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

43C01-1710-PL-000105



DOROTHY V. BARNES, ET AL
VS.
NORTH INDIANA ANNUAL
CONFERENCE OF UNITED
METHODIST CHURCH
VS.
NUMEROUS INTERVENING
DEFENDANTS

CASE NUMBER: 43C01-9109-CP-732

# RECORD OF SUBMISSION, FINDINGS OF FACT WITH OPINION AND JUDGMENT

## SUBMISSION

This action was submitted for trial to the Court, without a jury, Richard W. Sand, Senior Judge, presiding by assignment of the Court, commencing on July 5, 1994, the trial proceeding for approximately three weeks. In attendance throughout the trial were the parties by counsel and parties and representatives. The issue submitted for trial arises upon plaintiff's complaint and defendant's answer thereto and defendant's counter-claim and plaintiff's reply thereto. Issues arising with respect to the numerous intervening defendants upon the counter-claims, cross-claims and complaints of those intervening defendants were severed, to be tried at a later date, or not, abiding the results of the submission upon the issues between the plaintiff and the defendant. At conclusion of the trial the Court heard argument, ordered pleadings amended to conform to the evidence and took the issues under advisement.

## ISSUES SUBMITTED

The issues submitted for trial requires a definition of the relative rights of the parties to the littoral adjoining the plat of Epworth Forest on Lake Webster in Kosciusko County, Indiana. The plaintiffs, herein designated as "on-shore owners", are the owners of lots lying immediately adjacent to the shore of the lake. The defendant, North Indiana Annual Conference of the United Methodist Church, herein designated as the "Conference", which organization is a religious society, the proprietor of the plat, and performs functions and services within the plat area related to its religious organization and claims certain rights with respect to the littoral. The intervening defendants, herein designated as "off-shore owners", raise issues which were not tried, represent owners of lots within the plat of Epworth Forest which are not immediately adjoining the lakeshore.

## FINDINGS

Upon the issues presented for trial the Court finds, generally, and specifically where noted:

1. That as a result of mesne conveyances of persons who had originally entered of the United States, the Conference, then known as "The Epworth League Institute of the North Indiana Annual Conference of the Methodist Episcopal Church", became seized in fee simple of government or fractional lots numbered 1,2,3,4, and 5, in Section 11, Township 33 North, Range 7 East, in Kosciusko County, Indiana, subject, in substantial portion, to rights of submergence in favor of the proprietors of the Boydston Mill Dam. (Abstract Exhibit 632)

2. That Webster Lake originally consisted of a number of smaller ponds and large areas of swamp lands. That some portion of those lands as a result of the Swamp Lands Act became vested in the State of Indiana and was entered of that State by original entry. As a result of the submergence Webster Mill Pond was created in substantially the form as the lake exists today. The mill pond, now known as Webster Lake, has existed in its present state for over one hundred years. In addition, the State of Indiana has, many years ago, established a legal water level for the lake, which is believed to be 852.60 feet. (Exhibit 669). The lake is also, at this time, surrounded by hundreds, perhaps thousands, of homes which would render it politically

impossible to allow the lake to recede through failure or removal of the Boydston Dam. Consequently, the lake may now be regarded as a natural lake rather than a mill pond, and the legal standards applicable to natural lakes apply and the legal standards applicable to artificially submerged bodies of water do not apply.

3. That the designated name by which the Conference acquired title to the lands has been changed over the intervening years, through many organizations bearing different names, culminating in its present name by which the Conference, as defendant, appears of record, and that all of those organizations, by whatever name, is the same continuous organization as is the present conference, which then, in 1923, laid out and duly recorded the plat of Epworth Forest. (Exhibit 1) Upon that plat is exhibited Kline's Island, separately platted, and now owned by the Conference, and which is the top of a hill once existing in the swamp of the lands as originally surveyed. In 1926 the Conference caused a portion of the plat of Epworth Forest to be vacated. (Abstract, Exhibit 632, Item 133) The Conference then filed the revised plat of Epworth Forest in 1926. (Exhibit 3) A further revised plat was recorded in 1930 (Exhibit 4) and a final revised plat was filed in 1945 (Exhibit 5)

4. That the original plat of Epworth Forest indicated that the plat contained four hundred ten lots, although as a result of the revised platting there are now four hundred twenty six lots, of which fifty seven are owned by the Conference and three hundred sixty nine are privately owned. That plat contained the following legend:

> None of the lots extend to the low water mark, but an easement along all lakefrontage is held by [Conference], and is subject to all of the rules and regulations that are contained in their by-laws.
>
> ...all owners of lots and other properties as well as tenants thereof shall conform to the rules and regulations of the [Conference].
>
> The use of all drives are hereby dedicated for the use of owners of real estate in said Epworth Forest.

