

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

**IN THE MATTER OF:**

**CHARLES D. CROSBY, JILL CROSBY and )  
the CHARLES D. CROSBY LIVING TRUST, )  
Petitioners, )**

**Administrative Cause  
Number: 21-038W**

**vs. )**

**MICHAEL MOHLMAN, DONALD BOBAY, )  
and MAUREEN BOBAY, )  
Respondents. )**

**[Riparian Rights Dispute]**

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**MICHAEL MOHLMAN, DONALD BOBAY )  
and MAUREEN BOBAY, )  
Counterclaim-Petitioners )**

**vs. )**

**CHARLES D. CROSBY, JILL CROSBY and )  
the CHARLES D. CROSBY LIVING TRUST, )  
Counterclaim-Respondents )**

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

**Procedural Background and Jurisdiction**

1. On August 18, 2021, Charles D. and Jill Crosby and the Charles D. Crosby Living Trust (hereinafter Petitioners) filed correspondence (hereinafter Petition) with the Natural Resources Commission (hereinafter Commission) alleging that the boatlift Michael Mohlman (hereinafter Mohlman) maintains on the south side of his pier on Lake James encroaches on Petitioners’ riparian zone.
2. By filing their Petition, Petitioners 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.

3. Lake James is a Public Freshwater Lake located in Steuben County, Indiana. See Information Bulletin # 61 *Listing of Public Freshwater Lakes* (Eighth Amendment), published at DIN 2021020-IR-312210447NRA.
4. Pursuant to Ind. Code § 14-26, also known as the Lake Preservation Act, the Department holds Indiana's public freshwater lakes in trust for the benefit of the public.
5. Under I.C. § 14-26-2-23(e)(3),<sup>1</sup> the Commission established a process for the resolution of disputes among persons with competing interests along the shoreline of public freshwater lakes. The Commission adopted 312 IAC 11-1-3, which authorizes a person to initiate a proceeding controlled by IC § 4-21.5 and 312 IAC 3 to resolve a dispute among riparian owners concerning the usage of an area over, along, or within a shoreline of a public freshwater lake. 312 IAC 11-3-2.
6. The Commission has jurisdiction over the parties and the subject matter of this dispute.
7. Administrative Law Judge (ALJ) Dawn Wilson was appointed under IC § 14-10-2-2 to conduct this proceeding on August 18, 2021. ALJ Wilson withdrew as ALJ in December 2021 due to her retirement from the Commission. ALJ Gamboa was appointed by the Commission to preside over this matter in January 2022.
8. On September 17, 2021 William Gooden entered an appearance on behalf of Mohlman.
9. Also on September 17, 2021 Mohlman, by counsel, filed a counter-petition against the Petitioners. In summary, Mohlman requested a determination of the Crosbys' and Mohlman's riparian zone boundary based on principle four of Information Bulletin #56. Mohlman further asserted a decision in this matter could impact the Bobays, who own property adjacent to Mohlman. Mohlman requested the Bobays be joined as respondents.
10. William Gooden and Olivia Hess filed an appearance on behalf of the Bobays on October 25, 2021.
11. ALJ Wilson ordered the Bobays be joined as respondents by order dated November 17, 2021.

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<sup>1</sup> I.C. § 14-26-2-23(e)(3) was repealed by the Indiana legislature, effective July 1, 2023.

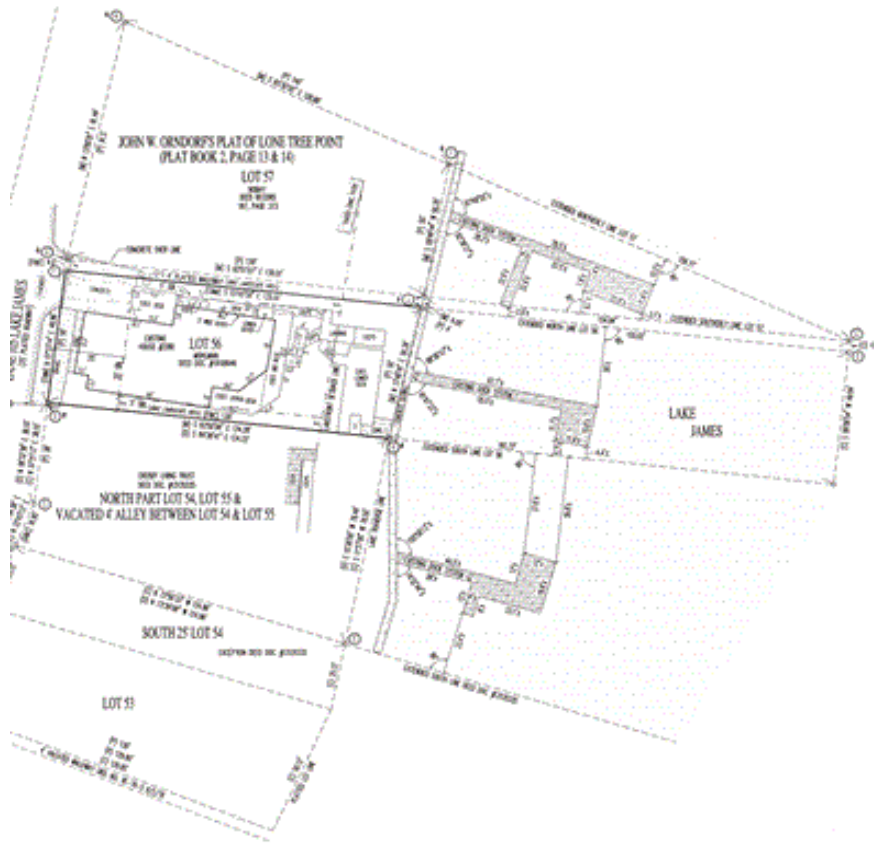
12. The parties filed motions for summary judgment and related materials on February 23, 2023. Petitioners filed an amended summary judgment brief on March 6, 2023. The parties also filed responses and replies to the motions for summary judgment.
13. The only issue raised on summary judgment was whether principle two of Information Bulletin 56, *Riparian Zones Within Public Freshwater Lakes and Navigable Waters (IB #56)*, published at DIN: 20220209-IR-312220025NRA should be applied to determine the parties' respective riparian zone boundaries.
14. The Motions for Summary Judgment were denied by order dated August 28, 2023.
15. The administrative hearing occurred October 18, 2023 in the Commission Division of Hearings hearing room in Indianapolis, IN.
16. The following witnesses were duly sworn and testified at the hearing: Charles Crosby; Gary Kent; Walter David; Rosalie Koher; and Michael Mohlman. Walter David and Rosalie Koher testified remotely without objection using the TEAMS application.
17. The following exhibits were accepted into evidence at the hearing: Petitioners' exhibits A, C, D, H, I, L, P, U, V, GG, TT, WW and HHH; and Respondents' Exhibits 1 – 8, 10 – 12, and 14.
18. The Bobays did not appear at the hearing.
19. The parties were granted to November 20, 2023 to file post-hearing briefs. This deadline was extended to December 20, 2023 by agreement of the parties.
20. In the post-trial brief, Petitioners requested an order applying the second principle of IB #56 to determine the parties' riparian zone boundaries.
21. Mohlman and Bobays requested that they be permitted "to maintain the status quo and continue to configure their piers, watercraft and watercraft lifts as they were configured as of the end of the 2023 lake season," that the Mohlman not locate any watercraft, piers, etc. any farther to the south than he did in the 2023 season, and that Crosbys "maintain a navigational safety buffer of at least ten (10) feet between all piers, watercraft, seaplanes, lifts, from the farthest south point of any of the Mohlman items." Post-Trial Brief of Mohlman and Bobay, p. 15.

