs agree that none of them will refile the Easement Termination Litigation or pursue the Claims prior to the expiration or termination of the Tolling Period as to them.
  - d. Nothing contained in this Order, is intended to be, nor shall it be deemed to be, an admission by any of the Parties that any Claim or Time Defense previously existed or now exists, or that liability to the other or to any third party under any Claim or Time Defense previously existed or now exists.
  - e. The Tolling Period shall terminate (as to an Easement Termination Plaintiff) at such time as an owner of another lot in Epworth Forest places a pier in the water of Webster Lake within the riparian zone of that Easement Termination Plaintiff, or at such time as an Easement Termination Plaintiff receives written notice of an intention for a pier to be placed by or on behalf of another lot owner.
  - f. Any appeal of the validity of the appurtenant easement issue shall not impact the propriety of this tolling agreement.
14. The Conference shall set up the EFAC with By-Laws, rules and regulations which state or establish the following principles and rules which can only be altered with Court approval:
- a. The purpose of the EFAC will be to manage all rights, obligations and disputes related to the Easement created by the original Plat and defined by the '94 Order and subsequent rulings and to accept the assignment from the Conference of all the '94 Duties.
  - b. The '94 Judgment as altered, amended or modified by subsequent Court Orders will continue to define the existing rights of the owners in Epworth Forest;
  - c. The EFAC will be managed by its Board of Directors which will be comprised of:
    - i. 2 directors who are selected by the lot owners of Epworth Forest who own lots that are "on-shore"; and
    - ii. 2 directors who are selected by the lot owners of Epworth Forest who own lots that are "off-shore";
    - iii. 1 director whose initial appointment is to be made by this Court and thereafter will be made by the unanimous consent of the 4 elected directors and if unanimous vote of the Directors cannot be reached then by appointment by the Kosciusko Circuit Court on petition of any lot owner in Epworth Forest.
  - d. The EFAC's by-laws will specify that the owner of each parcel [parcel defined as a lot, or multiple lots used for a residential structure as a group, or any group of undeveloped/unimproved lots owned by the same owner] shall have one vote in any election of directors. The Conference shall have one vote for its collected ownership of undeveloped lots. An owner may be more than one individual, or a legal entity, or

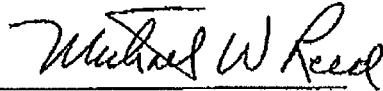


a trust, and the owner / owners shall designate in writing one representative to cast a vote for the parcel;

- e. The EFAC will possess the right to collect reasonable attorney fees if it prevails in an enforcement action for failure to timely pay duly assessed pier fees, failure to comply with a pier assignment, or other material failure to comply with any duly enacted Court Order or rule or regulation; however, there shall be no right of the EFAC to collect attorney's fees incurred in connection with the Easement Termination Litigation, to the extent it is refiled, or in connection with any refusal to comply with a pier assignment by an Easement Termination Plaintiff during the pendency of the Easement Termination Litigation if such litigation is refiled.
- f. All past-due fines or penalties relating to pier fees are waived if the underlying pier fees are fully paid by May 1, 2014;
- g. The EFAC will possess the authority to levy reasonable fines for violations of policies and pier assignments and to levy reasonable late fees for failure to pay pier fees all consistent with the Court's January 21, 2014 Order;
- h. The EFAC will possess the authority to place a lien on any lot in Epworth Forest to secure payment of any assessed fee and to secure a judgment obtained against a lot owner;
- i. The by-laws of the EFAC will ensure that onshore owners will not be overburdened, but will also recognize that strict equality in burdening owners is not possible;
- j. Onshore owners' pier assignments will continue from year to year and be presumed permanent. An offshore pier assignment / location, in accordance with the 1994 judgment, may be changed only for substantial change of circumstances making the prior assignment unreasonable under current facts and circumstances. An onshore pier assignment may be changed, in accordance with the 1994 Judgment, only upon the request in writing of the onshore owner, however, the request may be denied and then reasonableness decided based upon the current facts and circumstances;
- k. Every owner that seeks a pier must show proof to the EFAC of adequate liability insurance in such reasonable amounts as determined by the EFAC;
- l. The EFAC will establish a fair, timely appeal process for pier disputes that conforms with the January 21, 2014 Order part 7(g);
- m. Offshore owners are required to access pier locations over rights of way;
- n. No motor vehicles will be allowed on the Easement except as allowed by January 21, 2014 Order;
- o. A presumption will exist of one off-shore pier per onshore lot;

- p. The EFAC will develop, establish and maintain community piers where possible. The general pier fees assessed to all owners shall be for the administration of pier assignments and related matters, including administration of any community pier assignments and enforcement. However, the expenses of acquiring, maintaining, seasonal installation / removal of any community pier shall be paid for separately by a fee for that purpose charged to any user of a slip or place on a community pier and not from regular pier fees. The separate fee for use of a community pier shall be in addition to regular pier fees;
- q. The EFAC by-laws will ensure that the terms of Directors will be staggered and that no business shall be conducted without the presence of all 5 Directors.

SO ORDERED THIS 15<sup>th</sup> DAY OF APRIL, 2014.



Michael W. Reed, Judge  
Kosciusko Circuit Court

Kosciusko Circuit Court

IN THE KOSCIUSKO CIRCUIT COURT  
KOSCIUSKO COUNTY, INDIANA

KOKOMO GRACE UNITED  
METHODIST CHURCH, INC.,  
Plaintiff,

43C01-1710-PL-000105

v.

CAUSE NO: ~~43C01-1710-PL-~~

EPWORTH FOREST ADMINISTRATION  
COMMITTEE, INC.,  
Defendant.

**COMPLAINT FOR DECLARATORY JUDGMENT AND FOR DAMAGES**

COMES NOW Plaintiff (hereinafter "Kokomo Grace") by counsel and for cause of action says:

1. Kokomo Grace is the owner of property at 8521 East Wade Lane, North Webster, Indiana, the same being Lot 15 in Block B of the Plat of Epworth Forest.
2. Kokomo Grace is the owner of a tract of land southwest of Lot 15 in Block B of the Plat of Epworth Forest, consisting of all of that land which lies southwest of Lot 15 and abutting the shoreline of Webster Lake (hereinafter "Lakeshore Tract").
3. A demonstrative exhibit is attached, labeled Exhibit 1 and incorporated by reference.
4. The tracts at 8557 East Wesley Lane and the strip of land between that tract and the lakeshore are owned by Trinity United Methodist Church of Huntington, Inc.
5. Historically there has been a community or group pier (hereinafter "Group Pier") maintained by Indiana Annual Conference of the United Methodist Church, Inc., and located on the lakeshore of the Trinity United Methodist Church and the Kokomo Grace United Methodist Church.
6. The Group Pier was maintained in that location permissively.



7. The Group Pier was maintained, prior to 2014, by the North Indiana Conference and its Pier Committee.

8. Kokomo Grace recently affirmed its title to the Lakeshore Tract by way of a deed from the Indiana Annual Conference. Please see Exhibit 2, attached hereto and incorporated by reference.

9. The January 2014 Order provides specifically at page 3 that "The onshore owners get first choice as to where they get to put their piers because they are the owner of the fee" (echoing the 1994 Judgment.

