

**AGENDA OF THE
AOPA COMMITTEE OF THE
NATURAL RESOURCES COMMISSION**

**Fort Harrison State Park – Garrison
Gates Room
6002 North Post Road
Indianapolis, Indiana**

**November 17, 2015
8:00 a.m., EST (7:00 a.m., CST)**

1. Call to order and introductions
2. Consideration and approval of minutes for meeting held on September 24, 2015
3. Consideration of objections with respect to Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *Sudlow and Heckaman v. Slocum, et al.*; Administrative Cause No. 12-119W
4. Adjournment

**AOPA COMMITTEE
OF THE
NATURAL RESOURCES COMMISSION
September 24, 2015 Meeting Minutes**

MEMBERS PRESENT

Jane Ann Stautz, Chair
R.T. Green
Jennifer Jansen

NATURAL RESOURCES COMMISSION STAFF PRESENT

Sandra Jensen
Dawn Wilson
Jennifer Kane

PARTICIPANTS AND GUESTS PRESENT

| | |
|--------------|----------------|
| Joy Grow | Ihor Boyko |
| Sean Wooding | Mae Moriarity |
| Donn Wray | Eric Wyndham |
| Ken Smith | William Gooden |
| John Eggen | |

Call to order and introductions

The Chair, Jane Ann Stautz, called the meeting to order at 2:00 p.m., EDT, on September 24, 2015 in the Sycamore Room of the Fort Harrison State Park Inn, 5830 North Post Road, Indianapolis, Indiana. With the presence of all three members, the Chair observed a quorum.

Consideration and approval of minutes for meeting held on June 22, 2015

R. T. Green motioned to approve, as presented, the minutes of the meeting held on June 22, 2015. Jennifer Jansen seconded the motion. Upon a voice vote, the motion carried.

Consideration of objections with respect to “Findings of Fact and Conclusions of Law with Nonfinal Order” by the Special Administrative Law Judge in *Moriarity v. DNR*, Administrative Cause No. 12-094W

The Chair reported that the Claimants, pursuant to 312 IAC 3-1-12(f), requested a court reporter be present to record the argument. For information regarding this item, see transcript.

Consideration of Final Order following remand from the Steuben Circuit Court in *Cress v. Byrer and DNR*, Administrative Cause No. 12-192W

The Chair reported the item withdrawn.

Consideration of draft Findings of Fact and Conclusions of Law with Final Order following remand by the AOPA Committee in *Holland v. Phillips, et al.*, Administrative Cause No. 14-056W

The Chair explained that this Committee, at its June 22, 2015 meeting, remanded this matter back to the Administrative Law Judge to revise the nonfinal order to reflect the Committee's decision that the *easement is, in fact, unambiguous and that the rights that were given are limited to just the access for the waterline and the water pump and no more.*¹ She noted that the Committee's packet includes a draft Modified Final Order, which incorporates the Committee's decision. She asked the Committee members whether the "Modified Final Order" adequately and accurately reflects the Committee's decision.

Jennifer Jansen said, "I may not be the best person to ask, because I believed the language was ambiguous."

The Chair stated that the Modified Final Order "accomplishes and does what we we're asking the [Administrative Law Judge Jensen] to do as far as the proposed findings and order."

R.T. Green asked, "So our job, if that's the case, is then to adopt this as modified...and consistent with what we suggested?"

The Chair answered in the affirmative.

R. T. Green moved to approve the Modified Final Order as the Natural Resources Commission's Final Order. Chair Jane Ann Stautz seconded the motion. Upon a voice vote, the motion carried. Jennifer Jansen voted against the motion.

Consideration of recommended amendment of nonrule policy document, Information Bulletin #1

Dawn Wilson, Administrative Law Judge with the Commission's Division of Hearings, presented this item. She noted that this AOPA Committee established a special committee to review Information Bulletin #1. The review was initiated by a request from an attorney to add negotiated orders to the Commission's decisions database (CADDNAR). Also addressed was the preparation of transcripts by Commission staff. Jennifer Jansen, Bart Herriman, and Wilson served on the special committee. Wilson explained that the revisions provide additional clarity. She provided Committee members with an updated version of the nonrule policy document, but

¹ NRC, AOPA Committee minutes of meeting held June 22, 2015 (http://www.in.gov/nrc/files/nrc_aopa_june_2015_minutes.pdf).

indicated the revisions, as compared to the amendment proposal in the Committee's packet, were minimal. Wilson indicated that the updated version is presented for final approval.

The Chair reflected that she appreciated the time and effort of the special committee. "I thought it was well-documented. I also appreciate the detail around the transcript fees, costs, and procedure for managing requests for transcript preparation."

R.T. Green moved to approve amendments to the nonrule policy document, Information Bulletin #1, *Establishment of Division of Hearings; Indexing of Final Adjudicative Agency Decisions; Transcript Fees*. Jennifer Jansen seconded the motion. Upon a voice vote, the motion carried.

Sandra Jensen, Director of the Commission's Division of Hearings, asked the AOPA Committee whether its directive would be to place the amended nonrule policy document on the November meeting for full Commission consideration or to submit the document directly to the Legislative Services Agency (the "LSA") for publication in the INDIANA REGISTER.

Green asked, "Is it our job to speak on behalf of the Commission?"

The Chair stated that it was not truly necessary for the full Commission to consider the amended Information Bulletin #1 "given the scope of our authority. I'm sure they are not going to have any additional insight or information."

Green suggested the AOPA Committee make a report to the full Commission at the November meeting regarding the approval of the amended nonrule policy document.

The Chair agreed, and directed the document be submitted to LSA for publication.

Adjournment

The meeting was adjourned at 2:40 p.m., EDT.



Consideration of objections with respect to Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *Sudlow and Heckaman v. Slocum, et al.*; Administrative Cause No. 12-119W

- **Finding of Fact and Conclusions of Law with Nonfinal Order**
- **Email, Robert Eherenman, (filed September 8, 2015)**
- **Notice of Intent to Correct Scrivener's Error Upon Issuance of Findings of Fact and Conclusions of Law with Final Order**
- **Claimants' Objections to Findings of Fact and Conclusions of Law with Nonfinal Order**
- **Partial Objection of Respondents Mark G. Doyle and Gordon P. Doyle, as Trustees of the Doyle Land Trust, To Nonfinal Order**
- **Respondents Thomas A. Yoder and Nance A. Yoder and Don Ermal Marsh and Marilyn Lois Marsh's Partial Objection to Nonfinal Order**
- **Kitch Acceptance Corp's Objection to Findings of Fact and Conclusions of Law with Nonfinal Order**
- **Notice of Intent to Propose Amendment to the AOPA Committee of the Natural Resources Commission with Respect to Certain Respondents Relating to Finding 63 of the Findings of Fact and Conclusions of Law with Nonfinal Order**

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

| | | |
|--|---|----------------------------------|
| ANNA SUDLOW and |) | Administrative Cause |
| CONSTANCE SUDLOW HECKAMAN, |) | Number: 12-119W |
| Claimants, |) | |
| |) | |
| vs. |) | |
| |) | |
| JOAN M. SLOCUM, |) | (Riparian Rights Dispute) |
| Respondent, |) | |
| |) | |
| KITCH ACCEPTANCE CORP.; CRAIG D. |) | |
| DOYLE and LEE A. DOYLE; MARK G. |) | |
| DOYLE and GORDON P. DOYLE as |) | |
| TRUSTEES of the DOYLE LAND TRUST, |) | |
| DON ERMAL MARSH and MARILYN LOIS |) | |
| MARSH; THOMAS A. YODER and NANCY A. |) | |
| YODER; and SOUTH SHORE |) | |
| CONDOMINIUM ASSOCIATION, |) | |
| Third Party Respondents. |) | |
| |) | |
| DEPARTMENT OF NATURAL RESOURCES, |) | |
| Agency Respondent. |) | |

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
WITH NONFINAL ORDER**

Procedural Background and Jurisdiction:

