

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

**IN THE MATTER OF:**

<b>SHOREWOOD CONSERVATION DEVELOPMENT, LLC. &amp; ROBERT E. BAKER,</b>	)	
<b>Petitioners,</b>	)	<b>Administrative Cause</b>
	)	<b>Number: 22-041W</b>
<b>vs.</b>	)	
	)	
<b>WILLIAM C. DREW &amp; DIANE M. DREW,</b>	)	<b>Riparian Rights</b>
<b>Respondents.</b>	)	

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

**Procedural Background and Jurisdiction**

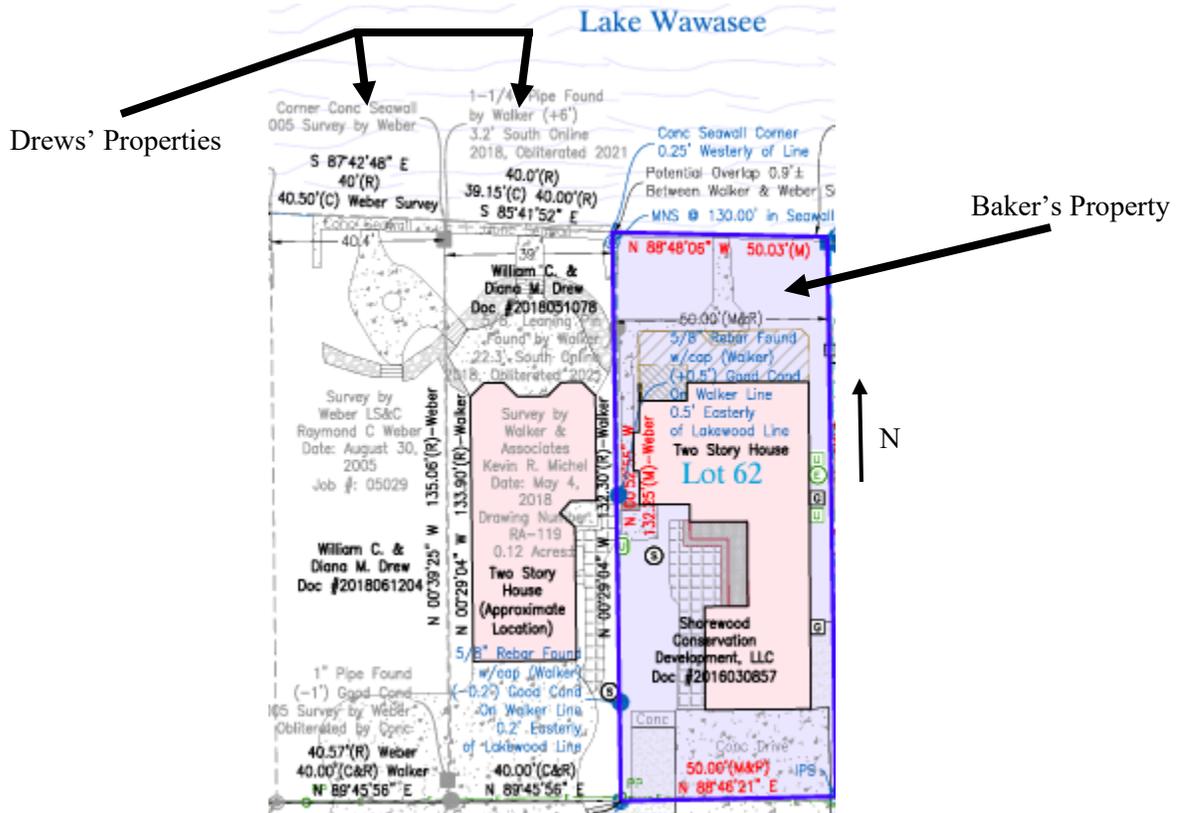
1. On June 23, 2022, Shorewood Conservation Development, LLC. and Robert E. Baker (hereinafter Baker) filed correspondence (hereinafter Petition) with the Natural Resources Commission (hereinafter Commission) alleging that William C. and Diane M. Drew (hereinafter Drews) extended a pier into Lake Wawasee that interfered with Baker’s use of his riparian area. See Petition.
2. Baker sought to have the parties’ respective riparian zones defined and to resolve the dispute involving Drews’ pier so as to respect Baker’s riparian rights. Id.
3. By filing his Petition, Baker initiated a proceeding governed by Indiana Code 4-21.5-3, sometimes referred to as the Administrative Orders and Procedures Act (AOPA) and the administrative rules adopted by the Commission at 312 IAC 3-1 to assist with the implementation of AOPA. See IC 4-21.5-3-1, et seq.
4. Administrative Law Judge (ALJ) Aaron Bonar was appointed under IC 14-10-2-2 to conduct this proceeding and was assigned this case on or around July 1, 2022.
5. A telephonic prehearing conference was held on July 14, 2022. Counsel for Drews stated that Drews would likely file a quiet title action in the Kosciusko County Superior Court related to a landward property dispute between the parties and a motion to stay this action pending the outcome of the quiet title action.