10. On or about January 28, 2014, Kokomo Grace applied for a pier assignment on a form provided by the Conference Pier Committee, as shown by Exhibit 3, attached hereto and incorporated by reference.

11. In 2014 EFAC and Kokomo Grace communicated regarding the Group Pier, and Kokomo Grace requested the Group Pier be removed.

12. In 2014 EFAC did not object to the request for removal of the Group Pier, but did ask for some additional time to find a new location, and Kokomo Grace permitted that request.

13. EFAC has never owned and maintained the Group Pier on the Kokomo Grace frontage other than permissively.

14. EFAC does not have any property rights in the lake frontage.

15. In February 2016, EFAC requested one more year, 2016, of permissive use as demonstrated by Exhibit 4, attached hereto and incorporated by reference.

16. Kokomo Grace agreed to one additional extension of permissive use of the location of the Group Pier, as indicated by Exhibit 5, attached hereto and incorporated by reference.

17. Notwithstanding its prior position, on April 14, 2017, EFAC took the position that the "Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church" was the legal owner of the shoreline, see Exhibit 6, attached hereto and incorporated by reference.

18. The claim that the "Epworth League Institute" was the owner contradicted the position stated by EFAC in a communication of April 13, 2017, attached hereto, labeled Exhibit 7 and incorporated by reference.

19. The position of EFAC also directly contradicts the finding of the Honorable Richard W. Sand in the 1994 Judgment to-wit:

- a. Page 12, "The onshore owners get first choice as to where they get to put their piers because they are the owner of the fee...".
- b. Page 13, Judgment paragraph 1 holding that the Plaintiffs are vested in fee simple as owners of the lands lying between their lots and shore of Lake Webster and extending into Lake Webster and listing these particular parties.

20. Kokomo Grace did not participate in the original litigation because it would be tantamount to litigating with itself or its own church entity, but Kokomo Grace occupies exactly the same position as to title as any and all of the other onshore owners. (See rhetorical paragraph 19(b) above.)

21. EFAC cannot produce any written instrument whereby the "Epworth League Institute" was ever the fee title owner of the shoreline or the strip of land lying between the platted lots and the waters of Webster Lake.

22. The purported ownership of lakefront by "Epworth League Institute" came about by the unilateral and arbitrary action of the Auditor's office during the term of Marsha McSherry.

23. The Auditor relabeled various lakefront partial tracts from "Unknown" to "Epworth League Institute" without any recording of a document of transfer with the Recorder, nor any required disclosure document, nor any other legal basis. Exhibit 8, attached hereto and incorporated by reference, is an exemplar of that unauthorized action by the Auditor's office.

24. EFAC is aware of, or should be aware of, all of the above with regard to title, making its claim of action based upon ownership by Epworth League Institute arbitrary, knowing, intentional, and contrary to fact.

25. EFAC has applied to the Department of Natural Resources for a Group Pier permit for a relocation of the Group Pier from the Kokomo Grace/Huntington Trinity lakeshore to another location.

26. The current Group Pier located on the shoreline owned by Kokomo Grace consists of a pier with twenty-four (24) slips, meaning twenty-four (24) different offshore boats and offshore owners.

27. Kokomo Grace, by counsel, by letter dated August 4, 2017, requested the right of an onshore owner to utilize twenty-four (24) feet of shoreline for its riparian uses. See Exhibit 9 attached hereto and incorporated by reference.

28. EFAC, by counsel, denied the request of Kokomo Grace for their riparian area and the related request that the Group Pier be relocated elsewhere. See Exhibit 10, attached hereto and incorporated by reference.

29. There have been three judgments and/or orders entered in the Kosciusko Circuit Court with regard to the issues between these parties under Cause No. 43C01-9109-CP-732: Those orders are respectively a "Record of Submission, Findings of Fact with Opinion and Judgment" entered August 2, 1994 (hereinafter the "1994 Judgment"); an "Order" dated January 21, 2014, containing further findings and order regarding interpretation and application of the 1994 Judgment (hereinafter "January 2014 Order"); and an "Agreed Order Granting Relief Pursuant to TR60 Through Modified Judgment" dated April 15, 2014 (hereinafter the "April 2014 Agreed Order"). All of these are incorporated by reference and are part of the Court record and not duplicated here.

30. The Group Pier located on the shoreline owned by Kokomo Grace was installed originally by the North Indiana Annual Conference of the United Methodist Church, and was permissive.

31. When the North Indiana Annual Conference bowed out of participation in the 1994 litigations, EFAC entered into the picture pursuant to the April 2014 Agreed Order.

32. Prior orders of this Court do not support the arbitrary location of a Group Pier at the place where the lakefront owner is entitled to designate its riparian area.

33. The 1994 Order provides at page 12 that "Offshore owners and conference piers may not be placed...to create unreasonable inconvenience to onshore owners in the use of their own piers".

34. In the present case EFAC is essentially prohibiting Kokomo Grade from having its own pier, contrary to the contemplation of the 1994 Order.

35. The 1994 Order has multiple references to findings and conclusions that piers installed on the easement are to be done in a fashion to minimize the burden upon the subservient owners (the lakeshore owners).

36. The 1994 Order provides at page 12 that "The offshore owners have a littoral use to erect **a pier** and to dock **a boat**."

37. Section 4 at page 14 of the 1994 Order provides explicitly that regulations be provided "to assure, first, that the onshore owners may establish a pier at their location of choice upon their lands."

38. The same Section 4 of the 1994 Order provides that regulations provide for placement of piers and docking of boats by offshore owners "in the manner in which imposes the least possible burden upon any one or group of onshore owners."

39. The maintenance of a Group Pier by EFAC on the riparian shoreline of Kokomo Grace does not perform the requirements of the 1994 Order.

40. The Bylaws adopted by EFAC, Exhibit 11, attached hereto and incorporated by reference, provide in Section 6(e) that EFAC will have the duty "to operate under the presumption that one offshore pier will exist per onshore lot."

41. The Group Pier effectively constitutes a multitude of offshore piers, not a single pier.

42. The Bylaws of EFAC at Section 6(i) provide a duty to develop, establish and maintain community piers where possible.

43. Neither the judicial Orders nor the Bylaws give EFAC the power to confiscate shoreline of onshore owners for the purpose of a community pier.



44. The April 2014 Agreed Order provides that at paragraph 14(i) that the Bylaws of the EFAC will insure that onshore owners will not be overburdened.

45. The April 2014 Agreed Order at paragraph 14(j) provides that onshore owners' pier assignments will continue from year to year and be presumed to be permanent. Kokomo Grace is entitled to an onshore owner's pier assignment which it has never had previously, has requested, and which request has been denied.

46. The January 2014 Order provides at page 7 in paragraph 8 that although not a mandate, the regulations should strive to "burden any one onshore owner with only one offshore pier site".

47. The communication of EFAC apparently are founded upon a presumption that because this Court has expressed negative opinions regarding relocations of offshore and onshore piers, that somehow a Group Pier is entitled to be placed arbitrarily wherever EFAC desires, ignoring the difference between a single pier and single boat for an offshore owner as compared to a Group Pier with twenty-four (24) or more boat slips attached to it.