5. The Conference is a religious society, and the plat of Epworth Forest was conceived as a religious community subject to the discipline of the Methodist Episcopal Church. For the purpose of acquiring funds with which to build the facilities needed by the Conference to conduct its religious functions, principally the operation of a religious resort or camp, basically for children, and to some extent for adults, upon lands retained by it, basically the "tabernacle site" on the original plat, as well as upon lands owned by the Conference to the north and east and off the plat, and upon fifty seven lots still retained in ownership by the Conference, the Conference sold lots as dwellings to individuals and to church groups. In the early days the lots were sold at least basically to ministers, retired or otherwise, and to individual church organizations upon which to build cottages, as a result of which the residential lots were essentially owned by people who had an identity of views with the Conference and the discipline of the Church. Over time many of those lots have now come into the hands of people who have no affiliation or particular sympathy with the objectives of the Conference and who do not adhere to its discipline, a fact which has created a schism among the residents upon the plat.

6. The littoral, that strip lying between the lakeshore and the on-shore lots runs in width from as little as four or five feet at the Northeast Corner of Lot 62, Block A, to perhaps as much as one hundred feet in front of Block B and the eastern portion of Block C. (current survey, Exhibit 6) To this strip the plaintiffs claim exclusive littoral rights, the defendant claims exclusive littoral rights to be licensed for all lot owners, and the intervening defendants claim littoral uses. Littoral rights and usages in this action means the right to build and maintain a pier and to dock boats thereat. There also exists along the littoral a walkway well defined in the western portion of the plat, less so around the headland well into the western end of Block E, and less well defined around the eastern stretches of Block A. With one or two exceptions, all parties to the action concede the existence of a walkway easement for the benefit of all owners of lots and lands in the plat as well as the Conference and of its guests and members.

7. That the on-shore owners have, over the years, erected upon the littoral valuable improvements, mainly sea walls, and in some places, cabanas or decks, stairways, and walks and have, generally throughout the years, maintained the littoral as if it were a part of their adjoining lot, beautifying it, mowing the grass, planting flowers, and trimming, when necessary, trees and shrubbery. The Conference, although claiming ownership of the littoral, has allowed the on-shore owners to build those improvements and to conduct that maintenance although from time to time and in various places the Conference has, itself, done maintenance, principally the cutting and removal of dangerous trees, and has built some paved walkway and has required certain lot owners to remove obstructions to the walkways such as fences and hedges.

8. That pier and boat docking management was essentially without controversy and raised no significant issues from the time of the platting until the late forties or fifties. Anyone in the plat who wanted a boat on the lake simply put it on the lake and whenever they wanted to dock it they drew it up on the shore and tied it to a tree. Piers would be located wherever lot owners wanted to place them, with some minimal guidance from the Conference. Controversy commenced in the 1950's and has intensified since largely because of the increasing size and complexity of boats and the desire of people to own multiple kinds of boats, all of which require docking, as opposed to simply being dropped upon the shore. Particularly in the bay area, fronting Block C and Block B, there are so many piers that it is often impossible to get boats in and around them, leaving little or no space for swimming or fishing and which is degrading to any person's ascetic sense, is offensive to the eye, and to that impression of peace and privacy which accompanies the lakeshore living experience. The demand for pier space is excessive for the length of the shoreline available which is approximately eight thousand feet.

9. Controversy accruing over lake access privileges the Conference first actively established a formal policy dealing with the pier maintenance problem in the year 1955. (Exhibit 59) That policy was again taken up in 1963, (Exhibit 85) and a more formal and complete set of rules adopted in 1976 (Exhibit 125) and in 1978 (Exhibit 153)

10. That in addition to the formal policy stated in the preceding finding, the evidence shows that the pier problem at Epworth Forest has been the subject of contention and discussion for a period of twenty years or more as evidenced by numerous minutes of the Conference in evidence as well as the minutes of the Property Owners Association of Epworth Forest, a privately organized organization to which many but not all of the lot owners belong, and with communications with individual lot owners inclusive of numerous applications for a pier permit and other documents all in evidence. The Conference, in an effort to resolve the continuing problems, has attempted to license piers, which effort has been, in significant part, ignored, and has even considered the alternative of surrendering their claimed title to the littoral to the on-shore owners, a measure which was immediately assailed by the Property Owners Association and many of the private owners. Most recently the conference proposed a $100.00 per annum pier permit fee, those monies to be used for pier management purposes and other purposes of the Conference - an act which probably brought this action to a head.