6. Drews filed a quiet title action on July 18, 2022, and filed a Motion to Stay This Action Pending a Final Order by Kosciusko Superior Court in this matter on September 6, 2022. The stay was granted by ALJ Bonar during a telephonic conference held on September 6, 2022.
7. At the parties' request, a telephonic status conference was held on August 7, 2023. The parties acknowledged that the Kosciusko County case was ongoing, but that any ruling in that case would have minimal impact on the issues in this matter. The parties agreed that the only issue to be heard in this case is the amount of open, navigable space each party will have to maintain on their respective sides of a dividing riparian line.
8. The parties agreed to hold an administrative hearing on October 11, 2023. At the hearing, Baker, Baker's counsel Bill Eberhard, Drews, and Drews' counsel Stephen Snyder, appeared in person at the Commission Hearing Room at the Indiana Government Center in Indianapolis, Indiana.
9. The following witnesses testified at the administrative hearing: Ryan Weber, Kent Baker, Gloria Novotny, and William C. Drew.
10. Baker's Exhibits A-X and Drews' Exhibits 1-36 were admitted into the record by stipulation at the administrative hearing.
11. The parties filed post-hearing briefs on November 13, 2023.

### **Findings of Fact**

12. Baker owns real property abutting Lake Wawasee in Kosciusko County, IN. The property is commonly known as 6582 E. Waco Drive, Syracuse, IN 46567. See testimony of Kent Baker (Baker testimony) and Exhibit H.
13. Baker's family has owned the property for at least two generations. Baker's father holds a life estate in the property. On the death of Baker's father, the remainder of the property will vest in Shorewood Conservation Development, LLC., Baker's company. See Baker testimony and Exhibit B.
14. Drews own real property abutting Lake Wawasee in Kosciusko County, IN. The property is commonly known as 6574 E. Waco Drive, Syracuse, IN 46567. Drews purchased the property in 2018. See testimony of William C. Drew (Drew testimony) and Exhibit 32.

15. Ryan Weber is a licensed surveyor in Indiana. Weber testified that Baker’s and Drews’ properties share a common property line that runs north and south, with the Drews’ property being immediately west of Baker’s property. The north-south property line terminates northward into Lake Wawasee. See testimony of Ryan Weber (Weber testimony) and Exhibits F, H (excerpt below), and W.



16. Drews’ property consists of two lots, giving Drews approximately 80 feet total of combined shorefront. Baker’s property, consisting of one lot, has approximately 50 feet of shorefront. See Weber testimony, Baker testimony, testimony of Gloria Novotny (Novotny testimony), and Exhibits H and F.
17. No evidence was presented that the parties had any issues concerning their respective pier placements before 2021. See totality of the evidence and Exhibits 29 and X (old pier placements).
18. By September 2021, Drews’ pier had been expanded and was closer to the riparian line dividing the Baker and Drews riparian zones. See Exhibits S and W.
19. In November 2021, Baker emailed Drews noting that Baker believed that Drews’ pier and accessories likely cross into the “safety zone” between the Drews’ and Baker’s piers. Baker asked Drews not moor any watercraft on Drews’ pier in such a way as to “push further into

the riparian rights zone allowing in/out unimpeded access to our shoreline.” See Baker testimony and Exhibit D.

20. In 2022, Drews reconfigured their pier, including placing a boatlift on the east side of the lakeward end of the pier. This reconfiguration did not address the concerns raised by Baker but raised further safety concerns for Baker’s family and guests due to the narrowed clearance between the parties’ piers. See Baker testimony, Novotny testimony, and Exhibits S and 5.
21. An overlay of an aerial photograph on Weber’s survey shows Drews’ pier is between 5.9 and 7.1 feet away from the boundary dividing the riparian zones. Baker’s pier is between 10.8 and 9.6 feet away from the shared riparian line. This creates a total of approximately 16.7 feet of space between the two piers. See Exhibits F and 6.
22. In July 2022, Drews filed a quiet title action in the Kosciusko County Superior Court. This case was pending at the time of the hearing. The parties agree that the quiet title action is limited to the parties’ onshore property boundaries. See totality of the record and pleadings in 43D04-2207-PL-000064.
23. However, the parties seek the have the Commission establish the extent of the riparian safety zone (clear space). The parties agree that the outcome of the Kosciusko County Court case will have minimal impact on this matter as the dividing line between the two riparian zones is unlikely to create a significant difference in the size of the parties’ respective riparian zones. See totality of the record.
24. As of the hearing date, the piers were in the same location as they were after the 2022 reconfiguration. As of 2023, Drews have a “jut out” that make the space between the parties’ piers narrower. See Baker testimony; Drew testimony; and Exhibits P, T, U, and 11.
25. To date, there have been no collisions of watercraft owned by the parties or their guests due to the nearness of the parties’ respective piers. See Drew testimony and Baker testimony.

