

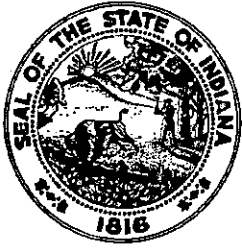
INDIANA OFFICE OF ENVIRONMENTAL ADJUDICATION

Mary L. Davidsen, *Chief Environmental Law Judge*
Lori Kyle Endris, *Environmental Law Judge*
Sara C. Blainbridge, *Legal Administrator*

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OBJECTION TO THE ISSUANCE OF SANITARY SEWER CONSTRUCTION PERMIT APPROVAL NO. 23464 LAKEVIEW MINISTRIES (AKA CAMP CEDAR BROOK) 2022 OEA 020, CAUSE NO. 20-W-J-5111

Official Short Cite Name:	Lakeview Ministries, 2022 OEA 020
OEA Cause No.:	20-W-J-5111
Topics/Keywords:	IC 4-21.5-3-4(d) IC 4-21.5-3-23(b) IC 13-15-3-5(b) 315 IAC 1-3-2(b)(4)(A) 327 IAC 3 Sanitary Sewer Construction Permit Motion for Summary Judgment // Ind. T.R. 56(C) Issues raised outside of 315 IAC 1-3-2(b)(4)(A)
Presiding ELJ:	LORI KYLE ENDRIS
Party Representatives:	SIERRA ALBERTS, ESQ., IDEM PAMELA PERKINS, ESQ., PETITIONERS CHARLES AND ROSEMARY CLARK, PRO SE, PETITIONERS JEFFREY J. LORENZO, ESQ., PERMITTEE
Order Issued:	MAY 4, 2022
Index Category:	WATER QUALITY
Further Case Activity:	



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STATE OF INDIANA)
)
COUNTY OF MARION)
)
IN THE MATTER OF:)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

CAUSE NO. 20-W-J-5111

OBJECTION TO THE ISSUANCE OF)
SANITARY SEWER CONSTRUCTION)
PERMIT NO. 23464)
CAMP CEDAR BROOK)
LAKEVIEW MINISTRIES)
LANESVILLE, HARRISON COUNTY, INDIANA.)

John and Cindy Loi, Norman and Sandra)
Dickson, and Charles and Rosemary Clark)
Petitioners,)
Lakeview Ministries)
Permittee/Respondent,)
Indiana Department of Environmental)
Management)
Respondent.)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER

This matter came before the Office of Environmental Adjudication (OEA) on Respondent, Indiana Department of Environmental Management's¹ (IDEM) Motion for Summary Judgment, filed on March 24, 2022, which pleading is part of OEA's record. Having read and considered the motion and brief, the presiding Environmental Law Judge makes the following Findings of Fact, Conclusions of Law and enters the Final Order:

FINDINGS OF FACT

1. On May 18, 2020, IDEM issued a 327 IAC 3 Sanitary Sewer Construction Permit No. 23464 (Permit), Camp Cedar Brook, Lakeview Ministries (Permittee/Respondent), Lanesville, Harrison County, Indiana. The Permit authorized the construction of a sanitary system to be located near the intersection of Corey Drive and Corydon Ridge Road (Project). In addition to

¹ Neither Petitioners nor Permittee/Respondent filed Motions for Summary Judgments or Responses to IDEM's Motion for Summary Judgment.

imposing specific and general conditions, the Permit requires the Project to conform to all provisions of 327 IAC 3.

2. On May 18, 2020, Petitioners John and Cindy Loi, Norman and Sandra Dicson, and Charles R. and Rosemary Clark filed a Petition for Administrative Review and Request for Stay (Petition) with OEA.

3. During a June 16, 2020 telephonic prehearing conference, the parties agreed to continue the stay hearing indefinitely.

4. On March 24, 2022, IDEM filed a Motion for Summary Judgment. Neither Petitioners nor Permittee/Respondent filed Motions for Summary Judgment or Responses to IDEM's Motion for Summary Judgment.