1. Anna C. Sudlow and Constance Sudlow Heckaman (*“the Sudlows”*), by counsel, Stephen R. Snyder, filed their Petition for Administrative Review with the Natural Resources Commission (*“Commission”*) on July 19, 2012 alleging that Joan M. Slocum (*“Slocum”*) had “placed a pier and docks boats in the waters of Lake Wawasee in a fashion that encroaches into the riparian area” of the Sudlows.
2. Lake Wawasee is a public freshwater lake. *Indiana Code § 14-26-2-24 and Natural Resources Commission, Information Bulletin # 61 (Fourth Amendment) “Listing of Public Freshwater Lakes”, October 1, 2014.*

3. As required by Indiana Code § 14-2-26-23(e)(3), the Commission adopted administrative rules addressing the initiation, mediation and adjudication of disputes among riparian owners using the shoreline along a public freshwater lake. *312 IAC 11-1-3.*
4. The Commission possesses jurisdiction over the subject matter and the parties to this proceeding and serves as the ultimate authority pursuant to 312 IAC 3-1-2. *Indiana Code 4-21.5-1-15.*
5. On August 13, 2012, Slocum, by counsel, Richard K. Helm, filed her “Answer to Petition for Administrative Review” and her “Request to Require Joinder of Additional Necessary Parties.” Thereafter, Slocum filed her “Memorandum as to Joinder of Additional Parties” on November 29, 2012.
6. Kitch Acceptance Corporation (“*Kitch*”), by counsel, Andrew L. Palmison, consented to Slocum’s request for joinder and was recognized as a Third Party Respondent through an order issued on October 11, 2012.
7. On January 17, 2013, then presiding Administrative Law Judge Stephen L. Lucas recused himself and appointed the undersigned administrative law judge to preside. *See “Order Providing Extended Opportunity to Respond to Respondent’s (Joan Slocum’s) Motion to Join Additional Parties and Recusal and Appointment of Substitute Administrative Law Judge, January 23, 2013.*
8. With the exception of Kitch, each of the persons or entities identified by Slocum as necessary parties, objected to Slocum’s motion. However, in an order issued on February 27, 2013, Administrative Law Judge Jensen observed that the Sudlows’ petition for administrative review included a diagram of riparian zones the result of which “clearly has the potential to impact all of the individuals Slocum seeks to join as parties...” Through that order Craig D. and Lee A. Doyle (*collectively referred to as “the Doyles”*), Mark G. Doyle and Gordon P. Doyle as Trustees for the Doyle Land Trust (*referred to as “the Doyle Trust”*), Don Ermal and Marilyn Lois Marsh (*collectively referred to as “the Marshes”*), Thomas A. and Nancy A. Yoder (*collectively referred to as “the Yoders”*), and South Shore Condominium Association (*referred to as “South Shore”*) were joined and identified as Third Party Respondents.
9. On October 10, 2014, the Department of Natural Resources (“*Department*”) filed its motion to intervene. The motion was granted on October 14, 2014.

10. Throughout the pendency of this proceeding various parties have reported attempts to resolve the issues presented but ultimately it became necessary to schedule an administrative hearing that, after necessary continuances, was conducted on July 6, 2014.

Findings of Fact:

11. Each of the properties at issue is situated in John T. Vawter's First Addition to Vawter Park ("Vawter Park") and front on Lake Wawasee in Kosciusko County.
12. More particularly, the Sudlows are the owners of Lots 18 & 19 and Slocum owns Lot 17 along with a portion of Outlot 3. The Slocum property shares an east/southeast property line with the Sudlows and a west/northwest property boundary with Kitch, which owns Lot 16 and a portion of Outlot 3. The remaining parties, with the exception of the Department, own Lots traversing the shoreline of Lake Wawasee in a west/northwest direction from the Kitch property. The Doyles own Lot 15 and a portion of Outlot 3 while the Doyle Trust owns Lot 14. Lot 13 is owned by the Marshes and Lot 12 is owned by the Yoders. South Shore is the owner of the property adjacent to the west/northwest boundary of the Yoders' property consisting of two tracts maintained in a horizontal property regime.
13. The evidence is not in dispute that the shoreline of Lake Wawasee correlating with the Lots owned by the Doyles, the Doyle Trust, the Marshes, the Yoders and South Shore forms a generally straight line. It is also not contradicted that the onshore property lines of each of these properties intersect the principally straight shoreline at obtuse angles. *Testimony of John Heckaman, Rodney Neese and Kevin Michael, Claimants' Exhibit 8, Slocum Exhibit B and DNR Exhibit A.*
14. The Doyles, the Doyle Trust, the Marshes, the Yoders and South Shore have historically extended piers into Lake Wawasee in a manner suggesting that the riparian zones associated with these properties were established by the extension lakeward of lines perpendicular to the shoreline. *Id.* The piers extending from the shoreline of these properties today are in essentially the same locations and configurations as they have been for 30 or more years.
15. It is also not disputed that the Sudlow and the Slocum properties are situated along a stretch of shoreline transitioning from an east-west direction, to the east of the Sudlow property, to a southeast-northwest direction, to the west of the Slocum property. *Testimony of Rodney Neese and Kevin Michael, DNR Exhibit A and Slocum Exhibit B.*

16. Rodney Neese (“*Neese*”) and Kevin Michael (“*Michael*”), who are both licensed professional land surveyors having experience with the laws, rules and guidelines applicable to surveying and establishing riparian zones, agree that the appropriate manner to establish the riparian zones for the Sudlows’ and Slocum’s properties is through a pro-ration of the shoreline associated with those properties. *Id.* Both Neese and Michael acknowledged their reliance upon “Riparian Zones Within Public Freshwater Lakes and Navigable Waters”, Information Bulletin #56 (Second Amendment) published in the Indiana Register on March 31, 2010, <http://www.in.gov/legislative/iac/20100331-IR-312100175NRA.xml.pdf>, (“*IB #56*”) in reaching their respective conclusions.
17. Neese and Michael agree that apportioning the waters lakeward of the Sudlow and the Slocum properties would appropriately begin with the establishment of the Sudlows’ east riparian zone boundary by extending that onshore boundary line lakeward consistent with the historically established riparian zones of properties situated along the straight shoreline to the east of the Sudlow property. *Id.*
18. Whether Kitch’s property is most appropriately considered to be in the transitional curve similar to the Sudlows’ and Slocum’s property or whether it lies on the chiefly straight shoreline area, similar to the Doyles’, the Doyle Trust’s, the Marshes’, the Yoders’ and South Shore’s properties, is a point of disagreement in the evidence.
19. With respect to the western most limit for shoreline apportionment, Neese advocates that only the Sudlows’ and Slocum’s riparian zones be established by apportionment while Michael believes that a just apportionment can only be accomplished if Kitch’s riparian zone is also determined in that fashion. *Id.*
20. Using Neese’s method requires Slocum’s west-northwest boundary line, shared with Kitch, to be determined by extending a line perpendicular to the shoreline lakeward from the point at which the shared Kitch/Slocum onshore boundary intersects with the shoreline. This would establish a riparian zone consistent with the zone historically utilized by Kitch and consistent with the recognized riparian zones of the properties to the west-northwest of Kitch. Using Neese’s method only the riparian zones of Slocum and the Sudlows would be apportioned and Kitch’s historically relied upon riparian zone established by lines extended lakeward perpendicular to the shore would be unaffected. *Testimony of Neese, Testimony of Chester Kitch, Slocum Exhibit B and DNR Exhibit A.*

21. Conversely, Michael's apportionment of the shoreline would involve the extension of a line perpendicular to the shoreline from the point at which the onshore boundary Kitch shares with the Doyles intersects the shoreline.
22. Through Michael's approach the riparian area of Kitch, Slocum and the Sudlows would be established through an apportionment of the shoreline associated with Kitch's, Slocum's and the Sudlows' properties. *Testimony of Michael and Slocum Exhibit B.*
23. Application of Michael's methodology would clearly reshape and decrease the size of Kitch's riparian zone from its historic footprint. The evidence fails to disclose the degree to which Kitch's historically recognized riparian zone will be altered.
24. Similarly, there is no evidence in the record from which to ascertain what impact the inclusion or exclusion of Kitch's shoreline in the apportionment will have upon the size or shape of the Sudlows' or Slocum's resulting riparian zones.
25. While Michael concludes that the Kitch riparian zone should be established by apportionment, Michael makes what appears to be a contradictory conclusion in his report. Michael states,

There are five owners between the South Shore Condominium property and the Slocum property. All of their piers are oriented approximately perpendicular to the shoreline....