**Findings of Fact**<sup>2</sup>

22. Petitioners own Lot 55 and part of the adjacent Lot 54 in the platted real estate of Lone Tree Point of Lake James (Lone Tree). Petitioners purchased the property in 2013 and started using it as a weekend/vacation property in 2015. They began residing there full-time in March 2021. See Charles Crosby testimony.
23. Petitioners' property includes approximately 80 feet of shore-front abutting Lake James. See Id. and Exhibit 11
24. Lot 56 of Lone Tree is adjacent to and north of the Petitioners' property. It was owned by the Kohers from approximately 1979 to 2019. Kohers sold this property to Mohlman in 2019. See Michael Mohlman testimony, Rosalie Koher testimony. Lot 56 has approximately 50 feet of shoreline abutting Lake James. See Id. and Exhibit 11.
25. Bobays own Lot 57 of Lone Tree, north of and adjacent to Mohlman's property. Bobays' lot also contains approximately 50 feet of shoreline abutting Lake James. See, Crosby testimony, Mohlman testimony, and Exhibit 11.
26. In the following excerpt of the Retracement Survey prepared by Rowland and Associates (Rowland survey), Exhibit 11, Petitioners' property appears at the bottom the survey, the Mohlman property in the middle, and the Bobay property at the top:

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<sup>2</sup> A Finding of Fact more appropriately construed as a Conclusion of Law or a Conclusion of Law more appropriately considered a Finding of Fact shall be so considered.



27. A seawall, represented above with double lines, runs along the shorefront adjacent to Lots 55, 56, and 57. See Rowland Survey, Kent testimony.
28. The dotted lines extending from the seawall into Lake James represent extension of the parties' property boundaries into Lake James. See Id.
29. Lone Tree is a "V-shaped" plat surrounded by Lake James on the outside of the "V" with platted lots abutting Lake James. The Steuben County Beacon system shows the plat of Lone Tree as follows:



30. Mohlman’s property is highlighted in light blue. See Mohlman testimony and Exhibit 8.
31. Previous owners of the Petitioners’ property extended a pier from the shore. There is no evidence on the size or location of that pier. No pier was extended from the Crosbys’ shoreline when they purchased the property in 2013. See Crosby testimony, Koher testimony.
32. Petitioners extend and maintain an “L-shaped” pier from the shoreline near the center of Lot 55. According to the Rowland survey, the pier is approximately four feet wide as it extends approximately 28 feet into Lake James. The pier is approximately eight feet wide as it extends further into Lake James for another 23 feet. The lakeward portion of the pier, referred to as the “deck,” extends approximately 20 feet to the north from the length of the pier and is approximately twelve feet wide. See Exhibit 11.
33. Petitioners moor a pontoon boat and a speed boat on lifts attached to their pier. They also have a Sea Do lift attached to their pier. They plan to reconfigure the pier to accommodate more watercraft and to make room to dock a sea plane from the shore. See Crosby testimony.
34. While Patricia Koher and her husband occupied Lot 56 from 1979 to 2013, they consistently maintained an “L-shaped” pier from their shoreline at the same angle from

the shoreline, near the property line between Lot 56 and Lot 55. The deck of the pier extended south. Although the type of watercraft moored on the pier changed over the years, Kohlers consistently maintained watercraft of various sizes on both sides of the pier. See Koher testimony and Exhibit 14.

35. A friend of the Kohers moored his speed boat on the north side of the pier. Later, the Kohers purchased a speed boat and moored it on a lift attached to the north side of their pier. Kohers maintained a Hobie Cat on a home-made stand on the south side of the “deck” portion of the pier and moored watercraft to the “run” of the south side of the pier. Koher testimony.
36. Rosalie Koher has not lived at the house since at least 2013 and visited the house no more than two times from a year from 2013 to 2019. Koher testimony. Koher’s testimony as to the habitual placement of the pier, the location of the watercraft attached thereto, and the configuration of the pier is therefore limited to the time-period before 2013.
37. Mr. Koher purchased a new pier in 2019 that was approximately the same size and extended in the same manner, as the previous pier. Koher testimony.
38. After Mr. Koher installed the pier he obtained in 2019, Mr. Crosby told Mr. Koher he (Mr. Crosby) believed the pier was closer to the riparian zone boundary between Lot 56 and Petitioners’ property. According to Crosby, Mr. Koher replied that he would not moor boats on the south side of the pier. See Crosby testimony.
39. The Kohers did not have a boat lift or any other watercraft on the south side of the pier from 2015 to 2019. See *Id.*
40. Mohlman purchased the Kohers’ pier when he purchased their property. He widened the deck portion of the pier but did not recall if the pier was also lengthened. The pier is approximately 68 feet long with the deck portion extending twelve feet to the south. Mohlman installed boatlifts that are approximately twelve feet wide on the north and south sides of the pier’s deck. See. Mohlman testimony.
41. The changes Mohlman made to his pier resulted in the pier angling further south at the lakeward end than it did previously. See Crosby testimony, Mohlman testimony.
42. The distance between Mohlman’s lift on the south side of his pier and Petitioners’ boatlift is approximately eighteen feet. See Mohlman testimony.