### **Conclusions of Law**

26. Lake Wawasee is a Public Freshwater Lake located in Kosciusko County, Indiana. Information Bulletin #61 Listing of Public Freshwater Lakes (Eighth Amendment), DIN 2021020-IR-312210447NRA (IB61).
27. IC 14-26-2-5, also known as the Lake Preservation Act, provides that the State “has full power and control of all the public freshwater lakes in Indiana ... [and] hold and controls

all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.” See IC 14-26-2-5(d)(1-2).

28. The Commission has jurisdiction over public freshwater lakes and has the power to make administrative rules to implement relevant sections of the Indiana Code. See IC 14-10-2, 14-15-7-3, 14-26-2-23<sup>1</sup>, and 4-22-2.
29. A “riparian owner” is “the owner of land, or the owner of an interest in land sufficient to establish the same legal standing as the owner of land, bound by a lake.” 312 IAC 11-2-19.
30. In general, the owner of property that abuts a lake possesses certain rights associated with ownership of that property. *Bass v. Salyer*, 923 N.E.2d 961, 971 (Ind. Ct. App. 2010). Those rights include “(1) the right of access to navigable water; (2) the right to build a pier out to the line of navigability; (3) the right to accretions; and (4) the right to a reasonable use of the water for general purposes . . .” *Parkison v. McKue*, 831 N.E.2d 118, 128 (Ind. Ct. App. 2005).
31. It is not disputed that the parties all own real estate abutting Lake Wawasee and are therefore riparian owners. As such, they each may be permitted to extend a qualifying temporary structure lakeward of the shoreline of Lake Wawasee provided that the structure meets several criteria, including that the structure does “[n]ot infringe on the access of an adjacent landowner to the public freshwater lake” and does “[n]ot unduly restrict navigation.” See 312 IAC 11-3-1(b).
32. The Commission is required to consider the guidance provided in Information Bulletin #56 (IB56) when asked to determine parties’ riparian boundaries. 312 IAC 11-1-4 and Information Bulletin #56, *Riparian Zones within Public Freshwater Lakes and Navigable Rivers* (Third Amendment), DIN 20220209-IR-312220025NRA.
33. IB56 does not have the effect of law; however, it is widely followed to provide guidance for determining riparian boundaries. *England v. Ball & Arend*, 15 CADDNAR 77, 79 (2019).
34. The parties agree that IB56’s second principle applies in this matter and agree that the riparian line dividing their properties will extend straight into Lake Wawasee from the landward property line determined in the Kosciusko County Court case. See IB56 at page 3.
35. IB56 also states, in relevant part, “[t]o 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

---

<sup>1</sup> IC § 14-26-2-23(e)(3) was repealed by the Indiana legislature, effective July 1, 2023. However, as this petition was filed on June 23, 2022, the Commission retained jurisdiction over this matter.

boats, although the area may be used for loading and unloading boats and for active recreation.” See IB56 at page 2.

36. While IB56 recommends that parties maintain a total of 20 feet of clearance between lakeward structures, the Commission has sometimes ordered parties to maintain less clearance space. The Commission has also found a ten (10) foot clearance space to be an adequate safety zone. See *N.G. Hatton Trust v. Young & Pfeiffer*, 14 CADDNAR 176 (2017); *Xanders v. Nixon Trust*, 14 CADDNAR 33 (2015); *Lawson v. Halliwill*, 13 CADDNAR 146 (2013).
37. The parties agree that there is 16.7 feet of space between their respective piers. Both piers are set back at least five (5) feet from the riparian zone boundary line. Indeed, regardless of which possible line is drawn, Baker’s pier is nearly 10 feet from the potential riparian line and Drews’ pier is at least six (6) feet from the same line.
38. Both parties seem to be confused as to what constitutes a “safety zone” in terms of riparian rights. A safety zone is not to be used for mooring boats or placing boatlifts but is to be kept free of “piers and moored boats” as well as other structures. See IB56 at page 2.
39. Given the Commission’s history of finding a 10-foot safety zone adequate to satisfy the guidance of IB56, the 16.7-foot distance between the parties’ piers, and the lack of any collisions or safety incidents due to the piers’ current configurations as of the hearing date, the ALJ finds that the parties must maintain no less than five (5) feet of space clear from any piers, moored watercraft, and/or boatlifts from the riparian boundary line as established by the final order in the Kosciusko County Court case.
40. At no time may either party leave less than five (5) feet of clear buffer space, including space occupied by moored watercraft, available from the riparian line between the parties’ respective riparian zones.
41. At no time may any watercraft moored and/or docked at either party’s pier cross into or otherwise infringe on the other party’s riparian zone beyond infringement caused by the temporary entry to and exit from the parties’ respective riparian zones.
42. The parties are responsible for adjusting their piers, moored watercraft, and/or boatlifts, if necessary, to comply with this order.