48. The position of EFAC with regard to its claimed rights to place a Group Pier wherever it pleases because the Court does not wish to have piers moved around for offshore and onshore owners is misplaced, arbitrary, and capricious.

49. The continued presence of EFAC with a Group Pier on the shoreline of Kokomo Grace exceeds any and all of its own regulations, or the declared policies and constraints of the three prior Orders of this Court, and constitutes a continuing trespass.

50. The continuing trespass of EFAC on the littoral rights of Kokomo Grace also constitutes a slander of title.

51. Kokomo Grace is entitled to recover its attorney's fees as a part of its damages in bringing this action and defending against the slander of title and trespass being continuously committed by EFAC.

THEREFORE, Kokomo Grace requests that the Court:

1. Order the removal of the EFAC Group Pier from its riparian area.


2. Order EFAC to allow Kokomo Grace to designate its twenty-four (24) feet of riparian area as an onshore owner.

3. Award appropriate damages to Kokomo Grace for the slander of title and excessive use of Kokomo Grace's property.

4. Award the costs of this action and such other remedies as may be appropriate.

Respectfully submitted,

ROCKHILL PINNICK LLP

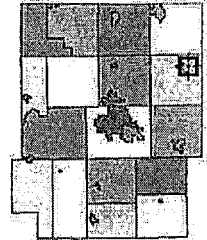


Richard K. Helm  
Attorney #7646-43  
105 East Main Street  
Warsaw, Indiana 46580  
574-267-6116  
Attorneys for Plaintiff

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### Overview




### Legend

- Lot Lines
- Parcels
- Cities and Towns (Local)
- ◻ Lakes
- House Numbers
- Road Centerlines
- Railroads

Parcel ID	005-043-022	Alternate ID	0572601385	Owner	Kokomo Grace United Methodist Church Inc
Sec/Twp/Rng	0011-0033-7	Class	EXEMPT PROPERTY OWNED BY A RELIGIOUS ORG THAT IS GRANTED AN EXEMPTION	Address	219 W Mulberry St Kokomo, IN 46901
Property Address	Acreage n/a				
District	Tippecanoe				
Brief Tax Description	005-043-022 TR SW LOT 15 BLK B EPWORTH FOREST 0.03A PER CALC (Note: Not to be used on legal documents)				


Date created: 10/4/2017  
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 Developed by  
The Schneider Corporation

**RECEIVED**  
AUG 10 2017  
KOSCIUSKO COUNTY  
ASSESSOR

*lm*

Duly Entered for Taxation Subject to  
Final Acceptance for Transfer this  
AUG 10 2017 *AD*  
*Michelle L. Lovitt*  
Auditor of Kosciusko County

**EXHIBIT 2**  
2017080389 DEED \$25.00  
08/10/2017 03:32:19P 3 PGS  
Joetta Mitchell  
Kosciusko County Recorder IN  
Recorded as Presented  


### Quit-Claim Deed

THIS INDENTURE WITNESSETH, that **Indiana Annual Conference of the United Methodist Church, Inc.**, an Indiana not-for-profit corporation, successor by merger of the **North Indiana Annual Conference of the United Methodist Church, Inc.**, as the successor to The Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church (Grantor), (property currently listed by Auditor in the name of a predecessor entity, Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church) for One Dollar and other valuable consideration, the receipt of which is hereby acknowledged, **RELEASES AND QUIT-CLAIMS** to Kokomo Grace United Methodist Church Inc., the following described real estate situate in Kosciusko County, in the State of Indiana, to-wit:

That area of land lying between Lot 15 and Block "B" in the Plat of Epworth Forest and the Shoreline of Webster Lake, more particularly described as beginning at the Southeast corner of Lot 15, Block "B" and thence Southerly along the East line of Lot 15, extended, to the Shoreline of Webster Lake; thence Northerly and Westerly along the meander line of the Lake to a point intersecting the West line of Lot 15, extended; thence Northerly and Easterly along the West line of Lot 15, extended to the Southwest corner of Lot 15; thence Easterly along the South line of Lot 15 to the place of beginning. The tract described is all of that land lying between Lot 15 and the Lake which is approximately a rectangular parcel of land 25 feet by 50 feet in dimension.

This Quit-Claim Deed transfers to the Grantee all the fee interest of the Grantor in the Real Estate, but expressly reserves all Easement Rights, as defined below and all other rights and privileges other than fee estates granted to Grantor or its predecessors in interest by any document of record, which excluded rights are expressly retained by, and reserved to, Grantor. The Easement Rights as used herein shall mean all rights granted to Grantor or its predecessors in interest by easement or plat and those recorded easement and littoral rights granted or reserved to the North Indiana Annual Conference

of United Methodist Church in that certain Judgment entered on August 2, 1993, in that certain legal action titled as Barnes et al v. North

Indiana Annual Conference of United Methodist Church and filed as Case No. 43C01-9109-CP-732. The Easement Rights expressly exclude those classes of rights, as the same relate to the Real Estate, which were vested to the owners of the on-shore lots in the above-referenced Judgment.

Zoning Conditions: In order to comply with current Kosciusko County Zoning Ordinance requirements and to describe the explicit purpose of this transfer, the tract transferred by this Quit-Claim Deed is intended by Grantee to be combined with, and made a part of, lot numbered Fifteen (15) and Block "B" of "Epworth Forest" as platted in Section Eleven (11) Township Thirty-three (33) North, Range Seven (7) East, as recorded in the plat book No. 4, at page 65, in the records of the Recorder's Office in the said County; the real estate described in this Quit-Claim Deed and as well the real estate of Lots 15, shall be required to be transferred as a single parcel or ownership unit, and may not be conveyed separately except in conformity with the Kosciusko County Zoning Ordinance.

The Real Estate is to be held in trust, that such premises shall be kept, maintained and disposed of for the benefit of the United Methodist Church and subject to The Book of Discipline of the United Methodist Church and usage of said church, as from time to time authorized and declared by the General Conference and by the Annual Conference within whose bounds the said premises are situated.

IN WITNESS WHEREOF, the said Grantor, The North Indiana Annual Conference United Methodist, an Indiana not-for-profit corporation, commonly known as the North Indiana Annual Conference of the United Methodist Church, Inc., has executed this Deed this 7<sup>th</sup> day of August, 2017.

**Indiana Annual Conference of the United Methodist Church, Inc.**, an Indiana not-for-profit corporation, successor by merger of the North Indiana Annual Conference of the United Methodist Church, Inc.

By:

Printed:

Title:

Karen Jackson Gould  
Karen Jackson Gould  
Trustee

ATTESTED BY:

By:

Printed:

Title:

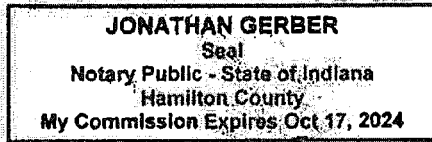
[Signature]  
TRUSTEE  
Trustee

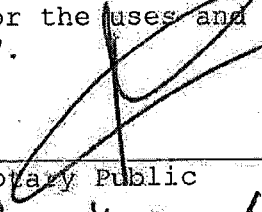
STATE OF INDIANA, Hamilton COUNTY, SS:

Before me, a Notary Public, in and for said County and State, personally appeared Joe Williams and Karen Jackson Gould, the trustee and trustee of the within named **Indiana Annual Conference of the United Methodist Church, Inc.**, an Indiana not-for-profit corporation, successor by merger of the **North Indiana Annual Conference of the United Methodist Church, Inc.**, and acknowledged the execution of the foregoing deed to be the voluntary act and deed of the Grantor, for the uses and purposes herein stated, this 7<sup>th</sup> day of August, 2017.