The third principle in Bulletin #56 is appropriate in this area. The third principle states, 'Where the shore approximates a straight line, and where the onshore boundaries approach the shore at obtuse or acute angles, the boundaries of riparian zones are generally determined by extending a straight line at a perpendicular to the shore.' The property owners appear to be placing their piers consistent with the third principle. There is no need to change their riparian zones.

Slocum Exhibit B. One of the five properties located between South Shore's and Slocum's properties is the Kitch property.

26. Michael also testified that the curve in the shoreline is "more pronounced" between the Kitch's and the Doyles' properties. This conclusion is not supported by a comparison of the surveys and photographs. *Slocum Exhibit C, Yoder Exhibit D, Claimant's Exhibit 8.*
27. The Sudlows added a third boat stall to the west side of their pier in 2010 and added a boat lift to the west side of that boat stall in 2012. If the Sudlow riparian zone is determined by apportionment, whether Kitch is included in the apportionment as proposed by Michael or whether the apportionment involves only the riparian zones of the Sudlows and Slocum as

proposed by Neese, the most recently added boat lift and possibly the third boat stall added in 2010 will exceed the width of the Sudlows' riparian zone and be located, either wholly or partially, within the riparian zone that would be established for Slocum. *Claimants' Exhibits 10(B) and 11.*

28. In an effort to accommodate the third boat stall and the boat lift, the Sudlows developed a third alternative to apportion the waterfront as between themselves and Slocum. *Testimony of John Heckaman, Claimants' Exhibit 10(B).*

29. John David Heckaman ("*Heckaman*") is the owner of Sudlows Pier Shop, which is the family pier shop where he has been employed since approximately 1974. Heckaman is knowledgeable with respect to the installation and maintenance of piers and is very familiar with the lakeshore at issue in this proceeding. Heckaman developed a third alternative method of apportionment (*this alternative will be referred to as "the Sudlow Proposal" or "Sudlows' Proposal"*). *Id.*

30. Sudlows' Proposal accepts Neese's and Michael's conclusion that the Sudlows' east riparian zone boundary should be established by extending the onshore property boundary lakeward. The Sudlow Proposal offers no input or opinion regarding the most appropriate means of establishing Slocum's west-northwest riparian zone boundary. The focus of Sudlows' Proposal is the riparian zone boundary shared by Slocum and the Sudlows, which Heckaman established by extending the shared onshore boundary lakeward for a distance of approximately 30 feet before angling the riparian zone boundary line towards the east at a degree allowing for the riparian zone line to run parallel to and 11 feet east of Slocum's existing pier.

31. Neese explained that his proposal considers Slocum's ownership of 59.0 feet of shoreline and the Sudlows' ownership of 104.0 feet of shoreline. Further, Neese elaborated that his calculations were based on a line of the general curvature of the shoreline at a distance of approximately 175 feet lakeward of the shoreline. Neese concluded that with a total shoreline length of 163 feet, Slocum's share is 36.2% as compared to the Sudlows' 63.8% share. Through his pro-ration, based on the respective shoreline lengths at a distance of 175 feet from the shoreline, Slocum will be granted a riparian zone consisting of 36.2% of the total waterfront and the Sudlows will be granted a riparian zone comprised of 63.8% of the total waterfront. *Testimony of Neese.*

32. Neese acknowledged that calculations would be necessary to determine whether the Sudlow Proposal achieves the goal of creating a fair distribution of the waterfront based upon Slocum's and the Sudlows' percentage of shoreline ownership. However, Neese offered the opinion that Sudlows' Proposal appears to provide the Sudlows with a riparian zone larger than is consistent with percentage of shoreline owned.
33. There exists no other evidence in the record by which to determine whether the Sudlow Proposal accomplishes an appropriate distribution of the waterfront consistent with the percentages of shoreline owned by Slocum and the Sudlows in establishing the riparian zones.

Conclusions of Law:

34. IB #56 establishes as its Second Principle that riparian zones associated with properties situated on a shoreline approximating a straight line having onshore boundaries meeting the shoreline at an approximately perpendicular angle should be established by extending the onshore property boundaries lakeward.
35. The parties to this proceeding do not include the owner of any property located to the east of the Sudlows. However, it is not disputed that the riparian zones for the properties located immediately to the east of the Sudlows' property are appropriately determined using the Second Principle of IB #56. For this reason the evidence supports the conclusion that the Sudlows' eastern riparian zone boundary must be established by extending the Sudlows' east onshore property boundary lakeward.¹
36. The parties to this proceeding owning properties located to the west-northwest of Kitch, including the Doyles, the Doyle Trust, the Marshes, the Yoders and South Shore; undisputedly own properties situated on a generally straight shoreline with onshore property boundaries meeting that shoreline at obtuse angles. The evidence clearly supports the conclusion that the riparian zones for these properties be established in a manner consistent with the Third Principle of IB #56, which states,

Where the shore approximates a straight line, and where the onshore boundaries approach the shore at obtuse or acute angles, the boundaries of riparian zones are generally determined by extending a straight line at a perpendicular to the shore.

¹ It is acknowledged that this order is not binding upon any person who is not a party to this proceeding.

37. Application of the Third Principle in establishing the Doyles' riparian zone will simultaneously establish Kitch's west-northwest riparian zone boundary in accordance with the Third Principle as well.
38. The evidence in this proceeding is also undisputed with respect to the need to apply the Fourth Principle of IB #56 for establishing the riparian zones of Slocum and the Sudlows.
39. The Fourth Principle of IB #56 provides,
 - ...the lines forming the boundaries between riparian zones should be run to divide the total navigable waterfront in proportion to the length of the shores of each owner taken according to the general trend of the shore.
40. The threshold determination whether Kitch's riparian zone should be fully determined by application of the Third Principle or whether Kitch's east riparian zone boundary should be established through pro-ration consistent with the Fourth Principle must precede the ultimate conclusion regarding the establishment of Slocum's and the Sudlows' riparian zones.
41. Slocum sought the joinder of Kitch as a party to this proceeding. As between Slocum and Kitch, Slocum bears the burden of proof.
42. The only evidence presented in support of establishing Kitch's riparian zone by apportionment as prescribed by the Fourth Principle of IB #56 came from Michael who testified that a more appropriate apportionment was achieved by the inclusion of Kitch.
43. IB #56 states that the use of the Third Principle, establishing riparian zones by extending lines lakeward at a perpendicular to the shoreline, is "most compelling where land owners in the vicinity have historically used a perpendicular line to divide their riparian zones..., whereas establishing riparian zones using pro-ration under the Fourth Principle is for use "Where the shore is irregular, and it is impossible to run lines at right angles to the shore for a just apportionment..."
44. Overall, the evidence establishes that the shoreline associated with Kitch's property is not "irregular" and that Kitch has historically used a riparian zone established by extending lines lakeward at a perpendicular to the shoreline. The evidence presented by Slocum contains contradictions. Most importantly, Slocum has failed to provide any evidence supportive of a conclusion that a just apportionment cannot be accomplished without including Kitch in the pro-ration.
45. As between Slocum and Kitch, Slocum has failed to meet her burden of proof.