**NONFINAL ORDER**

1. Upon the determination of the Kosciusko County Superior Court in 43D04-2207-PL-000064, the riparian line dividing the parties' properties shall be drawn "by extending the onshore boundaries into the public waters" of Lake Wawasee.
2. Both parties are to maintain no less than five (5) feet of clear space on their respective sides of the riparian line, creating a total of 10 feet of open, clear, navigable space between the parties' respective piers.
3. The five (5) feet of clear space maintained by each party must be kept free of piers, moored watercraft, boatlifts, and other structures.
4. At no time may either party leave less than five (5) feet of clear space, including space occupied by piers, moored watercraft, and/or boatlifts, available from the riparian line between the parties' respective riparian zones.
5. At no time may any watercraft moored at either party's pier cross into or otherwise infringe on the other party's riparian zone beyond infringement caused by the temporary entry to and exit from the parties' respective riparian zones.
6. The parties are responsible for adjusting their piers, moored watercraft, boatlifts, and other structures, if necessary, to comply with this order.

Dated: February 13, 2024



Aaron W. K. Bonar, Administrative Law Judge  
Natural Resources Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, Indiana 46204-2200  
(317) 232-4699

**DISTRIBUTION**

The foregoing is distributed to the parties as follows on February 13, 2024.

Distribution List:

Petitioners:

Bill D. Eberhard, JR. and Charity A. Murphy  
Attorneys for Petitioners  
[bill@eberhardweimer.com](mailto:bill@eberhardweimer.com)  
[charity@eberhardweimer.com](mailto:charity@eberhardweimer.com)

Respondents:

Stephen R. Snyder  
Attorney for Respondents  
[srs@smfklaw.com](mailto:srs@smfklaw.com)

A copy of the foregoing will also be distributed to the following in accordance with IC 4-21.5-3 or IC 5-14-3. *The parties need not serve pleadings, motions or other filings upon these persons.*

DNR Legal

Donna Ridner, Division of Water

By: Scott Allen, Legal Analyst, Natural Resources Commission

BEFORE THE  
NATURAL RESOURCES COMMISSION  
OF THE STATE OF INDIANA

SHOREWOOD CONSERVATION	)	
DEVELOPMENT LLC and	)	
ROBERT E. BAKER,	)	
	)	
Petitioners,	)	Administrative Cause No.: 22-041W
	)	
vs.	)	
	)	
WILLIAM C. DREW and	)	Riparian Rights
DIANE M. DREW,	)	
	)	
Respondents.	)	

**PETITIONERS, SHOREWOOD CONSERVATION DEVELOPMENT LLC and  
ROBERT E. BAKER, OBJECTION TO FINDING OF FACT AND  
CONCLUSIONS OF LAW WITH NON-FINAL ORDER**

Petitioners, Shorewood Conservation Development LLC and Robert E. Baker (collectively “Baker”), by counsel, pursuant to I.C. 4-21.5-3-29 and 312 IAC 3-1-12, hereby assert to the AOPA Committee of the Natural Resources Commission the following objections to the finding and conclusions of the Non-Final Order issued in this proceeding on February 13, 2024.

1. Baker objects to finding/conclusion number 36 because such finding/conclusion misapplies applicable law and legal principles. It is correct that the Commission “sometimes” orders less than 20 feet, and that (on occasion) the Commission has found 10 feet to be an adequate safety zone; however, what is not conveyed in this finding/conclusion is that the standard/recommendation is 20 feet, and there would be some justification for deviating from the standard/recommendation (*e.g.* property owners having a small area of shoreline; the shoreline being irregular; and/or an agreement between the parties – none of which applies to Baker’s case).
2. Baker objects to finding/conclusion number 37 because it incorrectly states the space between the Parties’ piers, as well as from the riparian zone boundary line. The Finding of Fact and Conclusions of Law with NonFinal Order (hereinafter “Non-Final Order”) correctly noted

Surveyor Ryan Weber calculated the Drews’ pier between 5.9 – 7.1 feet from the riparian line and Baker’s pier between 9.6 – 10.8 feet from the riparian line (Non-Final Order, ¶21); however, Kent Baker and his wife Ms. Novotney testified that the Drews’ boatlift further reduced the safety zone by another 1 -2 feet. Hence, there is less than 16.7 feet.

3. Baker objects to finding/conclusion number 38 because such finding/conclusion fails to state how Baker is confused as to what constitutes a “safety zone”; rather, the uncontradicted evidence shows that Baker has provided approximately 10 feet of safety space, wherein they have not moored a boat/watercraft or placed a pier, between their riparian zone and the Drews’ riparian zone. However, the Drews have only provided approximately 5 feet of safety space, which resulted in this lawsuit.
4. Baker objects to finding/conclusion number 39 because such finding/conclusion misapplies applicable law and legal principles. The Non-Final Order correct states the Commission is “required” to consider the guidance provided in Information Bulletin #56 (Non-Final Order, ¶32), and that the Commission has “sometimes” ordered parties to maintain less than 20 feet of clearance (Non-Final Order, ¶36 and Objection 1, *supra*); however, in contradiction to IB56 (p.2) and other NRC case holdings, the Non-Final Order states:

Given the Commission’s history of finding a 10-foot safety zone adequate to satisfy the guidance of IB56, the 16.7-foot distance between the parties’ piers, and the lack of any collisions or safety incidents [...] the ALJ finds that the parties must maintain no less than five (5) feet of space [...] (Non-Final Order, ¶39).

