

**AOPA COMMITTEE
OF THE
NATURAL RESOURCES COMMISSION
March 16, 2021 Meeting Minutes**

AOPA COMMITTEE MEMBERS PRESENT

Jane Ann Stautz, Chair
Jennifer Jansen
Bart Herriman

NRC, DIVISION OF HEARINGS STAFF PRESENT

Sandra Jensen
Billie Franklin
Scott Allen

GUESTS PRESENT

Robert Eherenman
Stephen Snyder

Call to order and introductions

Jane Ann Stautz, Chair, called the meeting to order at 8:47 a.m., ET, at the Fort Harrison State Park, Garrison, 6002 North Post Road, Lawrence Room, Indianapolis, Indiana. With the presence of three members, the Chair observed a quorum.

Consideration and approval of minutes for the meeting held on September 15, 2020

Jennifer Jansen made a motion to approve the minutes of the meeting held on September 15, 2020. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

Consideration of Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *WAWA, LLC v. E. Mark Deister*; Administrative Cause No. 20-017W

The Chair noted respective counsel for the Petitioner and Respondent would be given ten minutes each for oral argument.

The Chair recognized Robert Eherenman (Eherenman), counsel for the Petitioner.

Eherenman stated the basis for the Petitioners' objection depends on how the riparian dispute is viewed and said, "do you view in a macro, that is, do you look at the whole shoreline or are we

looking at it in a narrower way?” He said the dispute requires a determination whether Principle 2 or Principle 3 of Information Bulletin #56 (IB #56) is applied. He noted Finding 75 of the Findings of Fact and Conclusions of Law with Nonfinal Order (Nonfinal Order) the conclusion that neither of the surveyors calculated the exact angle at which the parties’ onshore boundary meets the shore.

Eherenman stated the Petitioner agrees with Finding 77, which says, “the [parties] onshore boundary line meets the shore at a substantially perpendicular angle... when viewing the smaller area of shoreline adjacent to only a few properties, [McCrea’s] observation is correct.” He recognized that when looking at property lines, how one property line is adjusted could impact other property lines and cause a domino effect. Eherenman noted *Sudlow v. Slocum*, 14 CADDNAR 46 (2015), which applied different principles to different boundaries for equitable access, but stated *Sudlow* does not apply in the current case because this matter deals with one isolated riparian boundary and the narrow area of the property where the property line is substantially perpendicular to the shoreline. He stated the Petitioner believes Principle 2 of IB #56 should be applied.

Eherenman said the current matter involves an isolated riparian line and does not impact other riparian boundary lines. He noted there was another Natural Resources Commission decision involving the Respondents’ other riparian boundary line sixty feet south where Principle 2 was applied. He said, instead of looking at all the properties riparian lines in a macro perspective, looking at the smaller riparian area involved in the current matter, where the riparian line is substantially perpendicular to the shoreline requires application of Principle 2.

Eherenman stated that answering the question, “what is equitable access?” is important in how this case is decided. He said equitable access allows a person to install a pier, dock a boat, and swim. Eherenman said if Principle 2 were applied the Respondent’s lake access is not cut off and the Respondent would still have reasonable access to have a pier and boats on the lake. Eherenman said historically the Respondent has docked a 24-foot-wide houseboat on his property and the Respondent provided testimony that he could only dock his houseboat if he moved his son’s boats. Eherenman said those are decisions that lake owners must make and if the Respondent wanted to dock a houseboat there, he would have equitable access under Principle 2. Eherenman stated that “equitable access” does not mean because someone has less shoreline that a different principle should be used because they are next to someone with more shoreline. He said “equitable access” means that someone can exercise their riparian rights and using Principle 2 does not interfere with the equitable access of Respondent.

Eherenman said that one of the considerations in the Nonfinal Order was the amount of shoreline owned by the Respondent and the fact that he owns less shoreline does not mean Principle 3 should be applied.

The Chair recognized Stephen Snyder (Snyder), counsel for the Respondent.

