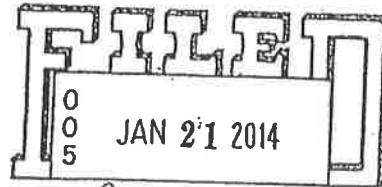


IN THE KOSCIUSKO CIRCUIT COURT
121 NORTH LAKE STREET
WARSAW, INDIANA 46580

DOROTHY V. BARNES, et al,)
Plaintiffs,)
VS.)
NORTH INDIANA ANNUAL)
CONFERENCE OF THE UNITED)
METHODIST CHURCH,)
VS.)
NUMEROUS INTERVENING)
DEFENDANTS,)
Defendants.)

CASE NO. 43C01-9109-CP-732



Ann Jorpy
CLERK KOSCIUSKO CIRCUIT COURT

ORDER

Proceedings were held on the issues arising under the Court's Request to Review the "Pier Administration Policy" and the maps showing the assigned pier locations for 2014 on January 14 and January 15, 2014. Those in appearance were as follows: certain on-shore owners by Richard K. Helm; certain off-shore owners by Stephen R. Snyder and Randall L. Morgan; certain on-shore owners by James S. Butts; certain fee simple lakefront owners by Jason M. Kuchmay; North Indiana Annual Conference of the United Methodist Church by Edward A. Sullivan and Larry E. LaTarte; Richard D. Presser by Michael M. Yoder; William and Sue Kerley by Rachel Y. Osting; and Robert Turner, in person and pro se. Evidence was submitted and argument heard and the Court took the issues under advisement.

The Court having reviewed the evidence, the argument of those present, and being duly advised in the premises, now makes the following Findings and Order:



FINDINGS

1. After extensive litigation and a long trial in this Court in July of 1994, this Court entered its Record of Submission, Findings of Fact with Opinion and Judgment on August 2, 1994, ("Judgment") .

2. The Court's Judgment provided as follows:

(1) That the several plaintiffs, and with respect to the several lots in Epworth Forest owned by them, which plaintiffs along with the lots severally owned by them are as follows:

SEE PARTIES - PLAINTIFF LIST ATTACHED AS EXHIBIT "A"

are each, in their several titles by which they hold title to the designated lots, vested in fee simple as owners of the lands lying between their lots and the shore of Lake Webster and extending into Lake Webster in a matter not adjudicated, the tracts severally owned by those parties determined by extending their lateral lot lines to the lakeshore at the established legal lake level, said titles being subject to any encumbrances or other burdens as they exist and not determined in this action.

(2) That so much of the land vested in the parties lying between their designated lots and the lakeshore are each burdened, as a subservient tenement, with an easement reserved by the plat in favor of the defendant, North Indiana Annual Conference of the United Methodist Church, for its own use and the use of off-shore owners being the owners of lots in the Plat of Epworth Forest not lying upon or adjoining the littoral or upon the lake.

(3) That the scope of the easement includes only a right of the off-shore owners and the defendant acting for them and for itself to maintain upon the lands lying between the on-shore lots and the lakeshore, that is the littoral, of a walkway upon which landowners in the Plat of Epworth Forest, their guests, and the guests and attendees of the defendant may promenade, and to permit access to such persons for fishing from the shore and to maintain upon the lake-front piers at which boats may be docked.

(4) That in exercising the rights and privileges inhering to the dominant tenement, the defendant for itself and for the benefit of the off-shore owners may establish reasonable regulations as may be required to assure, first, that the on-shore owners may establish a pier at their location of choice upon their lands, and then to allow the placement of piers and the docking of boats by off-shore owners and by the Conference in a manner which imposes the least possible burden upon any one or group of the on-shore owners and may further establish and enforce such reasonable regulations as may be required to assure that the walkway remains open and free for passage and that permitted people may have reasonable access to the shore for fishing and swimming, and if in the administration of such regulations costs which the Conference cannot reasonably bear are incurred, that cost may be budgeted and proportionately charged upon all persons installing piers, including on-shore and off-shore owners as well as the Conference itself.

