

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

COMPLAINT OF PINE BAY RESORT )  
CAMPGROUND, NORTHCREST R.V. PARK, AND )  
BARBEE LANDING AGAINST THE LAKELAND )  
REGIONAL SEWER DISTRICT CONCERNING ) CAUSE NO. 44798  
THE PROVISION OF SEWER UTILITY SERVICE )  
)

**PINE BAY RESORT CAMPGROUND’S REPLY TO LAKELAND REGIONAL SEWER  
DISTRICT’S MEMORANDUM IN OPPOSITION TO PINE BAY’S MOTION FOR  
SUMMARY JUDGMENT**

Pine Bay Resort Campground LLC (“Pine Bay Campground”) in reply to Lakeland Regional Sewer District’s (“LRSD”) Memorandum in Opposition to Pine Bay’s Motion for Summary Judgment states as follows:

**1. SUMMARY OF ARGUMENT.**

First, LRSD agrees that there are no material facts in dispute regarding the issue of whether the Commission has jurisdiction to hear this case and states this is a pure legal issue appropriate for summary judgment. The Commission has the implicit and essential power and authority necessary to effectuate Ind. Code §§ 13-26-11-2 (“Section 2”) and 13-26-11-2.1 (“Section 2.1”), which includes the authority to determine whether a property is a *campground* for purposes of the statutes. Without such authority, the campground rate protections in Section 2 and Section 2.1 are eviscerated. Therefore, the Commission has jurisdiction over this case.

Second, Pine Bay Campground is a campground. It is regulated as a campground by the Indiana State Department of Health and the Kosciusko County Health Department. Lambert Affid. at 14. It is included on the State Department of Health’s of campgrounds, located at <http://www.in.gov/isdh/22909.htm> (last visited on Dec. 11, 2016). Pin Bay Campground qualifies as a campground as defined in 410 IAC 6-7.1(3), which specifically includes “vacation

mobile homes.” Pine Bay Campground operates as a campground and is only open for six months out of the year. Section 2 and Section 2.1 provide protection to campgrounds from unfair billing practices by regional sewer districts, and Pine Bay Campground is entitled to that protection regardless of LRSD’s financially motivated decision to incorrectly reclassify Pine Bay Campground from a campground to a mobile home court. LRSD cannot defeat the protections that Section 2 and Section 2.1 afford to campgrounds by simply enacting an ordinance that says Pine Bay Campground is something other than a campground. It simply is not a mobile home court. By treating Pine Bay Campground as a year-round mobile home court, LRSD violates all three of the concerns addressed in Section 2.1.

Third, LRSD’s classification of most of the campgrounds in its service area as *mobile home courts* but two other campgrounds, including Pic-A-Spot, which is owned by an LRSD Board member and is functionally the same as and much larger than Pine Bay Campground, as *campgrounds* is arbitrary, capricious, discriminatory, and irrational.

## **2. ARGUMENT**

Pine Bay Campground incorporates by reference its Response to LRSD’s Motion for Summary Judgment in its entirety, which was filed in this Cause on November 28, 2016.

Pine Bay Campground notes that LRSD does not dispute the following designated material facts from Pine Bay Campground’s Motion for Summary Judgment: LRSD classified Pine Bay Campground as a campground for over two years—from December 27, 2012, to May 14, 2015. LRSD reclassified Pine Bay from a campground to a mobile home court for financial reasons to help pay for unexpected excess capital costs. LRSD’s reclassification of Pine Bay Campground from a campground to mobile home court was only based on brief drive-by visits and review of GIS maps without any study of the actual sporadic and seasonal use of the campsites. Pine Bay Campground has two campsites that have no water/sewer hook ups. As of this past fall, Pine Bay Campground’s campsites contained a fifth wheel trailer, a travel trailer, a park model trailer, two tents, and 41 camping trailers.

**A. The Commission has jurisdiction to determine whether Pine Bay Campground is a *campground* under Section 2 and Section 2.1.**

LRSD mischaracterizes the true nature of this case. Although Pine Bay Campground does challenge LRSD's classification of Pine Bay Campground as a *mobile home court*, the primary issue in this case is that Pine Bay Campground, which operates only during the six warm camping months of the year, is entitled to the protections that Section 2 and Section 2.1 afford to campgrounds against unfair, excessive rates that are based on year-round occupancy.