My Commission Expires:

Oct 17, 2024  
County of Residence: Hamilton



  
Notary Public  
Jonathan Gerber  
Printed Name

<b>MAIL TAX STATEMENTS TO:</b>	<b>GRANTEE=S MAILING ADDRESS:</b>	<b>PROPERTY ADDRESS:</b>
219 W. Mulberry St. Kokomo, In 46901	219 W. Mulberry St. Kokomo, In 46901	8521 E. Wade Ln North Webster, In 46555

Prepared by Richard K. Helm, Rockhill Pinnick LLP, 105 East Main Street, Warsaw, Indiana 46580, and I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document unless required by law. JG MAP

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# EXHIBIT 3

page 2/1-E  
Indiana Conference  
United Methodist Church  
Epworth Forest Pier Administration

1/28/14

### Application for Pier Assignment (New, Transfer or Change Request)

1. Please complete and return to Bradley Company or PO Box 530, South Bend, IN 46501
2. Pier Committee written approval must be obtained in advance for transfers or new pier assignments.
3. The maximum allowed width for on-shore piers is 24 feet and the maximum allowed width for assigned off-shore owners is 16 feet. The Pier Committee will consider the request for approval.

Width is measured by the distance from the pier to the shore. Measurement is the total width taken from the first beam to the last beam. For example, pier, 10m, 20m, 30m, 40m, 50m, 60m.

Name(s): KOKOMO GRACE UNITED METHODIST CHURCH, INC.	
Epworth Forest Address: 8543 E. WESLEY LN NORTH WEBSTER, IN. 46556	Mailing Address: (church office) 212 West Walnut ST. Kokomo IN. 46901
Phone Numbers: Office # 765-457-5329 Fax # 765-457-5332	
Email: kokomograce@kokomograce.org	

Do you currently have a pier assignment?  no (please circle one)  
If yes, please list pier number or location. 8543 E. Wesley Ln.

Reason for request: (if this is a pier transfer, please include previous owner(s) name and pier number (if known):

The Kokomo Grace United Methodist Church Trustees are the owners of the lakefront property at 8543 E. Wesley Ln. The Trustees are requesting a change in Pier Assignment. Grace Church Trustees will be installing their own pier in front of the property. The old pier which has been managed by BRADLEY Company must be moved for the 2014 season.

Steve Hart, (Trustees Treasurer)

Pier Assignment	
Comments:	
Approved by:	Date:

**Cindy Lovegrove**

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**From:** Cindy Lovegrove <kokomograce@kokomograce.org>  
**Sent:** Friday, February 05, 2016 8:26 AM  
**To:** Gail Hart  
**Subject:** FW: Community Pier

**From:** Sue Montivoni [<mailto:smonty@embarqmail.com>]  
**Sent:** Friday, January 29, 2016 12:00 PM  
**To:** [kokomograce@kokomograce.org](mailto:kokomograce@kokomograce.org)  
**Subject:** Fw: Community Pier

**From:** Sue Montivoni  
**Sent:** Friday, January 29, 2016 11:53 AM  
**Cc:** Anson Sharon ; Lindsey Grossnickle ; Lusby Kara ; Presser Richard  
**Subject:** Community Pier

If the Kokomo Grace Board decides the Community Pier should be removed from your lake frontage, we are requesting our Board be permitted to continue to use the present pier for the 2016 summer only. This will allow us time to identify a new location for the pier and prevent removal of the 17-20 people who have been assigned pier slips, give us time to remove pier sockets, give us time for applying/receiving a new pier permit from the DNR, and allow us time to address any other administrative issues.

Our Board is aware of the many years you have allowed the Conference to place the Community Pier on your lake frontage. If you would allow our new Board one more year, we would be very appreciative.

Thank you,  
Suzann Montovani, Treasurer  
Epworth Forest Pier Administration Committee



**Cindy Lovegrove**

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**From:** Larry Murrell <lawrence.murrell@howardcountyin.gov>  
**Sent:** Wednesday, April 19, 2017 12:05 PM  
**To:** efpier@gmail.com  
**Cc:** Hart Steve; Rebber Kathy; kokomograce@kokomograce.org  
**Subject:** Kokomo Grace UMC Pier

To EFAC Board:

This is to respond to your April 14, 2017 email.

First let me clarify that we have not requested removal of your community pier as you state. Rather, based upon recent court decisions, we understood that beginning in 2015 your pier was to be relocated from our shoreline. At your request, we granted you an extension in 2015 and 2016 while you looked for a new location. Having granted two extensions, we denied your request for 2017 and began preparations for installing our own pier.

Your email assertion that the Epworth League of our predecessor Methodist Episcopal Church is the legal owner of a portion of our shoreline presents new information that will take some time to sort out. Accordingly, we have suspended the installation of our pier and will agree to another one-year extension for the installation of your pier during 2017 while we review and consider your claim. Provided that this extension is not, nor shall it be construed as, a waiver or relinquishment of any of our rights in or ownership of the property in question.

Please provide me with the contact information for your attorney so that I might discuss this matter directly with him/her.

Respectfully,

Larry Murrell, Chair  
Grace UMC Board of Trustees

**Cindy Lovegrove**

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**From:** Epworth Forest Administration Committee <efpier@gmail.com>  
**Sent:** Friday, April 14, 2017 3:29 PM  
**To:** Kokomo Grace UMC  
**Cc:** mattshipman@bgswlaw.com  
**Subject:** Re: Epworth Forest

Grace United Methodist Church -

We understand that you have requested the removal of our long-standing Epworth Forest Community pier. However, according to the records we have reviewed, the Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church is the legal owner of the parcel of shoreline that the community pier resides upon.

EFAC intends to continue utilizing the current location of the community pier, a pier that is recognized by the Kosciusko Circuit Court in their Order and Findings, Case No. 43C01-9109-CP-732, January 21, 2014.

As we seek an alternative location(s) to accommodate our community pier assignees, EFAC will continue to provide the Kokomo Grace and Huntington Trinity residences with slips/pier assignments on the EFAC community pier.

Please expect to receive a follow-up communication from our legal representation, Bloom Gates Shipman and Whiteleather, LLP regarding this matter.

Thank you,

EFAC Board of Directors

Epworth Forest Administration Committee, Inc.

PO Box 214, North Webster, IN 46555

[www.efpier.org](http://www.efpier.org)

[efpier@gmail.com](mailto:efpier@gmail.com)

On Thu, Apr 13, 2017 at 8:36 AM, Cindy Lovegrove <[kokomograce@kokomograce.org](mailto:kokomograce@kokomograce.org)> wrote:

Dear Epworth Forest Administration Committee,

The community pier was to be relocated starting in 2015 but we granted you a delay for one year. Grace Church has already contracted for our own pier installation.

