FILED
February 15, 2018
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

COMPLAINT OF NORTHCREST R.V. PARK, BARBEE LANDING MOBILE HOME PARK, KUHN LAKESIDE RESORT, and PINE BAY RESORT AGAINST THE LAKELAND REGIONAL SEWER DISTRICT CONCERNING THE PROVISION OF SEWER UTIILTY SERVICE	)))))))	CAUSE NO: 44973

NOTICE OF FILING PROPOSED ORDER

Comes now Lakeland Regional Sewer District, by counsel, and hereby provides notice to the IURC and all counsel of record that it has filed a Proposed Order, as ordered by the IURC on February 6, 2018, which is also attached to this Notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that on this 15th day of February, 2018, a true and complete copy of the above and foregoing document was served via electronic mail, hard copies available upon request, upon the following:

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BY THE COMMISSION:

Sarah E. Freeman, Commissioner
Lora L. Manion, Administrative Law Judge

Before the Indiana Utility Regulatory Commission ("IURC") are (1) Lakeland Regional Sewer District's Motion for Summary Judgment, as well as Motions for Summary Judgment filed by the Complainants. After conducting a careful review of the pleadings, evidence, and dispositive motions filed in Cause No. 44973, the Commission hereby GRANTS LRSD's Motion for Summary Judgment and rules as follows:

I. FINDINGS OF FACT

1. The District is a regional sewer district, duly organized and operating pursuant to Ind. Code 13-26. *See* ¶3 of the Affidavit of Andrew D. Boxberger; *see also* ¶3 of the Affidavit of Jim Haney.

2. Following its organization, the District worked with DLZ (its engineers) and H.J Umbuagh & Associates ("Umbaugh") (its rate consultants) to do a number of

things, including the preparation of rate studies and the development of a rate ordinance. *See* Boxberger Affid., ¶4; *see also* Haney Affid., ¶4.

3. Starting in April 2013, DLZ, Umbaugh, and the District, began performing site visits of properties to be within the District's service area as part of the effort to classify properties and their uses. *See* Haney Affid., ¶5.

4. Following that date, the District began drafting its rate ordinance. *See* Haney Affid., ¶6.

5. In drafting the rate ordinance, the District used ordinances enacted by Steuben Lakes and Lagrange County as a template, and worked closely with counsel to finalize an ordinance. *See* Boxberger Affid., ¶5; *see also* Haney Affid., ¶7.

6. As the ordinance language was being drafted, site visits continued in early 2015, to see where certain properties and uses fell within the contemplated definitions, and the District continued to consult with counsel who was drafting the proposed rate ordinance. *See* Haney Affid., ¶5.

7. During the site visits, the District confirmed that, according to the definitions noted below:

a. Pine Bay had 45 mobile homes and 1 recreational vehicle;

b. Northcrest had 28 mobile homes; and

c. Barbee Landing had 12 mobile homes, 2 recreational vehicles, and 1 empty lot.

d. Kuhn Lake had at least 22 mobile homes and at least three recreational vehicles.

See Haney Affid., ¶9; see also Supp. Haney Aff. ¶9.

8. At the same time, in February 2015, the District verified with the Indiana State Board of Health and Kosciusko County Planning Department the number of lots for Pine Bay, Northcrest, Barbee Landing, and Kuhn Lake. Each property had more than two lots, which is also confirmed by the fact that more than two mobile homes are located on each property owned by the Defendants. *See* Haney Affid., ¶10; see also Supp. Haney Aff. ¶10.

9. On June 4, 2015, the District, by its Board of Trustees (the "Board") enacted Ordinance No. 2015-02 (the "Ordinance"), an ordinance establishing the schedule of rates and charges to be collected by the District from property owners in the service area. *See* Boxberger Affid., ¶6; *see also* Haney Affid., ¶11.

10. There were several definitions in the Ordinance pertinent to this case. In that regard, the Ordinance provided that:

a. **"Campground"** shall mean any real property that is set aside and offered by a Person for direct or indirect remuneration of the owner, lessor, or operator thereof 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.

b. **"Mobile Home"** shall mean 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.

c. **"Mobile Home Court"** shall mean a parcel of land containing two or more spaces, with required improvements and utilities, used for the long-term placement of Mobile Homes.

See Boxberger Affid., Ex. A; *see also* Haney Affid., Ex. A.

