

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

IN THE MATTER OF:

WAWA, LLC,)	Administrative Cause
Petitioner,)	Number: 20-017W
)	
vs.)	
)	[Riparian Rights Dispute]
E. MARK DEISTER,)	
Respondent.)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NONFINAL ORDER

Procedural Background and Jurisdiction

1. Petitioner, WAWA, LLC (WAWA), by Counsel, Robert W. Eherenman, initiated the instant proceeding by filing a “Petition for Administrative Review” (Petition), with the Natural Resources Commission (Commission) on March 16, 2020.
2. The Petition sought review of “a dispute concerning the location of piers and the respective riparian rights” of WAWA and the Respondent, E. Mark Deister (Deister) on Lake Wawasee located in Kosciusko, Indiana.
3. Lake Wawasee is a public freshwater lake. *Ind. Code § 14-26-2-3, Ind. Code § 14-26-2-24 and “Listing of Public Freshwater Lakes”, Information Bulletin # 61 (Seventh Amendment), June 22, 2017, DIN: 20170531-IR-312170269NRA.*
4. The Commission possesses jurisdiction over the parties and the subject matter. *Ind. Code § 14-26-2-23(e)(3); 312 IAC 11-1-3.*
5. The Commission is the ultimate authority with respect to the subject matter of this proceeding. *Ind. Code § 4-21.5-1-15; Ind. Code § 14-10-2-3; 312 IAC 3-1-2.*
6. Administrative review before the Commission is governed by Ind. Code § 4-21.5-3 and 312 IAC 3. The Commission is authorized to apply the Indiana Rules of Trial Procedure and the Indiana Rules of Evidence. *312 IAC 3-1-10.*
7. Administrative Law Judge (ALJ) Jensen was appointed to preside over the instant proceeding in accordance with Ind. Code § 14-10-2-2.

8. Deister was notified of the Petition through a “Notice of Prehearing Conference” issued on or near March 30, 2020. Counsel, Stephen R. Snyder, entered his appearance for Deister on April 2, 2020. On April 7, 2020, Deister filed an “Answer”, “Affirmative Defenses” and “Counterclaim”.
9. On April 20, 2020, WAWA filed its “Reply to Counterclaim and Affirmative Defenses”.
10. A Prehearing Conference was conducted on April 23, 2020 at which time a case management schedule was established and an Administrative Hearing was scheduled for August 25, 2020.
11. Deister and WAWA each filed witness and exhibit lists on August 6, 2020 and August 7, 2020, respectively. The parties participated in a final Status Conference on August 12, 2020 and the Administrative Hearing was conducted, as scheduled, on August 25, 2020.
12. Following the Administrative Hearing the parties’ sought the opportunity to file written summations or post-hearing briefs. A deadline for filing the same was set for October 23, 2020, and later extended, on the unopposed motion of WAWA, to October 30, 2020.
13. During the Administrative Hearing, testimony was received from Dr. John Rex Parent (Parent), Christopher William McCrea (McCrea), Kevin Michael (Michael), John Heckaman (Heckaman), and Deister. WAWA’s Exhibits, identified by letters A through T, and Deister’s Exhibits, identified by numbers 1 through 33, were all admitted by stipulation or without objection.

Preliminary Interlocutory Order Regarding Removal of Boats and Anchor Posts

14. On April 20, 2020, WAWA filed its “Motion to Prohibit Docking Boat and for Removal of Boat Anchors in Claimant’s Riparian Area”, which prompted Deister’s filing of “Respondent’s Response to Motion to Prohibit Docketing Boat and for Removal of Boat Anchors in Claimant’s Riparian Area” on April 20, 2020.
15. During the Prehearing Conference, the appointed ALJ sought to have the parties provide additional briefing and invited the submission of evidence associated solely with this interlocutory matter. It was noted that evidence submitted for this purpose would not automatically be admitted in the record for the purpose of determining the merits of this proceeding. *See Report of Prehearing Conference.*
16. WAWA filed its supplemental motion and evidence in support of its motion for the removal of boats and anchors on May 1, 2020. Deister filed his supplemental response on May 15,

2020 followed by WAWA's filing of a reply on May 29, 2020. Oral argument on the motion was heard on June 16, 2020.

17. The ALJ's "Order on Petitioner, WAWA, LLC's, Motion Under 312 IAC 11-3-2(d)" (Temporary Use Order) was issued on or near June 17, 2020 to remain in effect until the conclusion of this proceeding.
18. Under the Temporary Use Order, absent the parties' reaching an alternative agreement regarding their use of the area during the pendency of this proceeding, compliance required each party relocate certain pier sections and/or boats and boat lifts. No action taken by either party to comply with the Temporary Use Order shall, at any time, be construed as an alteration or a change in use of the riparian area.

Issues Presented

19. In its Petition, WAWA, maintains that Deister's placement of his pier and boats encroaches into its riparian area thereby interfering with its exercise of riparian rights. Deister, in his Answer and Counterclaim, rejects WAWA's contention. The disagreement between the parties results from their differing views regarding the way their shared riparian zone boundary (referred to hereafter as the Subject RZB) is most appropriately established. In his Counterclaim, Deister maintains that the Subject RZB should be determined by an extension of a line perpendicular to the shoreline lakeward from the point at which the parties' shared onshore property boundary meets the shore. Conversely, WAWA maintains that the Subject RZB should be established by the extension lakeward of the parties' shared onshore property boundary.
20. Alternatively, Deister, in his Counterclaim, also maintains that for over 20 years he has used "a portion of Lake Wawasee lying north of an extension of the common property line" between his and WAWA's properties such that he has obtained ownership of the area by adverse possession or by prescriptive easement possesses the right to continue using the area.

Findings of Fact¹

21. WAWA is the owner of real property identified as Lot 4 Woody's Roost with a physical address of 9337 E. Woody's Lane, Syracuse, Indiana. The western boundary of WAWA's property abuts Lake Wawasee. *Testimony of Parent, Exs. A, D, G.*
22. The length of the shoreline associated with WAWA's property is approximately 242 feet. *Testimony of Parent, McCrea; Ex. 18.*
23. Parent is a managing member of WAWA. *Testimony of Parent.*
24. Parent purchased what is now the WAWA property in 1990. *Ex. D.* Parent transferred the property to WAWA on September 2, 2016. *Ex. G.* Hereafter, any reference to WAWA's ownership of the property includes the period dating back to 1990 when Parent purchased the property.
25. Deister is the owner of real property located immediately south of and adjacent to WAWA's property, having a physical address of 10783 N. Turkey Creek Road, Syracuse Indiana. The western boundary of Deister's property also abuts Lake Wawasee. *Exs. B, E.*
26. The length of the shoreline associated with Deister's property is approximately 62 feet. *Ex. 19.*
27. Deister has owned his property since November 19, 1992. *Ex. F.*
28. The WAWA property's southern boundary and the Deister property's northern boundary forms the parties' shared onshore boundary. *Exs. A & B.*
29. To the south of and adjacent to the Deister property is property owned by JR Realty Corp. (JR Realty), which also has a western boundary abutting Lake Wawasee. The Deister property's southern boundary and the JR Realty property's northern boundary also forms a shared onshore boundary.
30. JR Realty is not a party to the instant proceeding.
31. Through "Findings of Fact and Conclusions of Law with Final Order of the Natural Resources Commission" issued on July 11, 2016 in *E. Mark Deister v. JR Realty Corp*, 14 CADDNAR 97 (2016) (JR Realty Case), Deister and JR Realty stipulated that the shared riparian zone boundary between them (referred to hereafter as the JRR RZB) would be

¹ A Finding of Fact more appropriately construed as a Conclusion of Law or a Conclusion of Law more appropriate considered a Finding of Fact shall so be considered.

“determined by extending the common onshore property boundary into the public waters of Lake Wawasee, consistent with the Second Principle of Information Bulletin #56.” At 98.

32. Figure 1, a modified excerpt of Exhibit B, is provided for demonstrative purposes to enhance the reader’s understanding of the property locations and geographical area at issue.



Figure 1

33. The JR Realty Case did not address the Subject RZB; however, certain evidence from that proceeding was presented as evidence here.
34. The evidence supports a conclusion that the relationship between Parent and Deister has been amicable throughout the years and the two did not discuss the location of the Subject RZB or the placement of piers until near 2015, when the JR Realty Case was in litigation. *Testimony of Parent, Deister.*
35. The present usage by WAWA and by Deister of their respective riparian zones causes the distance between Deister’s houseboat and WAWA’s pontoon boat and boat lift to be only approximately five feet. *Ex. H, T.*
36. Since 1991 or 1992, WAWA, has consistently maintained two piers extending into the waters of Lake Wawasee. Boats are not routinely moored at the most northerly pier, which is actually located near the center of WAWA’s shoreline area. WAWA routinely moors boats to the more southerly pier to maintain an unobstructed view from the home across the lake. *Testimony of Parent.* The pier located on the more southern portion of WAWA’s shoreline is particularly of interest in this proceeding because of its proximity to the Deister property.