CONCLUSIONS OF LAW

1. This is a Final Order issued pursuant to I.C. § 4-21.5-3-23. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.

2. IDEM is authorized to implement and enforce Indiana environmental statutes and rules promulgated relevant to those statutes. See I.C. § 13-13 *et seq.* and I.C. § 13-14-1-11.5. Whenever a permit is required by any rule of the Environmental Rules Board under I.C. § 13-15-1 for the construction, installation, operation, or modification of any facility, equipment, or device, the permit may be issued only after the department staff has: (1) approved the plans and specifications; and (2) determined that the facility, equipment or device meets the requirements of the rule. I.C. § 13-15-3-5.

3. OEA has jurisdiction over the decisions of the Commissioner of IDEM and the parties to the controversy pursuant to I.C. § 4-21.5-7-3. In addition, OEA is governed by the regulations found under 315 IAC 1 *et seq.* As state agencies, IDEM and OEA only have the authority to take those actions granted by law. IDEM is authorized to determine whether a permit should be issued by applying the relevant statutes and regulations pertaining to permits and can only consider the relevant statutes and regulations when deciding whether to issue the permit. *American Suburban Utilities*, 2019 OEA 48, 53. Here, OEA's review is limited to determining whether IDEM complied with applicable statutes and regulations. I.C. § 4-21.5-7-3; *Blue River Valley*, 2005 OEA 1, 11. OEA does not have authority to address any other issues.

4. The OEA must apply a *de novo* standard of review to this proceeding when determining the facts at issue. *Indiana Dept. of Natural Resources v. United Refuse Co., Inc.*, 615 N.E.2d 100 (Ind. 1993). Findings of fact must be based exclusively on the evidence presented to the ELJ, and deference to the agency's initial factual determination is not allowed. *Id.*; I.C. § 4-21.5-3-27(d). OEA is required to base its factual findings on substantial evidence. *Huffman v. Office of Env'tl. Adjud.*, 811 N.E.2d 806 (Ind. 2004).

5. The OEA considers a motion for summary judgment “as would a court that is considering a motion for summary judgment filed under Ind. Trial Rule 56.” I.C. § 4-21.5-3-23(b). Citing Ind. Tr. R. 56(C), the Indiana Supreme Court stated, “[d]rawing all reasonable inference in favor of . . .the non-moving parties, summary judgment is appropriate ‘if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Hughley v. State*, 15 N.E.3d 1000, 1003. “A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties’ differing accounts of the truth, or if the undisputed material facts support conflicting reasonable inferences.” *Id.*

6. The moving party bears the initial burden to establish the absence of any genuine issue of material fact. *Id.* Once established, the burden shifts to the non-moving party to “‘come forward with contrary evidence’ showing an issue for the trier of fact.” *Id.* Summary judgment is particularly appropriate where the relevant facts are undisputed and pure legal questions of statutory interpretation are presented. *Kluger v. J.J.P Enterprises, Inc.*, 159 N.E.3d 82, 87 (Ind. Ct. App. 2020). All rational assertions of fact and reasonable inferences are deemed to be true and are viewed in the nonmovant’s favor. *Lindsey v. DeGroot*, 898 N.E.2d 1251, 1256 (Ind. Ct. App. 2009).

7. 315 IAC 1-3-2(b)(4)(A) requires a petitioner in a case involving an appeal of a permit to state with particularity and identify:

- (i) Environmental concerns or technical deficiencies related to the action of the commissioner that is the subject of the petition.
- (ii) Permit terms and conditions that the petitioner contends would be appropriate to comply with the law applicable to the contested permit.

8. In paragraphs 6 and 7 of the Petition, Petitioners contend they have fully functioning septic systems in place, are not interested in tapping into the system in the future, are not willing to incur the high costs associated and be assessed monthly service fees, are opposed to any future costs, and would experience decreased property values. None of these contentions constitute environmental concerns, technical deficiencies, permit terms and conditions as required by 315 IAC 1-3-2(b)(4)(A). Moreover, 327 IAC 3 does not require IDEM to consider any of these contentions before issuing a permit.

