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## Ctr. Townhouse Corp. v. City of Mishawaka, 882 N.E.2d 762 (Ind. Ct. App. 2008)

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Ctr. Townhouse Corp. v. City of Mishawaka, 882 N.E.2d 762 (Ind. Ct. App. 2008)

The Court concluded that Bowyer's argument was a challenge to the trial court's construction of the statutes. The Court said that the goal of statutory construction is to determine, give effect to, and implement the intent of the legislature. If the legislative intent is clear from the language of the statute, the language prevails and the court will give it effect. Where statutes address the same subject, they are *in pari material*, and the Court will harmonize them if possible.

In this case, the Court stated that Chapter 4 authorized the DNR to determine Lake Cicott's average normal water level. However, Chapter 4 did not specify the procedure for measuring the average normal water level. The trial court analyzed related code sections for procedures to measure the average normal water level of Lake Cicott, and found a procedure in Chapter 2. Because Chapters 2 and 4 both governed the management of public lakes, the two chapters were *in pari material*, and the Court determined that the trial court did not err in using a Chapter 2 procedure for measuring the level of a public lake when no procedure existed in Chapter 4. Additionally, the Court concluded that Bowyer incorrectly construed Chapter 4. The Court stated that the plain language of Chapter 4 required a report that contained the data necessary to compute the ten-year high water level of Lake Cicott, but the report need not compute that figure. The DNR correctly used the procedure in Chapter 2 to calculate this level.

The Court affirmed the judgment of the trial court establishing the legal level of Lake Cicott to be 702 feet above sea level.

*Adam Hernandez*

**Ctr. Townhouse Corp. v. City of Mishawaka, 882 N.E.2d 762 (Ind. Ct. App. 2008)** (affirming the district court holding that construction of a footbridge across a river, connecting two pieces of city owned property, constituted a taking of certain riparian rights of adjacent private landowners, but holding further that Indiana does not recognize a riparian right to an unobstructed view of the water).

Center Townhouse Corporation and individual riverfront property owners ("Landowners") brought an inverse condemnation action against the City of Mishawaka ("City") arising from the construction of a pedestrian bridge across a river, connecting two pieces of city property. The Landowners sought damages on the claim that construction of the bridge resulted in a taking of certain riparian property rights without just compensation, including the right to an unobstructed view of the river. The City argued that as the bridge was built entirely on City property and did not physically occupy private property, it was not a taking. In addition, the City claimed that the bridge did not substantially interfere with Landowners' riparian rights or otherwise diminish property values. The City also noted that its riparian rights are equal to Landowners' riparian rights and should not be subordinate.

The St. Joseph County Circuit Court held that a taking had occurred, and where state action infringes on riparian rights, the owners are entitled to compensation for the loss they suffered. Specifically, the court held that the City had taken an interest in the Landowners' riparian rights to ingress and egress, to construct a pier or dock, and to boat on and fish in the river. The trial court also found that such interference with Landowners' riparian rights caused a loss in property value. However, the trial court declined to rule upon whether Indiana recognized a riparian right to an unobstructed view. Upon receiving instructions not to consider any potential loss of view, a subsequent jury trial to determine damages returned a verdict of zero damages. The Landowners appealed the jury instruction and damages judgment to the Indiana Court of Appeals, and the City cross-appealed the decision that a taking had occurred.

The court began its analysis by stating the issues as follows: (1) whether the trial court erred in holding that construction of the bridge constituted a taking; (2) whether Indiana recognizes a riparian right to an unobstructed view of the water; and (3) whether the trial court erred in instructing the jury not to consider any loss of view when determining damages. The appellate court upheld the trial court's decision regarding the takings question on procedural grounds, despite the City's claim that the evidence did not support the trial court's findings. The court held that the City's failure to produce a transcript of the trial court decision, and therefore its failure to establish evidence necessary to evaluate the trial court's findings, worked as a waiver of its argument. The court further held that waiver notwithstanding, the City also failed to meet its burden of establishing the trial court's judgment was clearly erroneous.

The court next addressed the Landowner's claim that the court should recognize the loss of view as an injury to riparian rights and include that loss as a compensable element of damages. After a review of the relevant Indiana law of takings and riparian rights, as well as a brief survey of whether other states conceive loss of view as a compensable riparian right, the court declined to hold that riparian rights in Indiana include the right to an unobstructed view. Rather, the court held that determining the scope of a landowner's view, and the parameter of permissible obstruction, is inappropriate for the court and better left to the legislature and local zoning authorities who are equipped to proscribe unwanted uses and protect landowners' view of state waters. In addition, the court noted that even if Indiana recognized an unobstructed view as a compensable property right, the loss of view must substantially interfere with property rights to be compensable under established takings law, which might not have been the case here.

Finally, the court declined to hold that the trial court erred in instructing the jury to disregard any loss of view when determining dam-

ages. After establishing that its review of the trial court's jury instructions is highly deferential and that it will not disturb the trial court absent an abuse of discretion, the court agreed with the lower court's judgment that, given the nature of testimony regarding the view of the river, such an instruction was necessary to prevent confusion to the jury. The court held that the instruction was neither misleading, nor misstated the law, and found no error.

For the foregoing reasons, the court affirmed the district court ruling, holding that the City's construction of the bridge constituted a taking of landowners' riparian rights, that Indiana does not recognize a riparian right to an unobstructed view, and accordingly, that jury instructions not to consider any loss of view when determining damages was not in error.

*Jeff McCaughran*

**Lukis v. Ray, 888 N.E.2d 325 (Ind. Ct. App. 2008)** (holding the various standards for determining the riparian zones of contiguous lakefront properties are fluid and best applied on a case-by-case basis depending on the characteristics of the shoreline and position of the property with respect to the shoreline).

The dispute between appellant-respondent Michael Lukis ("Lukis") and appellees-petitioners Dean Ray, John Blackburn and Thomas Blackburn (the "Blackburns"), involved the the parties' riparian rights as owners of contiguous shoreline properties. Lukis's property was on the western boundary of the Blackburns' property and Ray's property was on the eastern boundary of the Blackburns' property. All of the parties' lots were irregularly shaped, and none of the lots intersected the lake at right angles. Ray's and the Blackburns' properties were part of the Gleneyre Association ("Association") and subject to the Association's constitution, bylaws, and restrictive covenants.

The conflict arose when Lukis installed a pier measuring eighty-nine feet long and twenty-seven feet wide, which was located ten feet closer to the Blackburns' property than the prior owners' pier. Consequently, the Blackburns had to relocate their pier thirty feet farther east, which left Ray with no access to the lake from the west side of his pier. Ray had to shorten his pier by twenty feet and park his boat on the east side of his pier, outside of his property boundaries with the permission of his neighbors.

Following Lukis's refusal to decrease the size of his pier or move his pier westward, Ray instituted an action with the Indiana Natural Resources Commission ("NRC") to resolve the dispute. In response to Ray's claim, Lukis filed a counterclaim against Ray and a cross-claim against the Blackburns alleging unreasonable interference with his riparian rights.

On June 8, 2006, an Administrative Law Judge ("ALJ") conducted a hearing and issued a non-final order on August 16, 2006. The ALJ