37. WAWA's southern pier is 3 feet wide and before boats were moved in compliance with the Temporary Use Order, WAWA maintained two boat lifts on the south side of the pier and two additional boat lifts on the north side. One of the boat lifts on the south side of WAWA's pier was located at the lakeward end of the pier for a large pontoon boat and the second boat lift located on the south side of the pier was located nearer the shore and was for a small pontoon boat. *Ex. P.*
38. Parent, who believed that the Subject RZB would be established by an extension of the parties' shared onshore property boundary (hereafter referred to as Principle 2), also believes that, to the best of his knowledge, WAWA's southern pier, as well as all of the boats moored to that pier, have always been located at least 10 feet north of the Subject RZB and in WAWA's riparian zone. *Testimony of Parent; Ex. H.*
39. Deister maintains a pier that extends approximately 140 feet from the shore. *Testimony of McCrea; Ex. 21.* The pier is approximately three feet wide except for approximately 50 feet nearest the lakeward end where the pier is approximately six feet wide². *Id.* Before boats were moved to comply with the Temporary Use Order, laterals had been installed on the north side of the pier in two areas, one nearer the shore and a second located near the mid-point of the pier. At the lakeward end of the pier, on the north side, Deister moored his 47'x 14' houseboat. *Exs. 21, 32.* Deister has additional laterals and boat lifts located on the south side of his pier. *Id.*
40. WAWA's large pontoon boat and Deisters house boat are moored adjacent to one another with approximately 5 feet between them. *Exhibit 19.*
41. Deister believes the Subject RZB should be established by extending a line lakeward, perpendicular to the shoreline, from the point at which the parties' shared onshore boundary intersects the shoreline (hereafter referred to as Principle 3). If this were the case, his pier and all moored boats would be located south of the Subject RZB and in his riparian zone. *Testimony of Deister; Ex. 22.*
42. Alternatively, based upon his claim of adverse possession or prescriptive easement, Deister maintains that the Subject RZB should be identified as an area that he has used for at least 20 years which can be identified by a line extending lakeward, from the point at which his and

² In the past this portion of the pier has been approximately nine feet in width.

WAWA's onshore boundary meets the shoreline, running parallel to the JRR RZB.

Testimony of Deister; Exs. N(C), 21.

43. The evidence presented regarding the use by WAWA and Deister of the waters lakeward of their respective properties is largely not disputed.
44. In October 2018, during an attempt to move Deister's houseboat, it experienced a loss of power and crashed into WAWA's large pontoon boat lift, destroying it. *Testimony of Parent, Deister; Exs. S.*
45. Parent acknowledged that insurance proceeds replaced the destroyed boat lift fully and there appeared to be no discord between the parties with respect to the property damage. However, the incident caused Parent to be concerned that his grandchildren, who frequently play on the pontoon boat when it is moored in that boatlift, could have been injured during the incident. *Testimony of Parent.*
46. Parent, in a letter dated April 15, 2019, stated to Deister;

As you are aware we have been friends for years and have maintained an unofficial understanding regarding the boundaries of our lake properties. However, after over 20 years and due to my growing family, I feel that we both need to abide by DNR riparian law and have appropriate five foot setbacks on either side of our common riparian zone boundary so that we are in compliance. At this time, I'm certain that you will have no problem complying with the DNR mandate before our piers are placed.

Ex. K.

47. Deister did not respond to Parent's April 15, 2019 letter and this proceeding ensued. *Testimony of Deister, Parent.*

Deister's Claim of Adverse Possession and Prescriptive Easement

48. Although Parent acknowledged that "until 2015, it was never, really, specifically discussed", from his perspective that the Subject RZB would be established under Principle 2, he believed it was understood that he had granted Deister permission to maintain his boats and/or pier within WAWA's riparian area *Id.*
49. Support for Parent's belief that Deister's pier and/or moored boats were partially located within WAWA's riparian zone may be found in the fact that during the 2015 litigation in the JR Realty Case, Deister sought, and received, Parent's written permission to maintain the items within WAWA's riparian zone. *Testimony of Parent, Deister, Ex. I, J.* More

particularly, in a letter dated August 24, 2015³, Deister requested that Parent specify “in writing that I have your permission to use a portion of your riparian area.” *Ex. I*. It is noted that while the Subject RZB was not at issue in the JR Realty Case, a survey prepared for use in the JR Realty case (hereafter referred to as the JRR Survey) identified the Subject RZB by Principle 2, as an extension lakeward of the parties’ shared onshore boundary. *Ex. H, which was admitted in this proceeding but is a survey prepared for William and Jeff Herdrich on July 28, 2015 for use in the JR Realty Case*. The JRR Survey also identified that two of Deister’s boat lifts were partially in WAWA’s riparian zone and that the anchor posts used to stabilize the north side of Deister’s houseboat had been installed into the lakebed within WAWA’s riparian zone, if the Subject RZB were to be identified using Principle 2. *Id.*

50. Although Deister maintained in his testimony that he did not agree with the JRR Survey’s identification of the Subject RZB, that boundary was not at issue in the JR Realty Case, so he did not seek a correction at that time. *Testimony of Deister*. This testimony and sentiment are reasonable.

51. In conjunction with the JR Realty Case, Deister was deposed on February 26, 2016. *Ex. L, pg. 43, Lines 9-23*. In his sworn deposition testimony, Deister testified that he did not have written permission from Parent to maintain a pier or moor boats within WAWA’s riparian zone as established by Principle 2 and set out in the JRR Survey but stated that Parent had indicated that no such permission was necessary and that his pier and boats were “fine just the way you are.” *Id.* Deister also testified on deposition that “[Parent] and I have a very good relationship. ...he’s been very kind to work together on this end as well.” *Id.*

52. It is noted that within the JR Realty deposition, Mr. Eherenman, Counsel for WAWA, who was also Counsel for JR Realty, questioned Deister as to his belief that the Subject RZB should be established by Principle 2, by onshore property boundaries extended, as was depicted in the JRR Survey. *Ex. L, pg. 42, lines 19-24 & pg. 43, lines 1-8*. Mr. Snyder, who was also Deister’s attorney in the JR Realty Case, objected to the question and Deister never responded. It is observed that this line of questioning would have no bearing on a

³ It is recognized that the date of August 24, 2015 letter in which Deister seeks Parent’s letter confirming permission occurs after the June 16, 2015 date of the letter signed by Parent granting the requested permission. It is also noted that the dates on the letters are prior to the date of Deister’s deposition wherein he states that that he probably had written permission from Parent. *Ex. L, pg. 43, line 16*. It appears that the letters may have been dated so as to appear to have existed before the deposition, however that fact is not known and does not appear to be relevant to this proceeding. The discrepancy in the dates on the letters was not reconciled by the evidence.

determination of the JRR RZB but during that litigation, it appears the parties contemplated adding Parent, who then owned the WAWA property, as a party to that proceeding. See *E. Mark Deister v. JR Realty Corp*, 14 CADDNAR 97 (2016).

53. It is concluded that Deister's testimony in this proceeding, is not inconsistent with the testimony he provided in the deposition.
54. It is perplexing why, while engaged in litigation with JR Realty in a matter than in no way impacted the Subject RZB, Deister sought to have Parent provide him written permission to encroach onto WAWA's riparian zone. Deister's testimony in this proceeding, which appears honest and forthright, indicates his reasonable belief that his pier and moored boats have always been located within his own riparian area. Through his testimony in this proceeding, it becomes apparent that Deister, himself, questioned JR Realty's, and Mr. Eherenman's interest in having him obtain the written permission from Parent for purposes of the unrelated litigation. Deister consistently, and believably, testified in this proceeding that he obtained the written permission from Parent only to satisfy JR Realty and Mr. Eherenman, despite the fact that he did not believe it was necessary because he believed his pier and moored boats to be located within his own riparian zone.
55. Ultimately, Parent complied with Deister's request and provided a letter, dated June 16, 2015⁴, that acknowledges the closeness of Deister's pier to WAWA's pier, but states no concern with respect to that situation and offers that "[after 20 years I feel if there is a concern, we could work it out amicably." *Ex. J*.
56. Parent testified to his belief that the letter requested by Deister and provided by Parent, evidences Deister's 2015 acknowledgment that the Subject RZB would be appropriately determined by Principle 2. *Testimony of Parent*. Thereby, Parent infers that Deister's current contention that the Subject RZB be determined by application of Principle 3 constitutes a change in position since 2015. *Id*.
57. Due to the circumstances surrounding Parent's provision of the written permission to Deister, the letter holds only marginal weight with respect to the decision that must be made in this proceeding.
58. WAWA's southern pier had been in the same position until approximately "five to eight years ago, Mr. Deister asked my son to move the pier north", away from the shared boundary

⁴ Compare footnote 3.

line. *Testimony of Parent*. While Parent stated that Deister made the request, Parent acknowledged that the request had been made to his son and that he was not directly involved in the discussion. *Id.* Parent's son did not testify and Deister denied having made the request. *Testimony of Deister*. Deister suggested that JR Realty possibly made the request because JR Realty had made a similar request to him. *Id.* The evidence is unclear as to exactly who made the request, but WAWA relocated its pier to the north by a distance that is not known. *Testimony of Parent*. While the testimony does not provide an exact date that this occurred, aerial photographs appear to reflect that the angle of the WAWA pier was altered slightly between 2013 and 2016, which would coincide with litigation in the 2015 JR Realty Case. *Compare Exs. 11 & 13.*

59. While Deister's denial of any involvement in the request that WAWA move its pier was not contested and must be accepted as factual, it is observed that since the evidence establishes that Deister never moved his pier to north to coincide with the movement of WAWA's pier, there would have been no benefit to JR Realty. The only beneficiary of WAWA's relocation of its pier to the north, was Deister.
60. Uncontested testimony of Parent established that, at one time, WAWA maintained a shore station near, but not attached to, the south side of its southern pier and some of Deister's workers moved the shore station to the north placing it closer to WAWA's pier. Testimony fails to confirm whether Parent acquiesced to Deister's action or if the shore station was ultimately returned to its original location; however photographic evidence of the area throughout the years does not depict a shore station along, but unattached to, the south side of WAWA's southern pier. *Ex. 5 – 14.*
61. Through unopposed testimony, it is determined that at some time between 2016 and 2019, Deister reduced the width of the lakeward end of his pier and removed the anchor posts that secured the north side of his houseboat to create more navigational space between his and WAWA's moored boats. *Testimony of Deister, Exs. 13 & 26.*
62. The evidence reflects that, probably in large part due to their amicable relationship, neither Parent, nor Deister, truly considered the correct or accurate location of the Subject RZB before some time in 2015, when the JR Realty Case brought the topic to the forefront. *Testimony of Deister, Parent*. It is also evidenced that neither Parent, nor Deister, were familiar with riparian law associated with identifying the Subject RZB until that time. *Id.*

The evidence suggests that throughout their history as neighbors they had shared the riparian areas associated with their properties, each had placed their respective piers and boats in a manner consistent with their respective needs based upon what they understood the law to allow and when a potential problem developed, they addressed it in a neighborly way.