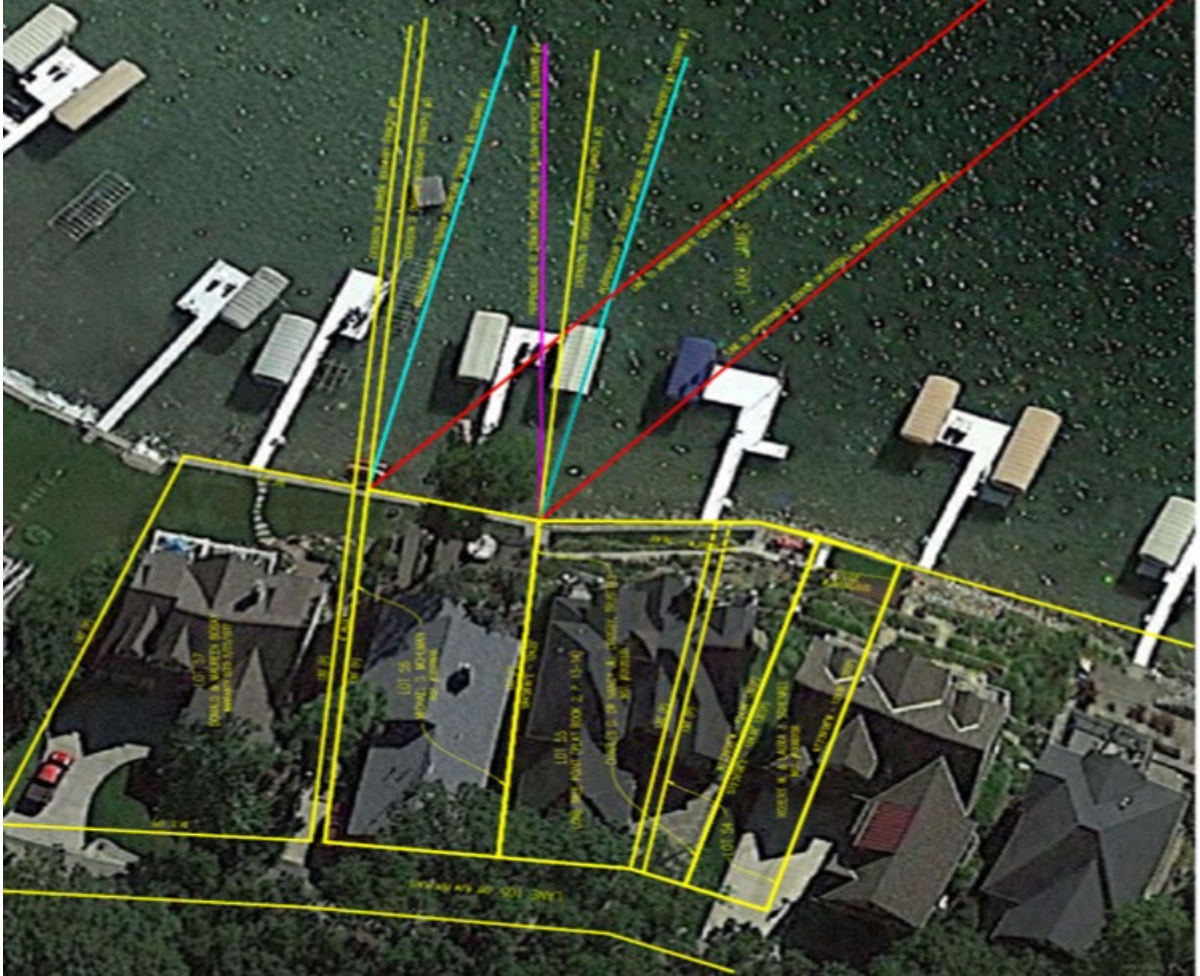
43. Sometime before April 2021 Crosby installed a flagpole in the water approximately two and one-half feet south of his property line extended into Lake James. Crosby testified the riparian zone boundary should be determined by extending the onshore property boundary into the lake. See Crosby testimony.
44. The flagpole prevented the pier installation company hired by Mohlman from installing Mohlman's pier in April 2021. Mohlman instructed the company to remove the flagpole. See Mohlman testimony and Petitioners' Exhibit I.
45. Little evidence was presented about the Bobay's use of their riparian zone. The Bobays added a section to their pier while this dispute was pending. Mohlman estimates the northernmost part of his boatlift on the north side of his pier is approximately ten feet from the southernmost portion of the Bobay's boatlift, located on the south side of Bobays' pier. See Mohlman testimony. There is no evidence as to what, if any, impact the Bobays' use of their riparian zone has on Mohlman's riparian rights.
46. It can reasonably be inferred from the evidence that Mohlman placed his pier in generally the same location as did the Kohers because this dispute arose only when Mohlman added a boatlift to the south side of his pier.
47. Petitioners hired Gary Kent, a professional surveyor licensed in the State of Indiana, to provide an opinion on the parties' riparian zones. See Gary Kent testimony.
48. Kent is familiar with IB #56 and the "four numbered principles" for determining riparian zones contained within it and has testified several times in front of the Commission. See Id.
49. Kent did not conduct a survey or visit the Petitioners' shoreline. Rather, he expanded the illustration of principle 2 as it appears in IB #56 and overlaid it on an arial image of Lots 54-58. To do this, Kent assumed that the IB #56 illustration was intended to reflect the "normal" lake-lot size of 50 feet and expanded the illustration to represent a 50-foot shoreline for each lot. See Id.
50. Kent then superimposed an outline of the geography of the lots based on the deeds to the properties. The resulting rendering was placed into evidence as Exhibit D.
51. Kent focused his analysis on four lots because the illustrations in IB #56 all include four lots. See Id.



52. Kent concluded that the shoreline of Lots 55-58 is no more undulating than the shoreline as represented in the illustration to principle 2 of IB #56. Kent testified principle two should apply in determining the riparian boundaries in this case. See *Id.*
53. Kent reviewed the Rowland survey after he had conducted his comparisons and believed his results were consistent with the survey. See *Id.*
54. The following illustration, created by Kent, shows application of all four principles of IB #56. The red lines illustrate application of IB #56 principle 4, with a line drawn to the approximate center of the overall bay.<sup>3</sup> The blue lines are drawn perpendicular to the shoreline as called for in IB #56, principle 3. The blue line on the right is a perpendicular from Crosby's corner property marker whereas the magenta or purple line is drawn at a perpendicular from Mohlman's property line. See Kent testimony, Exhibit C.
55. The yellow lines are extension of the onshore property as described in the second principle. The purple line is perpendicular to the Mohlman onshore boundary. See Exhibit C and Kent testimony

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<sup>3</sup> There is no evidence as to how Kent calculated the "approximate center of the overall bay."