3. The Court's conclusion and opinion entered August 2, 1994, provides:

(5) The easement was reserved for the purpose of maintaining a promenade for the enjoyment of all residents of the plat, their guests, the Conference and its guests and attendees. The persons to enjoy the easement have rights of access to the shore for the purpose of fishing and the off-shore owners have a littoral use to erect a pier and to dock a boat and the Conference has a right to install piers and dock boats for the benefit of the lot owners and of its guests and attendees. The on-shore owners have a duty to permit the maintenance of the walkway, to allow fishing from the lakeshore and to permit the Conference and the off-shore owners to establish piers at reasonable intervals. At reasonable intervals means that off-shore owners and the Conference piers may not be placed in such proximity to on-shore owner piers as to create unreasonable inconvenience to the on-shore owners in the use of their own piers. The on-shore owners get first choice as to where they get to put their piers because they are the owner of the fee and many of the sea walls built by them are so built that there is a specific place within the frame of the sea wall into which a pier is designed to fit. As the off-shore owners must be accommodated in a managed fashion for so long as the Conference remains operative upon the grounds,

the off-shore owners' right to pier placement must be managed through the Conference. The Conference will, therefore, have managerial rights, as a Trustee for the benefit of the off-shore owners to assign pier space to accommodate the off-shore owners without at the same time unduly burdening the on-shore owners. To so manage, the Conference must establish rules, which touching upon and concerning the land, are rules of the Conference which must be, under the restrictions on the plat, conformed to by the on-shore owners as well as the off-shore owners. Since such management requires resources, and resources, that is people, cost money, the Conference may establish a reasonable pier permit fee which may be no greater than that reasonably required to actually fund the cost of that management. Because the management regulations which will presumably be framed by the Conference for the benefit of the off-shore owners will also benefit the on-shore owners in that they must be designed to avoid overburdening the on-shore owners, the on-shore owners must participate in the cost of that management expenditure.

4. Pursuant to the judgment, the North Indiana Annual Conference of the United Methodist Church ("Conference") established regulations for the administration and enforcement of pier placements, fees, and regulation of the littoral, the first of which regulations were approved by this Court on November 7, 2007, ("Order").

5. In the Order, this Court made the following findings, conclusions and orders:

(1) The North Indiana Conference of the United Methodist Church ("Conference") has enacted reasonable regulations and procedures to carry out the responsibilities assigned to the Conference in this Court's judgment dated August 2, 1994. The Court has reviewed and approves the Pier Administration Policy, a copy of which is attached. The Court orders the Conference to maintain a copy of the Pier Administration Policy and a map showing the approximate assigned and unassigned pier locations at a place within Epworth Forest which is available to Epworth Forest lot owners at reasonable times.

(2) As a means of enforcing this Court's prior orders in this case, any party alleging that the Conference has acted or failed to act in violation of this Court's judgment dated August 2, 1994, shall file a separate lawsuit alleging that the Conference has acted or failed to act in violation of this Court's judgment of August 2, 1994, may be

heard only if the party alleging the violation has complied with the issue submission procedure included in the Pier Administration Policy. The action or decision of the Conference will not be reversed unless such action or decision is arbitrary, unreasonable or capricious.

The Court **FURTHER FINDS** and **ORDERS** as follows:

1. That the duty to establish reasonable regulations imposed on the Conference in the Judgment included the duty to modify or change these regulations when appropriate, with the Conference always being mindful that stability and predictability are important considerations when considering any such changes.

2. The Conference utilized the regulations approved by this Court in the Order for quite some time until, due to changes of the circumstances in Epworth Forest over time, including the need to identify more acceptable on-shore pier spots and to alleviate over-crowding on some areas of the lakeshore, the Conference adopted new regulations known as the Epworth Forest Pier Administration Policy revised April 15, 2011, the Epworth Forest Pier Administration Policy Pier Violation Enforcement Policy approved February, 2010, and a map or list showing pier placements for 2014 developed pursuant to these policies, copies of which are attached hereto and made a part hereof as Exhibits "C", "D" and "E".

3. The Court's Judgment does not expressly require the regulations adopted by the Conference to be approved by the Court in order for the regulations, including the fees to be assessed, to be binding and effective; however, the Court approved prior regulations in its Order and has approved the new regulations as provided hereafter to resolve any possible issue in this regard.

4. The Court finds that the new regulations and placements submitted to the Court are reasonable, are not arbitrary nor capricious, and are based on valid considerations, including the need to fairly allocate the burden of the Court's Judgment in a rational fashion considering the rights and obligations of the residents of Epworth Forest as a whole, and which shall be approved by the Court as submitted, except as provided otherwise herein.