Testimony of Parent & Deister.

63. Deister suggests that through adverse possession or prescriptive easement he has gained the right use the riparian area established by an extension of a line from the intersection of the parties' onshore boundary line with the shoreline, running parallel to the JRR RZB.

Counterclaim. This method of identifying the Subject RZB, would not be consistent with either Principle 2 or Principle 3 as set forth in Information Bulletin #56, "Riparian Zones within Public Freshwater Lakes and Navigable Waters" (IB 56). *Testimony of Michael, Ex. 33*⁵. However, Deister maintains that his use of this area, which is depicted in Exhibit 21, for over 20 years justifies a conclusion that he has obtained the area by adverse possession, or the right to use the area by prescriptive easement. *Testimony of Deister; Ex. 21.*

64. The evidence supports a conclusion that Deister has maintained a pier and moored boats in the same general location since 1993. *Testimony of Deister, Parent; Exs. 5 - 14.* Evidence reasonably supports the conclusion that the anchor posts used to secure the north side of Deister's houseboat, which utilize unmovable sockets installed into the lakebed, were installed in 1994. *Testimony of Deister, Heckaman, Exs. H, 17.* The evidence, taken as a whole, supports the conclusion that the angle of Deister's pier has been static since at least 1994. *Id.*

Establishing the Shared Riparian Zone Boundary Between WAWA, LLC and Deister

65. McCrea is a licensed professional land surveyor having 35 years of surveying experience.

66. Michael is a licensed professional land surveyor and licensed professional engineer. He has worked as a surveyor since 1974. *Testimony of Michael.* Michael obtained licensure as a professional engineer 1984 and as a land surveyor in 1987. *Id.*

67. In 2015, for use in the JR Realty Case, McCrea was hired by JR Realty for the express purpose of preparing a survey identifying the JRR RZB by onshore property lines extended, or by Principle 2 of IB 56. *Ex. 19.*

⁵ On some occasions, exhibits were duplicated. Only one reference is provided.

68. In 2019, Parent commissioned McCrea to create a photographic image of the Subject RZB depicting the location of the Subject RZB established through the application of Principle 2. *Testimony of McCrea*. In fulfilling this task, McCrea first identified GPS coordinate points on WAWA's property and after "flying at approximately 140 feet" and taking "roughly 350 photos", he then used Pics 4D software to create one photo with a scale accuracy of "probably plus or minus one inch". *Id.*; *Ex. P*. McCrea then overlaid the scaled photo with the survey. *Id.*
69. Michael was commissioned by Deister to prepare two surveys of the Subject RZB with one reflecting the adverse possession/prescriptive easement area and the other identifying the Subject RZB using Principle 3 of IB 56. *Testimony of Michael; Exs. 21, 22*.
70. McCrea and Michael are both familiar with IB 56 and they agree that both Principle 2 and Principle 3 assume the existence of a generally straight shoreline. *Testimony of McCrea, Michael; Ex. R*.
71. Few shorelines could be characterized as exactly straight except possibly those having straight seawalls. *Testimony of McCrea, Michael*.
72. Application of Principle 2 assumes that onshore property boundaries will meet a generally straight shoreline at an approximate perpendicular, or 90° angle. *Id.* Principle 2 may be appropriately applied even if onshore property boundaries do not meet the shoreline at an exact perpendicular angle. *Testimony of McCrea, Michael*.
73. Application of Principle 3 assumes that onshore property boundaries will meet a generally straight shoreline at an "obtuse" or "acute" angle. *Ex. R*. Any onshore property boundary that meets the shore at something other than perpendicular, or 90°, will have created an acute angle on one side and an obtuse angle on the other side. *Testimony of Michael*.
74. The degree of the angle at which an onshore property boundary line meets a generally straight shoreline is a crucial factor in determining the appropriateness of applying Principle 2 or Principle 3. *Id.*
75. Neither McCrea nor Michael calculated the exact angle at which the parties' onshore boundary meets the shore. The only evidence in the record estimates that the angle of the intersection, is approximately 75°/105°, or 15° off from being perpendicular to the shore. *Testimony of Michael*.

76. Michael did not consider the intersection of the parties' shared onshore boundary line with the shore of Lake Wawasee to be substantially perpendicular and for this reason did not support the use of Principle 2 to establish the Subject RZB. *Testimony of Michael.*
77. In McCrea's opinion, a review of the shoreline forming the western boundary of Deister's property "shows very little deflections, according to the drawing. It's not a straight line, but it also does not meander a lot" and 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. *Testimony of McCrea; Ex. 19.* When viewing the smaller area of shoreline adjacent to only a few properties, McCrea's observation is correct.
78. Michael determined that the shoreline along the WAWA property is concave, or curves inward toward the middle. *Id.; Ex. 22.* This general trend of the shoreline is also evident in wide-angle photos of the shoreline in the area. *Exs. A, B, 7 – 10, 12.* Considering Figure 1, it is apparent that at the near center of WAWA's property, the shoreline extends to the south, across Deister's and then JR Realty's properties, and beyond, in a generally straight manner. *Exs. A, 7 – 10, 12.* The shoreline of Lake Wawasee to the north of WAWA's property is not at issue in this proceeding; however, even though the shoreline undulates more significantly in places, the general trend of the shoreline to the north of the WAWA property is also somewhat straight. *Id.* From a wider view, the shoreline of Lake Wawasee does form a concave curve, the middle of which is near the center of WAWA's property. *Id.*
79. McCrea acknowledged that the parties' shared onshore property boundary meets the shore at a greater angle than does the Deister/JR Realty onshore property boundary. However, McCrea offered his opinion that application of Principle 2 would provide Deister with equitable access to Lake Wawasee as instructed by IB 56. *Testimony of McCrea.*
80. Michael, using McCrea's survey photo, made modifications to reflect the concave nature of the shoreline along WAWA's property. *Ex. 22.* In doing so also identified the Subject RZB as it would appear by application of Principle 3. *Testimony of Michael.*
81. McCrea explained his belief that Principle 3 is more appropriately applied in the case where the angle at which the onshore property boundary meets the shore would cause the riparian zone boundary line to "intersect the opposing line at a very, or relatively, short distance from the water's edge." If the Subject RZB is established using Principle 2, the Subject RZB and the JRR RZB will intersect at a point lakeward of Deister's property. The point of

intersection would be beyond the end of the existing pier and possibly as far as 500 feet lakeward. *Testimony of McCrea*. The exact intersection point is not provided in the evidence.

82. The evidence does not provide actual calculations by which to determine the rate at which the JRR RZB and the Subject RZB, if established using Principle 2, will converge lakeward of Deister's property. However, using related testimony and measurements provided in Exhibit 20, the convergence rate can be roughly estimated. By mid-length of Deister's existing pier, approximately 70 feet lakeward of the shore, the convergence of the two lines would have reduced the width of Deister's riparian area to roughly 42 feet⁶ and at the lakeward end of Deister's pier, approximately 140 feet lakeward, the width of the riparian zone would have likely diminished to approximately 35 feet⁷. *Exhibit 20*.
83. As noted previously, Deister's property enjoys approximately 62 feet of shoreline and by these estimations he would lose nearly one-third of the width of his riparian area within 70 feet and nearly one-half the width at 140 feet.
84. Although WAWA correctly noted that in considering a wider angle view of the trend of the shoreline causes the consideration of pier locations associated with properties for which the location of onshore property boundary lines are not known and any agreements between those property owners with respect to pier placement is also not known. However, this evidence is contemplated by IB 56 and is expressly identified as being important to the consideration of the application of Principle 3. *IB 56*. The general trend along the shoreline in the vicinity of the WAWA property and the Deister property is to extend piers into the water at an angle perpendicular to the shoreline. *Testimony of Michael*. The wide-angle aerial photos depicting piers to the north and to the south of WAWA's property extending from the shore at generally perpendicular angles reveals that the lakeward end of the piers north of WAWA's property tend to angle toward the lakeward end of piers located to the south of WAWA's property, and vice versa. *Testimony of McCrea; Exs. Exs. A, B, 7 – 10, 12, 22*.

⁶ From the JRR RZB working north, these calculations were used. 4' (open space), +10' (lift) +1'(pier) +10'(lift) +3'(pier) + 10'(lift) + 1'(pier) + 3'(to Subject RZB, by Principle 2) = 42'

⁷ From the JRR RZB working north, these calculations were used. 4.9'(open space) +9'(lift) +1'(open space) +11'(lift) +9'(pier) +5'(to Subject RZB, by Principle 2) = 39.9'. Because many of these measurement are taken from near the mid-point of the pier's length, instead of from the terminal end, an adjustment was made by subtracting 5 feet, which from the scale of the survey appears reasonable. 39.9' -5'(adjustment) =34.9'

85. Neither Michael, nor McCrea, rejected the idea that either Principle 2 or Principle 3 could be used to identify the Subject RZB, but they expressed a difference of opinion with respect to which method was most appropriately applied.
86. In his letter to Deister dated April 15, 2019, Parent sought to have Deister agree to “appropriate five foot setbacks on either side of our common riparian zone boundary...” and in its Petition, WAWA seeks the establishment of “a reasonable buffer between the boats and piers...” Otherwise, the evidence in this proceeding does not address the establishment of a buffer or setback between WAWA’s and Deister’s piers and moored boats.

Conclusions of Law

87. Both WAWA and Deister, as owners of land abutting the shore of Lake Wawasee, are “riparian owners”. 312 IAC 11-2-19.
88. As riparian owners, both WAWA and Deister are persons who may be permitted to extend a qualifying temporary structure lakeward of the shoreline of Lake Wawasee. 312 IAC 11-3-1(b).
89. A qualifying temporary structure must meet each of the requirements set forth at 312 IAC 11-3-1.
90. With respect to the waters lakeward of and near the shared onshore property boundary of WAWA and Deister, the issue in this proceeding relates to 312 IAC 11-3-1(b)(9), which requires that the structure “be placed by a riparian owner or with the written approval of a riparian owner.”
91. “The rights associated with riparian ownership generally 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 such as boating, domestic use, etc. *Parkison v. McCue*, 831 N.E.2d 118, 128 (Ind.App.,2005), citing *Tennant v. Recreation Dev. Corp.*, 249 N.W.2d 348, 349 (1976).
92. A resolution of this proceeding requires determination of Deister’s adverse possession and prescriptive easement claim, and, alternatively, the appropriate means of establishing the Subject RZB as authorized and required by Ind. Code § 14-26-2-23(e)(3) and 312 IAC 11-3-3.