46. The riparian zone associated with the Kitch property shall be wholly established through application of the Third Principle of IB #56.
47. As between the Sudlows and Slocum, the Sudlows bear the burden of proof.
48. The Sudlows seek to establish Slocum's and the Sudlows' riparian zones through the use of a unique method of apportioning the waterfront.
49. IB #56 is an agency statement adopted in accordance with Indiana Code § 4-22-7-7; a guidance document that while broadly followed does not have the effect of law. The Fourth Principle set forth in IB #56 offers a variety of methods by which an appropriate apportionment may be accomplished dependent upon the fact pattern presented. Again, these methodologies are not exclusive and in the appropriate case, with the appropriate evidence, a novel or unconventional method of pro-rata may prove useful.
50. However, any method of apportionment applicable in establishing riparian zones must "divide the total navigable waterfront in proportion to the length of the actual shorelines of each owner taken according to the general trend of the shore." *Nosek v. Stryker*, 309 N.W.2d 868, 872, (Wis. Ct. App., 1981) cited favorably in *Lukis v. Ray*, 888 N.E.2d 325, (Ind. Ct. App., 2008).
51. The Sudlows failed to present any evidence whatsoever that the Sudlow Proposal achieves a division of the waterfront in a manner proportionate to Slocum's 36.2% and the Sudlows 63.8% ownership of the shoreline. For this reason the Sudlows' invitation to deviate from tested apportionment methods, such as was employed by the Department, is rejected.
52. The evidence supports the conclusion that Slocum's and the Sudlows' riparian zones shall be established through the application of the Fourth Principle of IB #56 such that Slocum's riparian zone is comprised of approximately 36.2% of the waterfront and the Sudlows' riparian zone approximates 63.8% of the waterfront.

Nonfinal Order:

53. South Shore Condominium Association as the owner of two tracts maintained in a horizontal property regime situated on Lake Wawasee in Kosciusko County shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.

54. Kitch Acceptance Corporation, as the owner of Lot 16 and a portion of Outlot 3 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.
55. Craig D. and Lee A. Doyle, as the owners of Lot 15 and a portion of Outlot 3 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.
56. The Doyle Land Trust by Trustees Mark G. Doyle and Gordon P. Doyle, as the owners of Lot 14 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.
57. Don Ermal and Marilyn Lois Marsh, as the owners of Lot 13 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.
58. Thomas A. and Nancy A. Yoder, as the owners of Lot 13 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.
59. Anna C. Sudlow and Constance Sudlow Heckaman, as the owners of Lot 18 and Lot 19 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone having an east boundary established by extending their east onshore boundary lakeward.
60. Joan M. Slocum, as the owner of Lot 17 and a portion of Outlot 3 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone having a west-northwest boundary established by the extension of a straight line lakeward at a perpendicular to the shoreline consistent with the establishment of the Kitch Acceptance Corporation's riparian zone, as set forth in Finding 54.
61. The Sudlows' and Slocum's shared riparian zone boundary shall be established by extending a straight line lakeward from the point at which the shared onshore property boundary intersects with the shoreline. The line established shall divide the total waterfront proportionate with the Sudlows' ownership of 63.8 % and Slocum's ownership of 36.2% of the shoreline taken according to the general trend of the shore consistent with the Fourth Principle of IB #56.

62. It is recognized that certain of the parties to this proceeding may be required to commission a professional survey to properly identify the boundaries of their respective riparian zone as established by this order.
63. With respect to each of the established riparian zones, the respective owner shall maintain ten (10) feet of clearance from each riparian zone boundary to aid in safe navigation and to preserve the public trust.
64. No portion of a temporary structure, including watercraft moored to the temporary structure, may be maintained outside of the established riparian zone.
65. The orders issued herein shall apply to each of the parties to this proceeding as well as to their heirs and assigns. Upon proper recordation with the Recorder of Kosciusko County, the orders will apply to subsequent purchasers of the Lots to which this adjudication relates.

Dated: September 2, 2015


Sandra L. Jensen
Administrative Law Judge
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Jensen, Sandra

FILED

From: Robert Eherenman <REherenman@hallercolvin.com>
Sent: Tuesday, September 08, 2015 10:00 AM
To: Jensen, Sandra
Cc: Snyder, Steve; 'David D. Cornwell'; Craig Doyle; Gordon P. Doyle; Erik3home@att.net; Trent, Tom; Palmison, Andrew; jcb@birchlaw.com; Grow, Joy
Subject: Sudlow v. Slocum 12-119W
Attachments: Findings of Fact and Conclusions of Law with NonFinal Order (00434130xC0....pdf)

SEP 08 2015

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

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Judge Jensen:

I wanted to bring something to your attention regarding the recent Nonfinal Order that was issued on September 2 in the above matter (attached). With regard to the Yoders' property, on page 10, Paragraph 58 of the Nonfinal Order states that:

Thomas A. and Nancy A. Yoder, as the owners of Lot 13 in Vawter Park fronting on Lake Wawasee in Kosciusko County, shall be entitled to a riparian zone established by the extension of straight lines lakeward perpendicular to the shoreline.

(Emphasis added). On page 3 of the Nonfinal Order, Paragraph 12 correctly finds that the Yoders own Lot 12 and that the Marshes own Lot 13. Paragraph 57 does correctly state that the Marshes own Lot 13.

I believe that the reference to the Yoders owning "Lot 13" in Paragraph 58 is just a scrivener's error and that it should read "Lot 12." I would like to avoid having to file an objection since this not a challenge to any substantive part of the ruling, but just a correction of a typographical error.

I would like to see if I could correct the error without the filing of a formal objection, but would like some guidance as to how you would like to handle this situation. If the other counsel do not have any objections, I wondered if it might be possible to just issue an amended or a *nunc pro tunc* nonfinal order correcting Paragraph 58 to say "Lot 12" instead of "Lot 13."

Thank you.

Robert W. Eherenman

Robert W. Eherenman, Esq.
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**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

| | | |
|--|---|----------------------------------|
| ANNA SUDLOW and |) | Administrative Cause |
| CONSTANCE SUDLOW HECKAMAN, |) | Number: 12-119W |
| Claimants, |) | |
| |) | |
| vs. |) | |
| |) | |
| JOAN M. SLOCUM, |) | (Riparian Rights Dispute) |
| Respondent, |) | |
| |) | |
| KITCH ACCEPTANCE CORP.; CRAIG D. |) | |
| DOYLE and LEE A. DOYLE; MARK G. |) | |
| DOYLE and GORDON P. DOYLE as |) | |
| TRUSTEES of the DOYLE LAND TRUST, |) | |
| DON ERMAL MARSH and MARILYN LOIS |) | |
| MARSH; THOMAS A. YODER and NANCY A. |) | |
| YODER; and SOUTH SHORE |) | |
| CONDOMINIUM ASSOCIATION, |) | |
| Third Party Respondents. |) | |
| |) | |
| DEPARTMENT OF NATURAL RESOURCES, |) | |
| Agency Respondent. |) | |

**NOTICE OF INTENT TO CORRECT SCRIVENER’S ERROR UPON ISSUANCE
OF FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH FINAL ORDER**

On September 2, 2015, the administrative law judge entered “Findings of Fact and Conclusions of Law with Nonfinal Order (*“Nonfinal Order”*).”

It has been brought to the attention of the administrative law judge that two scrivener’s errors exist within the Nonfinal Order, as follows:

- a. At Finding 10, the Nonfinal Order erroneously indicates that the administrative hearing was conducted on July 6, **2014**, when that hearing actually occurred on July 6, **2015**.
- b. At 58, the Nonfinal Order erroneously states that Thomas A. and Nancy A. Yoder are the owners of **Lot 13** in Vawter Park, when in fact, the evidence is undisputed that they are the owners of **Lot 12** in Vawter Park.

The parties are notified that the administrative law judge intends to correct these errors without need for any party to file objections.

The corrections will be made contemporaneous with the issuance of the Finding of Fact and Conclusions of Law with Final Order.

Dated: September 9, 2015



Sandra L. Jensen
Administrative Law Judge
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2200
(317) 232-4229

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BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE STATE OF INDIANA

FILED

SEP 21 2015

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

IN THE MATTER OF:)

ANNA C. SUDLOW and)
CONSTANCE SUDLOW HECKAMAN)
Claimants,)

v.)