In violation of IB56 and precedent, wherein a total of 20 feet is the “ideal” standard/ recommended set-back [*see Yager v. Ryan*, 14 CADDNAR 50 (2016); *WAWA, LLC v. E. Mark Deister*, 16 CADDNAR 2 (2021); *McCulloch v. Day & Schramm*, 12 CADDNAR 40 (2009)], the Non-Final Order instructed there to be just 10 feet of clear space, in total, despite the Bakers testifying to issues and safety concerns. Seemingly, the only justification/evidence to support a reduction of the buffer zone within the Non-Final Order is that there has not been a

collision or safety incident (yet). However, “lack of an accident” is insufficient to support a deviation from the standard set forth in IB56.

Seemingly, the new precedent being set by the Non-Final Order is that unless there is an actual collision or safety incident, each party must only provide 5 feet of safety space.

5. Baker objects to finding/conclusion number 40 because each party should be required to provide 10 feet of clear buffer space, for a total of 20 feet. *See* Objection 1, 4.
6. Baker objects to paragraph 2 of the Non-Final Order because each party should be required to provide 10 feet of clear buffer space, for a total of 20 feet. *See* Objection 1, 4.
7. Baker objects to paragraph 3 of the Non-Final Order because each party should be required to provide 10 feet of clear buffer space, for a total of 20 feet. *See* Objection 1, 4.
8. Baker objects to paragraph 4 of the Non-Final Order because each party should be required to provide 10 feet of clear buffer space, for a total of 20 feet. *See* Objection 1, 4.

WHEREFORE, Petitioners, Shorewood Conservation Development LLC and Robert E. Baker, pursuant to I.C. 4-21.5-3-29 and 312 IAC 3-1-12, object to the findings and conclusion of the above referenced nonfinal order and requests that AOPA Committee of the Natural Resources Commission set this matter for oral argument, that it modify and/or dissolve the nonfinal order consistent with the objections stated herein, and that it grant any and all other appropriate relief.

Respectfully submitted,

EBERHARD, WEIMER & GLICK, P.C.

/s/ Bill D. Eberhard, Jr.

Bill D. Eberhard, Jr., # 7903-44  
EBERHARD, WEIMER & GLICK, P.C.  
115 South Detroit St.  
LaGrange, IN 46761  
Attorney for Petitioners

**CERTIFICATE OF SERVICE**

I certify that on the 27<sup>th</sup> day of February, 2024, service of a true and complete copy of the above foregoing pleading, *Petitioners, Shorewood Conservation Development LLC and Robert E. Baker, Objection to Finding of Fact and Conclusions of Law With Non-Final Order*, was filed electronically with the Natural Resources Commission and made upon each party or attorney of record herein via email:

Natural Resource Commission- [NRCAOPA@nrc.in.gov](mailto:NRCAOPA@nrc.in.gov)

Rebecca McClain- [rmcclain@dnr.in.gov](mailto:rmcclain@dnr.in.gov); [dnrlegal@dnr.in.gov](mailto:dnrlegal@dnr.in.gov)

Tara Eggen- [tegggen@dnr.in.gov](mailto:tegggen@dnr.in.gov)

Stephen Snyder- [srs@smfklaw.com](mailto:srs@smfklaw.com)

/s/ Bill D. Eberhard, Jr.

Bill D. Eberhard, Jr., # 7903-44

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

**IN THE MATTER OF:**

<b>SHOREWOOD CONSERVATION</b>	)	
<b>DEVELOPMENT, LLC. &amp; ROBERT E.</b>	)	
<b>BAKER,</b>	)	
<b>Petitioners,</b>	)	<b>Administrative Cause</b>
	)	<b>Number: 22-041W</b>
<b>vs.</b>	)	
	)	
<b>WILLIAM C. DREW &amp; DIANE M. DREW,</b>	)	<b>Riparian Rights</b>
<b>Respondents.</b>	)	

