

CIVIL NOTICE
KOSCIUSKO CIRCUIT COURT
121 N LAKE STREET
2ND FLOOR
WARSAW IN 46580

POWELL VS EPWORTH FOREST
43C01-1602-MI-000047

TO: MATTHEW R SHIPMAN
BLOOM GATES SIGLER WHITELEATHE
119 S MAIN ST/P.O. BOX 807
COLUMBIA CITY IN 46725

ATTORNEYS		PARTIES	
413-43	STEPHEN SNYDER	PETITIONER	
413-43	STEPHEN SNYDER	GERRY LEE POWELL	
		PATRICIA ANN POWELL	
20664-49	MATTHEW SHIPMAN	RESPONDENT	
		EPWORTH FOREST ADMINISTRATION	
6402-02	JOHN POWELL	INTERVENING PARTY	
6402-02	JOHN POWELL	ROBERT J MILLER	
		DEBORAH S MILLER	

08/30/2016

On August 25, 2016, Defendant, Epworth Forest Administration Committee, Inc., by counsel, filed proposed findings of fact, conclusions of law and judgment. (Memo: Snyder, Shipman, Powell) kr

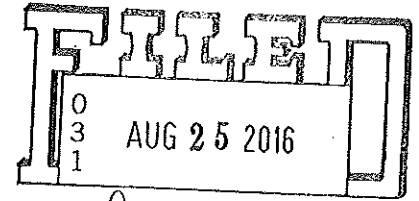
08/30/2016

On August 26, 2016, Intervenors, Robert J. Miller and Deborah S. Miller, filed proposed findings of fact, conclusions of law and judgment. (Memo: Snyder, Shipman, Powell) kr

STATE OF INDIANA)
)SS:
COUNTY OF KOSCIUSKO)

IN THE KOSCIUSKO CIRCUIT COURT
CAUSE NO. 43C01-1602-MI-47

GERRY LEE POWELL and,)
PATRICIA ANN POWELL,)
Plaintiffs,)
)
)
EPWORTH FOREST ADMINISTRATION)
COMMITTEE, INC. and)
ROBERT AND DEBORAH MILLER)
Defendants.)



CLERK KOSCIUSKO CIRCUIT COURT

DEFENDANT, EPWORTH FOREST ADMINISTRATION COMMITTEE, INC.'S
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND JUDGMENT

This cause is now submitted to the Court for hearing on Plaintiffs' Request for Judicial Review. The hearing was held on August 10, 2016. The Plaintiff, Gerry Lee Powell and Patricia Ann Powell, appeared in person and by counsel, Stephen Snyder. The Defendant Epworth Forest Administration Committee, Inc., appeared by its agent Richard Presser, and by counsel, Matthew R. Shipman and the Defendants Robert and Deborah Miller appeared in person and by their counsel, John Powell. On August 10, 2016, the Court heard evidence, took the issues under advisement, and ordered the parties to submit proposed findings of fact and conclusions of law pertaining to all outstanding issues. The Court, having reviewed the testimony, exhibits, and having considered the proposed findings of fact and conclusions of law, now enters the following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

1. "The on-shore owners have a duty to permit . . . the conference and the off-shore owners to establish piers at reasonable intervals. At reasonable intervals means that the off-shore owners and the conference piers may not be placed in such proximity to on-shore owner piers as to create reasonable interference to the on-shore owners in the use of their own piers." (Barnes, Kosciusko Circuit Court Order dated August 2, 1994, Conclusion and Opinion, page 12).

2. The "regulations as adopted and applied...should strive to (a) allow/provide for a...ten (10) foot buffer zone...between all facilities and equipment utilized on the pier sides." (Barnes, Kosciusko Circuit Court Order dated January 21, 2014, paragraph 8).

3. Pursuant to the rules and regulations established by Epworth Forest Administration Committee, Inc. ("EFAC") state in part as follows: "[l]akefront owners owning at least 24 feet or more shoreline frontage shall be allotted a pier assignment up to twenty-four (24) feet."

4. The April 14, 2014, Order of the Kosciusko Circuit Court allows for a change in that assignment/location where there is a “substantial change in circumstances making prior assignments unreasonable under current facts and circumstances.” (Barnes, April 14, 2014 order of the Kosciusko Circuit Court, paragraph 14.j.).

5. No where in the January 21, 2014, or the April 15, 2014, Order of the Kosciusko Circuit Court does it give the EFAC board direction as to whether the 24 feet of shoreline allotted to an “on-shore” owner should be centered on the pier location or in a different location. See (Barnes, Kosciusko Circuit Court Order dated January 21, 2014 and April 15, 2014).

6. The April 15, 2014, Order of the Court states that the “on-shore owners’ pier assignments will continue from year to year and be presumed permanent.” (Barnes, Kosciusko Circuit Court Order dated April 15, 2014).