11. That the Conference has, throughout the period of its existence, claimed fee simple ownership to the littoral exercising that claim not only on behalf of the on-shore owners but also on behalf of the off-shore owners and for its own usages. During the same period of time on-shore owners have, in significant number, many without even being aware of the fact that the Conference claimed title, have believed themselves to be the owners of the littoral, either claiming adversely of the Conference or in simple ignorance of the history.

12. Throughout the history of Epworth Forest, and to this day, many on-shore owners, including many of the plaintiffs of this action, have acknowledged that the Conference either owned or claimed ownership of the littoral. (Exhibits 503 through 580 and testimony of certain witnesses), but some have changed their minds because of a perceived fear that the Conference may place upon the littoral picnic grounds or camp grounds, or otherwise burden what they consider to be essentially their private space and, in prospect of the annual pier maintenance fee.

CONCLUSION AND OPINION

The Court, having found specifically as stated and otherwise generally, now states its conclusions and opinion thereon.

First as to the position of on-shore owners that the amendment of the original plat of Epworth Forest, as to Block A, Block D, and Block E and the re-platting thereof without reservations or restrictions effectively deleted those reservations and restrictions as expressed in the original plat, the Court concludes that the effect of the vacation and of the re-platting thereof constituted revisions to the original plat, and not a new plat to be independently construed apart from the original plat. Bob Layne, Contractor, Inc., v. Buennagel 301 N.E. 2d 671 (Ind. App., 2nd District, 1973). Therefor all subsequent plats will be construed as revisions and subject to such reservations and restrictions as may be contained in the original plat of Epworth Forest.

Secondly, as to estoppel, the on-shore owners and the Conference each contend that the other is estopped. Each party claims that they have acquired title to the littoral because of the other parties knowledge and acquiescence to the exercise of control and dominion over the littoral strip over a number of years.

An estoppel occurs if the person against whom the estoppel is asserted (1) has knowledge, actual or constructive, of the essential facts; (2) makes a statement of fact, or conceals a fact, or makes a promise with respect to the transaction and the statement is false, the concealment is misleading, or the promise is not performed; (3) the party asserting the estoppel was without knowledge or means of obtaining knowledge of the real facts; (4) the statement, concealment or promise was made with intention that it should be acted upon; and (5) the party to whom it was made justifiably relied on or acted upon the represented fact and suffered prejudice thereby.

The parties have apparently submitted the estoppel issue as an alternative theory to the adverse possession standards, which will be separately considered. Applying the estoppel standards to this case it can be perceived from the evidence that no promises were made, there was no concealment of any fact and each party had knowledge or the means of obtaining knowledge of the real facts. Each party, throughout the years, lived their separate lives, doing that with respect to the property which seemed desirable and appropriate. The fact that the on-shore owners beautified the land, erected sea walls and other small structures or improvements was not inconsistent to the privileges and rights claimed by the Conference, and was, in fact, encouraged by the Conference as a means of benefitting all concerned parties. The Conference, in maintaining the walkway and attempting to control the pier problem, did nothing more than what might be expected of

it in the circumstances and whatever acts it did, they were not so misleading as to induce the on-shore owners to acknowledge the existence of a fact not inherent in the reservations and restrictions of the plat and of the acts of various parties throughout the history of Epworth Forest. An estoppel is, therefor, not available to aid any party to this action.

Adverse Possession is the third issue, raised by each party to protect their claims against the other.

Plaintiffs contend, against the possibility that the Conference owns the littoral strip, or had reserved an easement over it, that the on-shore property owners have acquired a prescriptive easement over the Conference's fee simple or easement, as the case may be, to the exclusive littoral use of the lakeshore land conceding, however, the existence of a walkway over it.

The Conference, to the contrary, contends, against the possibility that the on-shore owners may be the owners of the littoral, that it has, by prescription, acquired an easement for pedestrian usage of the walkway and the exercise of littoral rights for all lot owners in the plat, off-shore as well as on-shore.

