

NEW - INDIANA COURT REFUSES TO ENFORCE BEACH OWNERSHIP

In a recent case in Indiana, a trial court has refused to enforce beach ownership to the water's edge.

In *LBLHA, LLC et al v. Town of Long Beach, Indiana*, property owners of beaches along Lake Michigan sued their town for passing an ordinance prohibiting the police from enforcing private property rights below the elevation of 581.5 feet above sea level. The ordinance was based upon the Indiana DNR's position that the state "owned" the beach below the "ordinary high water mark." The town, through its ordinance, recognized and accepted this position.

The landowners sued, alleging that the ordinance was an unconstitutional taking of their property rights. Environmental and community organizations joined the lawsuit in support of the town's position, aided by Traverse City lawyer James Olson, himself an opponent of private beach ownership rights. The court disagreed with the landowners, finding that the ordinance was merely a statement of policy, and the town itself did not "assert any ownership of any land." Despite the fact that the ordinance "recognized and accepted" the DNR's assertion of state ownership, the court somehow concluded that the town did not "take a position relative to the ownership of any specific parcels." The court did not itself decide the dividing line of

public and private rights, but did cite two federal cases which, it says, suggest the dividing line was the "ordinary high water mark." Those cases are *Garner v. Michigan City*, 453 F.Supp. 33, 35 (N.D. Ind. 1978) and *US v. Carstens*, 2013 U.S. Dist. Lexis 169079 (2013). As is typically the case, a critical review of those cases leads to a different conclusion.

SOS is informed that the property owners intend to appeal the decision, and have secured one of the country's largest law firms to represent them.

The law of most, if not all, Great Lakes states has traditionally been that the dividing line of public and private rights is the water's edge. In response to arguments of environmentalists over the last 45 years, some courts have recently refused to enforce prior law, and are quietly trying to shift the line of ownership from the water's edge to what they call an "ordinary high water mark." Save Our Shoreline opposes this effort, and will continue to monitor this case and others like it to determine whether action by SOS is required.