

**AOPA COMMITTEE
OF THE
NATURAL RESOURCES COMMISSION
September 15, 2020 Meeting Minutes**

AOPA COMMITTEE MEMBERS PRESENT

Jane Ann Stautz, Chair
Jennifer Jansen
Bart Herriman

NRC, DIVISION OF HEARINGS STAFF PRESENT

Sandra Jensen
Dawn Wilson
Billie Davis
Scott Allen

GUESTS PRESENT

Gary Hancock
Jim Kaminski
Raymond Rehlander
Robert Dempsey
Robert Lenzen
Marvin Templin
Wieslaw Kaminski

Call to order and introductions

Jane Ann Stautz, Chair, called the meeting to order at 11:12 a.m., ET, at the Fort Harrison State Park, Garrison, 6002 North Post Road, Blue Herron Ballroom, Indianapolis, Indiana. With the presence of three members, the Chair observed a quorum.

Consideration and approval of minutes for the meeting held on July 21, 2020

The Chair noted a typographical error in the last paragraph on page five of the minutes where the word “opportunity” was duplicated and should be stricken.

Bart Herriman made a motion to approve, with the revision, the minutes of the meeting held on July 21, 2020. Jennifer Jansen 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 *Raymond and Kimberly Rehlander v. Robert Lenzen, Marvin Templin, Robert Dempsey Trust, Wieslaw Kaminski and Nicholas Amelio*; Administrative Cause No. 18-059W

The Chair noted the change in legal representation for the Respondents and that they will be proceeding *pro se*. The Chair stated that the Petitioners, Respondents, and Intervenor would be given ten minutes each to give oral arguments. The Chair noted Nicholas Amelio (Amelio) listening by phone and represented in person by his attorney Gary Hancock.

The Chair recognized Jim Kaminski (Kaminski), counsel for the Petitioner.

Kaminski stated the Krivaks previously owned the Petitioner's (Rehlander) property on Bass Lake and the Commission previously reviewed pier permits involving the Intervenor and Respondents. Kaminski noted there was a meander line identified in Rehlanders property deed and the Fulton Circuit Court created a 20-foot easement on the north portion of Rehlander's property in the nineties. Kaminski stated, "the legal description in that [Fulton Circuit Court] decision ran to the meander line, not to the shore." Kaminski stated that Amelio (Intervenor) presented evidence showing property title has the property line starting at the meander line. Kaminski stated accretion occurred from the meander line as the lake level dropped. Kaminski said that because of accretions the property rights extend for the Rehlanders, for easement holders, and Intervenors to the shore.

Kaminski cited *Krivak v DNR, Dempsey, Lenzen and Amelio*, 6 CADDNAR 176 (1994) and said, "The Commission held the boundaries approached the shoreline at an angle other than perpendicular. The Commission specifically noted that *Nosek v Stryker*, 309 N.W.2d 868 (Wis. 1981) is persuasive." Kaminski said that a surveyor testified the south line of the Rehlanders property runs essentially straight towards the lake but confirmed that the north boundary is not straight, and is at an obtuse angle.

Kaminski stated the appropriate decision in the current matter would be to follow the *Nosek* decision and the third principle in Information Bulletin #56 (IB #56). He said Rehlander's northern boundary line runs at an obtuse angle toward Bass Lake and if the boundary were to run straight into the lake, it would create an interference between the Rehlander's pier and the subdivision easement pier. Kaminski said the findings do not appear to follow *Nosek* where the easement pier should extend perpendicular into the lake and the Rehlander's pier is perpendicular to the lake and parallel with a neighboring pier to the south.

Kaminski said that under IB #56, the third principle, and under *Nosek*, the findings should be the subdivision's pier should extend perpendicular into the lake and noted it would resolve the navigational hazard. Kaminski said since the nineties the subdivision has continued to extend their pier further into the lake and it has become a navigational hazard.

Kaminski said the Respondents indicated they do not need to apply for a group pier because they are not part of a subdivision with less than five property owners, but the findings said they should be getting a group pier and noted 312 IAC 11-2-11.5 defines a group pier. He said if the pier benefits a "subdivision" or "addition" it is considered a group pier and the Fulton Circuit

Court found the 20-foot easement is provided to all owners of the subdivision. He said the only reason the Respondents have lake access through the easement is because they are owners in the Krivak subdivision. Kaminski stated the administrative finding was appropriate and the evidence showed the pier is based on a subdivision or addition and should be required to be permitted as a group pier.

