

STATE OF INDIANA)	IN THE KOSCIUSKO CIRCUIT COURT
)SS:	
COUNTY OF KOSCIUSKO)	CAUSE NO. 43C01-1511-MI-270
ROBERT H. STINE and,)	
MOLLY MCGINNIS STINE,)	
Plaintiffs,)	
)	
)	
EPWORTH FOREST ADMINISTRATION)	
COMMITTEE, INC.,)	
Defendant.)	

**DEFENDANT’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 24, 2017. The Plaintiffs, Robert H. Stine and Molly McGinnis Stine, 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 Intervening Defendants, Roy Chapman and Linda Chapman, appeared in person and pro se. On August 24, 2017, 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 and 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. Plaintiffs are the owners of the following described real estate located in Kosciusko, Indiana:

Lot 22 in Block B in the Plat of Epworth Forest;

which property is lake front on Webster Lake (“Stine Lot”).

2. Intervening Defendants, Roy Chapman and Linda Chapman, (hereinafter “Chapman”) are the owners of the following described real estate located in Kosciusko County, Indiana:

Lot 23 in Block B in the Plat of Epworth Forest;

which property is lake front on Webster Lake (“Chapman Lot”).

3. The Stine Lot and the Chapman Lot are adjacent to each other with the Stine Lot being the eastern most lot.

4. Defendant Epworth Forest Administration Committee, Inc. (“EFAC”) is an Indiana corporation established pursuant to Order of this Court dated April 15, 2014 in Cause No. 43C01-9109-CCP-732.

5. The rights and obligations of lakefront owners of lots in the Plats of Epworth Forest have been determined by judgment and various orders of this Court in Cause No. 43C01-9109-CP-732 (“*Barnes*”), in particular, the Judgment entered August 2, 1994 (Plaintiffs’ Exhibit 2), the Order dated November 7, 1997 (Plaintiffs’ Exhibit 3), the Order dated January 21, 2014 (Plaintiffs’ Exhibit 5), and the Order dated April 15, 2014 (Plaintiffs’ Exhibit 6).

5. On August 2, 1994 this Court entered a Judgment in the *Barnes* litigation which stated in paragraph 4 that “the on-shore owners may establish a pier at their location of choice *upon their lands.*” (emphasis added).

6. “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*, August 2, 1994 Order, page 12).

7. 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).

8. 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.”

9. E.F.A.C. was established by the filing of its Articles of Incorporation with the Secretary of State of Indiana and the adoption of its bylaws.

10. E.F.A.C. now administers the lakefront in the various plats of Epworth Forest including, but not limited to, assignment of pier locations for both onshore and offshore lot owners.

11. The *Barnes* Court’s Order dated January 21, 2014, approved the then existing pier assignments, the then existing pier placements and also the assignment of a certain location zone for pier and other equipment usage as long as those pier locations complied with the August 2, 1994, Order of the *Barnes* court requiring the pier to be “upon their lands.”

12. The Court has also ordered that the pier assignment based on Exhibit E to the *Barnes* January 21, 2014, Order was assigned based on an allocation of the frontage of each lot and created a zone of use for these assignments (an actual area assignment).

13. According to this Court’s decision in 43C01-1602-MI-47, (“Powell”), it was also

the Court's intention, and order, that each assignee of a pier assignment be free to fully and freely utilize their zone assignment, **but not so that this usage would affect others**, especially adjacent pier location assignments (i.e. the pier of other equipment may be moved within the assigned area, but may not be moved to affect the use of an adjacent assigned area).

14. The *Powell* decision further stated that "that the pier assignment based on Exhibit E was assigned based on **an allocation of the frontage of each lot** and created a zone of use for these assignments. (*Powell* decision, ¶14)(emphasis added).

15. Pursuant to the Court's previous order which adopted the Rules of EFAC, "[p]ier Assignment [is defined as a]n allotted space along Lake Webster shoreline that is assigned to an owner." (*Powell* appellate decision, Indiana Court of Appeals, 43A03-16510-MI-2332, June 13, 2017, hereinafter "Powell Appeal").