LRSD's continued reliance on *Yankee Park Homeowners Ass'n Inc. v. LaGrange Cnty. Sewer District*, 191 N.E. 2d 128 (Ind. App. 2008), is mistaken. *Yankee Park* was based on a review by a trial court of the regional sewer district's ratemaking decisions. In *Yankee Park*, the Court found that the trial court was limited in its ability to review user classifications because such classifications are an inherent aspect of ratemaking and ratemaking is a legislative not a judicial function. 891 N.E.2d at 131. However, unlike a trial court, the Commission is a legislative body, and it has specialized legislatively granted ratemaking authority and extraordinary expertise tailored to ratemaking matters, including customer rate classes, e.g. differentiating between the temporary sporadic occupancy of campgrounds versus the year-round occupancy of mobile home courts.

In addition, the facts in this case are distinguishable from *Yankee Park*. LRSD points out five reasons listed in *Yankee Park* that support LRSD's classification of Pine Bay Campground as a *mobile home court*, but the facts as they related to Pine Bay Campground are different in all five regards.

(1) "[E]ach property has structures that were obviously mobile homes rather than recreational vehicles, campers, or tents." *Id.* at 132. Here, Pine Bay Campground has 2 tents, one Park Model camping trailer, one fifth wheel trailer, one pull-behind travel trailer, and 41 seasonal camping trailers that are not used as residences for year-round occupancy. *Lambert Affid.* ¶10. Moreover, Pine Bay Campground's camping sites are not all connected to waste water lines. *Lambert Affid.* ¶8.

(2) “[T]he mobile homes were occupied for extended periods of time when the property was open for occupancy.” *Yankee Park*, 891 N.E.2d at 132. Here, Pine Bay Campground’s campsites are exclusively used for recreational camping and are only occupied sporadically on weekends and holiday weeks. *Lambert Affid.* ¶13.

(3) “[T]he mobile homes remain on the lots throughout the year, regardless of whether the property was open for occupancy or not.” *Yankee Park*, 891 N.E.2d at 132-33. Here, the camping facilities, including camping trailers, have been moved in and out of Pine Bay Campground, *Lambert Affid.* ¶11, and the campground has two campsites without sewage hookups that are used for tents, *Id.* ¶ 8, 10, *Lambert Second Affid.* ¶ 5. In addition, this provision is inconsistent with LRSD’s definition of *Recreational Vehicle*, in which LRSD includes Park Model camping trailers, Ordinance 2015-02, § 1(t), because those Park Models, which resemble small houses or wooden cabins, are specifically designed to be pulled to a favored campsite and “parked” there long term. *Lambert Affid.* ¶26. In fact, Pic-A-Spot Campground’s website boasts of offering its patrons eight “wooded cabins.” *Second Lambert Second Affid.* ¶ 9.

(4) “[T]he sanitary sewage collection, transmission, and treatment services were available to the properties year round and the District incurred the cost of operating and maintaining the system all year round regardless of whether a user chose to take advantage of it.” *Yankee Park*, 891 N.E.2d at 133. Here, the campers at Pine Bay Campground have no option to choose to take advantage of the sewage system because the campground is closed for six months of the year, and the water lines are shut off. *Lambert Affid.* ¶ 9, *Second Lambert Affid.* ¶ 6. Pine Bay Campground cannot at the option of its patrons be used as mobile home court because its closed six months of the year and the water is turned off. Also, Pine Bay’s owner has no interest in operating this lake resort family camping location as a “mobile home court.” *Lambert Affid.* ¶12. LRSD will not incur the cost of accepting and treating Pine Bay sewage during the six months that the campground is closed and the water is turned off. In addition, Section 2 allows campgrounds to request and receive a metered rate to reflect the difference between the usage of a seasonal, low-use campgrounds compared to residences with regular year-round occupancy. Further, LRSD incurs the same costs of maintaining its system for the two properties it classified as *campgrounds*, but it has not sought to recover those year-round flat monthly rate costs from

the those two properties, one of which is owned by an LRSD board member. Instead those properties will receive a low seasonal campground metered rate.

(5) “[S]imilar properties in the Districts Region A were charged at the mobile home court rate and the District wanted to treat the property owners in Region B consistently.” Here, LRSD is acting in a contrary manner by treating similarly situated lake-retreat recreational campgrounds differently by allowing the Board-member-owned Pic-A-Spot Campground and one other campground to be billed at a metered, campground rate, but charging Pine Bay Campground and all the other campgrounds in its service area the much higher mobile home court rate even though there is no functional difference between the campgrounds except that Pic-A-Spot is far larger than and has more than three times more campsites than Pine Bay Campground.