56. Kent also created a meander line along the shore, using aerial photography and the known geography of the shoreline. See *Id.*
57. A meander line is an attempt by a surveyor to approximately locate a shoreline to create geometry to determine acreage of the property and to give geometry to an irregular line, such as a shoreline. The meander is a series of lines that reasonably approximates the shape of the shore. See *Id.*
58. The creation of the meander line is subjective in that surveyors may have differing opinions as to how the meander line should be drawn. See *Id.*
59. Kent's meander line ran in generally the same location as the sea walls adjacent to Lots, 57 and 58. See *Id.*
60. Kent testified that the shoreline is approximately straight; therefore, the riparian boundaries should be determined by applying the second principle of IB #56, which contemplates extension of the onshore boundaries into the water. See *Id.*

61. Kent testified that the fourth principle is not relevant, because it visually does not work with the area of the lake. See Id.
62. At Mohlman's request, Walter David of Rowland Associates measured the angles created by the intersection of property lines and the shoreline. See David testimony.
63. David created a "lake traverse line" on Mohlman's boundary retracement survey to connect the Petitioners' south corner property marker adjacent to the Lake James to Bobays' north corner marker adjacent to Lake James. See Id. and Exhibit 11.
64. David measured the perpendicular angles formed by the northeast corner of the Bobays' property and the seawall that runs between the property and Lake James (angle "I") and the angle at which the southeast corner of Lot 56 meets the seawall (and "J"). See Id.
65. The Angle "I" is 11 degrees 26 minutes. Angle "J" is 11 degrees, 44 minutes. See Id and Exhibit 12.
66. David testified that the question of whether the lake traverse line is the same as a meander line depends on when the property was platted. Very old plats would not include the geography for the property line adjacent to the water. Surveyors therefore establish a meander line to determine the geography of the property. David did not indicate when the Lone Tree plat was created. See Id.
67. David is not familiar with IB #56 and testified that surveyors cannot establish riparian zone boundaries. He also testified that surveyors cannot create meander lines. See Id.

### **Conclusions of Law**

68. Lake James is a public freshwater lake subject to Ind. Code § 14-26-2, also known as the Lake Preservation Act ("Act").
69. The Act places full power and control of public freshwater lakes in the state of Indiana, through the Department of Natural Resources (Department) to hold in trust for Indiana's citizens to preserve the lakes' natural scenic beauty and for recreation. I.C. § 14-26-2-5.
70. The Commission has adopted administrative rules to assist in the administration of the Act, found at 312 IAC 11-2.
71. The term "riparian owner" is defined in those rules as an "owner of land . . . bound by a lake." 312 IAC 11-2-19.

72. It is not disputed that the parties are riparian owners by virtue of their ownership of lake front property within Lone Tree.
73. Indiana law recognizes that a riparian owner typically enjoys rights that include: 1) 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 such as boating and domestic use. *England v. Ball & Arend*, 15 CADDNAR 77, 79 (2019), citing *Parkinson v. McCue*, 831 N.E.2d 118, 128 (Ind. Ct. App., 2005).
74. A riparian owner's right to exercise exclusive enjoyment of riparian rights is limited to the owner's riparian zone, which is the "portion of public waters where a riparian owner has particular rights that are correlative to those of citizens, under the public trust, and exclusive of those neighboring riparian owners." IB #56.
75. The exercise of riparian rights may not interfere with the rights of the public or of other riparian owners. *Id.* A pier or boatlift placed by a riparian owner in a public freshwater lake must be placed in a manner that allows for reasonable access to the lake by other riparian owners. *Rehlander v. Lenzens, et. al. & Amelio*, 15 CADDNAR 115 (2020).
76. The party requesting that an agency take action or asserting an affirmative defense bears the burden of persuasion with the evidence. Ind. Code 4-21.5-3-14(c); *McCulloh v Day & Schramm*, 12 CADDNAR 40, 43 (2009).
77. The Petitioners request a determination of their shared riparian boundary with Mohlman.
78. In his pleading, Mohlman requested a determination of his riparian zone boundary with the Petitioners and with the Bobays. In his post-trial brief, Mohlman requested that "Mohlman and Bobay and their successors in title be entitled to maintain the *status quo* and continue to configure their piers, watercraft, and watercraft lifts as they were configured as of the end of the 2023 season. Post-Trial Brief of Mohlman and Bobays, p. 15.
79. Bobays do not object to Mohlman's request that Bobays continue to configure their pier and lifts as they were configured as of the end of 2023 season.
80. No determination will be made as to the common riparian zone boundary between Mohlman and Bobays.
81. Only the riparian zone boundary between Petitioners and Mohlman is under consideration.

82. The Commission is required to consider IB #56 as guidance when determining riparian disputes. 312 IAC 11-1-4. IB #56 does not have the effect of law; however, it is widely followed to provide guidance for determining riparian boundaries. *England*, 15 CADDNAR 77 at 79.
83. IB #56 sets forth four principles to determine riparian zones which “seek to accommodate the diverse characteristics of Indiana’s numerous public freshwater lakes. They are designed to provide riparian owners with equitable access to public waters.” The diagrams contained in IB #56 are “intended to augment and provide examples of the principle that immediately precedes it or them.”
84. The first principle is not applicable to this dispute.
85. Petitioners assert the second principle is appropriately applied to the dispute; whereas respondents argue either principle three or four applies. IB #56 provides:
- Second principle: Where the shore approximates a straight line, and where the onshore property boundaries are approximately perpendicular to this line, the boundaries of riparian zones are determined by extending the onshore boundaries into the public waters.
- Third principle: 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. Application of the third principle is most compelling where landowners in the vicinity have historically used a perpendicular line to divide their riparian zones, but the principle should not be applied where a result is to deprive a riparian owner of reasonable access to public waters.
- Fourth principle: Where the shore is irregular, and it is impossible to run lines at right angles to the shore for a just apportionment, 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. If the navigable waterfront borders a lake that is substantially round or a bay that is substantially round except for its connection to the main body of the public waters, the riparian zones may be formed by running lines from each owner’s shore boundaries to the center of the lake or bay. If the navigable waterfront borders a long lake or other public waters that are not substantially round the boundaries of the riparian zones may be formed by running a line through the center of the

public waters, with defected lines run from each owner's shore boundaries to intersect the centerline at perpendiculars.

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 running a line from the owners' boundary intersection to the center of a substantially round public waters or to a center point where at the cul-de-sac of a long lake. Otherwise, for a long lake or other public waters, which are not substantially round, by running a line from the intersection of their boundaries to intersect the centerline at a perpendicular.