Sincerely,

Grace United Methodist Church

**From:** Epworth Forest Administration Committee [mailto:[efpier@gmail.com](mailto:efpier@gmail.com)]  
**Sent:** Thursday, April 13, 2017 7:49 AM  
**To:** [questions@inumc.org](mailto:questions@inumc.org)  
**Cc:** Huntington Trinity; Kokomo Grace UMC  
**Subject:** Epworth Forest

Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church  
301 Pennsylvania Pkwy Ste 300  
Indianapolis, IN 46280

Indiana UMC Conference -

This email is in regards to the Epworth Forest community in North Webster, Indiana. The Epworth Forest Administration Committee (a.k.a. the Epworth Forest pier committee) wanted to be sure to share with you that we are in the process of pursuing alternate locations for the long-standing Community Pier located on your shoreline (Parcel ID 005-042-285), directly west of the EF camp's swimming pier (near the Huntington Trinity and Kokomo Grace residences). We are currently awaiting DNR approval for a proposed new location and will then need to make subsequent decisions upon that approval to determine if it is a viable solution for relocation. Until that occurs, EFAC's intent is to continue to place the current 24-slip Community pier in its existing location upon the shoreline of your lot, as it has been for many years. Please reply to this email if you have any questions or concerns about our efforts by April 25th, as our pier installation will be scheduled shortly for the new season.

Thank you,

EFAC Board of Directors

Epworth Forest Administration Committee, Inc.

PO Box 214, North Webster, IN 46555

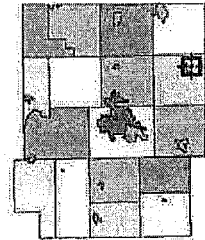
[www.efpier.org](http://www.efpier.org)

[efpier@gmail.com](mailto:efpier@gmail.com)

Epworth Forest Administration Committee, Inc.  
PO Box 214, North Webster, IN 46555  
[www.efpier.org](http://www.efpier.org)  
[efpier@gmail.com](mailto:efpier@gmail.com)



**Overview**



**Legend**

- Lot Lines
- Parcels
- Cities and Towns (Local)
- Lakes
- House Numbers
- Road Centerlines
- + Railroads

Parcel ID 005-042-285  
 Alternate ID 0572601103  
 Class EXEMPT PROPERTY OWNED BY A RELIGIOUS ORG THAT IS GRANTED AN EXEMPTION  
 Sec/Twp/Rng 0011-0033-7  
 Acreage n/a

Owner Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church  
 Address 8379 E Wesley Ln  
 North Webster, IN 46555

Property Address  
 District Tippecanoe  
 Brief Tax Description 005-042-285  
 LAND NOT TAKEN IN BY PLATTED LOTS ON PLAT OF EPWORTH FOREST 11-33-7 0.16A  
 (Note: Not to be used on legal documents)

Date created: 10/11/2017  
 Last Data Uploaded: 5/18/2016 5:08:10 PM

EXHIBIT 9  
COPY

ROCKHILL PINNICK LLP  
ATTORNEYS AT LAW

STANLEY E. PEQUIGNOT  
RICHARD K. HELM\*  
VERN K. LANDIS  
JAY A. RIGDON  
DANA LEON\*\*  
SCOTT E. REUST

105 EAST MAIN STREET  
WARSAW, INDIANA 46580-2742

TELEPHONE (574) 267-6116

FACSIMILE (574) 269-9264  
E-MAIL [rockhill@rockhillpinnick.com](mailto:rockhill@rockhillpinnick.com)

[www.rockhillpinnick.com](http://www.rockhillpinnick.com)

\*Registered Civil Mediator

\*\*Registered Domestic Relations Mediator

August 4, 2017

Mr. Matthew R. Shipman  
Bloom Gates Shipman  
& Whiteleather LLP  
119 S. Main St.  
P.O. Box 807  
Columbia City, IN 46725

Re: Your client, Epworth Forest Administration Committee, Inc.  
My client, Kokomo Grace United Methodist Church, Inc.

Dear Matt,

As noted above, our firm will be representing Kokomo Grace United Methodist Church, Inc. We would appreciate it if any actions, correspondence or the like, in the future, would include the undersigned to the extent appropriate.

I will be communicating in more detail at a later date, as I still need to consult further with my client. However, I did receive via electronic filing your recent "Request for Clarification". I do wish to clarify one aspect recited in that Request.

In rhetorical paragraph 2 there is a recital that the Conference owns the strip of land between the property owned by Kokomo Grace and the water's edge. This is incorrect. First, quite clearly the 1994 Judgment from Judge Richard W. Sand addressed the aspect that the strip of land belongs to the adjacent lot owner, subject to being impressed with an easement. In fact Judge Sand vested that strip of land in all lot owners who were appearing of record in the case. He could not do so with regard to other lot owners who did not participate. In fact I would note that several lots owned by churches were not participants because they did not want to litigate with the Conference. Nonetheless, it does not change the aspect of the law which vests that strip of land in the adjacent lot owner.

I am aware that the current records of the Auditor of Kosciusko County have the strip of land labeled as "Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church". You are surely aware that the Auditor changed the labeling on the strip along the lakeshore several years ago, on her own volition, with no authority from anyone, and such labeling by the Auditor does not change ownership.

The Conference has recognized this, and has put in place a system whereby owners may ask for a quit-claim deed to rectify the unusual and inappropriate alteration of records by the Auditor.

I do note as well that there is a strip of land from the original plat lying between Lot 16 and Lot 15 which runs from Wade Lane down to the water. Whether this is a "fire lane" or some other notion contained in the original plat, it is an easement and easements do not vest or convey riparian rights. The two adjacent lot owners own the riparian rights at the end of that easement. All of that would, of course, be subject to the general governance of the EFAC with regard to administration of the easement.

All of that being said, my client is perfectly willing to discuss any alternatives or proposals with regard to the 50 feet of frontage between Lot 15 and the water's edge. As I read the Orders entered by the Kosciusko Circuit Court in 1994 and in 2014, as an onshore owner my client is entitled to 24 feet of riparian use and the remaining 26 feet as well as the approximately nine feet of the adjacent easement strip, are in play for use by EFAC for pier assignments, in accordance with the adjudication set down by the Court.

I will appreciate your acknowledgement of this letter. After I have an opportunity for further discussion with my client I will be open to further discussions with you on behalf of EFAC.

Very truly yours,

ROCKHILL PINNICK LLP

Richard K. Helm

RKH:jmw

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cc: *Larry Murrell (via email)*  
*Steve Hart (via email)*

Richard Helm

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**From:** Matt Shipman <mattshipman@bgsowlaw.com>  
**Sent:** Wednesday, September 27, 2017 3:06 PM  
**To:** Richard Helm  
**Subject:** Kokomo Grace

Rick

I don't believe that EFAC is in a position to honor your request that we not locate the community pier on the Church's property. Judge Reed has made it perfectly clear in every ruling the last year that he intends for all piers location to be permanent. If you want us to relocate the community pier, the only way that is going to happen is if the judge orders it. Please let your client know and by all means file a declaratory judgment action if you want a different answer.