93. IB 56 was initially adopted by the Commission in 2008 under the authority of Ind. Code § 4-22-7-7 for the purpose of “[providing] guidance for determining the boundaries of riparian zones within public freshwater lakes ... The guidance helps define the relationships between neighboring riparian owners, between easement holders and the fee ownership, and between riparian owners and public use of the waters.” IB 56, constitutes a nonrule policy document that does not have the force and effect of law. However, the Commission, in determining issues of competing riparian interests, has followed the guidance of IB 56 since its adoption. *Skilbred, et al. v. Ward, et al.*, 13 CADDNAR 125 (2013), *Bowman v. Walls*, 14 CADDNAR 85 (2016), *Rademaker v. Wells*, 12 CADDNAR 224 (2010).

Deister’s Claim of Adverse Possession and Prescriptive Easement

94. The doctrine of adverse possession allows a person to obtain ownership of property upon clear and convincing proof of:

- (1) Control—The claimant must exercise a degree of use and control over the parcel that is normal and customary considering the characteristics of the land (reflecting the former elements of “actual,” and in some ways “exclusive,” possession);
- (2) Intent—The claimant must demonstrate intent to claim full ownership of the tract superior to the rights of all others, particularly the legal owner (reflecting the former elements of “claim of right,” “exclusive,” “hostile,” and “adverse”);
- (3) Notice—The claimant's actions with respect to the land must be sufficient to give actual or constructive notice to the legal owner of the claimant's intent and exclusive control (reflecting the former “visible,” “open,” “notorious,” and in some ways the “hostile,” elements); and,
- (4) Duration—the claimant must satisfy each of these elements continuously for the required period of time (reflecting the former “continuous” element).

Fraley v. Minger, 829 N.E.2d 476, 486 (Ind.,2005) (internal citations omitted).

95. The elements set forth in *Fraley* also “apply to establishing prescriptive easements, except for those differences required by the differences between fee interests and easements.”

Whitman v. Denzik, 882 N.E.2d 260, 264 (Ind.App.,2008), citing *Wilfong v. Cessna Corp.*, 838 N.E.2d 403, 406 (Ind.2005).

96. The evidence sufficiently proves that Deister has controlled the use of the riparian area depicted in Exhibit 21 since 1993. The elements of “control” and “duration”, as set forth in *Fraley*, have been met and will not be discussed further.

97. Generally, a person’s use, for 20 years, of a property for which the person does not hold title creates a “a rebuttable presumption that use is adverse”. *Fleck v. Hann*, 658 N.E.2d 125, 128

(Ind.App.,1995). The title holder must then rebut the presumption “by demonstrating that he merely permitted the ... use ...” *Id.*

98. However, in 1999, the Indiana Supreme Court determined that a person claiming a recreational prescriptive easement over water is not entitled to enjoy same type of rebuttable presumption that might be created by ““an unexplained use for 20 years’ of an obvious path or road for ingress and egress over the lands of another...” *Carnahan v. Moriah Property Owners Ass’n, Inc.*, 716 N.E.2d 437, 442–43 (Ind.,1999). The Court stated,

...we are unwilling to recognize such a presumption in favor of a party trying to establish a prescriptive easement for the recreational use of a body of water. This is because recreational use (especially of a body of water) is of a very different character from use of a path or road for ingress and egress over land. Recreational use (especially of water which leaves no telltale path or road) seems to us likely to be permissive in accordance with the widely held view in Indiana that if the owner of one land ‘sees his neighbor also making use of it, under circumstances that in no way injures the [land] or interferes with [the landowner's] own use of it, [it] does not justify the inference that he is yielding to his neighbor's claim of right or that his neighbor is asserting any right; it signifies only that he is permitting his neighbor to use the [land].’

We thus conclude that claimants seeking to establish an easement based on the “recreational” use of another's property *must make a special showing that those activities were in fact adverse*; they will not be indulged a presumption to that effect.

Id. (italics added)

99. Following *Fraleley*, the concepts of actions that are “adverse”, “hostile”, “under a claim of right”, or “exclusive” are now characterized as “intent” and to a lesser degree, “notice”. The “restatement” of the elements necessary to establish adverse possession or prescriptive easement did not alter the significance of *Carnahan*. *Bass v. Salyer*, 923 N.E.2d 961 (Ind.App., 2010).

100. The facts established in this case are not convincing with respect to the element of “intent” as stated in *Fraleley*.

101. “A use which is merely permissive or which is exercised under a mere license cannot ripen into an easement.” *Fleck v. Hann*, 658 N.E.2d 125, 128 (Ind.App.,1995); See also *Bass v. Salyer*, *supra* at 970.

102. Both Deister and Parent acknowledged not knowing and having not considered or discussed the proper location of Subject RZB until 2015. That fact, alone, requires the

conclusion that any encroachment by either of them upon the riparian zone of the other was permissive. But, bolstering that conclusion is the fact that Deister made modifications of his pier for the benefit of WAWA, and WAWA, for the benefit of Deister, acquiesced to or made alterations of its pier and shore station.

103. Prescriptive easements are generally “are not favored in the law”, and “the party claiming [a prescriptive easement] must meet ‘stringent requirements.’” *Carnahan*, at 441, quoting *Fleck* at 128.
104. Considering the discussion in *Carnahan*, Deister’s use of any riparian area that may be the actual property interest of WAWA was consistent with the uses that would usually be made of a riparian area. Deister’s use of the riparian area occurred without injury to the area. Diester’s use of the riparian area for the placement of a pier and mooring of boats could have had the effect of excluding WAWA from also using the area for those purposes; however, there is no evidence that WAWA attempted and was actually precluded from using the riparian areas where Deister’s pier and boats were located.
105. In fact, the opposite it true. By Deister’s own testimony, he voluntarily decreased the width of his pier and removed his houseboat’s anchor posts for the purpose of increasing navigational space for the benefit of WAWA. Therefore, there is also no evidence that WAWA has experienced any injury due to any interference with its purported property interests.
106. The evidence in this case is convincing that Deister and Parent have used the riparian area lakeward of their respective properties in a shared and amenable manner for as long as they have been neighbors. Neither were concerned about where the Subject RZB was located.
107. The facts presented in this case are similar to those considered in *Searcy v. LaGrotte*, where the court determined that two parties’ use of “the dirt drive and barn lot without consideration of ownership” was insufficient to establish that the use was “adverse”⁸. 372 N.E.2d 755, 757 (Ind.App. 1978).
108. Without doubt, everything about Deister’s use of the riparian area depicted in Exhibit 21 was obvious and apparent to WAWA, however, the evidence undermines any claim by

⁸ *Searcy* was decided before *Fraley* and therefore the reference to “adverse” would following *Fraley* refer to the element of “intent”.

Deister that his use of the riparian area put WAWA on “notice” of his intention to “exclusive[ly] control” that portion of the riparian area.

109. Deister has failed to meet the “stringent requirements” and make a “special showing” that his use of the riparian area proves by the clear and convincing evidence necessary with respect to the elements of “intent” and “notice”, as required by *Fraleley*, to prevail on his claim that he has gained a property interest in the riparian area depicted in Exhibit 21 by adverse possession or prescriptive easement.

Establishing the Shared Riparian Zone Boundary Between WAWA, LLC and Deister

110. At issue is whether Principle 2 or Principle 3, as set forth in IB 56, should be used to determine the Subject RZB. Principle 2 effectively calls for the extension of onshore property lines lakeward and is for use when an onshore property boundary meets a shoreline in a generally perpendicular manner. *IB 56*.
111. Principle 3 of IB 56 generally calls for the extension of a line lakeward in a manner perpendicular to the shoreline from the intersection of an onshore property boundary with the shoreline. This method is most appropriately used when a shoreline “approximates a straight line, and where the onshore boundaries approach the shore at obtuse or acute angles...” *Id.*
112. There is no legal requirement to impose a setback or buffer between riparian owners’ piers and boats. *Xanders v. Nixon Trust*, 14 CADDNAR 33 (2015). However, IB 56 provides,
- To assist with safe navigation, as well as to preserve the public trust and the rights of neighboring riparian owners, there ideally should be 10 feet of clearance on both sides (for a total of 20 feet) of the dividing line between riparian zones. At a minimum, a total of 10 feet is typically required that is clear of piers and moored boats, although the area may be used for loading and unloading boats and for active recreation.
113. IB 56 expressly states that Principle 3 “should not be applied where a result is to deprive a riparian owner of reasonable access to public waters.” The evidence establishes that access to public waters may be achieved for both WAWA and Deister by application of either Principle 2 or Principle 3.
114. IB 56 also states that application of Principle 3 is “most compelling where landowners in the vicinity have historically use a perpendicular line to divide their riparian zones...”
115. The evidence is clear that piers in the vicinity have customarily been placed in a manner perpendicular to the shoreline. This factor weighs in favor of applying Principle 3.

