

STATE OF INDIANA)	IN THE LAGRANGE CIRCUIT COURT
)SS:	
COUNTY OF LAGRANGE)	CAUSE NO. 44C01-1510-MI-00059
WALTER HOLLAND and)	
KATHLEEN HOLLAND,)	
Petitioners,)	
)	
v.)	
)	
INDIANA DEPARTMENT OF)	
NATURAL RESOURCES,)	
MARK PHILLIPS, SARA)	
PHILLIPS and LISA MENIERS,)	
Respondents.)	

ORDER

The Petitioner appeared by counsel, Stephen Snyder, and Respondents, Mark Phillips, Sara Phillips and Lisa Meniers, appeared by counsel, William Gooden, for review hearing on June 3, 2016. The Respondent, Indiana Department of Natural Resources (“DNR”), does not appear for the review hearing. The Court, having considered the oral argument of counsel, the written pleadings and briefs of counsel, the record of the administrative proceedings and the pertinent law, hereby finds as follows:

I. FACTS and PROCEDURAL HISTORY

1. That the Petitioners filed a Petition for Judicial Review of Agency Decision with this Court on October 2, 2015.
2. The agency decision at issue is the issuance of Findings of Fact and Conclusions of Law with Final Order entered by the AOPA Committee of the Natural Resources Commission as the Ultimate Authority (312 IAC 3-1-2) in Administrative Cause Number 14-056W on September 24, 2015.
3. That a Certification of Record of Administrative Proceeding for Use on Judicial Review was received from the Natural Resource Commission on December 1, 2015.
4. That the undersigned was appointed as Special Judge by a LaGrange Circuit Court Order dated October 29, 2015.

5. That the matter of review of the agency decision is properly before this Court, pursuant to the provisions of I.C. 4-21.5-5

6. The Court has jurisdiction over the subject matter of this proceeding and over the persons of the parties.

7. Upon judicial review of an administrative decision, the trial court is limited to determining whether the agency action is: (1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) Contrary to constitutional right, power, privilege, or immunity; (3) In excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) Without observance of procedure required by law; or (5) Unsupported by substantial evidence. The burden of demonstrating the invalidity of the agency action is on the party to the judicial review proceedings asserting invalidity. Ind. Code 4-21.5-5-14; *Natural Resources Commission of the State of Indiana v. AMAX Coal Co.*, 638 N.E.2d 418 (Ind. 1994).

8. When a Court reviews a decision from an administrative agency, the reviewing Court may not try the cause *de novo* or substitute its judgment for that of the agency.

9. The Petitioners assert that the AOPA Committee of the Natural Resources Commission improperly reweighed the evidence presented to the Administrative Law Judge and substituted its judgment for that of the trier of fact and that the DNR's decision is arbitrary, capricious and without support in the facts or the law.

10. The agency decision that is the subject of this review was commenced by the Petitioners on March 17, 2014, seeking resolution of a dispute concerning the location of a pier on an easement owned by them that fronts on Dallas Lake, in LaGrange County, Indiana.

11. The Respondents, Mark Phillips, Sara Phillips and Lisa Meiners, demanded that the Petitioners remove their pier as well as any boat lift or boat moored to the pier. (Final Order, Para. 2)

12. The Petitioners are the fee title owners of Lots 98 and 99 in Dallas Bay Phase I-B, which lots are not located adjacent to the shoreline of Dallas Lake. (Final Order, Para. 13)

13. The Petitioners also hold title to an easement lying adjacent to the shoreline of Dallas Lake, described as follows:

An easement being five (5) feet in width, by parallel lines, off of the east side of Lot 4 in Brunner Park Range 9 Ease, LaGrange County, Indiana. Said easement being for the exclusive benefit of the owner of lot number ninety-nine, in Dallas Bay Phase I-B Dallas Lake

for ingress and egress (no motorized vehicles allowed), access to a water line now existing on said easement by grantors or their successors in interest who shall have responsibility for maintenance of their said water line. This Agreement shall be construed as a covenant running with the land.