Thanks

Matthew R. Shipman  
Bloom Gates Shipman & Whiteleather, LLP  
119 S. Main Street  
P.O. Box 807  
Columbia City, IN 46725  
Telephone: (260) 248-8900  
Fax: (260) 244-3913  
Email: [mattshipman@bgsowlaw.com](mailto:mattshipman@bgsowlaw.com)

\*\*\*\*\*

**CIRCULAR 230 DISCLOSURE:** To ensure compliance with recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including any attachments, is not intended or written by us to be used, and cannot be used, by anyone for the purpose of avoiding federal tax penalties that may be imposed by the federal government or for promoting, marketing or recommending to another party any tax-related matters addressed herein.

**CONFIDENTIALITY NOTICE:** This E-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of this E-mail or any attachment is prohibited. If you have received this E-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system. Thank you.

We are a debt collector. This letter is to collect a debt. Any information obtained will be used for that purpose.

BLOOM GATES SHIPMAN & WHITELEATHER, LLP

\*\*\*\*\*



Draft - June 2, 2014

**BYLAWS  
OF  
EPWORTH FOREST ADMINISTRATION COMMITTEE, INC.**

ARTICLE I  
Name and Principal Office

The name of the corporation is EPWORTH FOREST ADMINISTRATION COMMITTEE, INC. (hereinafter referred to as the "Committee").

The registered office of the Committee shall be located at Indiana Conference United Methodist Church, 301 Pennsylvania Parkway, Suite 300, Indianapolis, Indiana 46280, until and unless changed in accordance with law by the Board of Directors.

ARTICLE II  
Definitions

Section 1. "1994 Judgment" means the Kosciusko Circuit Court's August 2, 1994 Record of Submission, Findings of Fact with Opinion and Judgment in *Barnes, et al v. North Indiana Annual Conference of United Methodist Church v. Numerous Intervening Defendants*, Cause Number 43C01-9109-CP-00732 and all subsequent decisions under this cause number. The 1994 Judgment adjudicated a dispute between and among property owners in Epworth Forest community on Lake Webster over ownership rights in the littoral between the lake and platted lots immediately adjacent to the lake. In addition to adjudicating the ownership dispute, the 1994 Judgment also defined the scope of an easement in the littoral and assigned the Conference certain management responsibilities relating to the easement.

Section 2" "2014 Order" means (collectively) the Kosciusko Circuit Court's January 2014 Order and April 15, 2014 Order Granting Relief Pursuant to T.R. 60 Through Modified Judgment in *Barnes, et al v. North Indiana Annual Conference of United Methodist Church v. Numerous Intervening Defendants*, cause number 43C01-9109-CP-00732.

Section 3 "Committee" means and refers to this corporation, which is also referred to as the "Corporation" in the Articles of Incorporation of this corporation.

Section 4. "Conference" means the North Indiana Annual Conference of United Methodist Church.

Section 5. All of the terms as defined and used in the 1994 Judgment and 2014 Order shall have the same meanings in these Bylaws. The 1994 Judgment as altered, amended or modified by subsequent Court Orders shall continue to define the existing rights of the owners in Epworth Forest.

ARTICLE III  
Membership and Voting Rights

Section 1. Membership, Transfer, Voting Rights. The Members, shall have voting membership rights to elect the Board of Directors. The Owner or Owners of each lot or multiple lots as a group used for a residential structure, or any one or group of undeveloped/unimproved lots owned by the same owner ("Parcel") shall have one vote in any election of directors. The Conference shall have one vote for its collective ownership of undeveloped lots. Owner may be more than one individual, legal entity, or trust, and the owner/owners shall designate and deliver to the secretary in writing the name of one representative to cast a vote for the parcel. Reference is hereby made to the 1994 Judgment, 2014 Order and the Articles of Incorporation which set forth terms, provisions and conditions governing and relating to membership in the Committee, transfer of membership, all of which terms, provisions and conditions are incorporated herein by reference.

Section 2. Meetings. Meetings of the members of the Committee shall be in accordance with the following provisions:

(a) Place. Meetings of the members shall be held at such place in Kosciusko County, Indiana, as may be designated by the Board of Directors of the Committee.

(b) Annual Meetings. The members shall have an annual meeting. The first annual meeting of the members shall be held during the first fiscal year of the Committee, the exact date to be decided by the Board of Directors. At such first annual meeting of the members, the Board of Directors may designate a regular day or date for successive annual meetings. If any designated day or date falls upon a legal holiday, the actual date of the meeting shall be the next business day succeeding such designated day or date.

(c) Special Meetings. Special meetings of the members may be called by the president of the Committee or by resolution of the Board of Directors of the Committee. Notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

(d) Notice of Meetings. Pursuant to Indiana Code 23-17-10-5, the Committee shall give notice of meetings in a fair and reasonable manner. The Committee shall provide notice by communicating in person, mail or other method of delivery; or other electronic means capable of verification. It shall be the duty of the secretary of the Committee to serve a notice of each annual or special meeting, stating the purposes thereof, as well as the time and place where it is to be held, upon each member of record, not less than ten (10) days, or, if notice is mailed by other than first class or registered mail, thirty (30) days nor more than sixty (60) days, before the meeting date. The mailing of a notice to each member at the address shown for such member on the Committee's records shall be deemed notice served.

(e) Notwithstanding any of the foregoing, any matter or business agreed to in writing by all members of the Committee shall be valid and binding regardless of whether

the procedures set forth above have been satisfied; for this purpose, signatures transmitted electronically shall be deemed to be, and shall have the same effect as, original signatures.

ARTICLE IV  
Board of Directors

Section 1. Number, Qualification and Election. The affairs of the Committee shall be governed by a Board of Directors composed of five (5) persons. The Board shall consist of two (2) directors elected by the Off-shore Owners, two (2) directors elected by the On-shore Owners, and one (1) "neutral" director whose initial appointment is made by the Kosciusko Circuit Court. Thereafter, the "neutral" director shall be selected by unanimous consent of the four (4) elected directors, and if unanimous vote cannot be reached by the four (4) elected directors, then by appointment of the Kosciusko Circuit Court on petition of any lot owner in Epworth Forest.

Section 2. Additional Qualifications. Where an owner consists of more than one person, or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner or a partner, officer or trustee, as the case may be, of the partnership, corporation, trust or other entity owner shall be eligible to serve on the Board of Directors of the Committee, except that no owner may be represented on the Board of Directors by more than one person at a time.

Section 3. Initial Board of Directors.

3.1. The On-shore Owners shall, collectively, designate two persons as representatives on the board of directors. Those two persons may be selected by consensus, by an informal election process, and shall not require a full formal voting procedure. The On-shore Owners shall provide the names of the two members of the board of directors to their attorneys, who will provide those names to the attorneys for all parties and to the Court as necessary.

3.2. The Off-shore Owners shall, collectively, designate two persons as representatives on the board of directors. Those two persons may be selected by consensus, by an informal election process, and shall not require a full formal voting procedure. The Off-shore Owners shall provide the names of the two members of the board of directors to their attorneys, who will provide those names to the attorneys for all parties and to the Court as necessary.