86. There is no evidence to support a finding that Lake James is a substantially round or a long lake.
87. Principle 2 applies where the shoreline approximates a straight line and where the onshore boundaries are approximately perpendicular to this line. Principle 3 also calls for a substantially straight shoreline but contemplates the onshore boundaries meeting the shoreline at obtuse or acute angles. Principle 4 applies to irregular shorelines.
88. Kent's determination that the shoreline approximates a straight line was based on comparing the shoreline to the diagram contained in IB #56 illustrating the second principle. This required an assumption that the diagram intended to apply to a fifty-foot shoreline. This assumption is not supported by text of IB #56. The illustrations in IB #56 are merely intended to give a pictorial representation of the various principles of determining riparian zone boundaries. There is no indication the diagrams were drawn to scale or were meant to represent a certain length of shoreline.
89. Because Kent's assumptions are not supported in the text of IB #56, his testimony is granted little weight in answering the question of whether the shoreline is approximately straight or irregular.
90. Mohlman argues that application of the "10% rule" described in *Yager v. Ryan*, 14 CADDNAR 50 (2016), would show the onshore boundaries approach the shoreline at obtuse or acute angles.
91. The Commission made the following finding of fact in *Yager*, a riparian rights dispute:

Neese [head surveyor of the DNR Division of Water] has determined that no shoreline is exactly perpendicular, meeting the onshore properties at exactly 90 degrees at all points of contact. Therefore, when Neese calculates the degree at which the onshore property boundaries meet the shoreline, he uses a 10% rule. If Neese finds the angle, at which the onshore property boundaries meet the

shoreline, to be within 10% of 90 degrees, he concludes that the onshore property boundaries are approximately perpendicular to the shore. If he finds the angle to be beyond 10% of 90 degrees, Neese concludes that onshore property boundaries meet the shoreline at an acute or obtuse angle.

*Id.* at 52.

92. The Commission also found that Neese calculated a meander line which enabled him to determine the degree of the angle of the shore to the onshore property boundaries created an approximately 90% angle. *Id.* The Commission also detailed the method employed by Neese in making those measurements.
93. Mohlman points to no previous decision of the Commission that adopts Neese's "10% rule" as a legal principle to be applied to riparian disputes. Further, even if the rule were to be adopted, David did not follow the procedure explained by Neese in *Yager*. David did not establish a meander line and did not fully explain how he determined the angles which he measured. Therefore, David's testimony is likewise assigned little weight.
94. More compelling here is the evidence presented at the hearing as to the locations and configuration of the respective piers. The Kohers and the Mohlman placed the pier in the same location and in roughly the same configuration until Mohlman included a boat lift on the south side of his pier, the action which gave rise to this dispute.
95. As seen from Exhibit C, the piers appear to have been placed perpendicular to the shoreline, which indicates the parties assumed a riparian zone boundary drawn perpendicular from their shoreline.
96. "Application of the third principle is most compelling where landowners in the vicinity have historically used a perpendicular line to divide their riparian zones." See I.B. #56.
97. The riparian boundary dividing the Petitioners' and Mohlman's riparian zones is formed by a perpendicular to the shore from the point of intersection of their onshore boundaries consistent with principle 3 of IB #56.
98. Mohlman requested Petitioners be ordered to maintain a navigation safety buffer of at least ten feet between all piers, watercraft, seaplanes, lifts, or the like from the farthest south point of any of the Mohlman items.
99. The Commission has routinely ordered that a buffer between piers and moored boats is necessary for safe navigation. *N.G. Hatton Trust v. Young & Pfeiffer*, 14 CADDNAR 76, 80 (2017).

100. I.B. #56 provides that ideally there should be ten feet of clearance on both sides of the dividing riparian line, for a total of twenty feet of clear space. At minimum, a total of ten feet of space that is clear of piers and moored boats is typically required. *Id.*
101. Unless there are compelling reasons to hold otherwise, the burden of maintaining a clear space is shared by the adjacent owners. Mohlman's request could potentially place the burden of maintaining clear space solely on Petitioners. Absent compelling evidence to require this of Petitioners, the burden of maintaining a clear space of ten feet will be shared equally by Petitioners and Mohlman.

**Non-Final Order:**

102. The riparian zone boundary between Petitioners and Mohlman is formed by a perpendicular to the shore from the point of intersection of the onshore boundaries.
103. No determination of the riparian zone boundary between Mohlman and the Bobays is made.
104. Petitioners are required to maintain a buffer zone of five feet south of the riparian zone boundary with Mohlman and any piers, moored watercraft, and boat lifts. The buffer zone must also be free of any craft, including sea planes, maintained from the shore.
105. Mohlman is required to maintain a buffer zone of five feet north of the riparian boundary with Crosby. No portion of a temporary structure, including watercraft moored to or boatlifts attached to, the temporary structure. The buffer zone must also be free of any craft, including sea planes, maintained from the shore.

Dated: February 5, 2023



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Elizabeth Gamboa, Chief 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 5, 2024.

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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.*

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

Donna Ridner, DNR Division of Water

By: Scott Allen, Legal Analyst, Natural Resources Commission

**Allen, Scott**

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**From:** NRCAOPA  
**Sent:** Monday, February 5, 2024 12:12 PM  
**To:** Mark H. Bains; mhm@barrettlaw.com; Will Gooden; Olivia Hess; Ashley Denny  
**Cc:** McClain, Rebecca L; DNR Legal; Ridner, Donna  
**Subject:** Crosby v. Mohlman (21-038W) NFO.pdf  
**Attachments:** Crosby v. Mohlman (21-038W) NFO.pdf; Crosby v. Mohlman (21-038W) NFONotice.pdf

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The Document(s) attached have been entered into the record for the referenced proceeding.

Thank you,

Natural Resources Commission – Division of Hearings Indiana Government Center North  
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SA

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

IN THE MATTER OF:	)	
	)	
CHARLES D. CROSBY and	)	
JILL CROSBY, Individually and as Trustees of	)	
the CHARLES D. CROSBY LIVING TRUST,	)	Administrative Cause
Petitioners/Counter-Respondent,	)	Number: 21-038W
	)	
v.	)	
	)	
MICHAEL MOHLMAN,	)	[Riparian Rights Dispute]
Respondent/Counter-Petitioner,	)	
	)	
and	)	
	)	
DONALD AND MAUREEN BOBAY,	)	
Respondents.	)	

**MOHLMAN’S AND BOBAYS’ MOTION TO CLARIFY OR, IN THE ALTERNATIVE,  
OBJECTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW  
WITH NON-FINAL ORDER**

Respondent/Counter-Petitioner, Michael Mohlman, and Respondents, Donald and Maureen Bobay (collectively “Mohlman”), by counsel, pursuant to Indiana Code § 4–21.5–3–29 and 312 IAC 3-1-12, hereby move for clarification of or, in the alternative, assert the following objections to, the findings and conclusions of the non-final order issued in this proceeding on February 5, 2024:

1. **Finding/conclusion number 18** states that the Bobays did not appear at the hearing. However, the Bobays were present and represented at the hearing by

counsel, and also by Donald Bobay, who attended the hearing, but did not testify. Correction/clarification of the record is simply requested in this regard.