Adverse possession ripens into title or into a prescriptive easement, as the case may be, if the possession of the land was adverse, hostile, exclusive, uninterrupted and continuous, under a claim of right for a period of either ten years or twenty years. With respect to easements I.C. 32-5-1-1 requires twenty years. With respect to title I.C. 34-1-2-2 requires ten years. While each party, in its evidence, attempts to tack together their respective adverse claims over a period of twenty years the Court is of the opinion that the twenty year easement statute was necessarily impliedly amended by the amendments which reduced the adverse title period from twenty to ten years. Failure of the General Assembly to amend the twenty year easement act is believed of the Court to be simple oversight for it makes no sense at all to maintain a legal standard by which one can steal a farm in ten years, when it takes twenty years to steal the right to harvest mushrooms from the woods. However, this issue need not be decided for neither party can maintain in the evidence their adverse possession claims.

One who acquires title to lands acquires that title subject to any reservations, restrictions, or covenants contained in the chain of title, subordinate to the claims of title or interest in the land arising in the chain, and to adversely claim against the chain, the period for adverse possession begins to run only when the adverse claimant clearly and unequivocally disclaims the title of the true owner. Emberry Community Church D. Bloomington Dist. 482 N.E. 2d 288 (Ind. App. 1 Dist. 198: Pool v. Corwin 447 N.E. S 2d 1150 (Ind. App. 4 Dist. 1983); Restatement of Property 458. While actual notice of disclaimer is not required

constructive notice can arise only where the hostile acts of adversity are so manifest and notorious that a reasonable owner could not have been unaware of them.

Here the on-shore owners have built piers and made many other improvements upon the contested strip, and have maintained it, mowed it and planted flowers and shrubs. None of this was adverse to the Conference. Many undertook those improvements in simple ignorance of the Conference's claims, never realizing that there was a claim of ownership or of particular legal right by the Conference, but these people are bound by their chain of title and none have taken any act which would provide actual or constructive notice to the Conference that they were claiming adverse to the Conference's interest. Many have sought permission to build sea walls. All have acted in subornation to the claims of the Conference to the maintenance of a walkway. There has been some controversy with respect to the pier issue, although because of location many of the lot owners, particularly at the west end of Block E and in Block A, have never been troubled with off-shore piers because of their remoteness from the center of activity, that is Block C and Block B. The claims of the Conference similarly fail. There is no evidence that the Conference has, in any case, given notice, either actual or constructive, to any on-shore owner that the Conference is claiming rights greater than that generally acknowledged, and if disputed, which is not subordinate to the claims arising out of the chain of title created in Epworth Forest.

Because many of the uses put to that land by the respective parties have been permissive and expressly licensed adverse possession cannot arise. Bauer v. Harris 617 N.E. 2d 923 (Ind. App. 1 Dist. 1993)

Lastly, to the central thrust of this case, it is necessary to construe the plat, to attempt to determine the intention of the proprietors thereof, and to define the relative rights and privileges of the respective parties created by the plat.

None of the lots extend to the low water mark, but an easement is retained by the Conference along the littoral subject to the Conference's rules and regulations. This language must be construed in light of the apparent intention of the proprietors of the plat, not only objectively, looking at the words alone, but also in view of the acts and practices of the parties which might give meaning to that phraseology.

Little attention need be given to the phrase "low water mark", as it is a phrase, anciently used, and unfortunately even in modern discussion, taken from the old cases which dealt with riparian rights on navigable rivers and to title waters, and which has little meaning on a stable inland lake, particularly in view of the modern practice of establishing lake levels by legal proceedings pursuant to statute.

The Conference claims title to the littoral based upon the fact that the lots do not extend to the water level, whereas the on-shore owners claim title under the strips and gores doctrine. If the proprietors intended to retain title to the littoral then the question may be asked, Why did they assert in the plat that they held an easement. The word "easement" as used could have been, by the draftsman, intended to refer only to the idea of the existence of a strip of land, a popular though not a legal definition. However, if the proprietors intended to retain title to the on-shore strip, why did they not also retain title to other strips, that is the drives which were dedicated to the use of all property owners in Epworth Forest. This includes drives not only physically shown on the plat, but also drives which extend over the "tabernacle site" as shown on the original plat as well as certain roads which are believed to exist in other lands held by the Conference to the north and east and off the plat in the out lots. To restrict access to the area to those conforming to the discipline of the Church it would have been desirable or necessary to retain title to the driveways as well as to the lakeshore, but nonetheless drives were dedicated to the use of all lot owners. The use of the word "dedicated" is indicative of the slips of language which occurs in these instances, particularly at the time of the platting, when questions such as exist in this case were simply non-existent. A dedication is a gift of land, in fee or by easement to the general public, consisting of all of the people, but nonetheless those strips were all regarded as private drives for many years until quite recently some, but not all of them were in fact dedicated to the public by inducing the County to take over their maintenance because the Conference can simply no longer afford to maintain the roads.