Snyder said there are specific findings in the Nonfinal Order and testimony from Kevin Michel who was an expert surveyor for the Petitioner, indicating the common property line between the Petitioner and Respondent did not meet the shoreline at an approximate ninety-degree angle in

accordance with IB #56. Snyder stated because the property line is fifteen-degrees off from being perpendicular to the shoreline, Principle 3 is applicable. Snyder said after the Administrative Law Judge (ALJ) determined the property line was not perpendicular she considered other factors appropriate to the determination to apply Principle 3. Snyder stated the factors to consider include whether other piers in the area are historically perpendicular to the shoreline and whether application of Principle 3 deprives a riparian owner of reasonable access to public water. Snyder said it must be considered in the correct order and once it was determined the property line was off fifteen degrees then Principle 3 could apply if other factors were considered.

Snyder observed that after determining that Principle 3 applied, the ALJ determine that piers in the area have historically been placed perpendicular to the shoreline. The next question was if someone was denied “reasonable access” to the lake if Principle 3 were applied. Snyder stated the ALJ looked at the Petitioners 241 feet of lake front property and determined that if Principal 3 were applied the Petitioner would not be denied “reasonable access” to the lake.

Snyder provided the Committee a copy of Exhibit 22 from the Administrative Hearing and explained that Michel determined the shoreline of the Petitioner’s property is concave. Snyder said using Exhibit 22 that Michel drew a line from the center of the Petitioner’s shoreline to the south property line to estimate that the line was fifteen-degrees off from perpendicular. Snyder noted Finding 75 of the Nonfinal Order and that neither surveyor calculated property boundary at a perpendicular angle to the shoreline.

Snyder stated all the principles were considered subprinciples of Principle 3 were examined, and it was determined Principle 3 was applicable because of the placement of other piers and the determination that it would not deprive “reasonable access” to the Petitioner. Snyder stated the Respondent agrees with the Nonfinal Order.

The Chair asked if there were questions or comments.

Herriman asked what the solid red line was in Exhibit 22.

Snyder answered that the solid red line was perpendicular to the shoreline.

The Chair recognized Eherenman for rebuttal.

Eherenman stated the premise of the argument is Michel had determined the angle of the shoreline and in Finding 75 it say, “Neither McCrea nor Michel calculated the exact angle at which the parties’ onshore boundary meets the shore.” He added that the angle of intersection between the boundary line and the shoreline was estimated.

Eherenman stated Finding 77 says, “the parties onshore boundary line meets the shore at a substantially perpendicular angle such that in McCrea’s opinion the use of Principle 2 is appropriate... When viewing the smaller area of shoreline adjacent to only a few properties, McCrea’s observation is correct.” Eherenman noted that the ALJ seemed to agree with McCrea’s observation when looking at the smaller area, which undermines the premise of the argument that Principle 3 is applicable.

Eherenmen stated, based on Finding 77 of the Nonfinal Order, that Principle 2 should be the legal conclusion based on the evidence.

The Chair said Finding 75 says “The only evidence in the record estimates that the angle of the intersection, is [approximately seventy-five-degrees]” and asked if that was testimony from Michel.

ALJ Jensen answered “yes” that Finding 75 was testimony from Michel.

Eherenman reiterated that Michel estimated the seventy-five-degree angle where the boundary line meets the shoreline, but that Michel did not do the calculation and the Petitioner does not believe an estimate is sufficient evidence.

The Chair noted that in reviewing Exhibit 22, which both parties have seen and entered, and the judge discussed during the proceeding”, the angles appear to be visible, and makes sense with respect to whether the property line is perpendicular to the shoreline or if it was fifteen-degrees off from being perpendicular.

The Chair asked if there were other questions or comments in the matter.

Snyder stated that Exhibit 22 confirms the estimate made by Michel, who was asked in the administrative hearing, “What is the approximate deviation from ninety-degrees?” and Michel answered fifteen-degrees.

The Chair asked if there was a motion.

Jennifer Jansen moved to accept the Findings of Fact and Conclusions of Law with Nonfinal Order as submitted. Bart Herriman seconded the motion.

The Chair called for a vote to accept the Findings of Fact and Conclusions of Law with Nonfinal Order in the matter of *WAWA, LLC v. E. Mark Deister*. On a voice vote, the motion unanimously carried.

Adjournment

The meeting was adjourned at 9:12 a.m., ET.