2. **Finding/conclusion number 21** relates to Mohlman's request to maintain the *status quo* and continue to configure their piers, watercraft and watercraft lifts as they were configured as of the end of the 2023 lake season, that Mohlman not locate any watercraft, piers, etc., any farther to the south than he did in the 2023 season, and that Crosbys maintain a navigational safety buffer of at least ten (10) feet between all piers, watercraft, seaplanes, lifts and the like from the farthest south point of any of the Mohlman items.

As will be addressed in additional detail below, Mohlman's request for a ten (10) foot buffer zone was meant simply to create the overall Natural Resources Commission Information Bulletin #56 ("Bulletin #56") minimum clear navigational zone, but not to allocate all of such buffer zone to the Crosbys. Mohlman believes the great weight of the evidence is that the fourth principle of Bulletin 56 should apply such that the riparian boundary should be set so that the lines forming the boundaries between riparian zones of Mohlman and Crosby 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 in order to provide for a just apportionment of the total navigable area.

Along these lines, Mohlman's request was that he be ordered to refrain from locating any piers, watercraft, lifts, etc., any farther south than at the end of the 2023 season and that Crosby not locate any such items closer than ten (10) feet from the farthest south Mohlman item. This request allows for the determination of a reasonable

and safe Mohlman-Crosby riparian area and buffer but does not require the specific mathematical location of a riparian line. In other words, the ten (10) foot clear space can also be stated in terms of Mohlman providing a five (5) foot buffer by not locating any items farther south, and Crosby maintaining a five (5) foot buffer (for a total of ten (10) feet of clear space) by staying ten (10) feet away from Mohlman's closest item.

3. **Finding/conclusion number 55** pertains to hearing Exhibit C and the testimony of Gary Kent. It appears this finding/conclusion improperly refers to the purple line on the diagram as being shown perpendicular to the Mohlman onshore boundary. It is believed the purple line is shown perpendicular to the Crosby onshore boundary. Correction/clarification of the record is simply requested in this regard.

4. **Findings/conclusions 75 and 76** provide:

The exercise of riparian rights may not interfere with the rights of the public or of other riparian owners. *Id.* A pier or boatlift placed by a riparian owner in a public freshwater lake must be placed in a manner that allows for reasonable access to the lake by other riparian owners. *Rehlander v. Lenzen, et. al. & Amelio*, 15 CADDNAR 115 (2020). The party requesting that an agency take action or asserting an affirmative defense bears the burden of persuasion with the evidence. Ind. Code 4-21.5-3-14(c); *McCulloh v Day & Schramm*, 12 CADDNAR 40, 43 (2009).

There was no evidence that Mohlman's placing a boat lift on the south side of his pier interferes with Crosbys' reasonable access to Lake James. To the contrary, Mr. Crosby testified repeatedly that despite Mohlman's south side lift there was no actual interference (Record, 11:26:55) and that they enjoyed reasonable access to Lake James (Record, 11:55:30). With this being the case, the Crosby have not, and cannot, meet their burden stated above in findings/conclusions 75 and 76 and Mohlman should not be required to relocate or remove his pier or boatlift.

5. Generally, in **Findings/conclusions numbered 88 through 93**, there is a discussion of the competing evidence presented by Crosby and Mohlman as to whether the shoreline of Lake James in the relevant area approximates a straight line (as claimed by Crosby) or is irregular (as proffered by Mohlman). However, it does not appear that any conclusion was ultimately drawn as to the configuration of the shoreline in the non-final order. Yet in **findings/conclusions 94 through 97**, the non-final order applies the third principle of Bulletin #56 which is applicable only where the shoreline approximates a straight line.

6. **Finding/conclusion number 101 and Non-Final Order numbers 102, 104 and 105** are totally consistent with the request made by Mohlman and the uncontroverted evidence at the final hearing. Mohlman's request is for maintaining the *status quo*, such that Mohlman must refrain from locating any piers, lifts, or other items any farther south (toward Crosby) than at the end of the 2023 season. Stated differently, Mohlman shall not encroach into a proper navigational buffer between his property and the Crosbys'.

To the extent that Mohlman's lift would encroach into the five (5) foot buffer zone on his side of the perpendicular line established by **Non-Final Order number 102**, it would be consistent with all applicable legal principles (including both the third and fourth principles of Bulletin #56) and the evidence admitted at hearing to clarify/correct the Non-Final Order to reflect that Mohlman's request should be granted.

To this end, Mohlman testified without challenge or contradiction that as of the 2023 season the distance between his south side boat lift and Crosbys' boat lift located

on the north side of their pier (the closest item of Crosbys to Mohlman) was approximately eighteen (18) feet, well over 10 feet, obviously. Furthermore, Mr. Crosby testified that he planned to relocate the lift on the north side his pier to south side, opposite Mohlman, thus creating significantly more space between the Mohlman and Crosby lifts and piers, and perhaps as much as thirty (30) feet, assuming a 10- to 12-foot-wide lift being relocated by Crosby. In any event, Mr. Crosby testified that this generous space is to be used to allow for taxiing in and out and mooring of his seaplane. Mohlman's south side lift need not be moved to accommodate the aircraft, as Crosby himself testified.

Mohlman's request is consistent and appropriate because whether or not a specific riparian line is located, and it need not be under this arrangement, both parties enjoy reasonable access to Lake James and at least a ten (10) foot navigational buffer is maintained. If one were to advocate for locating a riparian boundary line, such could be done by locating a point 5 feet to the south of Mohlman's lift and drawing a line through that point from the point on the shoreline where the Mohlman and Crosby common property line meets the shoreline. Although this might not be perfectly perpendicular, it would surely nearly be so and still consistent with the third and fourth principles and with reasonable access to the lake for both parties.

WHEREFORE, Respondent/Counter-Petitioner, Michael Mohlman and Respondents, Donald and Maureen Bobay, by counsel, pursuant to Indiana Code § 4-21.5-3-29 and 312 IAC 3-1-12, requests clarification of, or in the alternative, object to the findings and conclusions of the above referenced non-final order and request that: 1) the ALJ address and clarify such matters and/or that 2) the 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,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2024, a copy of the foregoing was served by email on all counsel of record and the NRC.

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BEFORE THE DIVISION OF HEARINGS  
NATURAL RESOURCES COMMISSION  
STATE OF INDIANA

CHARLES D. CROSBY and JILL  
CROSBY, Individually and as Trustees  
of the CHARLES D. CROSBY LIVING  
TRUST,  
Petitioners,

Administrative Case  
Number: 21-038W

v.

MICHAEL MOHLMAN, DONALD  
BOBAY and MAUREEN BOBAY,  
Respondents.