11. Following the enaction of the Ordinance, Northcrest, Barbee Landing, Pine Bay, and Kuhn Lake were classified as "Mobile Home Courts" but later claimed that their properties were used as campgrounds and asked to be billed accordingly to that claimed use, pursuant to I.C. 13-26-11-2.1. *See* Boxberger Affid., ¶7; *see also* Haney Affid., ¶13.

12. On August 13, 2015, the District's attorney informed Barbee Landing's attorney that its request was denied. *See* Boxberger Affid., ¶8; *see also* Haney Affid., ¶14.

13. On August 13, 2015, the District's attorney informed Pine Bay that its request was denied. *See* Boxberger Affid., ¶9; *see also* Haney Affid., ¶14.

14. On September 2, 2015, the District's attorney informed Northcrest that its request was denied. *See* Boxberger Affid., ¶10; *see also* Haney Affid., ¶14.

15. On or about April 11, 2017, the District's attorney informed Kuhn Lake's attorney that its request was denied. Supp. Haney Affid., ¶15.

16. The District took no further action on the above requests. *See* Boxberger Affid., ¶11; *see also* Haney Affid., ¶15; see Supp. Haney Affid. ¶16.

17. Pine Bay did not seek a review of the District's decision until October 6, 2015. *See* Boxberger Affid., ¶12.

18. Northcrest and Barbee Landing did not seek a review of the District's decision until February 22, 2016. *See* Boxberger Affid., ¶13.

19. In response to Pine Bay's Complaint, the Consumer Affairs Division Analyst made an initial determination consistent with the District's position that the Indiana Utility Regulatory Commission (the "Commission") lacks jurisdiction to determine whether a property is a campground, and that Pine Bay's billing dispute does not fall under one of the three issues raised in Ind. Code §13-26-11-2.1. *See* Boxberger Affid., ¶13 and Ex. E.

II. THE IURC LACKS JURISICTION TO DETERMINE THIS DISPUTE

Indiana Code §13-26-11-2.1(c) grants the Commission the power to conduct an informal review on only the following narrow issues:

1. Whether a campground is being billed at rates charged to residential customers for equivalent usage under a metered rate;

2. Whether the number of residential equivalent units determined for the campground in a flat-rate system complies with I.C. 13-26-11-2(c); and

3. Whether any additional charges imposed on a campground under section 2(d) of this chapter are reasonable or nondiscriminatory.

As an administrative agency, the IURC derives its power solely from statute. General Tell Co of Indiana, Inc. v. Public Serv. Commissioners of Indiana, 154 N.E.2d. 372, 373 (Ind. 1958). Therefore, unless a statute specifically grants the IURC the power to act, there is none. Id. Even the Commission recognized this limitation on its jurisdiction

by holding that "this Commission. . . has only such jurisdiction as is specifically delegated by statute". In re Madison Light & Power Co., 924 C.Pub.Util.Rep. 517, 519 (IPSC 1924). Any decision by the IURC is contrary to law when the IURC fails to stay within its jurisdiction and to abide by the statutory and legal principles that guide it. Indiana Office of Utility Consumer Counselor v. Lincoln Utilities, Inc., 834 N.E.2d. 137 (Ind. Ct. App. 2006).

It is noteworthy that a Consumer Affairs Division (CAD) analyst already considered this exact issue and determined that the IURC did not have jurisdiction to determine whether a property is or is not a campground. On or about February 8, 2016, a CAD analyst in Cause No. 44793 found as follows:

> It is my determination that the Commission does not have jurisdiction to determine if a property is or is not a campground, nor does this billing dispute brought before the Consumer Affairs Division fall under one of the three issues raised by statute [IC 13-26-11-2.1].

Because the IURC only has the power to act within its legislative and statutory authority, namely Indiana Code §13-26-11-2.1, the IURC may only determine matters that fall within these three narrow issues. At issue in Cause No. 44973 (as is the same exact issue in Cause No. 44793), is the Complainants alleging that they have been misclassified as mobile courts, as opposed to campgrounds. Setting aside the merits of the parties' respective arguments, the core issue in this case is whether the District's classification of the Complainants properties as mobile home courts was not arbitrary and capricious. This issue does not fall within one of the issues delineated in Indiana Code §13-26-11-2.1(c). Therefore, consistent with the CAD analyst's determination that the IURC does not have

jurisdiction to consider a classification dispute, the IURC does not have jurisdiction and/or statutory authority to determine this dispute.

The IURC hereby finds that it does not have jurisdiction and/or statutory authority to hear the Complainants dispute under Cause No. 44973. Therefore, this matter is dismissed with prejudice.