116. IB 56 acknowledges as follows,
- The number of persons who can obtain riparian rights for land adjacent to public waters is infinite. The resources of public waters are finite. And riparian owners and the public must enjoy them in balance. ...
- [These principles] are designed to provide riparian owners with *equitable access* to public waters.
117. Equitable access is frequently achieved by using one Principle to establish the riparian zone boundary on one side of a property and a different Principle to establish the riparian zone boundary on the opposing side of the same property. Consider *Sudlow v. Slocum, et al.*, 14 CADDNAR 46 (2015).
118. Determining what constitutes equitable access must also consider the amount of shoreline owned by the competing riparian owners. *Rademaker v. Wells*, 12 CADDNAR 224, 230 (2010).
119. In this instance Deister owns approximately 62 feet of shoreline while WAWA owns approximately 242 feet of shoreline. Clearly, from an equitable standpoint WAWA will enjoy a much larger riparian zone.
120. The overall size of Deister's riparian zone should be smaller than the riparian zone of WAWA due to the vast difference in the expanse of shoreline owned by each.
121. The significant decrease in width of Deister's overall riparian zone that would occur within a reasonably short distance lakeward as a result of the Subject RZB being established using Principle 2 does constitute equity.
122. Upon the presentment of appropriate evidence, the Commission has determined, on occasion, to reduce the width of the buffer zone called by by IB 56 from the ideal 20-foot buffer zone, being 10 feet on each side of a shared riparian zone boundary. *Jennings v. Parkison, et al.*, 14 CADDNAR 86 (2016), *Xanders*, supra.
123. The evidence in this proceeding does not support a reduction of the buffer zone.

Nonfinal Order

124. The Subject RZB, or the shared riparian zone boundary between WAWA and Deister shall be established by application of Principle 3 of IB 56 as the line is depicted in Michael's modification to McCrea's survey photo as set forth as Exhibit 22.

125. Deister shall not maintain any temporary structure or moor any boat within the 10-foot area to the south of the Subject RZB, as established according to Finding 117.
126. WAWA shall not maintain any temporary structure or moor any boat within the 10-foot area to the north of the Subject RZB, as established according to Finding 117.
127. The 20-foot buffer area created along the Subject RZB may be used for navigation and for temporary purposes such as embarking and disembarking.

Dated: January 25, 2021

Sandra L. Jensen
 Administrative Law Judge
 Natural Resources Commission
 Indiana Government Center North
 100 North Senate Avenue, Room N103
 Indianapolis, Indiana 46204-2200
 (317) 232-4699

Certificate of Service

Served on the following as indicated this 25th day of January 2021.

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A copy of the foregoing will also be served upon 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.*

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BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE STATE OF INDIANA

WAWA, LLC)	
)	
CLAIMANT,)	ADMINISTRATIVE CAUSE
)	NUMBER:20-017W
vs.)	
)	
E. MARK DEISTER)	
)	
RESPONDENT.)	

FILED

FEB 09 2021

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

CLAIMANT'S
OBJECTIONS TO NONFINAL ORDER

Claimant, WAWA, LLC (“WAWA”), by counsel, objects to the entry of the Nonfinal Order in this matter, and in support thereof would show the Natural Resources Commission (“NRC”) as follows:

1. On January 25, 2021, Findings of Fact and Conclusions of Law with Nonfinal Order (“Nonfinal Order”) were entered by the Honorable Sandra L. Jensen, and the Nonfinal Order was accompanied by a Notice of Filing setting February 9, 2021, as the deadline for filing objections to the Nonfinal Order.

2. The Nonfinal Order established the common boundary of the riparian zones in Lake Wawasee between WAWA and Respondent, E. Mark Deister (“Deister”) utilizing Principle 3 in Information Bulletin No. 56. (Nonfinal Order, pp. 19, ¶¶ 110-124).

3. The ALJ concluded that the “evidence establishes that access to public waters may be achieved for both WAWA and Deister by application of either Principle 2 or Principle 3.” (Nonfinal Order, pp. 19, ¶ 113).

4. The ALJ concluded that Principle 3 should be applied in this case, and the legal basis for using Principle 3 was based on the following conclusions: (a) that “piers in the vicinity have customarily been placed in a manner perpendicular to the shoreline.” (Nonfinal Order, p. 19, ¶ 115); (b) achieving equitable access to the public waters in this case justified using a different principle for Deister’s riparian boundary with WAWA, which is his neighbor to the north, than Deister consented to use in establishing his riparian boundary with JR Realty, which his neighbor to the south¹ (Nonfinal Order, p. 20, ¶ 117-118); and (c) the amount of shoreline owned by WAWA should be considered in choosing which Principle to apply and, since Deister owns less shoreline than WAWA, Principle 3 should be used since WAWA will still have a much larger riparian zone than Deister. (Nonfinal Order, pp. 19, ¶¶ 118-121).

5. WAWA respectfully submits that the Nonfinal Order’s conclusions for utilizing Principle 3 are not supported by the legal authorities cited in the Nonfinal Order. Indiana utilizes a “reasonableness” test to evaluate the exercise of riparian rights by onshore landowners. *Zapffe v. Srbeny*, 587 N.E.2d 177, 181 (Ind. Ct. App. 1992). The riparian rights of an onshore property owner “grow out of his special connection with such waters as an owner” *Brown v. Heidersbach*, 360 N.E.2d 614, 619 (Ind. Ct. App. 1997) (quoting *Thompson v. Enz*, 154 N.W.2d 473, 482 (Mich. 1967)). “A riparian owner acquires his rights to the water from his fee title to the

¹ Deister had previously stipulated that his southern riparian boundary would be determined by Principle 2. See, *Deister v. JR Realty Corp.*, 14 CADDNAR 97, 98 (2016).

shoreland.” *Bath v. Courts*, 459 N.E.2d 72, 74 (Ind. Ct. App. 1984). The installation of a pier by a riparian owner is a reasonable use of the public waters, so long as it does not interfere with the use of the lake by others and reasonableness should be decided on the basis of the facts and circumstances so as to treat each riparian owner equitably. *Zapffe*, 587 N.E.2d 2d at 181.

The Lakes Preservation Act provides that the public of Indiana has a vested right in the use of public freshwater lakes for fishing, boating, swimming, and any other purpose for which lakes are ordinarily used and adapted. I.C. §§ 14-26-2-5(b) and (c)(2)(b). “A person owning land bordering a public freshwater lake does not have the exclusive right to use the waters of the lake or any part of the lake.” I.C. § 14-26-2-5(e). Riparian rights are appurtenant to the shore land owned in fee title. *Watson v. Thibodeau*, 559 N.E.2d 1206, 1208 (Ind. Ct. App. 1990). A person must have a property interest in the land appurtenant to the water before the person can acquire rights to use the water of a public freshwater lake. *Bass*, 923 N.E.2d at 971; *Cir. Townhouse Corp. v. City of Mishawaka*, 882 N.E.2d 762, 767-68 (Ind. Ct. App. 2008). The rights associated with riparian ownership generally include: (1) the right of access to the 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 reasonable use of the water for general purposes such as boating, domestic use, and other such uses. *Parkinson v. McCue*, 831 N.E.2d 118, 128 (Ind. Ct. App. 1990). Riparian owners continue to possess rights with respect to a public freshwater lake, but their rights are statutory and must be balanced with the public rights. *Lake of the Woods v.*

Ralston, 748 N.E.2d 396, 401 (Ind. Ct. App. 2001). Information Bulletin No. 56 recognizes that:

The number of persons who can obtain riparian rights for land adjacent to public waters is infinite. The resources of public waters are finite, and riparian owners and the public must enjoy them in balance. The enjoyment of riparian rights must not overwhelm the public trust.

Information Bulletin No. 56, pp. 2-3. Deister's rights to use Lake Wawasee arise out of the land he owns, and Deister's riparian rights coincide with the actual boundaries of his property. Information Bulletin No. 56 provides that the different principles are designed "to provide riparian owners with equitable access to public waters." Information Bulletin No. 56, p. 3. Therefore, the central issue is what principle under Information Bulletin No. 56 provides Deister with equitable access to Lake Wawasee and properly balances his private rights with the public's right to use the lake. Equity in this case is not picking winners and losers based on the amount of shoreline WAWA and Deister each own. Rather, equity in this case is the balance between each property owner's right to use the lake versus the public's right to use the lake and which principle best achieves this balance.

(a) **Perpendicular Piers in the Vicinity.**

In this case, the ALJ was only determining the riparian boundary between WAWA and Deister. There is no evidence: (i) that it is necessary to use Principle 3 in order to provide Deister with equitable access to the lake to install a pier or dock a boat; (ii) that the shoreline owned by third parties needed to be considered in order to balance the public's right to use the lake and to provide Deister with

equitable access to the lake; or (iii) that the application of Principle 2 would cause a “domino” effect requiring any surrounding landowners to re-apportion their riparian zones or relocate the historical placement of their piers. *See, e.g., Rademaker v. Wells* 12 CADDNAR 224, 231, ¶ 68 (2010) (where the NRC found that Principle 3 was appropriate because “applying another principle could have a subsequent domino effect and disrupt landowners who are not parties.”); *Roberts v. Beachview Properties, LLC, et al.*, 10 CADDNAR 125, ¶¶ 100, 132, 134 (2005) (finding that applying the “long lake” method would cause the “northern riparian line and northern pier [to] cross the historic placement of Martindales’ pier and could result in a domino effect with four northern neighbors.”) Since the ALJ was only determining the riparian boundary between WAWA and Deister, and the riparian zones to which each is entitled based on their respective ownership of the shoreline, the historical configuration of other piers in the vicinity is irrelevant to the determination of the parties’ common riparian boundary to achieve an appropriate balance with the public’s rights. In fact, the ALJ concluded that “access to public waters may be achieved for both WAWA and Deister by application of either Principle 2 or Principle 3.” Nonfinal Order, p. 19, ¶ 113).

(b) **Equitable Access Using Different Principles.**

The ALJ cited *Sudlow v. Slocum*, 14 CADDNAR 46 (2015) to support the conclusion that different principles under Information Bulletin No. 56 can be applied to different boundaries in order to provide equitable access. (Nonfinal Order, p. 20, ¶¶ 116-117). However, the *Sudlow* case is factually different than this

case. In *Sudlow*, the common riparian boundary between Slocum and Sudlow was determined by using the **Fourth Principle** in Information Bulletin No. 56. *Sudlow*, 14 CADDNAR at 49. Principle 4 expressly provides for “divid[ing] the total navigable waterfront in proportion to the length of shores of each owner taken according to the general trend of the shore.” In *Sudlow*, the NRC found that there was evidence to support an apportionment of the shoreline between Slocum at 36.2% and Sudlow at 68.2%. *Sudlow*, 14 CADDNAR at 48. This apportionment was supported by the evidence.