JOAN M. SLOCUM)
Respondent,)

KITCH ACCEPTANCE CORP.; CRAIG T.)
DOYLE and LEE A. DOYLE; MARK G.)
DOYLE and GORDON P. DOYLE as)
TRUSTEES of the DOYLE LAND TRUST,)
DON ERMAL MARSH and MARILYN LOIS)
MARSH; THOAMS A. YODER and NANCY A.)
YODER; and SOUTH SHORE)
CONDOMINIUM ASSOCIATION,)
Third Party Respondents.)

ADMINISTRATIVE CAUSE
NUMBER: 12-119W

(Riparian Rights Dispute)

CLAIMANTS' OBJECTIONS TO
FINDINGS OF FACT AND CONCLUSIONS OF LAW
WITH NONFINAL ORDER

Claimants, Anna Sudlow and Constance Sudlow Heckaman, by counsel, file their objections to Findings of Fact and Conclusions of Law with Nonfinal Order. Claimants object to the following:

1. Claimants object to paragraph 8 for the reason that no parties other than Sudlow and Slocum were necessary parties. Claimants objected to the addition of all other parties and, as shown by the Nonfinal Order issued by the Administrative Law Judge, only the common riparian line between Sudlow and Slocum was affected.

2. Claimants object to paragraph 27 for the reason that the method of apportionment of the Slocum and Sudlow riparian areas, as proposed by Claimants, would result in both the

Slocum pier and boats moored at it and the Sudlow pier and boats moored at it being within their respective riparian areas.

3. Claimants object to paragraph 32 for the reason that the opinion of Neese described therein is not consistent with the evidence and that the Sudlow Proposal, as shown by Exhibit B to Exhibit 10, clearly apportions the riparian area at a distance 150 feet from the shoreline in at least the 36.2%/63.8% described in paragraph 31 and may in fact provide greater riparian area to Slocum than the proposal of Neese.

4. Claimants object to paragraph 33 for the reason that Exhibit 10 clearly shows that the Sudlow proposal accomplishes an appropriate distribution of the waterfront consistent with percentages of shoreline.

5. Claimants object to paragraph 51 for the reason that Exhibit 10 clearly indicates that the Sudlow Proposal achieves a division of the waterfront in a manner proportionate to the percentages suggested by Rodney Neese. Information Bulletin No. 56, not having the effect of law, does not bind the Administrative Law Judge and the mere fact that the Sudlow Proposal is "unique" does not justify rejection.

6. Claimants object to paragraph 52 for the reason that the evidence clearly indicates that the Sudlow Proposal proportioned the riparian area in accordance with the waterfront ownership and also did so without any requirement for the disturbance of existing piers or boats moored at the piers of either Slocum or Sudlow.

7. Claimants object to paragraph 61 for the reason that extending a straight line lakeward from a point at which the shared onshore property boundary intersects with the shoreline is contrary to the testimony of Rodney Neese (the most appropriate method is that which has been followed by the parties and results in the least disturbance to any existing temporary structures). Modification of the Fourth Principal of Information Bulletin No. 56 is appropriate to meet the goals of the Department of Natural Resources.

8. Claimants object to paragraph 63 for the reason that there was no evidence presented that a 10 foot sideline clearance was required to aide in safe navigation and preserve the public trust. In fact, paragraph 63 is contrary to the findings in paragraph 14.

WHEREFORE, Claimants move for the modification of the Findings of Fact and Conclusions of Law with Nonfinal Order to conform to the objections described herein and the evidence presented at Final Hearing.

SNYDER MORGAN, LLP

By: 

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Attorneys for Claimants

CERTIFICATE OF SERVICE

The undersigned certifies that on the 21st day of September, 2015, a true and correct copy of the foregoing pleading was served upon the following by electronic mail:

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A handwritten signature in black ink, appearing to read 'S. R. Snyder', written over a horizontal line.

Stephen R. Snyder

FILED

SEP 21 2015

BEFORE THE NATURAL RESOURCES COMMISSION
OF THE STATE OF INDIANA

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

IN THE MATTER OF:

ADMINISTRATIVE CAUSE NO.
12-119W

ANNA C. SUDLOW and
CONSTANCE SUDLOW HECKAMAN.
Claimants

v.

RIPARIAN RIGHTS DISPUTE

JOAN M. SLOCUM,
Respondent

KITCH ACCEPTANCE CORP., CRAIG D. DOYLE
and LEE A. DOYLE, MARK G. DOYLE and
GORDON P. DOYLE as TRUSTEES of the DOYLE
LAND TRUST, DON ERMAL MARSH and MARILYN
LOIS MARSH, THOMAS A. YODER and NANCY A.
YODER, and SOUTH SHORE CONDOMINIUM
ASSOCIATION,

Third Party Respondents

PARTIAL OBJECTION OF
RESPONDENTS MARK G. DOYLE AND GORDON P. DOYLE, AS
TRUSTEES OF THE DOYLE LAND TRUST,
TO NONFINAL ORDER

Come now Third Party Respondents, Mark G. Doyle and Gordon P. Doyle, as Trustees of the Doyle Land Trust, by counsel, and partially object to the entry of the Nonfinal Order in this matter for the reasons stated in the Partial Objection filed by the Yoders and the Marshes and join in their Objection and would show the Natural Resources Commission that a five (5) feet clearance from each riparian zone boundary should also apply Lot 14 owned by said Doyle Land Trust for the following reason:

1. The Doyle Land Trust's Lot 14 is only 25.6 feet along the seawall of Lake Wawasee, as

shown by Exhibit 8 attached to the Yoder/ Marsh Objection.

2. This 25.6 feet of Doyle Land Trust shoreline is less than both the Yoder and Marsh shorelines and the same legal reasoning applies to application of this shorter clearance area to the riparian zone of the Doyle Land Trust. A total clearance area of 20 feet leaves the Doyle Land Trust with only 5.6 feet of useable riparian zone and changes the status quo and does not allow the Doyle Land Trust to use the 34+ year location and configuration of its pier.

Wherefore, the Doyle Land Trust requests that Paragraph 63 of the Nonfinal Order be modified as to the Doyle Land Trust Lot 14 and to have Paragraph 63 read as follows:

“With regard to the Yoder’s Lot 12, Marshes’ Lot 13, Doyle Land Trust’s Lot 14, the Yoders, Marshes and Doyle Land Trust shall maintain five (5) feet of clearance from each respective riparian zone boundary to aid in the safe navigation and to preserve the public trust.”

Respectfully Submitted,



Gordon P. Doyle #4595-18
Attorney for Doyle Land Trust
107 S. Mulberry St., Suite 200
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Witness and Exhibit List has been sent by electronic mail this 21st day of September, 2015 to:

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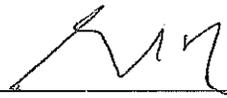
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GORDON P. DOYLE



Order was accompanied by a Notice of Filing setting September 21, 2015, as the deadline for filing objections to the Nonfinal Order.

2. The Nonfinal Order established the respective riparian zones of the parties and found that “the respective owner shall maintain ten (10) feet of clearance from each riparian zone boundary to aid in the safe navigation and to preserve the public trust.” (Nonfinal Order, p. 19, ¶ 63). (Emphasis added).

3. The basis for this 10-foot setback appears to come from Information Bulletin No. 56, which provides:

To assist with safe navigation, as well as to preserve the public trust and the rights of neighboring riparian owners, there ideally should be 10 feet of clearance on both sides (for a total of 20 feet) of the dividing line between riparian zones. At a minimum, a total of 10 feet is typically required that is clear of piers and moored boats, although the area may be used for loading and unloading boats and for active recreation.