5. The new regulations allocating more pier space for on-shore owners than off-shore owners is not precluded by the Court's Judgment and reasonably conforms to common expectations of property owners in general.

6. The Court's Judgment provides that the off-shore owners have a littoral use to erect a pier and to dock a boat. The regulations must be so modified to conform to this limitation and allow for the placement of only one pier and the docking of only one boat or other watercraft for each off-shore owner.

7. The regulations should be further modified to provide as follows:
- a) No on-shore owner may have a slip at a community pier unless all off-shore owners requesting either an on-shore pier site or a community pier slip have had their request granted.
 - b) The regulations are not meant to limit any lot owner's ability to seek redress for violations of their property or other rights directly with the appropriate court for issues relating to trespass or nuisance.
 - c) Requests for pier sites and/or pier slips should be assigned in the order they are received by the Conference. If it is impossible to fulfill all requests, a waiting list shall be established. Any requests which are received at the same time, and which cannot all be fulfilled, should be resolved by a lottery.
 - d) The ability to install more group and/or community piers to meet any unmet pier requests should be explored further by the Conference.
 - e) Reasonable late fees and penalties for violations are contemplated by the Court's Judgment, however, attorney fees for violations can only be imposed by a court and as provided by applicable Indiana law.
 - f) Violation fines should be from \$1.00 to \$100.00 per day, with each day the violation exists constituting a separate offense. Penalties for repeat offenders and/or ongoing violations should also include possible suspension and/or revocation of pier placement and/or docking privileges.
 - g) Time frames for enforcement proceedings should be reduced for the first, second, and third notice to seven (7) days.
 - h) In order to timely enforce the regulations, the Conference, through the Pier Committee, should appoint a single enforcement administrator who

shall, to the extent practicable, enforce the regulations adopted under the Judgment and specifically, should investigate and address violations of interlopers, hopefully within three (3) days.

- i) Off-shore owners are further required to access their pier assignments, or their use of the walkway, by utilizing the various streets, platted easements, and/or "fire lanes" which lead from public streets to the easement, and specifically, access to the pier assignments or the public walkway should not be across the lots of on-shore owners without express permission of the on-shore owners.
- j) The use of the easement as a "promenade" prohibits motorized vehicles, bicycles, golf carts, and the like, with an exception being made for wheelchairs for disabled persons in need of such wheelchairs, and further, piers and related facilities are not to be stored upon the walkway or the on-shore owners' property without express permission having been granted for such placement by the on-shore owner.

8. Although not mandated by the Court, the regulations as adopted and applied by the Conference should strive to:

- a) Allow/provide for a five (5) foot clearance on both sides [for a total of ten (10) feet] of the dividing line between pier sites so that a ten (10) foot buffer zone may exist between all facilities and equipment utilized on the pier sites; and
- b) Burden any one on-shore owner with only one (1) off-shore pier site.

9. The Conference has enacted reasonable regulations and procedures to carry out the responsibilities assigned to the Conference in the Judgment. The Court has further reviewed and approves the regulations known as The Epworth Forest Pier Administration Policy revised April 15, 2011, the Epworth Forest Pier Administration Policy Pier Violation Enforcement Policy approved February, 2010, and the map or list showing pier placements for 2014 developed pursuant to these policies, copies of which are attached hereto and made a part hereof as Exhibits "C", "D" and "E" as well as the current fee schedule testified to in open court, except as expressly modified herein.

10. As a means of enforcing the Court's prior orders in this case, any party alleging that the Conference has acted or failed to act in violation of the Judgment and/or as provided herein, shall file a separate law suit in this Court alleging same.

Except as provided herein in paragraph 7(b), a separate law suit alleging that the Conference has acted or failed to act in violation of the Judgment and/or as provided herein, may be heard only if the party alleging the violation has complied with the issue submission procedures included in the Pier Administration Policy previously approved by the Court. The action or decision of the Conference will further not be reversed unless such action or decision is arbitrary, unreasonable or capricious.

SO ORDERED THIS 21st DAY OF JANUARY, 2014.



Michael W. Reed, Judge
Kosciusko Circuit Court

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