9. In paragraphs 8 and 9, Petitioners contend that the design specifications set out in the plan are insufficient and so they reasonably anticipate potential leaks and/or breaks in the pipes, and the components of the proposed system may not be able to adequately handle the capacity associated with the additional residential inhabitants. These contentions are unsupported allegations, and as such they are speculative and cannot create questions of fact sufficient to defeat summary judgment. *Lindsey v. DeGroot*, 898 N.E.2d 1251, 1256 (Ind. Ct. App. 2009). Opinions expressing mere possibility with regard to a hypothetical situation

likewise cannot create questions of fact to defeat summary judgment. *Beatty v. LaFountaine*, 896 N.E.2d 18, 20 (Ind. Ct. App. 2008) (citing *Briggs v. Finley*, 631 N.E.2d 959, 964 – 65 (Ind. Ct. App. 2008)).

10. In paragraphs 10, 11, and 12, Petitioners aver they fear the Permittee/Respondent would not be in a financial position to make repairs promptly and adequately in the event of system, line or pipe failure. They also aver Petitioners' health and welfare would be adversely affected, and the groundwater in the area would be contaminated, affecting not only humans, but also local wildlife and vegetation. These averments are likewise unsupported allegations and speculative which do not create questions of fact sufficient to defeat summary judgment. *Id.*

11. In paragraphs 13, 14, and 15, Petitioners state they have not agreed to allow Permittee/Respondent to use their land or have provided consent to grant easements. They further state that Permittee/Respondent seeks to construct, own and operate the sanitary sewer system for its own economic gain and believe there are better options for the Permittee/Respondent to consider. None of these contentions constitute environmental concerns, technical deficiencies, permit terms and conditions as required by 315 IAC 1-3-2(b)(4)(A). Moreover, 327 IAC 3 does not require IDEM to consider any of these contentions before issuing a permit under 327 IAC 3.

12. In paragraphs 24, 25, a portion of 26, and 28 Petitioners raise concerns under the V and XIV Amendments of the United States and Article 1, Section 12 of the Indiana Constitution. Specifically, they contend that IDEM is precluded from depriving any citizen of his or her property without just compensation by issuing Permit No. 23464 which grants Permittee/Respondent the right to construct sewer facilities. Lastly, IDEM issued the Permit without opportunity for Petitioners to be heard and, in doing so, IDEM granted the Permittee/Respondent authority to construct a sewer system for its own economic gain.

A permit issued under 327 IAC 3 does not grant a permittee authority to take private property for public use in exchange for just compensation as IDEM has no authority to do so.² I.C. § 36-7-4 et seq. Lakeview may not start construction until it has obtained approval from any county, city or town. I.C. § 13-15-3-5(b). The Permit itself states under PART I that “[a]ll local permits shall be obtained before construction is begun on this project.” Neither I.C. § 13-15-3-5(b) nor the Permit’s language contain any conveyance, right or authority to construct on private property because IDEM does not have the statutory or regulatory authority to convey that right.

13. Also in paragraph 26, Petitioners contend they did not receive prior notice of Permittee/Respondent’s sewer plan until receipt of the Notice of Decision. IDEM is not

² Eminent domain is the process through which private property is taken for public use in exchange for just compensation.

required to give prior notice under 327 IAC 3. IDEM did not have to provide notice of the issuance of the Permit until after it issued the Permit pursuant to I.C. § 4-21.5-3-4(d).

FINAL ORDER

IT IS THEREFORE ORDERED Petitioners’ Petition for Administrative Review is hereby **DISMISSED**, and IDEM’s Motion for Summary Judgement is **GRANTED**. The Permit issued by IDEM is hereby **AFFIRMED**.

You are further notified that pursuant to provisions of I.C. § 4-21.5-7-5, the Office of Environmental Adjudication serves as the ultimate authority in administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of I.C. § 4-21.5. Pursuant to I.C. § 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 4th day of May, 2022 in Indianapolis, IN.



Hon. Lori Kyle Endris
Environmental Law Judge
frontdesk@oea.IN.gov

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