LRSD tries to rely on the Commission’s June 3, 2010 Order in Cause No. 43741 as authority that the Commission’s jurisdiction in this case is strictly limited by Section 2.1. But LRSD ignores the fact that in its Order in that case, one of the Commission’s first findings was that the Indian Lake Campground was a *campground*. *Appeal of Consumer Affairs Div.’s Decision of the Compl. of Paul Giesecking*, Cause No. 43741, slip op. at 2 (IURC June 3, 2010). The Commission went on to extensively review the sewage districts calculation of rates and assumed flow rates for single family dwelling units. *Id.* at 4-5. The only issue over which the Commission found it lacked jurisdiction was to order a refund of overcharged rates that were incurred prior to the Commission initiating its review of the case. *Id.* at 6. Considering this, it is even more important that the Commission decide the issues in this case before LRSD ends its interim billing and begins fully billing Pine Bay Campground the approximately \$70 per campsite monthly rate under the rate ordinance.

LRSD next argues that no authority confirms that the Commission has the inherent power to determine whether Pine Bay Campground is a campground. It is well settled that not all power and authority granted to the Commission is explicitly delineated by statute. *N. Ind. Pub. Serv. Co. v. Citizens Action Coalition*, 548 N.E.2d 153, 158 (Ind. 1989). “[I]t is equally well settled that an administrative agency has such implicit power and authority as is inherent in its broad grant of power from the legislature to regulate which is necessary to effectuate the regulatory

scheme outlined by the statute.” Id. The question of whether a complainant owns or operates a campground is a necessary threshold question to any decision made under Section 2.1. It is therefore within the Commission’s regulatory expertise and power to determine whether Pine Bay Campground is a campground or a mobile home court for reasonable rate treatment under Section 2 and Section 2.1. Without that expert regulatory authority, the campground rate protections of Section 2 and Section 2.1 are rendered ineffective. Without Commission ability to determine if a complainant is a campground the legislative intent to have reasonable campground rates can be totally frustrated by regional sewer districts crafting definitions that overcharge campgrounds as if they were mobile home courts.

Next LRSD argues that Pine Bay Campground failed to timely request Commission review of this issue within seven days as required by Section 2.1, and that the seven-day time limit is mandatory. Pine Bay Campground discussed this issue at length in its Response to LRSD’s Motion for Summary Judgment and it incorporates that discussion here by reference. In summary, LRSD chose not to modify just selected segments of its rate ordinance but rather LRSD has readopted its total rate ordinance, and passed a second ordinance related to campground rates. Because LRSD has not completed construction of its sewage system and it is not yet billing Pine Bay Campground the full mobile home court approximate \$70 per campsite rate under the ordinance. Instead it is billing its Ordinance approved Interim Waste Water Charge, which Pine Bay pays. Pine Bay Campground has an ongoing dispute with LRSD regarding its rates and the applicability of Section 2 and Section 2.1. In addition, LRSD did not provide notice to Pine Bay Campground of the seven-day period under 170 IAC 16-1-4(C)(5), and so cannot fall back on it as a bar to this action. Third, even if the seven-day period was violated, such a violation does not bar the Commission from deciding this case because the deadline is merely procedural and is not important to the substance of the statutes.

**B. Pine Bay Campground qualifies as a *campground* under LRSD's rate ordinance, and LRSD has not properly formulated nor reasonably applied the definitions in its rate ordinance to Pine Bay Campground.**

LRSD argues that Pine Bay Campground is a *mobile home court* and not a *campground* for purposes of its rate ordinance. Even if LRSD's definitions control whether Pine Bay Campground is entitled to protection under Section 2.1 (which they do not), LRSD has not properly applied its own definition, and its classification of certain properties as *campgrounds* or *mobile home courts* is arbitrary, capricious, and discriminatory. LRSD's rate ordinance defines a *campground* as "any real property that is set aside ... for parking or accommodation of Recreational Vehicles, tents, camper trailers, camping trucks, motor homes, and/or similar shelters that are not designed for permanent or year-round occupancy." (emphasis added). Pine Bay Campground's 41 camping trailers are, in fact, trailers used exclusively for sporadic seasonal camping, not permanent, year-round occupancy. At a minimum, the camping trailers at Pine Bay Campground should be considered *similar structures* under the rate ordinance definition of *campground*. Moreover it has tents, a park model, a fifth wheel and a travel trailer.