[Riparian Rights Dispute]

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MICHAEL MOHLMAN, DONALD  
BOBAY and MAUREEN BOBAY,  
Counterclaim-Petitioners

v.

CHARLES D. CROSBY and JILL  
CROSBY, Individually and as  
Trustees of the CHARLES D.  
CROSBY LIVING TRUST,  
Counterclaim-Respondents.

**PETITIONERS' WRITTEN OBJECTIONS TO THE FINDINGS OF FACT AND  
CONCLUSIONS OF LAW WITH NONFINAL ORDER**

COME NOW Petitioners/Counterclaim Respondents, Charles D. Crosby and Jill Crosby (the "Crosbys"), Individually and as Trustees of the Charles D. Crosby Living Trust, by counsel, Barrett McNagny LLP, and submit their Written Objections to the Findings of Fact and Conclusions of Law with Non-Final Order.

**ARGUMENT**

**Paragraph 88: Kent's determination that the shoreline approximates a straight line was based on comparing the shoreline to the diagram contained in IB #56 illustrating the second principle. This required an assumption that the diagram intended to apply to a fifty-foot shoreline. This assumption is not supported by the text of IB #56. The illustrations in IB #56 are merely intended to give a pictorial representation of the various principles of determining riparian zone boundaries. There is no indication the diagrams were drawn to scale or were meant to represent a certain length of shoreline.**

**OBJECTION:** Kent testified to his opinion that the shoreline at issue approximates a straight line and that the onshore property boundaries are perpendicular to the shore. Assisting Mr. Kent in his analysis was Petitioners' Ex. D, an aerial depiction of the properties and pier configurations issue, where Mr. Kent overlaid the depiction of the Second Principle in IB 56.



(Petitioners' Ex. D).

While noting the lack of a scale on the depiction in IB 56, Mr. Kent testified that he believed the authors of IB 56 were attempting to depict typical lake lot sizes. Given that the lots at issue were on the larger end of typical lake lots, Mr. Kent testified that he believed that analyzing the straightness of the boundary of the lots at issue was consistent with IB 56, with Mr. Kent noting that the depiction overlaid in Petitioners' Ex. D contains a curved shoreline prior to Lot 1 and following Lot 4, evidencing that the authors did not think that the analysis had to go beyond those lots to determine the principle of IB 56 to apply on the shoreline depicted. Mr. Kent testified that the

application of the Third Principle or Fourth Principle would be at odds with IB 56 and with the historical usage of the properties at issue.

The Commission stated that application of Principle 2 is “not supported by the text of IB #56.” (Non-Final Order ¶ 88). The Commission does not state which part of the text of Information Bulletin #56 does not support Mr. Kent’s conclusion. Principle 2 applies “[w]here the shore approximates a straight line, and where the onshore property boundaries are approximately perpendicular to this line...” The text of Principle 2 addresses precisely the situation applicable here.

The Commission states that the illustrations “are merely intended to give a pictorial representation of the various principles of determining riparian zone boundaries” and that there “is no indication the diagrams were drawn to scale or were meant to represent a certain length of shoreline.” The diagrams were not drawn “to scale” but obviously were intended to address a portion of the lake only, as evidenced by showing only four lots. Moreover, the fact that the diagram was not intended “to represent a certain length of shoreline” simply means that the Commission must exercise its judgment based upon the evidence presented including testimony of surveyors. The fact that the diagrams were not drawn to scale or do not define with precision the length of shoreline does not mean that the Commission should simply disregard Principle 2 in its entirety. That would render Principle 2 inapplicable in every case.

The Commission has often relied on the testimony of experts to determine the applicability of IB #56. *England v. Ball & Arend*, 15 CADDNAR 77, 80 (2019) (“Michel has experience in the determination of riparian boundaries through the application of the riparian boundary principles set forth in Information Bulletin #56”); *Rehlander v.*

*Lenzen*, 15 CADDNAR 115 (2020) (“Kent has had experience with riparian rights for multiple lakes. He has also been a presenter on multiple occasions for programs that included topic that addressed easements, boundary law and riparian boundaries and rights”). The Commission committed error by faulting Mr. Kent for doing what experts do – making assumptions based upon their education and experience. The Commission further erred by finding that Mr. Kent’s assumptions were not supported by the text of Principle 2 and failing to identify which part of the text and by failing to recognize that Mr. Kent expressly testified that he made certain assumptions which presumes that such testimony would not be found in the literal text of IB #56.

**Paragraph 89: Because Kent’s assumptions are not supported in the text of IB #56, his testimony is granted little weight in answering the question of whether the shoreline is approximately straight or irregular.**

**OBJECTION:** The Commission gave Mr. Kent’s testimony little weight because his “assumptions are not supported by the text of IB #56.” (Non-Final Order ¶ 89). The Commission does not specify which text to which it is referring. Further, as stated above, it is not surprising at all that Mr. Kent made “assumptions” that are outside of the literal text of Information Bulletin #56 – if Mr. Kent was simply parroting the text of Information Bulletin #56, that would not be an “assumption.” Further, if the text of Information Bulletin #56 is silent or unclear, that is when the testimony of a surveyor like Mr. Kent should be given the *most weight*, not accorded little weight.

**Paragraph 94: More compelling her [sic] is the evidence presented at the hearing as to the locations and configuration of the respective piers. The Kohers and the Mohlman [sic] placed the pier in the same location and**

**in roughly the same configuration until Mohlman included a boat lift on the south side of his pier, the action which gave rise to this dispute.**

**OBJECTION:** The Commission found the historical usage compelling.

However, evidence of historical usage was all over the place. While historical photographs from the 1970s through the 1990s evidenced several different piers and related boat lift/stand configurations by the Kohers extended from the Mohlman Property, the undisputed testimony of Mr. Crosby established that those configurations were shorter, narrower, and did not extend as far south into Lake James as the Mohlman Pier as presently configured. Mohlman and Mrs. Koher both testified that they had no idea how long or wide the historical piers were relative to the current Mohlman Pier configuration. Further, the testimony of Mr. Crosby and a photograph from the time of construction of the current Crosby residence established that since 2013, no piers extended by the Kohers from the Mohlman Property contained a boat lift on the south side of the piers.

Further, the Commission has recently held in *Adams v. Billington*, 16 CADDNAR 11 (2022) that historical usage cannot support a finding of adverse possession in contravention of the parties' riparian rights. (*Id.* Conclusions of Law ¶¶ 9-11). The Commission erred by considering historical evidence or using that historical evidence to support a riparian boundary.