(Final Order, Para. 14)

14. The Respondents, Mark Phillips, Sara Phillips and Lisa Meniers, own Lot 4 in Brunner Park, which is subject to the Easement. (Final Order, Para. 15)

15. Prior to April 11, 1988, Lots 98 and 99 in Dallas Bay and Lot 4 in Brunner Park were all owned by Ralph R. Wilt and Doris M. Wilt (the "Wilts").(Final Order, Para. 18)

16. The Wilts sold Lot 4 in Brunner Park to Samuel J. Valentine, Jr. and Loretta J. Valentine, on April 11, 1988, while reserving for their own use, as the owner of Lot 99 in Dallas Bay, as well as for their successors in interest, the interests specified in the Easement. (Final Order, Para. 18)

17. The Petitioners purchased Lots 98 and 99 in Dallas Bay on December 30, 2009. (Final Order, Para. 19)

18. The Respondents, Mark Phillips, Sara Phillips and Lisa Meniers, purchased Lot 4 in Brunner Park on January 30, 2009. (Final Order, Para. 21)

19. A water line and associated electrical equipment necessary to provide irrigation water from Dallas Lake to Lots 98 and 99 in Dallas Bay is located on and lies beneath the surface of the Easement. (Final Order, Para. 23)

20. The Petitioners and the Respondents agree that the Easement authorizes the Petitioners' ingress and egress for the purpose of assessing and maintaining the water irrigation infrastructure that exists within the Easement and serves Lots 98 and 99 in Dallas Bay.

21. The Petitioners further interpret the Easement language to also grant them the right to extend a pier into Dallas Lake for recreational purposes, including the right to place a pier and moor boats. The Respondents contend that the Petitioners may only use the Easement for accessing and maintaining the water irrigation infrastructure. (Final Order, Paragraphs 38, 39)

II. ANALYSIS

22. Usually easements arise to fill some need or to serve some purpose. That purpose, whether expressed in the grant, implied, or acquired through prescription, is the focal

point in the relationship which exists between the titleholders of the dominant and servient estates. The servient estate is burdened to the extent necessary to accomplish the end for which the dominant estate was created. The titleholder of the dominant estate cannot subject the servient estate to extra burdens. *New York Cent. R. Co. v. Yarian*, 39 N.E.2d 604 (Ind. 1942).

23. Generally, access to a body of water is sought for particular purposes beyond merely reaching the water, and where such purposes are not plainly indicated, a Court may resort to extrinsic evidence to assist the Court in ascertaining what they may have been. *Badger v. Hill*, 404 A.2d 222 (Maine 1979); *Klotz v. Horn*, 558 N.E.2d 1096 (Ind. 1990)

24. The issue in the instant case is whether the Petitioners are entitled to use the riparian rights of the servient estate for the purpose of erecting and maintaining a pier, mooring boats, storing a dock on the easement in the off season, and the like. Dominant owners of lakeside easements may gain those types of rights by the express language of the creating instrument. *Maddox v. Katzman*, 332 N.W. 2d 347 (Iowa 1982); *Klotz* at 1099.

25. The Commission found that the language of the Easement unambiguously grants a limited right of ingress and egress for use, as necessary, in accessing and maintaining the existing irrigation system and nothing more. (Final Order, para. 55, 56)

26. The Commission's finding that the document was unambiguous is supported by the evidence and is not contrary to law. The purpose of the Easement is plainly indicated in the creating document and the Commission was not required to resort to extrinsic evidence to assist them in their determination.

27. The Klotz Court cited a case decided by the Maine Supreme Judicial Court where that Court found that language creating an Easement for ingress and egress for the purpose of access to Eagle Lake was ambiguous, for the reason that generally, access to a body of water is sought for particular purposes beyond merely reaching the water, and where such purposes are not plainly indicated, a Court may resort to extrinsic evidence to assist the Court in ascertaining what they may have been. Id. at 1098.

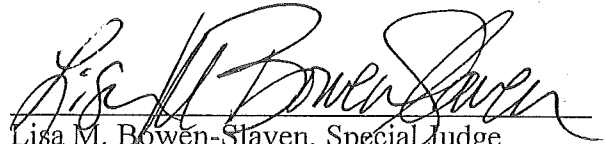
28. As the Respondents have argued, the Easement in question herein contains absolutely no reference to the lake, the shore or to the water within the lake, but rather only refers to the irrigation water line and access and maintenance related thereto.

III. CONCLUSION

29. For the above stated reasons, it is concluded that the Final Order of the Commission is not arbitrary, capricious, an abuse of discretion, or contrary to law.

30. The Final Order of the Natural Resources Commission AOPA Committee is hereby affirmed in all respects.

ALL OF WHICH IS ORDERED this 5th day of August, 2016.


Lisa M. Bowen-Slaven, Special Judge
LaGrange Circuit Court

c: Snyder
Gooden
Allega