LRSD argues that the units located at Pine Bay Campground are obviously mobile homes. LRSD defines a *mobile home* as "a residential structure that is transportable in one or more sections, is thirty-five (35) feet or more in length with the hitch, is built on an integral chassis, is designed to be used as a place of human occupancy when connected to the required utilities, contains the plumbing, heating, air conditioning, and/or electrical systems in the structure, and is constructed so that it may be used with or without a permanent foundation. Ordinance 2015-02, § 1(m). By this definition, many recreational vehicles, motor homes, and travel trailers would be *mobile homes* because they can be 35 feet or longer, can comfortably sleep 10 or more people, have electric, water, and wastewater hookups, central heating, and air conditioning. *Lambert Affid.* ¶24. For example, the Eagle HT travel trailer series can be as long as 39 feet; the Jayco North Point and Eagle series range from 38 feet to over 43 feet in length; and Coachman travel trailers and fifth wheels are over 35 feet in length. *Id.* ¶ 24, 25 and 26.

Although some camping trailers might also be able to serve as year-round mobile homes if they were in a mobile home park, this fact does not prevent them from serving as restricted seasonal camping trailers in a campground. The list of structures in LRSD's definition of *campground* is not exhaustive as indicated by the phrase "and/or similar shelters." Instead, the key characteristic of a camping structure under the definition is that the structures "are not designed for permanent or year-round occupancy." Pine Bay Campground is only open for business between April 15 and October 15. *Id.*, ¶ 9. Pine Bay Campground does not offer any long-term or permanent rental agreements and only rents lots on a month-to-month basis. *Id.*, ¶ 18. All the units at Pine Bay Campground, except the two tents, have wheels and can be, and some have been, towed to a different location. *Id.*, ¶ 19. Pine Bay Campground does not allow renters to install a permanent foundation on a lot and none of the campers there are designed for permanent foundations. *Id.*, ¶ 20. Pine Bay Campground's customers typically use their units only on weekends or for long holidays and, even then, only between April 15 and October 15. *Id.*, ¶ 13. Based on these facts, Pine Bay Campground is clearly a *campground* as defined in the rate ordinance.

Equally clearly, Pine Bay Campground is not a *mobile home court* as defined by the rate ordinance. The rate ordinance defines *mobile home court* as "a parcel of land containing two or more spaces, with required improvements and utilities, used for the long-term placement of Mobile Homes." Pine Bay Campground does not offer any long-term or permanent rental agreements, only rents on a month-to-month basis, and is closed to campers six months of the year. The rate ordinance defines a "mobile home" as a structure "used as a place of human occupancy when connected to the required utilities ...." But the units at Pine Bay Campground may not be used as a place of human occupancy between October 15 and April 15 because the campground is closed and utility service is turned off. *Second Lambert Affid.* ¶6. In addition, even when it is open, Pine Bay Campground does not require that patrons connect to utility service. *Second Lambert Affid.* ¶5. Therefore, Pine Bay Campground is not a *mobile home court* under the rate ordinance.



**C. LRSD's classification of some campgrounds as *mobile home courts* and others as *campgrounds* is arbitrary, capricious, discriminatory, and irrational.**

Of all the campgrounds in its service area, each of which have the same six seasonal operating months, LRSD only classified two as *campgrounds* and classified the rest as *mobile home courts*. One of the *campground* properties is Pic-A-Spot Campground, which is owned by LRSD board member John McDaniel, and which LRSD has granted a metered sewage rate under Section 29. *Lambert Affid.*, ¶ 35, *Second Lambert Affid.*, ¶ 9. According to its website, Pic-A-Spot Campground contains 171 lots, each of which has electric and water hookups, and 143 of which are "Extended Stay Sites." [www.camppicaspot.com/sites.html](http://www.camppicaspot.com/sites.html) (last visited on December 10, 2016). Interestingly, LRSD did not dispute these material facts, and provided no counter argument in its response to Pine Bay Campground's assertions of special treatment for the board-member-owned campground. LRSD only states that its rates and charges "do not have to be uniform throughout the district for all users." LRSD's Memorandum in Opposition to Pine Bay's Motion for Summary Judgment, at 22.