3.3 As soon as they are designated, the two On-shore designated directors and the two Off-shore designated directors shall meet informally, to conduct an organizational meeting, initially for the purpose of appointment a fifth "neutral" director. In the event those four directors cannot reach agreement as to the designation of a fifth and neutral director, that impasse may be reported to the Court by counsel for any party or parties, along with a request that the Court make the designation of the fifth and neutral member of the board of directors.

3.4. The Initial Board shall maintain, manage and administer the affairs and the property of the Committee during the initial term. The Initial Board shall arrange for appropriate elections to occur in June 2015 to establish elected directors. Election arrangements shall maintain the election of two directors from the Off-shore Owners, two directors from the On-shore Owners, and designation of a fifth, neutral director by the four elected directors. The Initial Board shall have the power and responsibility to ratify the Bylaws. In the event of any vacancy or vacancies occurring on the Initial Board, replacement directors shall be filled in accordance with the terms and provisions of these Bylaws and of the Articles of Incorporation.

Section 4. Term of Office Generally. The term of a director may not exceed five (5) years. Directors may be elected for successive terms. The Board of Directors may stagger the terms of directors to promote continuity in the governance of the Committee.

Section 5. Powers. The Board of Directors shall have such powers as are reasonable and necessary for the administration of the affairs of the Committee and to accomplish the performance of their duties, conferred by the Indiana Nonprofit Corporation Act or by other law and which powers include, but are not limited to, the power:

- (a) To adopt and publish reasonable rules and regulations governing the use and enjoyment of the Easement, the management and administration of the Committee, and as otherwise permitted in the 1994 Judgment and 2014 Order, and to establish sanctions for the infraction thereof, in each case in a manner consistent with the 1994 Judgment and 2014 Order;
- (b) To exercise all of the powers and privileges and to perform all of the Conference's managerial duties and obligations as set forth in the 1994 Judgment and 2014 Order;
- (c) To exercise for the Committee all powers, duties and authority vested in or delegated to the Committee and not reserved to the membership by other provisions of these Bylaws, the 1994 Judgment, the 2014 Order, the Articles of Incorporation or statute;
- (d) To collect reasonable attorney fees if it prevails in an enforcement action for failure to timely pay duly assessed pier fees, failure to comply with a pier assignment, or other material failure to comply with any duly enacted Court Order or rule or regulation; however, there shall be no right of the Committee to collect attorney's fees incurred in connection with the, Easement Termination Litigation, as defined in the 2014 Order, or in connection with any refusal to comply with a pier assignment by an Easement Termination Plaintiff, as defined in the 2014 Order, during the pendency of the Easement Termination Litigation if such litigation is refiled;
- (e) To declare the office of a member of the Board of Directors to be vacant in the event such director shall be absent from three (3) consecutive regular meetings of the Board of Directors or if such director is in arrears in paying any outstanding debts and/or obligations to the Committee including, but not limited to, assessments;

(f) To approve the annual budget, statement of income and expenditures of the Committee and to establish and maintain a reserve fund for capital expenditures;

(g) To employ as a manager, an independent contractor, or such other employees as it deems necessary, and to prescribe their duties, subject to the limitations set forth in the Declaration; and

(h) To do and take all such action as is or may be necessary, desirable or appropriate to perform the duties, obligations and responsibilities of the Board of Directors as required by the 1994 Judgment, the 2014 Order, other provisions of these Bylaws, the Articles of Incorporation, or statute.

Section 6. Duties. The Board of Directors shall have the following duties:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members;

(b) To ensure on-shore owners' pier assignments continue from year to year and be presumed permanent;

(c) To ensure that off-shore pier assignment/location, in accordance with the 1994 Judgment, may only be changed, in the sole discretion of the Board of Directors, for a substantial change in circumstances making the prior assignment unreasonable under the facts and circumstances;

(d) To ensure an on-shore pier assignment/location, in accordance with the 1994 Judgment, may only be changed, upon the request in writing of the on-shore owner and only for substantial change of circumstances making the prior assignment unreasonable under current facts and circumstances;

(e) To operate under the presumption that one off-shore pier will exist per onshore lot;

(f) To verify each Off-shore owner who requests a pier has adequate liability insurance in such reasonable amounts as determined in the sole discretion of the Board of Directors;

(g) To establish the amount of the assessments against each member for each pier owned, all in accordance with the terms of the 1994 Judgment, 2014 Order and these Bylaws;

(h) To cause that no motor vehicles, except wheelchairs for disabled persons in need of such wheelchairs, are permitted on the Easement (the prohibition against motor vehicles is not intended to prohibit access for necessary things such as tree trimming, utility installation and maintenance, and the like, on a temporary basis);

(i) To develop, establish and maintain community piers where possible;

- (j) To ensure off-shore owners are required to access pier locations over rights of way;
- (k) To send written notice of each assessment to each applicable owner;
- (l) To order that all past-due fines or penalties relating to pier fees are waived if the underlying pier fees are fully paid by May 1, 2014;
- (m) To levy fines for violations of the policies and pier assignments and to levy reasonable late fees for failure to pay pier fees consistent with the January 21, 2014 Order;
- (n) To establish a fair, timely appeal process administered by a single enforcement administrator who shall, to the extent practicable, enforce the regulations adopted under the 1994 Judgment and specifically, should investigate and address violations of interlopers within three (3) days;
- (o) To place a lien on any lot in Epworth Forest to secure payment of any assessed fee and to secure judgment obtained against any lot owner as the Board of Directors, in its sole discretion, deems necessary or advisable;
- (p) To issue, or cause an appropriate officer to issue, upon demand by any person or entity, a certificate setting forth whether or not any assessment has been paid;
- (q) To procure and maintain the insurance coverages required by the 1994 Judgment, 2014 Order and such other insurance coverages as the Board of Directors, in its sole discretion, deems necessary or advisable;
- (r) To ensure that on-shore owners will not be overburdened, but recognizing that strict equality in burdening owners is not possible;
- (s) To cause the Easement, including any improvements thereon, to be maintained to the extent, if any, of the Committee's responsibilities transferred to the Committee by the Conference, therefor as provided in the 1994 Judgment and 2014 Order; and
- (t) To supervise all officers of the Committee.

**Section 7. Compensation.** No director, except for the "neutral" serving director if unanimously agreed to by the other four (4) directors, shall receive compensation for any service he may render to the Committee as such director.

**Section 8. Removal of Directors.** Subject to the provisions of the 2014 Order and the foregoing Section 3 of this Article IV with respect to the Initial Board of Directors, any director may be removed for cause.

**Section 9. Regular Meetings.** Regular meetings of the Board of Directors shall be held at such regular intervals, without notice, at such place and hour as may be determined from time

to time by resolution of the Board of Directors. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the president on three (3) days' notice to each director, given personally, by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the secretary in like manner and on like notice on the written request of at least three-fifths (3/5) of the directors.

Section 11. Waiver of Notice. Before or at any meeting of the Board of Directors, any director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent of the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall be deemed a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

Section 12. Quorum. At all meetings of the Board of Directors, the presence of all five (5) of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which quorum is present shall be the acts of the Board of Directors except as otherwise provided in or required by the 1994 Judgment, 2014 Order, Articles of Incorporation, these Bylaws or statute.

