

Wed., July 8, 2020

To: Torch Lake Township ZBA Members

From: Bob Spencer



Re: I would like to make four comments for your information and ask that they be included in the record of this public hearing of the ZBA, as follow:

1. I have asked for this zoning interpretation hearing tonight due to the fact that I believe that ZBA has the zoning ordinance currently in effect that will allow its members to find that the Township has jurisdiction over construction in and on the bottomlands of lake beds.
2. Here is a quote from the Michigan Supreme Court ruling in the case of, Hess v. West Bloomfield Township, 439 MICH. 550, 486 N. W. 2d 628, (1992)

“ In order for townships to properly protect the bodies of water from destruction or impairment, pursuant to their zoning power within the TRZA, there must be an ability to regulate the exercise of riparian rights. To prohibit townships from exercising such regulatory zoning authority over riparian rights would permit the destruction or impairment of the natural resources associated with such bodies of water. To construe the TRZA in the manner asserted by the plaintiffs, and the Court of Appeals majority in Fox supra, would essentially prohibit townships from protecting the natural resources located within their communities that happen to be associated with bodies of water. This clearly could not have been the intention of the Legislature when it expanded the powers of the townships to regulate land development and to promote the public health, safety and welfare, pursuant to the zoning authority of the TRZA. Therefore, our reading of the TRZA is not only not “inconsistent with the manifest intent of the legislature,” it is manifestly consistent with it.

3. The following statement is taken from the Michigan Townships Association’s, “The Guide to Planning and Zoning (2012)” page 77:

“Planning commission and zoning board of appeals members are either appointed or confirmed by the township board. Once the appointments are made, individual board members, including the supervisor, should not be involved in or attempt to influence the decisions of the planning commission or zoning board of appeals.”

“Appointing officials may attend planning commission and ZBA meetings, and may comment on individual cases, but only to represent the views of the township and not to protect their own interests.”

4. The following statements are taken from the ruling in *Abrahamson v. Wendell, CNB and the Township of Hamlin* – 76 Mich. App. 278 (Mich. App. 1977) 256 N. W.2d 613)

“In the present case, the township supervisor appeared before the township zoning board of appeals on behalf of the defendants as their contractor. As such, he sought a variance from an administrative body over which he had powers of appointment.”

“Under these circumstances, it is difficult to believe that the supervisor did not in fact have a conflict of interest between personal profit and public duty. Therefore, as a matter of law, the appearance by the supervisor before the body over which he had appointive powers, at least in part, must be deemed an imposition of duress on the members of the zoning board of appeals and, as a result, the action of the board is void.”

Thank you,



Bob Spencer

709 N.W. Torch Lake Drive

Kewadin, MI 49648

Ph: (231) 264-6566 – home

E-mail: [bspencer@torchlake.com](mailto:bspencer@torchlake.com)