In *Yankee Park*, the court found that the standard for reviewing the definitions in the district's ordinances is whether the district acted arbitrarily, capriciously, or otherwise contrary to law, and that some rational basis must support the classifications. 891 N.E.2d at 130. This special treatment of a board-member-owned campground while misclassifying other similar campgrounds like Pine Bay Campground is arbitrary, capricious, and discriminatory. Classifying Pine Bay Campground based on scant site and map review without any study of its actual use is arbitrary, capricious, and discriminatory. LRSD provided no evidence that differentiates the two classified *campgrounds* from Pine Bay Campground and no rational basis for differentiating two campgrounds from all the others. By contrast, Pine Bay Campground's designated evidence shows that Pic-A-Spot is functionally similar to Pine Bay Campground and that the primary differences between the two are that Pic-A-Spot is much larger and owned by an LRSD board member. Pine Bay Campground's Motion for Summary Judgment, pp. 13-14 and 16. Pine Bay Campground also designated evidence, based on emails obtained from LRSD, that shows that LRSD's classifications are financially based and not based on the definitions in its rate

ordinance. *Id.*, pp. 12- 16. LRSD did not dispute these material facts and has provided no counter argument to refute them.

In addition, LRSD's definition of "mobile home" is irrational and so should be rejected under *Yankee Park* and *Bass Lake*. The definition pivots on two things: that the structure is 35 feet in length or longer; and that the structure is designed as a place of human occupancy. The 35 feet criteria offers no differentiation between mobile homes, and camping RVs because, as noted above, many RVs, e.g. fifth wheels, travel trailers, and motorhomes, are longer than 35 feet. *Lambert Affid.* ¶¶ 24-25. Similarly, many RVs come equipped with all the space, HVAC, and water use amenities of a full-time home and are parked at one location for extended periods, e.g. the Park Models at Pic-A-Spot Campground. *Id.* ¶¶ 24, 25 and 26. RVs and even tents are at least temporarily a place of "human occupancy," with many well equipped Park Models and other RVs offer the potential for long-term occupancy.

The real and rational distinction between a mobile home in a mobile home court and a camping trailer in a campground is limitation placed on the duration of occupancy by a campground. LRSD does not dispute that the camping trailers in Pine Bay Campground are only used sporadically and seasonally, not daily and year round like a mobile home in a mobile home court. LRSD's definitions lack any reference to the period of occupancy (sporadic and seasonal versus daily and year round), and this renders the definitions unenforceable. LRSD's irrational definition of a mobile home is a trap crafted to offer LRSD additional revenue by misclassifying and overcharging campgrounds as mobile home courts.

LRSD argues that it is irrelevant whether structures are occupied full-time or part-time and, without any supporting affidavit or other evidence, opines that some lakeside houses might only be used by their owners on a seasonal warm-weather basis. *LRSD's Response to Pine Bay Campground's Motion for Summary Judgment*, p. 21. But LRSD ignores the fact that nothing prevents the owners of such lake houses from choosing to live there year round. On the other hand, patrons of Pine Bay Campground are prevented from living at the campground for six months of the year, not only because the campground is closed and utility service is shut off, but also because of state and county health department laws and regulations. In addition, Lake houses have some form of permanent foundation or basement and are immobile. Conversely,

camping structures at Pine Bay Campground are prohibited from having foundations, *Lambert Affid.* ¶ 20, and can and have been moved elsewhere by their owners, *Id.* ¶19.

LRSD's definition of a *mobile home* is indefensible, irrational, and unlawful. As the court said in *Yankee Park*, "[u]ser classifications are inherent in ratemaking." 891 N.E.2d at 130-131. But those classifications must be rational and cannot be arbitrary and capricious. The Commission has the jurisdiction to require LRSD to provide Pine Bay Campground with the campground metered rate it has requested and is entitled to under Section 2 and Section 2.1.

**Conclusion.** LRSD cannot rationally or lawfully classify and treat Pine Bay Campground's tents, fifth wheel trailer, travel trailer, and camping trailers as mobile homes in a mobile home court and deny Pine Bay Campground the campground metered rate that it has requested and to which it is entitled by law. Pine Bay Campground's Motion for Summary Judgment should be granted, and the Commission should find that Pine Bay Campground is a *campground* under Section 2 and Section 2.1 and entitled a *campground* metered rate under LRSD's rate ordinance. It is within the Commission's authority to make such a decision, and it is appropriate for the Commission to make such a decision before LRSD begins fully billing Pine Bay Campground approximately \$70 per month per campsite under the rate ordinance.

Therefore, Pine Bay Campground respectfully requests that the Commission grant its Motion for Summary Judgment and for all other relief that is necessary and proper.

Respectfully Submitted,  
Robert Glennon & Assoc., P.C.

/s/ R.M. Glennon  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the following by electronic delivery, this 14<sup>th</sup> day of December 2016 to:

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