The *Sudlow* case was apportioning the shoreline of Lake Wawasee among 8 different property owners to avoid a “domino effect.” Sudlow failed to present any evidence that Sudlow’s proposal achieved a division of the waterfront in a manner proportionate to ownership of the shoreline. *Sudlow*, 14 CADDNAR at 49. In this case, neither WAWA nor Deister argued that Principle 4 should be applied and that their total navigable waterfront should be apportioned between them. The evidence is undisputed that Deister stipulated that Principle 2 should be applied to his southern boundary with JR Realty and that this principle provided Deister with equitable access to Lake Wawasee. The evidence is undisputed that, if Principle 2 is applied to establish Deister’s northern boundary with WAWA, Deister would still have equitable access to the lake to install a pier and dock several boats lakeward of his property. There is no evidence that the application of Principle 2 would interfere with Deister’s ability to install a pier and to dock several boats lakeward of his shore. That is, Principle 2 provides an appropriate balance between Deister’s

riparian rights resulting from his ownership of the shoreline and the public's rights to use the lake. The sole basis in *Sudlow* for using different principles to determine two different riparian boundaries was based on the fact that the only evidence produced by Slocum supported establishing the boundary under Principle 4 of Information Bulletin No. 56 to achieve this balance of private versus public rights. Here, WAWA introduced evidence that, by using Principle 2 to establish the common riparian boundary, Deister would still have equitable access to Lake Wawasee to install a pier and dock several boats lakeward of his property, that Deister's southern boundary was determined by Principle 2, and that Principle 2 would not create a "domino effect" impacting other riparian owners.

Based on this evidence, there is no legal basis (unlike in *Sudlow*) to use a different principle to determine the common riparian boundary between Deister and WAWA than was used to determine the boundary between Deister and JR Realty. Applying Principle 2 to the common riparian boundary between WAWA and Deister provides Deister with equitable access to Lake Wawasee by allowing him to install a pier and dock several boats and balances Deister's rights with the rights of the public.

(c) **Amount of Shoreline Owned.**

The ALJ determined that the amount of shoreline owned by the parties was the critical factor in determining whether Principle 2 or Principle 3 should be applied to the common riparian boundary between WAWA and Deister, citing *Rademaker v. Wells*, 12 CADDNAR 224. (Nonfinal Order, p. 20, ¶¶ 118-121).

However, in *Rademaker*, the determination to use Principle 3, instead of Principle 2, was based on evidence that “applying another principle could have a subsequent domino effect and disrupt landowners who are not parties” and “the disruption from the ‘domino effect,’ which is a likely result from application of the *Second Principle*, is appropriately avoided.” *Rademaker*, 12 CADDNAR at 231. In other words, using Principle 2 in that case would not achieve an appropriate balance among riparian owners to use the lake. While there was testimony in *Rademaker* that an expert had considered the amount of shoreline in his analysis, this was not the basis for applying Principle 3.

Neither Principle 2 nor Principle 3 discuss apportioning riparian zones based on the amount of shoreline owned. These two Principles reference the onshore boundary because the riparian rights derive from the fee simple ownership of the shoreline held by WAWA and Deister. Only Principle 4 provides the direction to apportion the riparian zones of each property owner in proportion to the length of the shoreline owned by each. Neither WAWA nor Deister argued or presented any evidence that Principle 4 should be applied in this case. While the ALJ cited the “significant decrease in width of Deister’s overall riparian zone that would occur within a reasonably short distance,” there was no conclusion by the ALJ that Deister would be prevented from exercising reasonable riparian rights, that he could not install a pier or that he could not dock several boats lakeward of his property. The conclusion was essentially that Deister should simply have “more” and, given the amount of shoreline owned by WAWA, it would not be affected.

Nothing in Information Bulletin No. 56 provides that WAWA should be required to give up its riparian rights simply to provide a neighbor with “more” access. The sole purpose of Information Bulletin No. 56 is to assist the NRC in exercising its responsibilities under the Lakes Preservation Act, so as to assure that each onshore property owner has reasonable access to the lake and to balance the property owner’s use with the public’s use of the public freshwater lake. As the ALJ found, Deister has access to the public waters using either Principle 2 or 3. The mere fact that WAWA owns more shoreline than Deister owns should not be the basis for granting to Deister a larger riparian zone than is required to preserve the riparian rights to which he is entitled by virtue of his fee ownership of the shoreline.

It is not “equity” that assures WAWA a much larger riparian zone than Deister; it is WAWA’s fee title to its onshore property. Similarly, it is not “equity” that entitles Deister to “more” access than the boundaries of the land he chose to purchase. Deister has equitable access to Lake Wawasee under Principle 2, and Principle 2 provides the appropriate balance between Deister’s riparian rights and the rights of the public. This is made clear in the Nonfinal Order, which expressly provides that “the Subject RZB being established using Principle 2 does constitute equity.” (Nonfinal Order, p. 20, ¶ 121).

6. Based on the foregoing, the legal authority cited in the Nonfinal Order does not support the conclusion that Principle 3 should be applied in this case. The evidence supports the legal conclusion that Principle 2 should be applied to determine the common riparian boundary between Deister and WAWA because it

provides Deister with the reasonable riparian rights based on his ownership of the shoreline and because Principle 2 was the same method that Deister stipulated to for his south riparian boundary with JR Realty. *Deister v. JR Realty Corp.*, 14 CADDNAR 97, 98 (2016).

7. Based on the evidence at the administrative hearing, WAWA respectfully requests the Nonfinal Order be modified and changed prior to the entry of a Final Order, as follows:

(a) Paragraphs 113 through 121 should be modified and changed to conclude that Principle 2 is the appropriate method for determining the riparian boundary between Deister and WAWA; and

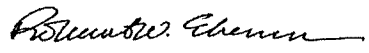
(b) Paragraph 124 be modified and changed to provide that the shared riparian zone boundary between Deister and WAWA be established by Principle 2, as that line is depicted on Christopher McCrea's survey photo, WAWA's **Exhibit P**.

These modifications of the Nonfinal Order are supported by the Lakes Preservation Act, Indiana case law, Information Bulletin #56, the CADDNAR decisions cited in the Nonfinal Order, and the evidence introduced at the administrative hearing.

Dated this 9th day of February, 2020.

Respectfully submitted,

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BY: 

ROBERT W. EHERENMAN
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the above and foregoing Claimant's Objections to Nonfinal Order has been sent both U.S. Certified Mail, Return Receipt Requested and by electronic mail this 9th day of February, 2021, to:

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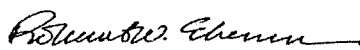
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ROBERT W. EHERENMAN

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

IN THE MATTER OF:

WAWA, LLC,)
 Petitioner)

vs.)

E. MARK DEISTER,)
 Respondent.)

Administrative Cause
Number 20-017W

FILED

FEB 22 2021

NATURAL RESOURCES COMMISSION
DIVISION OF HEARINGS

**RESPONDENT’S RESPONSE IN OPPOSITION TO
CLAIMANT’S OBJECTIONS TO NONFINAL ORDER**

Respondent, E. Mark Deister, by counsel, responds to the Claimant’s Objections to Nonfinal Order in this matter, and in support thereof submits to the Natural Resources Commission (“NRC”) as follows:

On January 25, 2021, Findings of Fact and Conclusions of Law with Nonfinal Order (hereinafter “Nonfinal Order”) was entered by the Honorable Sandra L. Jensen. The Nonfinal Order established the common riparian boundary between Claimant and Respondent by applying the Third Principle of Information Bulletin 56. (Nonfinal Order, p. 124). In support of this finding and in compliance with Information Bulletin 56, the ALJ correctly considered the nature of the subject properties, the configuration of the shoreline, the parties’ reasonable access to the public water, and the customary placement of piers in the vicinity. On February 9, 2021, Claimant, WAWA, LLC., by counsel, filed objections to the Nonfinal Order.

FACTUAL SUMMARY

Respondent is the owner of property commonly known as 10783 N. Turkey Creek Road, Syracuse, Indiana which he purchased on November 19, 1992. Respondent’s property has 62 feet of frontage on Lake Wawasee, a public freshwater lake. (Nonfinal Order, p. 4, ¶¶ 25-27). Claimant is the owner of real property located immediately north of and adjacent to Respondent’s property. Claimant’s property has 242.2 feet of frontage on Lake Wawasee. (Nonfinal Order, p. 4, ¶¶ 21-22).

In 1993, after his purchase of his property, Respondent extended the previously existing pier lakeward of his property. In 1994, Respondent added three sections across the lakeward end of the pier. Apart from the installation of three sections across the lakeward end of the pier, the configuration of Respondent's pier remained the same from 1994 to 2003. (Exhibit 17, attached hereto). Subsequent to 2003, two laterals and three additional lakeward sections were added to the pier. (Nonfinal Order, p. 6, ¶ 39). As concluded by the ALJ, Respondent has maintained the pier at issue and moored boats, including a houseboat, in the same general location since 1993. The location and angle of Respondent's pier has been static since at least 1994. (Nonfinal Order, p. 11, ¶ 64).

Claimant maintains a second pier on his lakefront immediately adjacent to Respondent's pier. (Nonfinal Order, p. 5, ¶ 36.) Most recently, Respondent maintained two boat lifts on the south side of the pier and two additional boat lifts on the north side. (Nonfinal Order, p. 6, ¶ 37). The location of Claimant's and Respondent's piers is shown by Exhibit 22, attached hereto.

As concluded by the ALJ and corroborated by expert testimony, the shoreline at issue in this matter is concave in nature. (Nonfinal Order, p. 12, ¶¶ 73-75; p. 13, ¶¶ 78, 80; p. 19, ¶ 111; p. 20, ¶ 124). The general trend of the concave shoreline is evident in wide-angle photos of the shoreline in the area. (Nonfinal Order, p. 13, ¶ 78). From a wide view, the shoreline at issue forms a concave curve, the middle of which is near the center of Claimant's property. (Exhibit 22, attached hereto). The evidence in the record estimates that the angle at which the parties' common onshore boundary meets the shore is approximately 75°/105°, or 15° off from being perpendicular to the shore. (Nonfinal Order, p. 12, ¶ 75).