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

**Procedural Background and Jurisdiction**

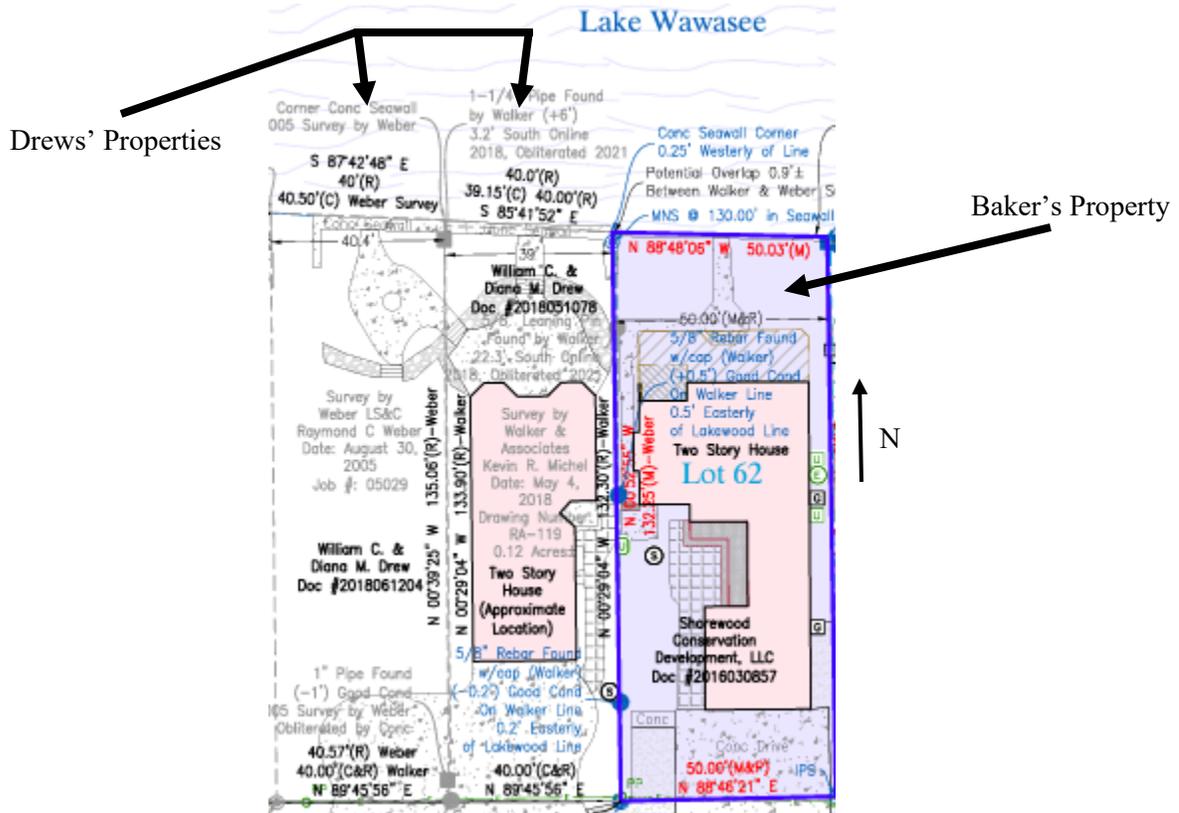
1. On June 23, 2022, Shorewood Conservation Development, LLC. and Robert E. Baker (hereinafter Baker) filed correspondence (hereinafter Petition) with the Natural Resources Commission (hereinafter Commission) alleging that William C. and Diane M. Drew (hereinafter Drews) extended a pier into Lake Wawasee that interfered with Baker’s use of his riparian area. See Petition.
  
2. Baker sought to have the parties’ respective riparian zones defined and to resolve the dispute involving Drews’ pier so as to respect Baker’s riparian rights. Id.
  
3. By filing his Petition, Baker initiated a proceeding governed by Indiana Code 4-21.5-3, sometimes referred to as the Administrative Orders and Procedures Act (AOPA) and the administrative rules adopted by the Commission at 312 IAC 3-1 to assist with the implementation of AOPA. See IC 4-21.5-3-1, et seq.
  
4. Administrative Law Judge (ALJ) Aaron Bonar was appointed under IC 14-10-2-2 to conduct this proceeding and was assigned this case on or around July 1, 2022.
  
5. A telephonic prehearing conference was held on July 14, 2022. Counsel for Drews stated that Drews would likely file a quiet title action in the Kosciusko County Superior Court related to a landward property dispute between the parties and a motion to stay this action pending the outcome of the quiet title action.

6. Drews filed a quiet title action on July 18, 2022, and filed a Motion to Stay This Action Pending a Final Order by Kosciusko Superior Court in this matter on September 6, 2022. The stay was granted by ALJ Bonar during a telephonic conference held on September 6, 2022.
7. At the parties' request, a telephonic status conference was held on August 7, 2023. The parties acknowledged that the Kosciusko County case was ongoing, but that any ruling in that case would have minimal impact on the issues in this matter. The parties agreed that the only issue to be heard in this case is the amount of open, navigable space each party will have to maintain on their respective sides of a dividing riparian line.
8. The parties agreed to hold an administrative hearing on October 11, 2023. At the hearing, Baker, Baker's counsel Bill Eberhard, Drews, and Drews' counsel Stephen Snyder, appeared in person at the Commission Hearing Room at the Indiana Government Center in Indianapolis, Indiana.
9. The following witnesses testified at the administrative hearing: Ryan Weber, Kent Baker, Gloria Novotny, and William C. Drew.
10. Baker's Exhibits A-X and Drews' Exhibits 1-36 were admitted into the record by stipulation at the administrative hearing.
11. The parties filed post-hearing briefs on November 13, 2023.

### **Findings of Fact**

12. Baker owns real property abutting Lake Wawasee in Kosciusko County, IN. The property is commonly known as 6582 E. Waco Drive, Syracuse, IN 46567. See testimony of Kent Baker (Baker testimony) and Exhibit H.
13. Baker's family has owned the property for at least two generations. Baker's father holds a life estate in the property. On the death of Baker's father, the remainder of the property will vest in Shorewood Conservation Development, LLC., Baker's company. See Baker testimony and Exhibit B.
14. Drews own real property abutting Lake Wawasee in Kosciusko County, IN. The property is commonly known as 6574 E. Waco Drive, Syracuse, IN 46567. Drews purchased the property in 2018. See testimony of William C. Drew (Drew testimony) and Exhibit 32.