Retaining title, as opposed to the reservation of an easement, to the lakeshore lands was not necessary to the purpose of the proprietors and it is extremely unlikely, had they even thought about it, that they would want to retain title to those lands throughout time even though probabilities are that the Conference will, at some time, terminate its operations at Epworth Forest.

As a matter of practice the Conference has never exercised any dominion over the lakeshore strip other than in maintaining the walkway as a promenade for the residents of the plat and the guests of the Conference, to provide access for fishing along the shore, and to assure that all plat owners including off-shore owners have access to the lake for the placement of piers and boats. The Conference has consistently permitted and encouraged on-shore owners to improve the lands, and to place expensive improvements upon it, although in some recent years, in an effort to maintain their claim of title, they have offered some on-shore owners receipts indicating a donation to the Church which would be tax deductible to the on-shore owner for s[illegible] expenditures.

The Court, therefore, concludes that the phrase "that none of the lots extend to the low water mark" establishes a line of demarcation, in front of which the Conference retains not title, but reserved an easement, the scope of which must be defined, with the title to the lands underlying the easement being vested in the adjoining on-shore owners, and obtained by extending the continuous line of their lot boundaries to the water and into the lake.

This conclusion, of course, vests in the on-shore owner's littoral rights to the lands underlying the lake and within their boundaries, subservient in all cases to a littoral use in favor of the dominant right to a littoral use in favor of the Conference and the off-shore owners, but by which use neither the Conference nor the off-shore users may unfairly overburden any particular on-shore owner.

Inherent in the issues is the question of where the lot lines of the on-shore owners, once extended to the lake, thereafter go, in what direction and to what point. Ignoring for the moment the piers of the off-shore owners, it is obvious in the evidence that many piers of the on-shore owners project in various directions dependent upon the curvature of the shoreline, and which cross the littoral line of the adjoining lot owner. This case is similar to the diagram shown in Bath v. Courts 459 N.E. 2d 72, which so far as it goes, seems correctly decided, but which fails to give effect to the extended property lines of the lots curing to the west and south of Nyona Lake. In Epworth Forest, at any one point, the shoreline may appear relatively straight, but the overall impression shows the projection of headlands and the inward curvature of bays. Lot 16, Block E in the revised plat of 1926 is particularly instructive. On the plat the minds eye suggests an extensive littoral. Examining the current survey it can be perceived that extending the lot lines of Lot 16 E does not even reach the lake, and that even if title, through strips and gores, be given to Lot 16 in the alley and buffer strip, designated as Lot 42, the lines would extend into the lake only far enough for the owner of that lot to shoehorn a minnow bucket into the lake. Lot 17, Block D cannot be extended to any place and giving it title to the adjacent alley or fire lane as referred to by the parties, hardly reaches the lake: Lot 8, Block A, although apparently still owned by the Conference suggests, in its relationship with Lot 9 and Lot 7, an impossibility. The primary source dealing with cases of this kind is the annotation: Allocation of water space among lakefront owners, in absence of agreement or specification 14 ALR 4TH 1028. Definition of the boundaries of adjoining land owners, as extended into a body of water, may depend upon whether the shoreline is straight, convex, or concave and in making that apportionment there are three basic methods which include (1) the extension of the on-shore boundaries in a direct line into the body of water to a defined point, (2) the extension of a line at

right angles to the shore from the point where the on-shore boundaries intersect the water line, (3) the proportionate distribution of the underwater lands in relationship to the proportion of frontage had by the respective on-shore owners. Particularly instructive is Borsellino v. Kole 484 N.W. 2d 564 (Wis. 1992). Other cases that may be found at West Digest "navigable waters". Because original entry was only to fractional lots of Section 11 in no case could the extended boundary lines of the lots extend beyond Section 11, as other lands on the lake and in other sections would necessarily be occupying that space. This, for instance, makes it impossible to extend Lot 16 E into the lake in any significant measure and, of course, any extension of lot lines in Block C and Block B must give effect to the similar extension of lot lines from Kline's Island.