THE ESTABLISHED SHARED RIPARIAN ZONE BETWEEN CLAIMANT AND RESPONDENT IN THE NONFINAL ORDER

The Natural Resources Commission has historically utilized the guidelines contained in Information Bulletin 56 when delineating boundaries between riparian zones. Effective January 1, 2010, the Commission is required to consider Information Bulletin 56 as guidance for determining riparian boundaries (312 IAC 11-1-4). The principles outlined in Information Bulletin 56 "accommodate the diverse characteristics of Indiana's numerous public freshwater lakes." Information Bulletin No. 56 (Second Amendment).

According to Information Bulletin 56, the proper angle and location of riparian boundaries depends upon the nature of the shoreline at issue. If the onshore property boundaries approach the shoreline at a point at which the shoreline is concave, or curved, the intersection of the shoreline and the onshore property boundaries creates an obtuse or acute angle. When an obtuse or acute angle is formed between the shoreline and the onshore property boundary, the Third Principle of Information Bulletin 56 is used to determine the correct riparian boundary. The Third Principle calls for the riparian boundary to be determined by extending a line lakeward in a manner perpendicular to the shoreline from the intersection of the onshore boundary with the shoreline. (Information Bulletin No. 56, p. 4). A review of the applicable administrative cases clearly support the application the Third Principle in similar cases where the intersection of the shoreline at issue and the onshore property boundaries creates an obtuse or acute angle. *See Rademaker v. Wells*, 12 CADDNAR 224 (2010); *Porter v. Swain, et al.*, 12 CADDNAR 1 (2009).

As stated above, it was concluded by the ALJ and established by the evidence that the shoreline at issue in this case is concave in nature. (Nonfinal Order, p. 12, ¶¶ 73-75; p. 13, ¶¶ 78, 80; p. 19, ¶ 111; p. 20, ¶ 124). Additionally, it was determined by the ALJ and established by the evidence that the angle of the intersection of the onshore boundary and the shoreline at issue was approximately 75°/105°, or 15° off from being perpendicular to the shore. (Nonfinal Order, p. 12, ¶ 75). As a result, it was concluded that the Third Principle should be used to determine the correct riparian boundary between the Claimant and Respondent by extending a line lakeward in a manner perpendicular to the shoreline from the intersection of the onshore boundary with the shoreline at issue. (Nonfinal Order, p. 19, ¶ 111; p. 20, ¶ 124). The correct riparian boundary as established by the Third Principle of Information Bulletin 56 is shown via the solid red line immediately adjacent to and south of the red boat lift in Exhibit 22, attached hereto. (Nonfinal Order, p. 20, ¶ 124).

It is also important to note that Information Bulletin 56 lists two contributing factors to weigh when determining the application of Third Principle. First, Information Bulletin 56 states that the application of the Third Principle is “most compelling where landowners in the vicinity have historically used a perpendicular line to divide their riparian zones.” (Information Bulletin No. 56, p. 4). Second, it is stated that the Third Principle “should not be applied where a result is to deprive a riparian owner of reasonable access to public waters.” (Information Bulletin No. 56, p. 4).

The ALJ considered these factors and correctly decided that the Third Principle should be applied in this matter. Regarding the first factor, the ALJ stated that “[t]he evidence is clear that piers in the vicinity have customarily been placed in a manner perpendicular to the shoreline.” (Nonfinal Order, p. 19, ¶¶ 114-115). As a result, the ALJ concluded that “[t]his factor weighs in favor of applying Principle 3.” (Nonfinal Order, p. 19, ¶ 115).

With regard to the second factor, the ALJ stated that “[t]he evidence establishes that access to public waters may be achieved for both WAWA and Deister by application of either Principle 2 or Principle 3.” (Nonfinal Order, p. 19, ¶ 113). Principle 2 of Information Bulletin 56 does not contain any contributing factors to be weighed, including the factor related to reasonable access to public waters. (Information Bulletin No. 56, p. 3). As a result, the ALJ’s determination that the parties’ access to public waters can be achieved by the application of either Principle 2 or Principle 3 only speaks to whether Principle 3 can be correctly applied in this case.

In this matter, after considering the amount of shoreline owned by each party, the ALJ concluded that the application of the Third Principle would not deprive either party of reasonable access to the public water. (Nonfinal Order, p. 19, ¶ 113; p. 20, ¶¶ 116-121). As a result, it was determined in the Nonfinal Order that the Third Principle of Information Bulletin 56 can and should be applied to determine the correct riparian boundary between the Claimant and Respondent. (Nonfinal Order, p. 20, ¶ 124).

RESPONSES TO CLAIMANT’S OBJECTIONS TO THE NONFINAL ORDER

A. The Claimant Misstates the Legal Basis on Which the ALJ Concluded that the Third Principle Should Be Applied

In the Objections to Nonfinal Order, Claimant states that the ALJ based her legal conclusion that the Third Principle should be applied solely on the following conclusions: a) that piers in the vicinity have customarily been placed in a manner perpendicular to the shoreline; b) achieving equitable access to the public waters in this case justified using a different principle for the Respondent’s riparian boundary with Claimant than Respondent consented to use in establishing the riparian boundary with his non-party neighbor to the south; and c) the amount of shoreline owned by Respondent and Claimant. (Claimant’s Objections, p. 2, ¶ 4). In stating the ALJ’s legal basis, the Claimant appears to exclude the portion of the Nonfinal Order at which the

ALJ addresses the fundamental inquiry of the Third Principle which involves the angle at which the onshore property boundaries approach the shoreline.

As stated above, according to Information Bulletin 56, when an obtuse or acute angle is formed between the shoreline and the onshore property boundary, the Third Principle is used to determine the correct riparian boundary. (Information Bulletin No. 56, p. 4). In the Nonfinal Order, the ALJ made the determination that such an angle existed, and thus that the Third Principle should be applied. (Nonfinal Order, p. 19, ¶ 111; p. 20, ¶ 124). Next, the ALJ correctly considered the contributing factors of historic use of piers in the vicinity and the respective reasonable access to the public waters of the parties involved. (Nonfinal Order, p. 19, ¶¶ 114-115; p. 20, ¶¶ 116-121). After concluding that the contributing factors did not prohibit the application of the Third Principle, the ALJ correctly determined that the Third Principle can and should be applied in this case. (Nonfinal Order, p. 20, ¶ 124).

B. Claimant Misstates the Central Issue in This Matter

In the Objections to Nonfinal Order, Claimant states that “the central issue is what Principle under Information Bulletin No. 56 provides Deister with equitable access to Lake Wawasee and properly balances his private rights with the public’s right to use the lake.” (Claimant’s Objections, p. 4). While the balancing of the public’s right to use public waters with a riparian owner’s right to use public waters is an important consideration under Information Bulletin 56 as well as generally under Indiana riparian law, such a consideration is not the central issue in this case. Rather, as stated above, the central issue, as required by Information Bulletin 56, is whether an obtuse or acute angle is formed by the intersection of the shoreline at issue and the onshore property boundaries. And then, after the angle determination is made, the fundamental inquiry turns to the applicable contributing factors of historic use of the piers and respective reasonable access to the public waters of the parties involved. (Information Bulletin No. 56, p. 4).

The ALJ considered the central issue in this case and, after appropriately weighing the contributing factors, correctly determined that the Third Principle should be applied to establish the shared riparian boundary zone between Claimant and Respondent. (Nonfinal Order, p. 20, ¶ 124).

C. The ALJ Correctly Considered the Parties' Equitable Access to the Lake and the Location of Piers in the Vicinity

In the Objections to Nonfinal Order, Claimant argues that the ALJ was only determining the riparian boundary between the parties to this action and as a result, consideration of the configuration of the piers in the vicinity or the parties' equitable access to the water was either irrelevant or incorrectly analyzed. (Claimant's Objections, p. 4, sec. (a)). Claimant begins this argument by stating that there is "no evidence that it is necessary to use Principle 3 in order to provide Deister with equitable access to the lake to install a pier or dock a boat." (Claimant's Objections, p. 4, sec. (a)(i)). This point is of no circumstance. According to Information Bulletin 56, there is no need to show that it is necessary to use Principle 3 in order to provide either party with equitable access to the water. Rather, as stated above, once it is determined by the ALJ that the shoreline and onshore property boundaries meet in such a way that warrants the application of the Third Principle, Information Bulletin 56 then calls for a determination on whether the application of the Third Principle would deprive a riparian owner of reasonable access to public waters. (Information Bulletin No. 56, p. 4). Accordingly, under Information Bulletin 56, if it is determined that the application of the Third Principle would not deprive either of the parties of reasonable access to the public water, the Third Principle can correctly be applied. However, Information Bulletin 56 does not require evidence that, but for the application of the Third Principle, one of the parties would be deprived of reasonable access to the public water.

Next, Claimant argues that because this matter involves only the determination of the riparian boundary between Claimant and Respondent, the historical configuration of other piers in the vicinity is irrelevant. (Claimant's Objections, p. 5). However, as stated above, the historical configuration of nearby piers is listed in Information Bulletin 56 as a contributing factor to be weighed in the application of the Third Principle. Specifically, Information Bulletin states that "application of the third Principle is most compelling where landowners in the vicinity have historically used a perpendicular line to divide their riparian zones." (Informational Bulletin No. 56, p. 4; Nonfinal Order, p. 19, ¶ 114). As a result, although such evidence is not required to apply the Third Principle, the ALJ correctly considered such evidence in her final determination, as required by Information Bulletin 56. (Nonfinal Order, p. 19, ¶¶ 114-115).