Information Bulletin #56 (Second Amendment), p. 2. (Emphasis added). The legal basis for this guideline in Information Bulletin No. 56 is two NRC decisions. In the first decision, *Havel & Stickelmeyer v. Fisher, et al.* 11 CADDNAR 110, 119 (2007), the NRC found that, based upon expert testimony “a minimum of 10 to 16 feet should be maintained to provide for safe navigation between piers, but 20 feet is preferred.” (Emphasis added). Based on the evidence in the case, the NRC found that 16 feet was sufficient. In the second decision, *Rugfenbarger & Rufenbarger v. Blue, et al.*, 11 CADDNAR 185, 194 (2007), the NRC found that based upon the evidence at the hearing, “five feet on either side of the [riparian zone] line . . . [the parties] should properly refrain from placing a pier or similar structure licensed under the Lakes Preservation Act and should properly refrain from mooring a boat.” (Emphasis added). Therefore, the setback from the respective riparian zone boundary should

be based on the evidence in the case, such as the width of the property owner's shoreline. For example, if a landowner only has twenty feet of shoreline, but is required to maintain a 10-foot setback from each riparian zone boundary, then the setback would effectively occupy the landowners' entire riparian zone. In this case, requiring the landowner to have a 10-foot setback from each boundary would effectively prohibit reasonable access to and reasonable use of the public freshwater lake. Where a landowner has a narrow shoreline, Information Bulletin #56 allows a 5-foot setback from each riparian boundary so that the landowner has reasonable use of his riparian zone.

4. In the Nonfinal Order, The ALJ found that:

The Doyles, the Doyle Trust, the Marshes, the Yoders and South Shore have historically extended piers into Lake Wawasee in a manner suggesting that the riparian zones associated with these properties were established lakeward of lines perpendicular to the shoreline. The piers extending from the shoreline of these properties today are in essentially the same location and configurations as they have been for 30 or more years.

Nonfinal Order, p. 3, ¶ 14. (Emphasis added).

5. The evidence at the administrative hearing showed that both the Yoders' and the Marshes' lots are narrow at the shoreline of Lake Wawasee. The Yoders' Lot 12 is only 30.4 feet wide at the shoreline, and the Marshes' shoreline is only 32.3 feet. *See Claimant's Ex. 8, which is attached hereto.* If the Yoders and the Marshes are required to maintain a 10-foot setback from each their riparian zone boundaries, then the setback would occupy 20 feet - - or two-thirds - - of their entire riparian zone. The 10-foot setback changes the status quo and does not allow the Yoders and the Marshes to use the 30-year location and configuration of their piers.

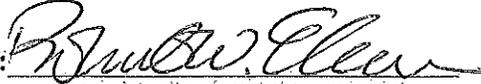
6. At the administrative hearing, there was photographic evidence submitted by the Yoders showing the historical location of the Yoder's and the Marshes' respective piers and the mooring of their boats. *See Yoder Ex. A, Ex. B, and Ex. D, which are attached hereto.* The Nonfinal Order found that the Yoders' and the Marshes' piers had been placed "in essentially the same location and configurations" for 30 or more years. Nonfinal Order, p. 3, ¶ 14. There is no evidence in the record indicating that during this 30-year period there have ever been any boating accidents, safety issues, access issues or navigational issues between the Yoders' and Marshes' properties.

7. Based on the evidence at the administrative hearing, the Yoders and the Marshes respectfully request that Paragraph 63 on the Nonfinal Order be modified as to their two properties - - Lot 12 and Lot 13 - - and to have Paragraph 63 read as follows: "With regard to the Yoders' Lot 12 and the Marshes' Lot 13, the Yoders and the Marshes shall maintain five (5) feet of clearance from each respective riparian zone boundary to aid in the safe navigation and to preserve the public trust." This modification of the Nonfinal Order is supported by Information Bulletin #56, *Rugfenbarger & Rugfenbarger v. Blue, et al.*, 11 CADDNAR 185, 194 (2007), and the undisputed evidence introduced at the administrative hearing.

Respectfully submitted,

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BY: 
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BY: 
JOSEPH R. HEERENS
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the above and foregoing
Objection to Nonfinal Order of Partial Summary Judgment on Remand has been sent
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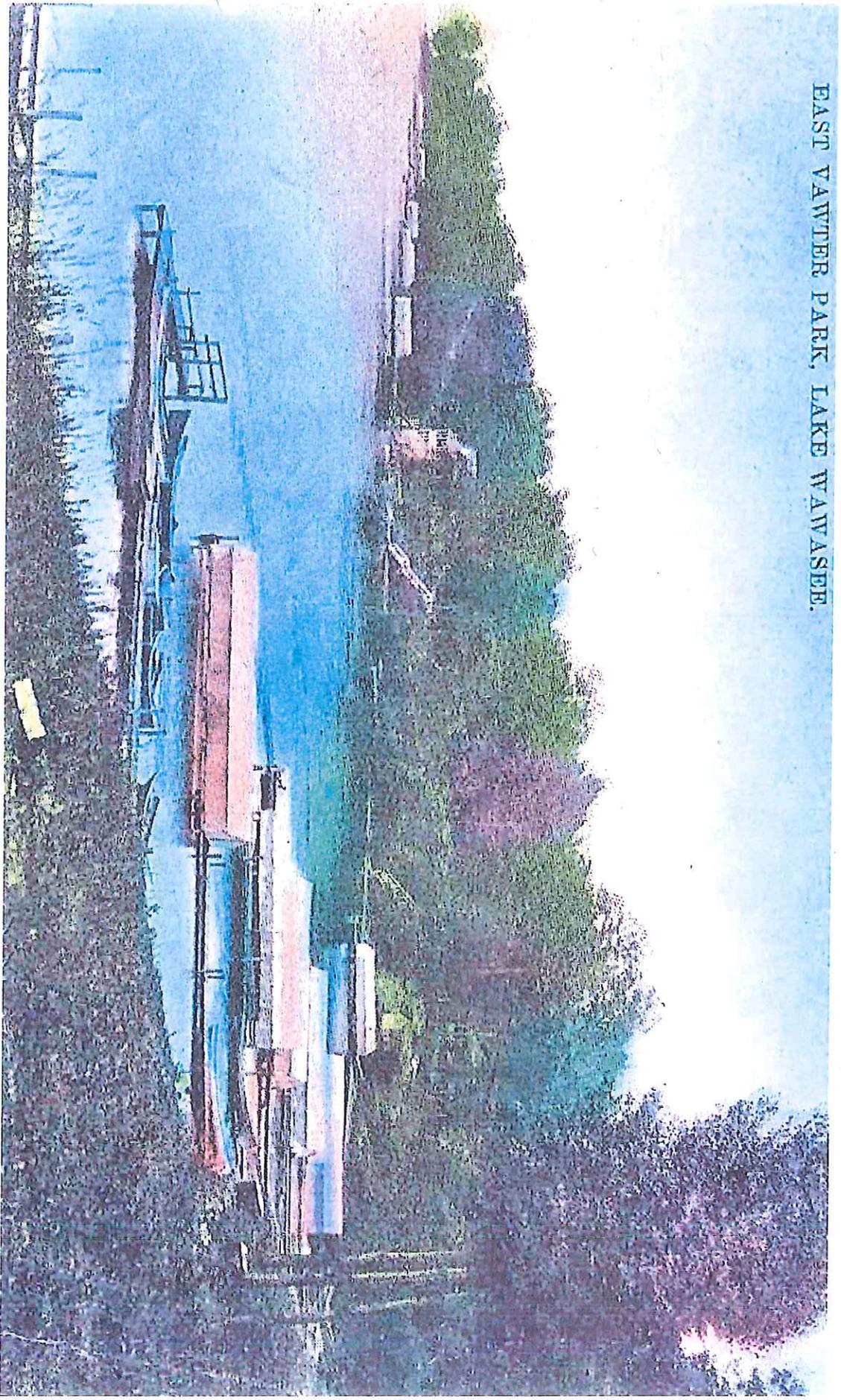
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ROBERT W. EHERENMAN

EAST VAWTIER PARK, LAKE WAWASEE.