Section 13. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. No action shall be conducted without the consent of all five (5) directors. Such approval must describe the action, be signed by each director, and be included in the minutes or filed with the corporate records reflecting the action taken. Any action so approved shall have the same effect as though taken at a meeting of the directors. For the purposes of this Section, a signature conveyed by electronic means shall have the same effect as if an original.

Section 14. Resignation. A director may resign by delivering written notice to the Board of Directors, its chairman, the president or the secretary. A resignation is effective when delivered unless the notice specifies a later date.

Section 15. Delegation of Powers. For any reason deemed sufficient by the Board of Directors, whether occasioned by absence or otherwise, the Board of Directors may delegate all or any of the powers and duties of any officer to any other officer or director, but no officer or director shall execute, acknowledge or verify any instrument in more than one capacity.

## ARTICLE V Officers and Their Duties

Section 1. Enumeration of Offices. The officers of the Committee shall be a president, a vice president (if required by the Board of Directors), a secretary and a treasurer, all of whom shall be members of the Board of Directors, and such other officers as the Board of Directors may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members of the Committee.

Section 3. Term. The officers of the Committee shall be elected annually by the Board of Directors and each shall hold office for one (1) year and until her or his successor is elected and qualified, unless he or she shall sooner resign, be removed or otherwise disqualified to serve. Officers may serve for any number of consecutive terms.

Section 4. Special Appointments. The Board of Directors may elect such other officers as the affairs of the Committee may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by a majority vote of the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

(a) President. The president shall preside at all meetings of the Board of Directors; see that orders and resolutions of the Board are carried out. The president shall have and discharge all the general powers and duties usually vested in the office of the president or chief executive officer of an Committee or a stock corporation organized under the laws of the State of Indiana.

(b) Vice President. The vice president shall act in the place and stead of the president in the event of his or her absence or inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board of Directors or as are delegated to him or her by the president.

(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the members; keep the corporate seal of the Committee (if any is adopted) and affix it on all papers requiring said seal; authenticate records of the Committee as necessary; serve notice of meetings of the Board of Directors and of the members; keep appropriate current records showing the



members of the Committee, together with their addresses; and shall perform such other duties as required by the Board of Directors.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Committee and disburse such funds as directed by resolution of the Board of Directors; keep proper books of account; and prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the members.

#### ARTICLE VI Committees

The Board of Directors may appoint various committees to carry out the purposes of the Committee. Except as otherwise expressly provided in the 1994 Judgment, 2014 Order or by statute, members of such committees may, but need not, be members of the Board of Directors.

#### ARTICLE VII Books of Account and Fiscal Year

Section 1. Books of Account. The Committee shall keep detailed books of account showing all expenditures and receipts of administration which shall specify any expenses incurred by or on behalf of the Committee and the members. Such accounts, books, records, financial statements and other papers of the Committee shall be open for inspection by the members and any Owner during reasonable business hours and subject to reasonable procedures established by the Board of Directors. Current copies of the 1994 Judgment, 2014 Order, the Articles of Incorporation, and the Bylaws of the Committee, and other rules concerning the Easement, shall be available for inspection by any Owner and lender, and to holders, insurers or guarantors of any first mortgage at the principal office of the Committee during normal business hours and subject to reasonable procedures established by the Board of Directors, where copies of the same and of audits may be purchased at reasonable costs.

Section 2. Fiscal Year. The fiscal year of the Committee shall commence January 1 and end the following December 31 each year.

Section 3. Assessment Certificates. Any officer of the Committee may issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board of Directors for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.

#### ARTICLE VIII Contracts, Loans, Checks

Section 1. Authorization. The Board of Directors may authorize any officer or officers or agent or agents of the Committee to enter into any contract, to execute any instrument, or to take out any loan on its behalf. Such authorization may be general or confined to specific instances. Except as provided in these Bylaws, no officer, agent, or employee shall have any

power to bind the Committee or to render it liable for any purpose or amount unless so authorized by the Board of Directors.

Section 2. Checks. All checks, drafts, or other orders for payment of money by the Committee shall be signed by no less than two (2) directors as the Board of Directors may from time to time designate by resolution. Such designation may be general or confined to specific instances.

#### ARTICLE IX Assessments

As more fully provided in the 1994 Judgment, January 21, 2014 Order, 2014 Order, each member who request a pier assignment is obligated to pay to the Committee assessments. The general pier fees assessed to all owners shall be for the administration of any community pier assignments and enforcements. The expenses of acquiring, maintaining, seasonal installation/removal of any community pier shall be paid for separately by a fee for that purpose charged to any user of a slip or place on a community pier and not from regular pier fees. The separate fee for use of a community pier shall be in addition to regular pier fees. Any assessments shall be delinquent which are not paid. No member who requests a pier assignment may waive or otherwise escape liability for the assessment provided for in the 1994 Judgment, January 21, 2014 Order, 2014 Order or herein by nonuse of any or all of the Easement or abandonment of his or her parcel.

#### ARTICLE X Amendments

Section 1. Amendments. The power to amend, alter, add to and repeal these Bylaws is vested in the Board of Directors of the Committee; provided, however, that no amendment or other change shall be made in these Bylaws which conflicts with the terms and provisions of the 1994 Judgment or 2014 Order.

Section 2. Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the 1994 Judgment and these Bylaws, the 1994 Judgment shall control. Any conflict between the 2014 Order and these Bylaws, the 2014 Order shall control. Any ambiguity in these Bylaws shall be interpreted consistently with the written meaning and intent of the 1994 Judgment and 2014 Order.

#### ARTICLE XI Miscellaneous

Section 1. Purpose. The purpose of the Committee will be to manage all rights, obligations and disputes related to the Easement created by the original Plat and defined in the 1994 Judgment and subsequent rulings and to accept the assignment from the Conference of all the Conference's duties in the 1994 Judgment.

Section 2. Membership Certificates. The Board of Directors is not required to issue to any member a certificate from the Committee evidencing membership in the Committee.

Section 3. No Earnings. No member shall have or receive any earnings from the Committee, except that a member who is an officer, director or employee of the Committee may receive fair and reasonable compensation and reimbursement of reasonable expenses incurred in performing the member's services as officer, director or employee of the Committee. A member may also receive payment of principal and interest on monies loaned or advanced to the Committee, as provided in the Act.

Section 4. Applicable Law. These Bylaws shall be construed in accordance with the laws of the State of Indiana.

Section 5. Severability. If one or more of the provisions of these Bylaws shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of these Bylaws; and these Bylaws shall be reformed and construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

Section 6. Time of Essence. Time is of the essence in these Bylaws.

Section 7. Headings and Gender. Headings are for reference only, and do not affect the provisions of these Bylaws. Where appropriate, the masculine gender shall include the feminine or the neuter, and the singular shall include the plural.

Section 8. Computation of Time. In computing a time period prescribed in these Bylaws, the day of the act or event shall not be counted. All subsequent days, including intervening weekend days and holidays, shall be counted in the period. The last day of the period so computed is to be included unless it is a weekend or a legal holiday as defined under Indiana law, in which case the period is to be extended to the next day that is not a weekend day or holiday.

Section 9