

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,)
 v.)
)
 EPWORTH FOREST ADMINISTRATION)
 COMMITTEE, INC.,)
)
 Defendant.)
)
 ROY CHAPMAN and LINDA CHAPMAN,)
 Intervening Parties.)

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 CLERK KOSCIUSKO CIRCUIT COURT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

1. Plaintiffs are the owners of the following described real estate located in Kosciusko County, Indiana:

Lot 22 in Block B in the Plat of Epworth Forest along with a strip to the water's edge ("*Stine Lot*");

which property fronts on Webster Lake.

2. Defendants 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 along with a strip to the water's edge ("*Chapman Lot*");

which real estate fronts on Webster Lake.

3. The Chapman Lot is adjacent to and west of the Stine Lot.

4. Epworth Forest Administration Committee, Inc. ("*EFAC*") is an Indiana corporation established pursuant to order of the Court dated April 15, 2014 in Cause No. 43C01-9109-CP-732.

5. Plaintiffs acquired the Stine Lot on in 1999 and since that date have maintained a pier on the lakefront of Webster Lake in the positions shown on Exhibits 1, 2, 3, 4, 5, 7, 8, 10, 11, 12, 15 and 17.

6. In 2008, because of an error by the pier installer, the Stine pier was placed approximately three feet east of its location in all other years.

7. In its historic location, the Stine pier is attached to the shoreline of the Stine Lot approximately one foot east of the common line with the Chapman Lot.

8. Stines are assigned 24 feet of lakefront for their use. (Exhibit 13).

9. Stines maintain a boatlift on both the east and west sides of the Stine pier. Approximately 10 feet of the west boatlift is located west of the common line of the Chapman Lot and Stine Lot extended into the water of Webster Lake.

10. The location of the Stine pier, verified by photograph, was approved by the Epworth Forest Community Pier Association, the predecessor to EFAC, by letter dated July 14, 2006. (Exhibit 15).

11. A drawing showing the location of the Stine pier was prepared by EFAC showing the location of the Stine pier in relation to the Chapman pier and the Tran pier (Tran being an offshore owner maintaining a pier lakeward from the Stine Lot) (Exhibit 14).

12. The location of the Stine pier was approved by this Court in its Order entered January 21, 2014 in Cause No. 43C01-9109-CP-732.

13. Defendant EFAC has demanded relocation of Plaintiffs' pier to a location different than that previously approved by this Court in Cause No. 43C01-9109-CP-732.

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

15. 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, in particular, the judgment entered August 2, 1994 (Exhibit 21), the Order dated November 7, 1997 (Exhibit 22), the Order dated January 21, 2014 (Exhibit 23) and the Order dated April 15, 2014 (Exhibit 24).

16. Pursuant to Exhibit 24, EFAC was established by the filing of its Articles of Incorporation with the Secretary of State of Indiana (Exhibit 19) and the adoption of its Bylaws (Exhibit 20).

17. EFAC 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.

18. The Order of this Court dated April 15, 2014 (Exhibit 24) states at subparagraph (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 the reasonableness decided based upon the current facts and circumstances."

19. The location of the Stine pier has not significantly changed since 1999 and the pier and boat lifts have been placed in the same relative and approximate location since 1999.

20. Defendant EFAC has demanded that Plaintiffs relocate their pier so that their pier and the accessories (boatlifts) are located wholly within the boundaries of the Stine Lot extended into the water of Webster Lake. Doing so would eliminate the pier space currently used by non-party Tran, a space in existence at the time of this Court's Order of January 21, 2014 (Exhibit 23) and depicted on both Exhibits 13 and 15.

21. No provisions of the prior Orders of this Court or the Articles or Bylaws of EFAC, require that an onshore owner's assigned 24 feet of lakefront be located within the boundaries of the lakefront owner's lot theoretically extended into Webster Lake, and this in fact would not be physically possible due to the contours of the shoreline in the Plat Epworth Forest which causes many of these areas to intersect and overlap.

22. There have been no substantial changes in relevant circumstances since the Stine pier assignment was made and approved which makes the Stine pier assignment unreasonable or improper under current facts and circumstances.

CONCLUSIONS OF LAW

23. The Judgment and various Orders in Cause No. 43C01-9109-CP-732 clearly indicate that it was the intention of this Court that assignments of pier spaces for onshore owners were intended to be permanent and are not to change absent a substantial change in circumstances which made an assignment unreasonable under current facts and circumstances.

24. The location of space assigned to lakefront owners and confirmed by this Court's Order of January 21, 2014 is not required to be located within the boundaries of the lakefront owner's lot theoretically extended into Webster Lake and this in fact would not be physically possible due to the contours of the shoreline in the Plat of Epworth Forest which causes many of these areas to intersect and overlap.

25. The general determinations made by the Indiana Department of Natural Resources for the location of riparian lines in public lakes in Indiana, as outlined by Information Bulletin No. 56 (Exhibit 25) do not apply to the lakefront in the plats of Epworth Forest, the Orders of this Court taking precedent over Information Bulletin No. 56.

26. The determination made by EFAC requiring Plaintiffs to relocate the Stine pier and boatlifts to be wholly within the boundaries of the Stine Lot extended into Webster Lake was necessarily arbitrary and capricious as it is contrary to, and not in conformity with, the express provisions of prior Judgment and Orders of this Court, the Articles of Incorporation of EFAC and the Bylaws of EFAC.

27. The request of Plaintiffs for an award of attorney's fees should be denied.

ORDER

IT IS THEREFORE ORDERED that the determination made by EFAC October 14, 2015 (Exhibit H) is reversed and the right of Plaintiffs to maintain their pier and accessories in their historic location, the pier being located at the shoreline approximately one foot east of the common line between the Chapman Lot and the Stine Lot with the west boundary of the area assigned to Stine extending 10' west of the common line of the Stine Lot and Chapman Lot extended into Webster Lake, is confirmed.

IT IS FURTHER ORDERED that the request of Plaintiffs for an award of attorney's fees is denied. Costs taxed to Defendants.

SO ORDERED this 10th day of October, 2017.



Michael W. Reed, Judge
Kosciusko Circuit Court