15. Ryan Weber is a licensed surveyor in Indiana. Weber testified that Baker’s and Drews’ properties share a common property line that runs north and south, with the Drews’ property being immediately west of Baker’s property. The north-south property line terminates northward into Lake Wawasee. See testimony of Ryan Weber (Weber testimony) and Exhibits F, H (excerpt below), and W.



16. Drews’ property consists of two lots, giving Drews approximately 80 feet total of combined shorefront. Baker’s property, consisting of one lot, has approximately 50 feet of shorefront. See Weber testimony, Baker testimony, testimony of Gloria Novotny (Novotny testimony), and Exhibits H and F.
17. No evidence was presented that the parties had any issues concerning their respective pier placements before 2021. See totality of the evidence and Exhibits 29 and X (old pier placements).
18. By September 2021, Drews’ pier had been expanded and was closer to the riparian line dividing the Baker and Drews riparian zones. See Exhibits S and W.
19. In November 2021, Baker emailed Drews noting that Baker believed that Drews’ pier and accessories likely cross into the “safety zone” between the Drews’ and Baker’s piers. Baker asked Drews not moor any watercraft on Drews’ pier in such a way as to “push further into

the riparian rights zone allowing in/out unimpeded access to our shoreline.” See Baker testimony and Exhibit D.

20. In 2022, Drews reconfigured their pier, including placing a boatlift on the east side of the lakeward end of the pier. This reconfiguration did not address the concerns raised by Baker but raised further safety concerns for Baker’s family and guests due to the narrowed clearance between the parties’ piers. See Baker testimony, Novotny testimony, and Exhibits S and 5.
21. An overlay of an aerial photograph on Weber’s survey shows Drews’ pier is between 5.9 and 7.1 feet away from the boundary dividing the riparian zones. Baker’s pier is between 10.8 and 9.6 feet away from the shared riparian line. This creates a total of approximately 16.7 feet of space between the two piers. See Exhibits F and 6.
22. In July 2022, Drews filed a quiet title action in the Kosciusko County Superior Court. This case was pending at the time of the hearing. The parties agree that the quiet title action is limited to the parties’ onshore property boundaries. See totality of the record and pleadings in 43D04-2207-PL-000064.
23. However, the parties seek the have the Commission establish the extent of the riparian safety zone (clear space). The parties agree that the outcome of the Kosciusko County Court case will have minimal impact on this matter as the dividing line between the two riparian zones is unlikely to create a significant difference in the size of the parties’ respective riparian zones. See totality of the record.
24. As of the hearing date, the piers were in the same location as they were after the 2022 reconfiguration. As of 2023, Drews have a “jut out” that make the space between the parties’ piers narrower. See Baker testimony; Drew testimony; and Exhibits P, T, U, and 11.
25. To date, there have been no collisions of watercraft owned by the parties or their guests due to the nearness of the parties’ respective piers. See Drew testimony and Baker testimony.

### **Conclusions of Law**

26. Lake Wawasee is a Public Freshwater Lake located in Kosciusko County, Indiana. Information Bulletin #61 Listing of Public Freshwater Lakes (Eighth Amendment), DIN 2021020-IR-312210447NRA (IB61).
27. IC 14-26-2-5, also known as the Lake Preservation Act, provides that the State “has full power and control of all the public freshwater lakes in Indiana ... [and] hold and controls

all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.” See IC 14-26-2-5(d)(1-2).

28. The Commission has jurisdiction over public freshwater lakes and has the power to make administrative rules to implement relevant sections of the Indiana Code. See IC 14-10-2, 14-15-7-3, 14-26-2-23<sup>1</sup>, and 4-22-2.
29. A “riparian owner” is “the owner of land, or the owner of an interest in land sufficient to establish the same legal standing as the owner of land, bound by a lake.” 312 IAC 11-2-19.
30. In general, the owner of property that abuts a lake possesses certain rights associated with ownership of that property. *Bass v. Salyer*, 923 N.E.2d 961, 971 (Ind. Ct. App. 2010). Those rights include “(1) the right of access to navigable water; (2) the right to build a pier out to the line of navigability; (3) the right to accretions; and (4) the right to a reasonable use of the water for general purposes . . .” *Parkison v. McKue*, 831 N.E.2d 118, 128 (Ind. Ct. App. 2005).
31. It is not disputed that the parties all own real estate abutting Lake Wawasee and are therefore riparian owners. As such, they each may be permitted to extend a qualifying temporary structure lakeward of the shoreline of Lake Wawasee provided that the structure meets several criteria, including that the structure does “[n]ot infringe on the access of an adjacent landowner to the public freshwater lake” and does “[n]ot unduly restrict navigation.” See 312 IAC 11-3-1(b).
32. The Commission is required to consider the guidance provided in Information Bulletin #56 (IB56) when asked to determine parties’ riparian boundaries. 312 IAC 11-1-4 and Information Bulletin #56, *Riparian Zones within Public Freshwater Lakes and Navigable Rivers* (Third Amendment), DIN 20220209-IR-312220025NRA.
33. IB56 does not have the effect of law; however, it is widely followed to provide guidance for determining riparian boundaries. *England v. Ball & Arend*, 15 CADDNAR 77, 79 (2019).
34. The parties agree that IB56’s second principle applies in this matter and agree that the riparian line dividing their properties will extend straight into Lake Wawasee from the landward property line determined in the Kosciusko County Court case. See IB56 at page 3.
35. IB56 also states, in relevant part, “[t]o 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