7. EFAC, by and through its board members, as well as through the court appointed fifth board member, Lindsey Grossnickle who offered expert testimony with respect to interpreting court orders, determined that the April 15, 2014, Order stating that the pier placements were permanent coupled with the January 21, 2014, Order which states that the “on-shore” owners “shall be allotted a pier assignment up to twenty-four (24) feet,” meant that the pier assignments should be centered on the twenty-four allotted feet.

8. The November 7, 2007, order in Barnes approving the Conference’s regulations relating to pier administration establish the standard for judicial review as follows: “The action or decision of the conference will not be reversed unless such action or decision is arbitrary, unreasonable or capricious.” (Barnes, Kosciusko Circuit Court Order dated November 7, 2007).

9. The EFAC Committee held a hearing on the appeal of the Plaintiffs and at the conclusion of that hearing the Committee voted that the Plaintiffs would have to remove their pier.

10. The EFAC Committee carefully considered the evidence and after discussion made their decision.

11. There was no evidence presented that would demonstrate that the Committee willfully disregarded the facts presented by the Plaintiffs. Further, the Committee made their decision based on their reasonable interpretations of the Court’s Orders. The fact that three board members, including attorney Lindsey Grossnickle, the court appointed fifth member of the Committee, voted in favor of the Committee’s decision, is presumptive evidence that the decision was reasonable.

12. There was no evidence presented that the committees decision was an unreasonable interpretation of this Court’s previous Orders or that an honest person could not have reached the same conclusion as the Committee.

13. Pursuant to this Court’s Order of April 15, 2014, EFAC “will possess the right to collect reasonable attorney fees if it prevails in an enforcement action . . . for failure to comply

with a pier assignment.” See (Barnes, Kosciusko Circuit Court Order dated April 15, 2014, paragraph 14(e)).

CONCLUSIONS OF LAW

1. Pursuant to the Barnes Court order of January 21, 2014 in paragraph 10: “[t]he action or decision of the conference will further not be reversed unless such action or decision is arbitrary, unreasonable or capricious.”

2. The decision of an administrative body “is arbitrary and capricious only where it is willful and unreasonable, without consideration and in disregard of the facts and circumstances in the case, or without some basis which would lead a reasonable and honest person to the same conclusion.” *Van Vactor Farms, Inc. v. Marshall County Plan Commission, et al.*, 793 N.E. 2nd 1136, 1147-1148 (Ind. Ct. App. 2004)(quoting *Equicor Dev. Inc. v. Westfield-Washington Township Plan Commission et al*, 758 N.E. 2nd 34, 37 (Ind. 2001)).

3. The burden of demonstrating the invalidity of agency action is on the party seeking review of the action. *Terra Nova Dairy, LLC v. Wabash Cnty. Bd. of Zoning Appeals*, 890 N.E.2d 98, 104 (Ind. Ct. App. 2008) “Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support the conclusion.” *Roberts v. Cnty. of Allen*, 773 N.E.2d 850, 853 (Ind. Ct. App. 2002), *trans. denied*.

4. There was no evidence presented that EFAC acted willful or unreasonable in any way. In fact, based on the overwhelming evidence that was presented at the hearing, EFAC’s decision was based on their interpretation of the Orders of this Court. As a member of the EFAC board is a licensed attorney in the State of Indiana, it is reasonable for the Board to rely on her interpretation of the Court’s Orders in making decisions. Lindsey Grossnickle testified at the hearing that her interpretation of the Court’s Order of April 14, 2014, when read in conjunction with the previous orders of this Court, was that an “on-shore” property owner’s twenty-four feet of allotted pier assignment was centered on the location of their pier.

JUDGMENT

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court finds that the decision of EFAC was not arbitrary and capricious and therefore affirms the February 15-16, 2016, decision of EFAC to relocate the Plaintiff’s pier.

2. The Court finds that pursuant to its Order of April 14, 2014, EFAC is entitled to its reasonable attorney fees and hereby sets this matter for further proceedings to determine the reasonable attorney fees of EFAC.

Dated this _____ day of _____, 2016.

JUDGE, KOSCIUSKO CIRCUIT COURT

Distribution:

Stephen Snyder
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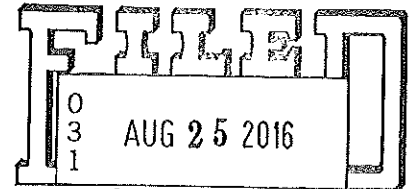
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)SS:
COUNTY OF KOSCIUSKO)

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PATRICIA ANN POWELL,)
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EPWORTH FOREST ADMINISTRATION)
COMMITTEE, INC. and)
ROBERT AND DEBORAH MILLER)
Defendants.)



Ann Jorpy
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Dated this ____ day of _____, 2016.

JUDGE, KOSCIUSKO CIRCUIT COURT

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