TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Approved Minutes of Zoning Board of Appeals Special Meeting 4-0 As prepared

June 2, 2016

Community Service Building

Torch Lake Township

Present: Keelan, Barr, Houghton, Spencer, Sumerix

Absent: Bretz, Jakubiak

Recording

Secretary: Olsen

Audience: Vey, Martel, Todd Millar – TLT Counsel, Bruce Laidlaw

1. Meeting was called to order at 7:01 p.m.
2. **Request by ZBA Chairman to adjourn to a Closed Meeting to consider material exempt from discussion or disclosure by State or Federal statute including written opinions from the Township Attorney dated November 18, 2015 and May 5, 2016 which opinions are subject to the Attorney-Client privilege and deal with the authority of the ZBA and Zoning Administrator in handling Variance Appeals.**

Keelan reviewed process to go into Closed Meeting and its purpose as stated in Agenda. Roll Call vote to stay in Open Session:

Houghton Yes Barr Yes Spencer Yes

By default, meeting will be an Open Session.

1. **Review of Attorney-Client Privileged Written Communications:**

**(a) A letter dated November 18, 2015 referencing “ZBA/Zoning Administrator decision with respect to deck in front yard setback on Lake Michigan”:**

**(b) A letter dated May 4, 2016, referencing “Privileged Attorney Client Communication – Protected Work Product – Rehearing of Buckley Appeal”:**

**(c) A letter dated May 5, 2016, referencing “Privileged Attorney client Communication – Protected Work Product – ZBA Work Session on October 27, 2015”:**

1. **Discussion of Attorney-Client Privileged Written Communications:**

With regards to attorney Millar’s opinions expressed in the above referenced letters, two issues were raised:

* Question certain actions of TLT Zoning Administrator Vey;
* Question certain actions of TLT ZBA.

1. On August 12, 2015, the ZBA denied the Bucklew/Petrillo variance appeal 2015-01. Thereafter, the Zoning Administrator took certain actions which required discussion/clarification with TLT Attorney.

Questions for TLT Attorney:

1. *Does the Zoning Administrator have authority under Zoning Ordinance to decide that decks referred to in Section 2.16 (B)(3) of TLT’s Zoning Ordinance include both “ground level” and “above ground level or elevated” decks? If so, in like fashion, could ZA decide that the decks referred to in 2.16 (B)(3) could be “enclosed” or “covered”? Where there is a term like “ground level” and that term is not defined in the Zoning Ordinance, does the ZA have initial authority to “define it” subject to the ZBA’s review (by appeal), or should the Zoning Administrator in the first instance refer the issue to the ZBA?*

* Millar defined relationship between ZA and ZBA. ZA is daily office presence, who will review and undertake the interpretation and implementation of the Township ordinances. The ZBA is a quasi-judicial entity that reviews ordinances. The ZBA is above the day-to-day interpretations and implementations, and is the entity that an applicant can go to if they disagree with a ruling.
* Millar further stated that if it is not specifically defined, it us up to the ZA to interpret what is appropriate.
* Keelan asked about a past hearing on a deck for a Torch Lake resident. Millar said to go back and review minutes to find reasoning behind decision.
* Barr asked for clarification that ZA makes the decision.
* Millar said that the ZA makes the decision, but it can be appealed to ZBA if there is a disagreement. If there is a challenge made, the Township issues a Stop Order. The ZA does not have the authority to directly contradict a ZBA decision.

1. *At the August 12, 2015 meeting, the ZBA determined that a storage shed with an attached deck was to be considered as one entity. The applicant treated it in the same way (see appeal 2015-01). The variance was denied. Thereafter, without any changes in the shed-deck structure, the ZA determined that the deck was ‘unattached’ to the principal residence and therefore “legal” under 2.16 (B)(3) and, as such, did not need a variance. This, in effect, reversed the August 12, 2015 determination of the ZBA. Does the ZA have that authority? Are there limits? Is the ZBA the ultimate authority?*
   * Millar said the deck was attached to the shed. ZBA considered it one structure. ZA cannot come back to say it is two structures. ZBA is ultimate arbiter of what zoning ordinance states. ZBA cannot rehear a decision unless there is a change in circumstances; then ZBA makes a decision whether it is a significant change.
   * Spencer cited zoning ordinance 19.01 that states the ZA is bound by any decision made by ZBA, Planning Commission or TLT Board.
   * Millar suggested keeping a running list of variances and decisions, along with interpretations.
2. *What are your opinions concerning the course(s) of action that the ZBA should take next with respect to the appeal 2015-04?*

* Millar asked if it was the same appeal as heard before and the same variance request. He said that if nothing is changed, it cannot be reheard because that is not allowed by the by-laws.

1. Discussion of questions regarding the impact of certain actions taken by the Township’s ZBA during a Special Work Session of the ZBA on October 27, 2015, after the ZBA’s August 12, 2105 denial of the Buckley-Petrillo Variance Appeal (Variance 2015-01).

Questions for TLT Attorney:

*1. Did any or all of these actions need to be publicly “noticed” under the requirements of Michigan’s Open Meetings Act? If not properly noticed, are these actions legal and enforceable?*

* Millar said that the Open Meetings Act requires 18 hours notification of Special Meeting (Work Study). Cannot take action at a Work Study.

1. *Were any of these five actions – (1) acted to approve conducting a re-hearing on Bucklew shed, (2) took no action on a motion as to whether the Bucklew deck being “attached or unattached” was moot, (3) took action to approve a motion confirming that the Buckley deck is an elevated deck, (4) took no action on a motion as to whether the Bucklew deck is not at ground level, (5) acted to approve the ZA’s decision to deal with the shed separately from the deck in Variance Appeal 2015-04 - either permitted or prohibited by the Township’s Zoning Ordinance? By Michigan’s Zoning Enabling Act?*
   * Millar stated that the ZBA does not have the authority to re-hear absent changed circumstances. It is up to the property owner to indicate changed circumstances and submit new variance request.