16. The *Powell* Appeals Court also noted that "lakefront owners who own at least 24 feet or more of shoreline frontage shall be allotted a pier assignment up to 24 feet. Lakefront owners owning less than 24 feet of shoreline frontage shall be allotted a pier assignment up to the limited frontage owned (i.e. if 22 feet is owned the lakefront assignment shall be 22 feet wide). (*Powell* Appeal.¶ 5).

17. "It is clear that the trial court's prior orders designated 'pier assignments' in terms of a linear footage along the shoreline." (*Powell* Appeal.¶ 12).

18. The Court's Order of January 21, 2014 in Cause No. 43C01-9109-CP-732 established the area (zone) along the shoreline assigned to particular onshore and offshore owners. That Order was based on historic usage of the shoreline and not necessarily the exact location of a pier within the assigned shoreline.

19. Persons to whom a portion of the shoreline has been assigned are free to locate any structures within the assigned shoreline and may relocate those structures as long as they are located within the assigned area.

20. Plaintiffs acquired the Stine Lot in 1999 and the evidence presented showed that the location of the Stine pier on the Stine Lot has moved around since they purchased the Stine Lot.

21. Plaintiffs have admitted that their pier encroaches onto the riparian zone of the Chapman Lot by as much as the length of an entire boat lift or ten feet.

22. The 24 feet allotted to an on shore owner is bounded by the property lines of each lot as Exhibit E incorporated into the Court's Order of January 21, 2014 specifically defines the pier locations of onshore and offshore owners as bounded by their lot lines extended into the waters of Webster Lake.

23. The location of the Stine pier was approved in the January 21, 2014 Order of this Court only to the extent that the pier was located "on the lands" of the Stine property.

24. On or about April 5, 2015, Roy Chapman submitted a pier inquiry form to EFAC requesting that they investigate the encroachment of the Plaintiffs' pier onto Chapman's riparian zone. (Defendant EFAC's Exhibit B).

25. EFAC investigated the Chapman inquiry and on August 5, 2015, sent an email to the Plaintiffs informing them that the EFAC committee had visually inspected the Stine Lot and the Chapman Lot and determined that Plaintiffs needed to relocate their pier because the April 2, 1994 Order and the January 21, 2014 Orders specifically required an on-shore pier to be located "upon their lands." (Defendant EFAC's Exhibit C).

26. Since the April 2, 1994, Order stating that a pier had to be located "upon their lands" preceded the Court's 2014 orders making the pier placements permanent, it was reasonable for EFAC to make their decision and require Plaintiffs to comply with the April 2, 1994 and get their pier located "upon their lands."

27. Plaintiffs appealed this determination and their appeal was denied by a unanimous decision of the EFAC board.

28. Plaintiffs appealed the determination of EFAC and all appeals have been denied and this litigation followed.

29. 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."

30. Pursuant to the testimony provided by Richard Presser, board president of the EFAC Committee, EFAC carefully considered the evidence and after discussion made their decision.

31. 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 all five board members voted in favor of the Committee's decision, is presumptive evidence that the decision was reasonable.

32. There was no evidence presented that the committee's 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.

CONCLUSIONS OF LAW

1. According 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 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*.

3. 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.*, (2004), Ind. App., 793 N.E. 2nd 1136, 1147-1148 (quoting *Equicor Dev. Inc. v. Westfield-Washington Township Plan Commission et al.*, (2001), Ind., 758 N.E. 2nd 34, 37).

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.

JUDGMENT

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

1. The Court finds that the Plaintiffs have not met the burden necessary to overturn the administrative decision of EFAC, and as a result, the Court denies Plaintiff’s Request for Judicial Review

Dated this _____ day of _____, 2017.

JUDGE, KOSCIUSKO CIRCUIT COURT

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