III. THE COMPLAINANTS FAILED TO TIMELY FILE THE IURC ACTION

While the IURC has already dismissed this action for lack of jurisdiction, even if jurisdiction was found by the IURC, three of the Complainants did not timely file this dispute. Indiana Code §13-26-11-2.1(c) provides that an owner or operator of a campground must request the Commission to review their building dispute "not later than seven days after receiving notice of the Board's disposition of the matter." Put simply, once the campground owner has received notice of the District's proposed disposition of the billing dispute, the campground owner has seven days to petition the IURC for review.

The following is a table showing when each Complainant was notified of the Board's final resolution and when each such property petitioned the IURC for the review of the dispute:

Property	Date Each Property Was Notified of the District's Final Disposition	Petitioned to IURC
Pine Bay	August 13, 2015	October 6, 2015
Northcrest	September 2, 2015	February 22, 2016

Barbee Landing	August 13, 2015	February 22, 2016
Kuhn Lakeside Resort	April 11, 2017	April 18, 2017

From the chart above, Pine Bay's IURC Complaint was filed 54 days after being notified by the District of final classification decision. Likewise, Northcrest and Barbee Landing did not file their respective Complaints before the IURC until 173 days and 193 days, respectively, after the District provided its final classification decision.

Given the facts above, it is evident that, even if the IURC had jurisdiction over this dispute, Pine Bay, Northcrest, and Barbee Landing failed to request IURC review within seven days of receiving the Board's final disposition of the billing dispute. Therefore, per Indiana Code § 13-26-11-2.1, Barbee Landing, Pine Bay and Northcrest failed to meet the statutory requirement for IURC review and, therefore, their Complaints are dismissed, with prejudice.

IV. THE DISTRICT PROPERLY EXERCISED ITS DISCRETION IN CLASSIFYING THE PROPERTIES

While it is unnecessary to delve into the appropriateness of the classification of the Complainants as Mobile Home Parks as the IURC does not have jurisdiction to determine a classification dispute and, furthermore, the Complainants failed to timely file their dispute with the IURC, summary judgment should be granted in the District's favor.

The power to classify property use for ratemaking and billing purposes is vested in regional sewer districts, not the Commission, by common law. That common law principle and the extent of a district's power to classify are found in *Yankee Park*

Homeowners Ass'n., Inc. v. LaGrange Cnty. Sewer Dist., 891 N.E.2d 128 (Ind. App. 2008). In that case, a homeowners' association that operated a seasonal facility for the long-term placement of mobile homes sued a regional sewer district seeking a declaratory judgment that an ordinance reclassifying the association's land from a campground to a mobile home court for billing purposes was arbitrary and capricious. The district had reclassified the property as a mobile home court for the following reasons:

> The District's basis for the reclassification of Yankee Park and other similarly situated properties as mobile home courts rather than campgrounds was: (1) each property had structures that were obviously mobile homes rather than recreational vehicles, campers, or tents; (2) the mobile homes were occupied for extended periods of time when the property was open for occupancy; (3) the mobile homes remained on the lots throughout the year, regardless of whether the property was open for occupancy or not; (4) the sanitary sewage collection, transmission, and treatment services were available to the properties year round and the District incurred the costs of operating and maintaining the system all year round regardless of whether a user chose to take advantage of it; and (5) similar properties in the District's Region A were charged at the mobile home court rate and the District wanted to treat the property owners in Region B consistently.

Yankee Park, 891 N.E.2d at 132. At both the trial and appellate levels, the courts agreed that the district's reasons for reclassifying the property were rational and therefore its decision to reclassify the property as a mobile home court was neither arbitrary nor capricious.

The *Yankee Park* decision is helpful in resolving this dispute because it states clearly the principles by which regional sewer districts can make decisions involving classification of property use for rate-making and billing purposes. In particular, the Court said the following:

> Thus, the question for our review is whether the District acted arbitrarily, capriciously, or otherwise contrary to law in defining mobile home and mobile home court as it did for purposes of assessing sewer rates and by classifying Yankee Park as a mobile home court. "Under this narrow standard of review, ***we 'will not intervene in a local legislative process [, if it is] supported by some rational basis***.'" [*Bd. of Dir. of Bass Lake Conservancy Dist. v. Brewer,* 839 N.E.2d 699, 701 (Ind. 2005)] (quoting *Borsuk v. Town of St. Joh*n, 820 N.E.2d 118, 122 (Ind.2005)). "We will find a municipal entity's action arbitrary or capricious only if it is 'patently unreasonable.' " *Id*. (quoting *South Gibson Sch. Bd. v. Sollman*, 768 N.E.2d 437, 441 (Ind.2002)). "In short, ***'[j]udicial review of whether a governmental agency has abused its rulemaking authority is highly deferential.***' " *Id*. (quoting *Ind. High Sch. Athletic Ass'n, Inc. v. Carlberg*, 694 N.E.2d 222, 234 (Ind.1997)). ***We are not permitted to substitute our judgment for the municipality's discretionary authority. Id. Rather, we may only determine whether the municipality is acting within its statutory authority***. *Id*.
>
> In *Bass Lake*, the Indiana Supreme Court noted that "[r]ate making is a legislative, not a judicial function." *Id*. "User classifications are inherent in ratemaking." *GPI at Danville Crossing, L.P. v. West Cent. Conservancy Dist.*, 867 N.E.2d 645, 650 (Ind.Ct.App.2007), *reh'g denied*, *trans. denied*. Thus, the ***District's classification of Yankee Park as a mobile home court falls under its ratemaking authority***. See id. ***Our review in this case is limited to determining whether the District acted within the scope of its statutory authority, and if so, whether its actions were supported by some rational basis***. See *Bass Lake*, 839 N.E.2d at 702; see also Ind. Code § 13–26–11–15(g) (noting that a court "shall determine ... (1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter[;] (2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges....").

Yankee Park, 891 N.E.2d at 130-31 (emphasis added).

It is significant to note that the court held that the definitions of terms that apply to statutes under Title 13 do not include definitions for the terms "mobile home," "mobile home court," or "campgrounds." *Yankee Park*, 891 N.E. 2d at 132. The court accordingly acknowledged the district's authority to employ its own definitions in order to classify property use for billing purposes.

It is also significant to note that the court reviewed in detail the case of *Board of Directors of Bass Lake Conservancy District v. Brewer*, 818 N.E. 2d 952 (Ind. App. 2004). The court noted that the Indiana Supreme Court granted transfer and agreed with the dissent at the Court of Appeals level. In the dissent the judge stated that how a property is zoned is irrelevant to the issue of how it is to be billed by a sewer utility. *Brewer*, 818 N.E.2d 960-61. Based on that analysis, the court in *Yankee Park* concluded, "[a]s in *Bass Lake*, ***the statutes and regulations governing the Indiana Department of Health may define mobile home community and campground differently than the District's ordinance, but those definitions are not binding upon the District.***" *Yankee Park*, 891 N.E. 2d at 135 (emphasis added).

It is important to note that the IURC is reviewing the District's classification decision using an "arbitrary and capricious" standard. As was the holding in Yankee Park, discussed supra, which is binding authority upon the IURC, the District has the legislative authority to formulate definitions for various property uses and to classify properties in its district according to those definitions, so long as those decisions are reasonable and not arbitrary or capricious.

In this case, the District acted for the same reasons and in the same manner as the district in *Yankee Park, supra*. Indeed, in drafting its rate ordinance, the District employed definitions of the terms "campgrounds," "mobile home," and "mobile home court" that were the same as or similar to the definitions of those terms that the Court deemed to be legally sound in *Yankee Park, supra*. The District also defined those terms by examining ordinances enacted by other local sewer districts. Accordingly, the District rationally

and reasonably defined the terms by which it would classify property use for ratemaking and billing in its Ordinance. The District also engaged in site visits to confirm how the Complainants' properties were being used, the number of lots, the utilities and improvements, etc…. and then rationally applied the definitions to the actual uses – to properly classify the properties as mobile home courts. The District at all times acted well within its statutory and its common law authority.

Given the statutory and common law limits on the Commission's authority, the Commission may not intervene to overturn the legislative act. Moreover, the District had a rational basis for its actions and acted within the scope of its authority. As such, summary judgment is hereby entered in favor of the District, and against the Complainants, upholding the classifications of the Complainants as Mobile Home Parks under the Ordinance.

V. CONCLUSION

Based upon the foregoing, the IURC hereby dismisses Cause No. 44973, with prejudice, for the reasons set forth above. This Order shall be effective on the date of its approval.

IT IS SO ORDERED AND APPROVED

I hereby certify the above is a true and correct copy of the Order as approved

INDIANA UTILITY REGULATORY COMMISSION

By _____
Sarah E. Freeman, Commissioner

By _____
Lora L. Manion, Administrative Law Judge

Date _____