Fortunately, for our peace of mind at this moment, it is not necessary to define either the direction of the extension nor the point to which the extension would be made. The issue was not raised in the pleadings, no evidence was forthcoming upon the point, and to even define the point would take massive and expensive surveys disclosing alternative means of projection to obtain a fair and just result. The encroachments which now exist will have to be left to future resolution.

The scope of the easement retained by the Conference must be defined in terms no broader than the purposes for which it was reserved, but at the same time to give it full force and effect while minimizing the burden upon the subservient owners.

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 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.

JUDGMENT

IT IS THEREFORE UPON THE FINDINGS AND CONCLUSIONS OF THE COURT CONSIDERED AND ORDERED:

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

   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 at 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 tenemant, 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 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.

5. That the costs of this action, consisting of the original filing fee are taxed to the plaintiffs and that other costs which may be taxable will be taxed to the party respectively incurring those costs.

DATED: August 2, 1994

Richard W. Sand, Senior Judge
Kosciusko Circuit Court

Copies to:
James Butts
James McKown
Richard Green
Stephen Snyder
ln

PARTIES - PLAINTIFF

That the names of the many plaintiffs, herein designated as "on-shore owners" as finally settled by amendment, dismissal and substitution along with the lot and block descriptions of the land owned by them in the plat of Epworth Forest and its revisions, in Section 11, Township 33, Range 7 East, in Kosiusko County, Indiana are as follows:

| Plaintiff name | Block | Lot |
|---|---|---|
| Joyce Phaneuf | E | 16 |
| Michael T. Black/Daphne Black | E | 17 |
| James D. Henry/Betty L. Henry | E | 18 |
| Ann Lawver/Lana Goombridge/ Graham Goombridge | E | 19 |
| Steven D. Lisle/Cassie J. Lisle | E | 19 |
| Richard Parks | E | 20 |
| JoAnn Benadum/Antoinette Griffin | E | 21 |
| Marion Shore/Rose Shore | E | Part 22 |
| Margaret Fatzinger | E | Part 22 & Part 23 |
| Boyd A. Wear | E | Part 23 |
| Robert G. Wacker | E | 24 |
| Roy Hanson/Geraldine Hanson | E | 25 |
| Edna Marge Slemmer | D | 30 |
| Richard D. Hinton/Betty J. Hinton | D | 29 |
| William H. Ginty | D | 24,25 & Part of 26 |
| Thomas M. Frost/Mary Ellen Frost | D | 20 |
| Ronald Horcher/Barbara Horcher | D | 18 |
| Donald R. Scott/Victoria H. Scott | D | 51,52 |
| Kevin William Smith/Beth A. Smith | C | 50 |
| Suetta M. Johnson | C | 49 |
| George Nelson/Mary Nelson | C | 48 |
| William Whitham/Douglas Whitham | C | 47 |
| Marilyn Doles | C | 36 |
| Roger Lauer/Lisa Lauer | C | 34,35 |
| Jo Ann Boyer | C | 32,33 |
| Richard L. Bolt/Kay L. Bolt | C | 31 |
| Roger Bruce/Nance Bruce | B | 26 |
| Robert Turner/Lois Turner | B | 25 |
| Leicester H. Brown/Jean Brown | B | 24 |
| Phillip W. Bogue/Ellen Sue Templin | B | 23 |
| Mark Faith/Julie Faith | B | 21 |
| William Harold Smith/Peggy J. Smith | B | 19 |
| Lawrence Hood/Shirley Hood | B | 16 |
| J. Robert Baur/Albert E. Baur | A | 37 |
| James P. Holdread/Susan M. Holdread | A | 38 |
| Howard McCain/Carol McCain | A | 39 |
| Roberta Glotzbach | A | 40 |
| David B. Kieper/Gayle Kieper | A | 41 |
| Eldon Thompkins/Sharon Thompkins | A | 42 |
| John S. Calland/Helen M. Calland | A | 43 |
| Jean M. Calland | | |
| David J. and Maureen Cornelius | A | 45 |
| Robert J. Berg/Kathleen Berg | | |
| Stephen Strack/Mary Ellen Strack | | |
| Mary Beth Brunette | A | 46 |
| Helen Beavers | A | 47 |
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