**Paragraph 96: “Application of the third principle is most compelling where landowners in the vicinity have historically used a perpendicular line to divide their riparian zones.” See I.B. #56,**

**OBJECTION:** The Commission quotes part of the Third Principle regarding historical usage. However, the entire language of Principle 3 is important:

Third principle: 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. Application of the third principle is most compelling where land owners in the vicinity have historically used a perpendicular line to divide their riparian zones, but the principle should not be applied where a result is to deprive a riparian owner of reasonable access to public waters.

IB #56. Principle 3 will only apply where the onshore boundaries approach the shore at obtuse or acute angles. There is no indication by the Commission or the evidence that was presented at trial that the boundaries approached the shore at obtuse or acute angles.

The Commission's application of Principle 3 is interesting. First, the Commission gives Mr. Kent's testimony little weight because the Commission found his assumptions were not supported by the literal text of IB #56, but the Commission subsequently picks out one sentence of Principle 3 (which none of the parties suggested should apply) and ignores the remaining text of Principle 3 that render it inapplicable.

Moreover, Principle 3 relies on a depiction of the shoreline where the onshore boundaries approach the shore at obtuse or acute angles. The Commission declined to apply Principle 2 because the depiction was not drawn to scale and the Commission could not determine how much of the shoreline was depicted in IB #56. (Non-Final Order ¶¶ 88-89). However, the Commission is applying Principle 3 yet expresses no concerns the depiction used to support Principle 3.

The Commission erred in purporting to apply Principle 3.

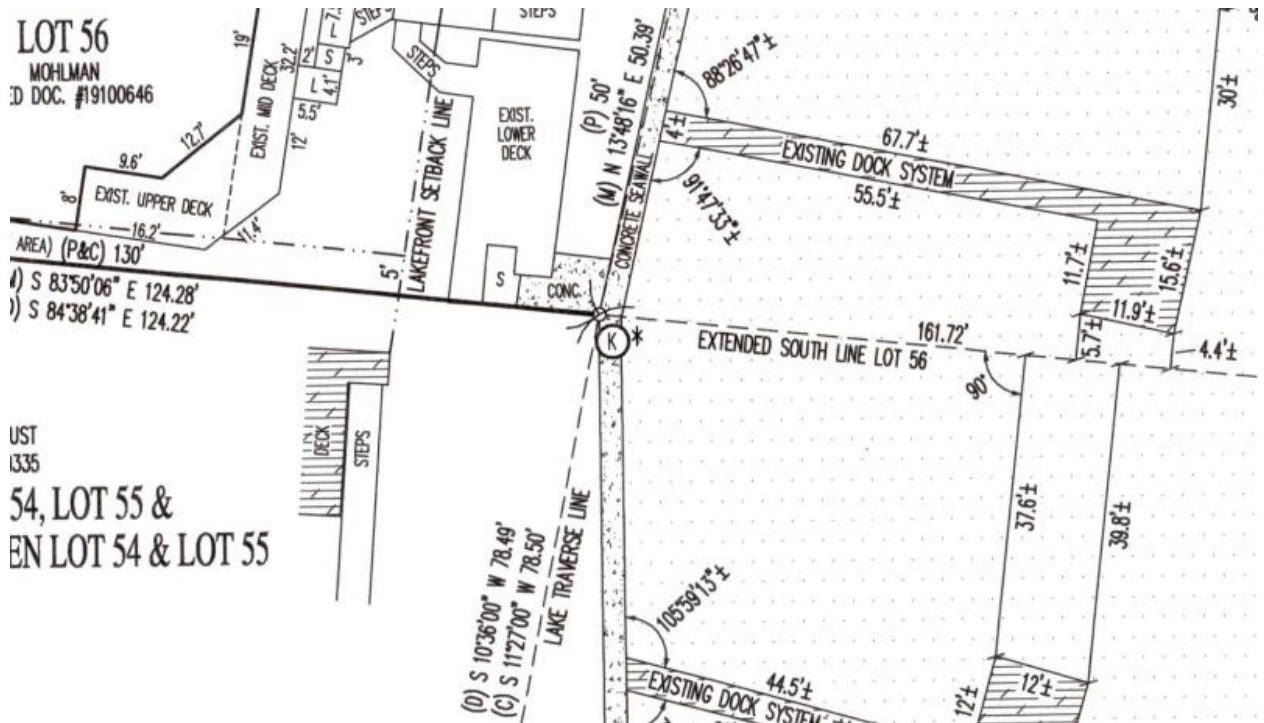
**Paragraph 97. The riparian boundary dividing the Petitioners' and Mohlmans' property is formed by a perpendicular to the shore from the point of intersection of their onshore boundaries consistent with principle 3 of IB**

#56.

**Paragraph 102.** The riparian zone boundary between Petitioners and Mohlman is formed by a perpendicular to the shore from the point of intersection of the onshore boundaries.

**OBJECTION:** For the reasons above, the application of Principle 3 is inapplicable. In a case filled with disputes, no one argued that Principle 3 should apply. The onshore boundaries do not approach the lakeshore at obtuse or acute angles. It was error for the Commission to utilize Principle 3.

The Commission is asking the parties to do the impossible – run a perpendicular line from the point of intersection of the onshore boundaries when the intersection of the boundaries meets at a point. It is impossible to comply with the Non-Final Order given that the properties intersect at an angle:





(Walter David Survey). The Commission itself does not endeavor to draw a line consistent with the Non-Final Order, leaving the parties to guess at the location of the line.

A perpendicular line is a straight line, formed at an angle of 90 degrees, that bisects another line. The Commission offers no explanation in Paragraph 97 where the lines should be drawn or how a perpendicular line could be drawn from the onshore boundaries of the Petitioners and the Respondents. Moreover, the Commission purports to utilize Principle 3, but that Principle states the “boundaries of riparian zones are generally determined by extending a straight line at a perpendicular to the shore.” IB #56. The Commission offers no explanation for utilizing Principle 3 at all much less utilizing Principle 3 in a manner not authorized by IB #56, specifically, by using a line “perpendicular to the shore **from the point of intersection of their onshore boundaries...**” (Non-Final Order ¶ 97) (emphasis added). The Commission erred in dividing the property of the Petitioners and Respondents as set forth in Paragraph 97.

### CONCLUSION

The Commission erred by disregarding the testimony of Mr. Kent. Mr. Kent’s application of Principle 2 should be adopted and the riparian boundaries drawn accordingly. Further, the Commission erred by using historical usage, which was conflicting at best, to draw any conclusions. Finally, the Commission erred by utilizing Principle 3. Neither party suggested applying Principle 3 – neither the facts nor the law permit its application. The Non-Final Order should be reversed and revised accordingly.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I certify that on February 20, 2024, a true and accurate copy of the foregoing was filed with the Natural Resources Commission and the following counsel of record via email:

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