---

<sup>1</sup> IC § 14-26-2-23(e)(3) was repealed by the Indiana legislature, effective July 1, 2023. However, as this petition was filed on June 23, 2022, the Commission retained jurisdiction over this matter.

boats, although the area may be used for loading and unloading boats and for active recreation.” See IB56 at page 2.

36. While IB56 recommends that parties maintain a total of 20 feet of clearance between lakeward structures, the Commission has sometimes ordered parties to maintain less clearance space. The Commission has also found a ten (10) foot clearance space to be an adequate safety zone. See *N.G. Hatton Trust v. Young & Pfeiffer*, 14 CADDNAR 176 (2017); *Xanders v. Nixon Trust*, 14 CADDNAR 33 (2015); *Lawson v. Halliwill*, 13 CADDNAR 146 (2013).
37. The parties agree that there is 16.7 feet of space between their respective piers. Both piers are set back at least five (5) feet from the riparian zone boundary line. Indeed, regardless of which possible line is drawn, Baker’s pier is nearly 10 feet from the potential riparian line and Drews’ pier is at least six (6) feet from the same line.
38. Both parties seem to be confused as to what constitutes a “safety zone” in terms of riparian rights. A safety zone is not to be used for mooring boats or placing boatlifts but is to be kept free of “piers and moored boats” as well as other structures. See IB56 at page 2.
39. Given the Commission’s history of finding a 10-foot safety zone adequate to satisfy the guidance of IB56, the 16.7-foot distance between the parties’ piers, and the lack of any collisions or safety incidents due to the piers’ current configurations as of the hearing date, the ALJ finds that the parties must maintain no less than five (5) feet of space clear from any piers, moored watercraft, and/or boatlifts from the riparian boundary line as established by the final order in the Kosciusko County Court case.
40. At no time may either party leave less than five (5) feet of clear buffer space, including space occupied by moored watercraft, available from the riparian line between the parties’ respective riparian zones.
41. At no time may any watercraft moored and/or docked at either party’s pier cross into or otherwise infringe on the other party’s riparian zone beyond infringement caused by the temporary entry to and exit from the parties’ respective riparian zones.
42. The parties are responsible for adjusting their piers, moored watercraft, and/or boatlifts, if necessary, to comply with this order.

**NONFINAL ORDER**

1. Upon the determination of the Kosciusko County Superior Court in 43D04-2207-PL-000064, the riparian line dividing the parties' properties shall be drawn "by extending the onshore boundaries into the public waters" of Lake Wawasee.
2. Both parties are to maintain no less than five (5) feet of clear space on their respective sides of the riparian line, creating a total of 10 feet of open, clear, navigable space between the parties' respective piers.
3. The five (5) feet of clear space maintained by each party must be kept free of piers, moored watercraft, boatlifts, and other structures.
4. At no time may either party leave less than five (5) feet of clear space, including space occupied by piers, moored watercraft, and/or boatlifts, available from the riparian line between the parties' respective riparian zones.
5. At no time may any watercraft moored at either party's pier cross into or otherwise infringe on the other party's riparian zone beyond infringement caused by the temporary entry to and exit from the parties' respective riparian zones.
6. The parties are responsible for adjusting their piers, moored watercraft, boatlifts, and other structures, if necessary, to comply with this order.

Dated: February 13, 2024



---

Aaron W. K. Bonar, Administrative Law Judge  
Natural Resources Commission  
Indiana Government Center North  
100 North Senate Avenue, Room N103  
Indianapolis, Indiana 46204-2200  
(317) 232-4699

**DISTRIBUTION**

The foregoing is distributed to the parties as follows on February 13, 2024.

Distribution List:

Petitioners:

Bill D. Eberhard, JR. and Charity A. Murphy  
Attorneys for Petitioners  
[bill@eberhardweimer.com](mailto:bill@eberhardweimer.com)  
[charity@eberhardweimer.com](mailto:charity@eberhardweimer.com)

Respondents:

Stephen R. Snyder  
Attorney for Respondents  
[srs@smfklaw.com](mailto:srs@smfklaw.com)

A copy of the foregoing will also be distributed to the following in accordance with IC 4-21.5-3 or IC 5-14-3. *The parties need not serve pleadings, motions or other filings upon these persons.*

DNR Legal

Donna Ridner, Division of Water

By: Scott Allen, Legal Analyst, Natural Resources Commission