D. The ALJ's Reliance on *Sudlow v. Slocum* was Appropriate

In Claimant's Objections to Nonfinal Order, it is next argued that the ALJ's reliance on *Sudlow v. Slocum*, 14 CADDNAR 46 (2015), is flawed. (Claimant's Objections, p. 5). In support of this argument, Claimant states that *Sudlow* cannot be relied upon because it involves, in part, the application of the Fourth Principle of Information Bulletin 56. (Claimant's Objections, pp. 5-6). However, the ALJ did not rely on *Sudlow* in order to determine what principle of Information Bulletin 56 should be applied in this case. Rather, the ALJ used *Sudlow* to show that it is appropriate, in some instances, to apply "one principle to establish the riparian zone boundary on one side of the property and a different principle to establish the riparian zone boundary on the opposing side of the same property." (Nonfinal Order, p. 20, ¶ 117).

In *Sudlow*, which involved a multitude of different riparian property owners, the Second Principle, the Third Principle, and the Fourth Principle were utilized in the determination of the applicable riparian boundaries based on the different attributes of each individual property's boundaries and the shoreline angles involved. *Sudlow*, 14 CADDNAR at 46, ¶¶ 53-61. The reliance on *Sudlow* is important to this matter because evidence was introduced to show that Respondent and Respondent's neighbor to the south, JR Realty, had previously stipulated to the application of the Second Principle in order to determine their shared riparian zone boundary. (Nonfinal Order, pp. 4-5, ¶¶ 31-32). Respondent's southern property boundary and JR Realty's northern property boundary form an onshore boundary. (Nonfinal Order, p. 4, ¶ 29). It was demonstrated that the onshore property boundaries of Respondent and JR Realty did not involve the same type of concave shoreline or angles that are present in this matter. (Nonfinal Order, p. 13, ¶ 79). As a result, the application of the Second Principle of Information Bulletin 56 was appropriate as between Respondent and JR Realty. The ALJ cited to *Sudlow* only to show the application of the Second Principle between Respondent and JR Realty does not prohibit the application of the Third Principle as between Respondent and Claimant in this matter. (Nonfinal Order, p. 20, ¶ 117).

E. The ALJ Did Not Use the Amount of Shoreline Owned by Each Party in Order to Apportion Riparian Zones, Rather Such Evidence was Used to Determine Whether the Parties Had Reasonable Access to the Public Water as Required by the Third Principle

Lastly, in the Objections to Nonfinal Order, the Claimant argues that the ALJ used evidence regarding the amount of shoreline owned by each party to somehow "apportion" the riparian zone

between Respondent and Claimant. (Claimant's Objections, pp. 7-8). However, in the Nonfinal Order, the ALJ simply used this evidence to show, in part, that based on the amount of shoreline owned by each party in this matter, the application of the Third Principle would not deprive either party of reasonable access to the public water. (Nonfinal Order, p. 19, ¶ 113; p. 20, ¶¶ 116-121, 124). Such a determination is required by Information Bulletin 56 and was correctly considered by the ALJ in this matter. (Information Bulletin No. 56, p. 4).

Additionally, the Claimant's argument regarding the use of "amount of shoreline owned" improperly suggests that the ALJ solely based her conclusion regarding the application of the Third Principle on the fact that Claimant owns more shoreline as compared to Respondent. However, in reality, the ALJ made her determination, as required by Information Bulletin 56, based on the angles created by the intersection of the shoreline and the onshore boundaries at issue and then, correctly considered the amount of shoreline owned by each party in order to ensure that neither party was going to be deprived of reasonable access to the public water. (Nonfinal Order, p. 19, ¶¶ 111, 113; p. 20, ¶¶ 116-121, 124).

CONCLUSION

The common riparian line between Claimant and Respondent is properly established by the Third Principle of Information Bulletin 56. Respondent's pier, temporary structures, mooring posts and boats moored at his pier are all located within his riparian area, as concluded in the Nonfinal Order.

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By: 

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served electronically upon the following via the electronic mail on February 22, 2021:

Robert W. Eherenman
rwe@hallercolvin.com

Rebecca McClain
rmcclain@dnr.in.gov

A handwritten signature in black ink, appearing to read 'SRS', is written over a horizontal line. The signature is stylized and cursive.

Stephen R. Snyder

Snyder, Steve

From: Dawn Heckaman <sudlowspier@yahoo.com>
Sent: Thursday, July 30, 2020 10:02 AM
To: Snyder, Steve
Subject: RE: Mark Deister

In 1994 he added the 3 sections across the end of his platform. That is all I could find that was added

From: Snyder, Steve
Sent: 7/30/2020 7:23 AM
To: Dawn Heckaman
Subject: RE: Mark Deister

Thanks. I only needed to go back to 1993. So the pier configuration was the same from that point forward?

Stephen R. Snyder
Attorney at Law
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From: Dawn Heckaman <sudlowspier@yahoo.com>
Sent: Thursday, July 30, 2020 7:21 AM
To: Snyder, Steve <srs@smfklaw.com>
Subject: Re: Mark Deister

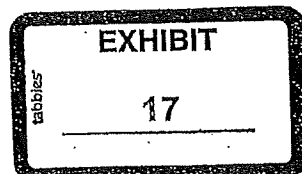
Good morning Steve.

My records here at the office only go back to 1992, so it was prior to that. If you want me to do more digging I can. Just let me know.

Thanks,
Dawn

On Wednesday, July 29, 2020, 03:26:59 PM EDT, Snyder, Steve <srs@smfklaw.com> wrote:

Thanks for the prompt response. That is very helpful. One other question, can you tell how long prior to 2003 this was the layout?



STeve

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From: Dawn Heckaman <sudlowspier@yahoo.com>
Sent: Wednesday, July 29, 2020 3:17 PM
To: Snyder, Steve <srs@smfklaw.com>
Subject: Re: Mark Deister

Steve,

Here is the last pier sketch that we have on file for Mark. We have not worked him since the fall of 2002. If you need anything else, just let me know.

Thanks,
Dawn

On Wednesday, July 29, 2020, 01:29:44 PM EDT, Snyder, Steve <srs@smfklaw.com> wrote:

John,

I represent Mark in a pier dispute with Rex Parent. Mark thinks you may have handled his pier years ago. If that's the case, do you have any drawings of what may have existed then?

Thanks,

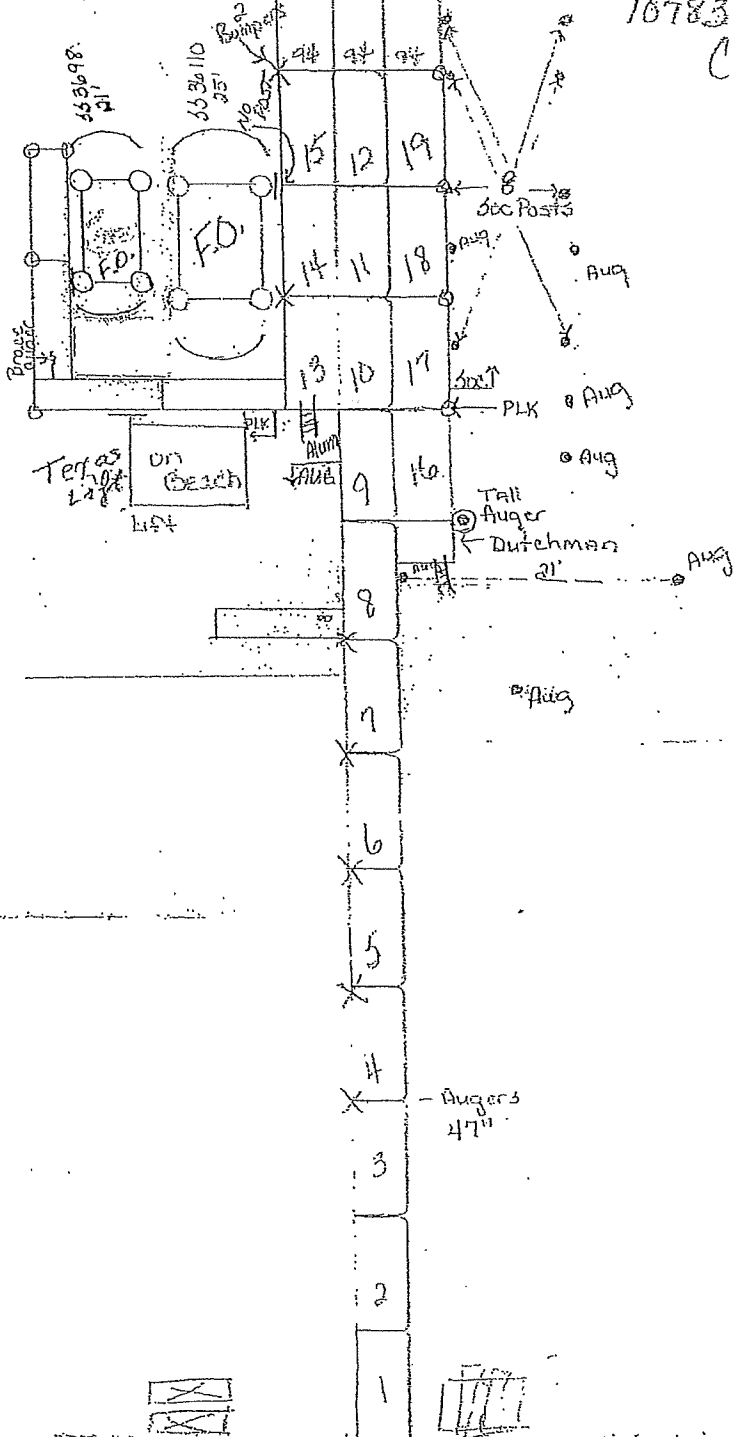
Steve

Stephen R. Snyder
Attorney at Law
Snyder Morgan Federoff & Kuchmay LLP
200 West Main Street

[The entire original message is not included.]

Deister mark

WA 261 E.E.
10783 N Turkey
Creek Rd



O = Trees (10)

Steve this is the last layout from whr we did the pier in 2003

Dawn

wood wall



Prepared By: JOHN KUPPEL & ASSOCIATES, INC
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 22

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