1910

tabbles®

EXHIBIT

A



tabbles®

B

EXHIBIT

Kitch

Wilson (C. Doyle - back lot)

Wilson (C. Doyle)

DOYLE FAMILY

Deister (MARSH)

YODER

tabbles'

D

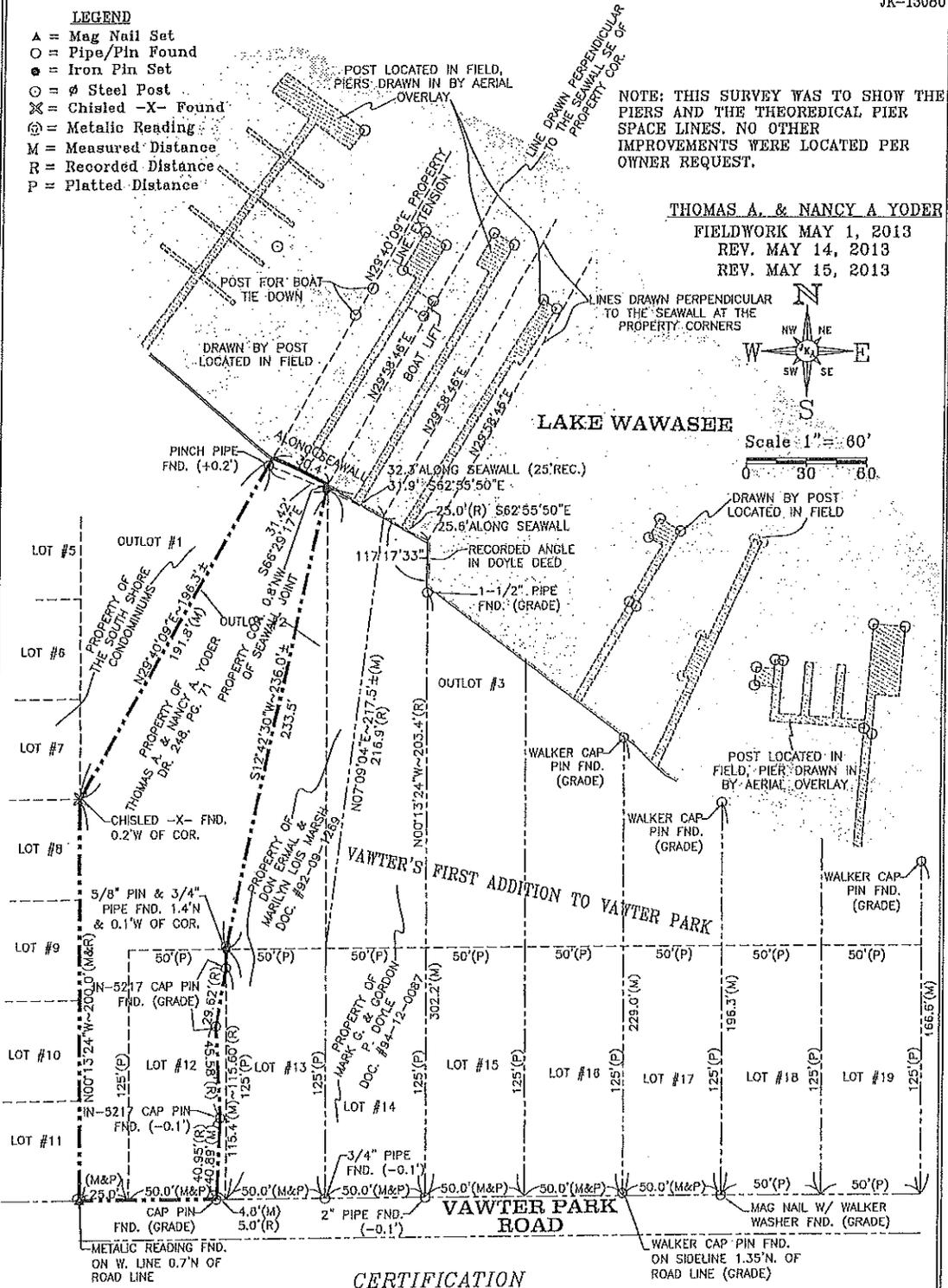
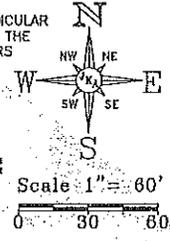
EXHIBIT



- LEGEND**
- ▲ = Mag Nail Set
 - = Pipe/Pin Found
 - = Iron Pin Set
 - = ∅ Steel Post
 - ⊗ = Chisled -X- Found
 - ⊙ = Metallic Reading
 - M = Measured Distance
 - R = Recorded Distance
 - P = Platted Distance

NOTE: THIS SURVEY WAS TO SHOW THE PIERS AND THE THEORETICAL PIER SPACE LINES. NO OTHER IMPROVEMENTS WERE LOCATED PER OWNER REQUEST.

THOMAS A. & NANCY A YODER
 FIELDWORK MAY 1, 2013
 REV. MAY 14, 2013
 REV. MAY 15, 2013



CERTIFICATION

I the undersigned Land Surveyor, registered as provided by law in the State of Indiana, have made a survey of the above tract and I certify that this plat is a correct representation thereof. This survey was made for Tom Yoder on May 15, 2013.

John M. Kimpel
 John M. Kimpel
 Registered Land Surveyor #S0562



5/14/13 leh
 Rev. Marsh Prop. to 25' Doo E. at Lake
 Rev. Add Piers and Notes

63. With respect to each of the established riparian zones, the respective owner shall maintain ten (10) feet of clearance from each riparian zone boundary to aid in safe navigation and to preserve the public trust.

(Nonfinal Order, ¶ 63).

3. The basis for Kitch's objection to the foregoing paragraph are set forth as follows:

a. Information Bulletin No. 56, which was relied upon in the Order to establish (appropriately) the riparian lines, offers guidance with respect to the distance between riparian owners and/or piers/moored boats to assist with safe navigation and preserve the public trust. Specifically, Information Bulletin No. 56 states as follows:

To assist with safe navigation, as well as to preserve the public trust and the rights of neighboring riparian owners, their ideally should be 10 feet of clearance on both sides (for a total of 20 feet) of the dividing line between riparian zones. *At a minimum, a total of 10 feet is typically required that is clear of piers and moored boats*, although the area may be used for loading and unloading boats for active recreation.

Information Bulletin No. 56 *citing Rufenbarger, et al. v. Blue, et al.*, 11 Caddnar 185, 194 (2007)(finding that "five feet on either side of the [riparian zone] line . . . [the parties] should properly refrain from placing a pier or similar structure licensed under the Lakes Preservation Act and should properly refrain from mooring a boat.") and *Havel & Stickelmeyer v. Fisher, et al.*, 11 Caddnar 110-119 (2007).

Accordingly, Information Bulletin No. 56 permits a minimum of 10 feet in a typical scenario that is clear of piers and moored boats.

- b. No evidence was produced at the hearing that suggested that the historical use of the piers (reflected in Yoder Ex. "D") interfered with safe navigation or the public trust.
- c. Kitch submits that a "buffer zone" consistent with the second sentence of the excerpt above from Information Bulletin No. 56 would accommodate the historic use of the piers and adequately maintain the public trust and safe navigation of the waterways.
- d. However, given the historic location of the piers, the lot sizes, and the curved shoreline, a buffer zone of 10 feet from the riparian zone on either side of a pier/moored boat would prejudice the parties. Under such a scenario, the riparian owners would likely need to make adjustments that deviate from the status quo and historic use.

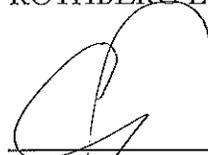
4. Based on the foregoing, Kitch Acceptance Corp. respectfully request that the paragraph 63 be modified consistent with Information Bulletin No. 56 to read as follows:

63. With respect to each of the established riparian zones, the respective owner shall maintain five (5) feet of clearance from each riparian zone boundary to aid in safe navigation and to preserve the public trust.

WHEREFORE, Kitch Acceptance Corp., by counsel, respectfully requests that paragraph 63 of the Order be so modified and for all other just and proper relief in the premises.