Kaminski presented to the AOPA Committee “Respondent’s Exhibit 4” from the administrative hearing and described the locations of the piers shown on the exhibit. He said evidence presented by Lenzen shows piers from the nineties were nearly parallel.

Kaminski said that Kent’s Survey shows the meander line, was the Petitioners’ former shoreline prior to accretion and the Petitioner’s position that the Petitioners’ property line, from the meander line to the current shoreline would be angled perpendicular to the original shoreline based on the third principle in IB #56. Kaminski said the Commission has discretion in determining how people place piers along the shoreline in an equitable and safe manner. Kaminski stated the Petitioners are requesting that the survey be accepted including the angles of the piers in the water by rotating the Krivak Acres pier twelve degrees be considered.

Herriman asked if the twelve-degree rotation would make the Krivak pier substantially parallel to the Rehlander pier.

Kaminski answered in the affirmative and added if the Krivak pier rotation is to the north. He said they would also argue the pier should be placed more to the north towards the Amelio pier.

Herriman asked if the reason for moving the Krivak pier more to the north is that it would be in the easement.

Kaminski answered in the affirmative.

The Chair noted the Petitioners would exceed their time and allocated additional time for the Respondents and Intervenor to give oral arguments.

The Chair recognized Raymond Rehlander (Rehlander), Petitioner.

Rehlander cited *Nosek* and said “IB #56, as its “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... If the boundaries of two owners intersect at the shore, or in proximity to but landward of the shore, the boundaries of the riparian zones may be formed by a perpendicular to the shore from the point of intersection of the onshore boundaries.” Rehlander said the only intersection of the “onshore boundaries” is where his meander line corner meets Amelio’s meander line corner.

Rehlander said that the method consistent with the ruling in *Krivak* and *Nosek*, should apply and the Third Principle of IB #56 which is perpendicular to the shoreline, back to the point of intersection of the properties, and extends out into the lake. Rehlander stated, “Our riparian

rights initiate at the meander line of Bass Lake that is the only way we have rights to the accretions. Mr. Amelios' is the same. Other property owners are the same. We're all deeded to the meander line of Bass Lake." Rehlander said beyond the meander line is not a property extension, but it is a riparian boundary.

Rehlander cited IC 14-26-2-5(d) and said that the statute says the state has control of the public freshwater lakes both meandered and un-meandered. He cited IC 14-26-2-5(e) and says that the statute says that a person owning land bordering a public freshwater lake does not have exclusive rights to the use of the water on the lake.

Rehlander said that Amelio's fence is a non-permitted structure that should not have been considered to support the property line.

Rehlander said his request is that the correct riparian rights be established and stated the rules are clear that the Krivak Acres pier meets the requirements of a group pier.

The Chair recognized Robert Dempsey (Dempsey), *pro se* Respondent for Robert Dempsey Trust.

Dempsey stated that his oral arguments were on behalf of Robert Dempsey Trust and the other Respondents in the matter.

Dempsey stated that Respondents object to paragraph 125 of the Findings of Fact and Conclusion of Law with Nonfinal Order (Nonfinal Order) that says that Krivak Acres include at least five owners, may be a subdivision or addition, and that the Easement Holders must obtain a group pier permit to place a pier. Dempsey said there are four, not five, participating property owners that include Lenzen, Templin, Dempsey, and W. Kaminski. Dempsey stated that Amelio is a property owner in Krivak Acres but he is not a participating pier owner with the other owners of the Krivak Acre pier. Dempsey stated that Amelio testified that Amelio was not a participating pier owner in the Krivak Acre pier and Rehlander did not identify Amelio as a participating owner in his original petition.

Dempsey the Nonfinal Order ruling that Krivak Acres is identified as a subdivision is not based on fact. Dempsey yielded to Lenzen.

The Chair recognized Robert Lenzen (Lenzen), *pro se* Respondent

Lenzen approached and present documents that he identified as exhibits presented at the administrative hearing in the matter.

The Chair noted the documents for later verification.