Respectfully Submitted,

ROTHBERG LOGAN & WARSCO LLP



Thomas B. Trent #23173-02
Andrew L. Palmison #27995-64
Attorneys for Third Party Respondent
Kitch Acceptance Corp.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was deposited in the U.S. Mail, First Class, postage pre-paid on the 21st day of September, 2015, addressed to:

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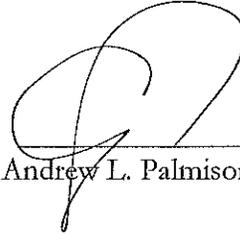
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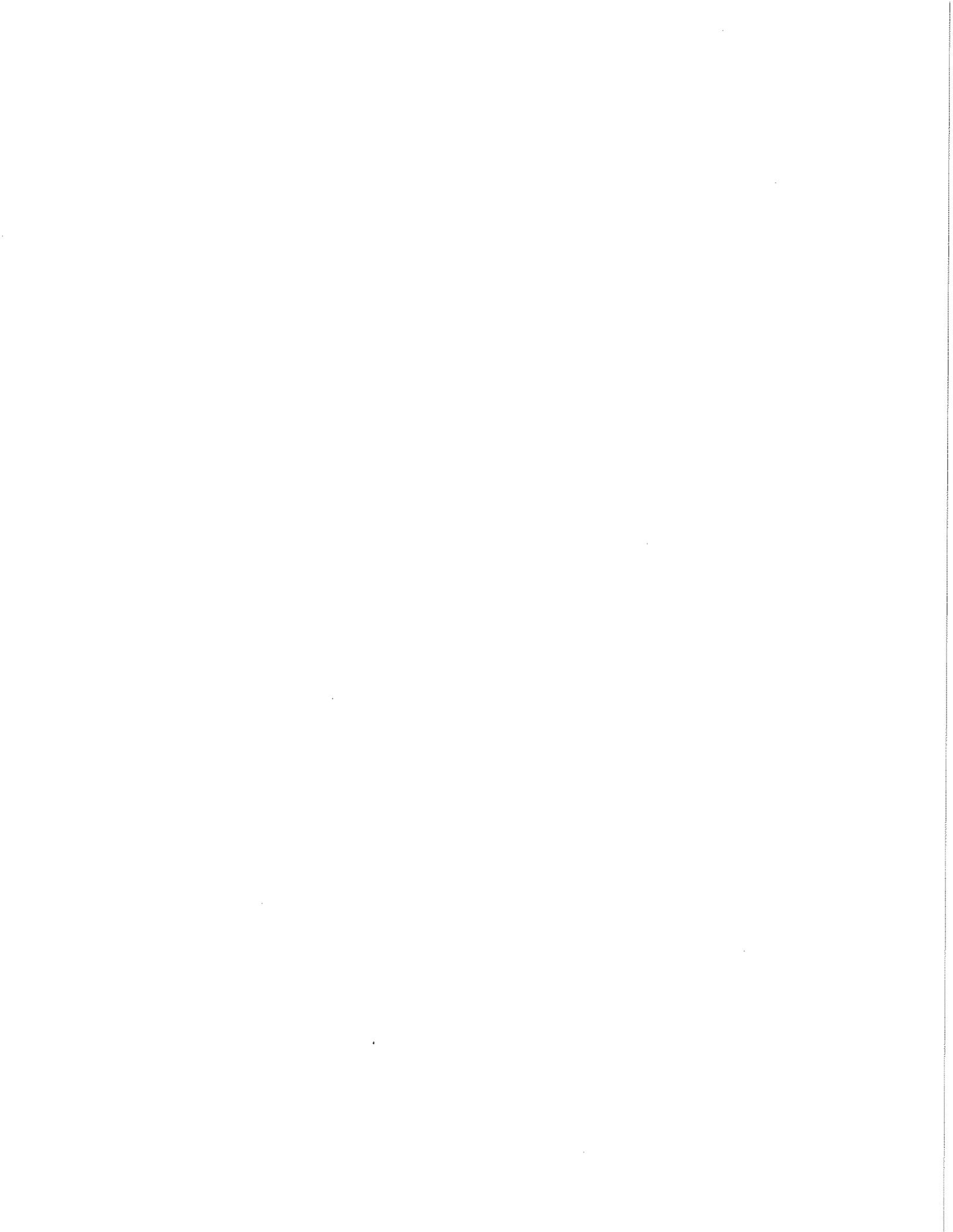
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Sandra L. Jensen
Administrative Law Judge
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2200

AOPA Committee
Natural Resources Commission
Indiana Government Center North
100 North Senate Avenue, Room N501
Indianapolis, Indiana 46204-2200



Andrew L. Palmison



**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

| | | |
|--|---|----------------------------------|
| ANNA SUDLOW and |) | Administrative Cause |
| CONSTANCE SUDLOW HECKAMAN, |) | Number: 12-119W |
| Claimants, |) | |
| |) | |
| vs. |) | |
| |) | |
| JOAN M. SLOCUM, |) | (Riparian Rights Dispute) |
| Respondent, |) | |
| |) | |
| KITCH ACCEPTANCE CORP.; CRAIG D. |) | |
| DOYLE and LEE A. DOYLE; MARK G. |) | |
| DOYLE and GORDON P. DOYLE as |) | |
| TRUSTEES of the DOYLE LAND TRUST, |) | |
| DON ERMAL MARSH and MARILYN LOIS |) | |
| MARSH; THOMAS A. YODER and NANCY A. |) | |
| YODER; and SOUTH SHORE |) | |
| CONDOMINIUM ASSOCIATION, |) | |
| Third Party Respondents. |) | |
| |) | |
| DEPARTMENT OF NATURAL RESOURCES, |) | |
| Agency Respondent. |) | |

**NOTICE OF INTENT TO PROPOSE AMENDMENT TO THE AOPA
COMMITTEE OF THE NATURAL RESOURCES COMMISSION WITH RESPECT TO
CERTAIN RESPONDENTS RELATING TO FINDING 63 OF THE FINDINGS OF
FACT AND CONCLUSIONS OF LAW WITH NONFINAL ORDER**

The Claimants, Anna C. Sudlow and Constance Heckaman Sudlow, as well as various Third Party Respondents, including Mark G. Doyle and Gordon P. Doyle, as Trustees of the Doyle Land Trust, Don Ermal and Marilyn Lois Marsh, Thomas A. and Nancy A. Yoder, and Kitch Acceptance Corporation, have each filed objection to Finding 63 of the "Findings of Fact and Conclusions of Law with Nonfinal Order". Finding 63 states:

With respect to each of the established riparian zones, the respective owner shall maintain ten (10) feet of clearance from each riparian zone boundary to aid in safe navigation and to preserve the public trust.

Lot 12, owned by Thomas A. and Nancy A. Yoder, has only 30.4 feet of shoreline, while Don Ermal and Marilyn Lois Marsh's property, Lot 13, has only 32.3 feet, and Lot 14, owned by the

Doyle Land Trust, has access to only 25.6 feet of shoreline. As is reflected in Finding 14, the piers associated with these properties have existed in “essentially the same locations and configurations” for 30 or more years. The evidence also indicates no navigational or safety concerns have arisen in conjunction with these piers during their existence. For these reasons the administrative law judge intends to propose that in issuing the Commission’s final order in this matter the AOPA Committee modify the nonfinal order to require the following:

1. That only five (5) feet of clearance be required on the east-southeast side of the riparian zone boundary of Lot 12 owned by Thomas A. and Nancy A. Yoder;
2. that only five (5) feet of clearance be required on the west-northwest side of the riparian zone boundary of Lot 14, owned by the Doyle Land Trust; and
3. that only five (5) feet of clearance be required on each side of both riparian zone boundaries of Lot 13, owned by Don Ermal and Marilyn Lois Marsh.

The administrative law judge observes that the evidence of record reflects that the shoreline associated with the Claimants, Anna C. Sudlow’s and Constance Sudlow Heckaman’s, and Third Party Respondent, Kitch Acceptance Corporation’s properties is approximately 50 feet or greater in length¹. With respect to these parties, the administrative law judge offers no additional input.

Dated: September 25, 2015


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¹ Additional parties, including the Respondent, Joan Slocum, as well as Third Party Respondents, Craig D. and Lee A. Doyle and South Shore Condominium Association, who also possess 50 feet or greater lengths of shoreline, did not file objections to the “Findings of Fact and Conclusions of Law with Nonfinal Order”.

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