Lenzen stated he has been in Krivak Acres since 1988 and joined the Krivak Acres group pier in 1992 at the time when the Krivak Acres pier was required to apply for a pier permit. He said, at that time, Amelio's permit was for a swimming platform and the Krivak Acres pier permit was determined to have had a maximum length, but it could be extended when additional pier owners

were added. Lenzen noted that the Krivak Acres permit was the only permit entered as evidence at the administrative hearing. Lenzen said the Nonfinal Order noted Rehlander installed a temporary pier under a general license and the Krivak Acres permit was originally considered in conjunction with the permits issued to neighbors.

Lenzen gave a history of the piers in the lake and referred to pictures he provided to the AOPA Committee. Lenzen said the Krivak Acres pier has followed the property line extending into the water since 1992 when the permit was approved. He said the Krivak Acres pier was extended in 1993 when Templin was added, again in 2010, and again in 2017 when W. Kaminski was added. Lenzen said they feel they are stuck in between two property owners and seek a clear decision on which direction the Krivak Acres pier should be placed. Lenzen said the Department had the owners move the Krivak Acres pier to the spot on the permit map. Lenzen yielded back to Dempsey

Dempsey stated the Nonfinal Order, finding 108 says, “All rights necessarily incident to the enjoyment of the easement are possessed by the owner of the dominant estate, and it is the duty of the servient owner to permit the dominant owner to enjoy his easement without interference.” Dempsey said the Respondents have not enjoyed total enjoyment of their pier and feel they are

The Chair recognized Gary Hancock (Hancock), counsel for the Intervenor.

Hancock said he represents the Intervenor (Amelio), who is 72 years old, lives in Florida, and who is participating by phone. Hancock noted that years ago Rehlander’s father in law sold off property behind his lakefront home and included an easement to Bass Lake, but later attempted to revoke that lake access. He said the matter was taken to the Fulton County and Stark County Courts and in 1992 and 1995 the matter was reviewed by the Commission. He said that the current matter involves the same set of piers with second generation Petitioners and Respondents so the results should be the same.

Hancock said to determine the placement of the piers the property line is identified and the riparian zone is then established. He noted the Rehlander argument fails in both identification of the property line and establishment of the riparian zone. He stated the line from the meander line to the water’s edge is disputed and historically that has been a straight line to the water, but Rehlander argues the line should be angled toward Amelio’s property. Hancock said to accept the Rehlander argument is to ignore fatal flaws like the fence that runs the entire property line to the water’s edge that was erected with a permit, and has been in place for 30 years. Hancock noted there have been four surveys completed and recorded in 1907, 1941, 1974, and 1992 that have the property line going straight to the water’s edge.

Hancock said the Rehlander argument relies on IB #56 to establish the property line, but Hancock argued that the application of IB #56 is limited to the water and not appropriate to delineate an on shore property boundary. Hancock stated Rehlander argues that the third principle of IB #56 applies, but the logic is misplaced. Hancock stated, “Application of the Third Principle of bulletin 56 is most appropriate where land owners in the area have historically used a perpendicular line to divide their riparian zones.” Hancock said the piers near the Rehlander

pier are nearly parallel to each other straight out from the property lines, with the Rehlander pier being the exception.

Hancock stated the Second Principle of IB #56 is most applicable and the Commission reached the same conclusion it a prior decision. Hancock stated Amelio requests the Nonfinal Order be approved as submitted and made a final order in the matter.

The Chair asked if there were questions or comments.

The Chair noted that the Committee is familiar with riparian cases and the principles within IB #56, which seek to accommodate the diverse characteristics of Indiana's public lakes. The Chair said it is challenging when there are changes to lake property lines and in the current matter, there have been changes in the docks.

The Chair stated that there might be a need for a group pier permit and wondered if there are multiple property owners who might not be currently participating but could potentially participate in the group pier. The Chair stated that she tends to agree with the findings in the Nonfinal Order.

Jansen and Herriman both concurred with the Chair.

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

Herriman replied that he had no questions or comments.

The Chair asked if there was a motion.

Bart Herriman moved to accept the Findings of Fact and Conclusions of Law with Nonfinal Order as submitted. Jennifer Jansen 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 *Raymond and Kimberly Rehlander v. Robert Lenzen, Marvin Templin, Robert Dempsey Trust, Wieslaw Kaminski and Nicholas Amelio*. On a voice vote, the motion unanimously carried.

Adjournment

The meeting was adjourned at 12:06 p.m., ET.