TORCH LAKE TOWNSHIP

ANTRIM COUNTY, MICHIGAN

Zoning Board of Appeals

Draft Minutes

November 29, 2017

Special ZBA Meeting

**Present:**    Chairman Dave Barr

Vice-Chairman Bob Spencer

Secretary Ralph Houghton

Members; Mark Jakubiak, Bob Cook

Absent; Norton Bretz, Greg Sumerix

**Others:**    Zoning Administrator Deb Graber

Todd Millar- Township Atty

Alan Martel-Township Supervisor

Wendell Johnson - Atty for Bucklew / Petrillo

**Audience:** 7 community members (see sign in sheet)

**Recording:** Jacqueline Petersen

**1.**    **Call to Order Regular Meeting:**

    Meeting called to order at 7:01 pm by Dave Barr

**2.    Approval of Agenda;**

    Motion by Houghton to approve 11.29.17 agenda, seconded by Jakubiak; passed 5-0.

**3.    Approval of Minutes**

Motion by Spencer to approve 11.08.17 regular ZBA meeting minutes, seconded by Cook; PASS 5/0

The minutes from the 11.08.17 ZBA Closed session were distributed at this time to Barr, Spencer, Houghton, Cook and Jakubiak for review.

Grammatical errors were corrected

Motion by Cook to approve 11.08.17 ZBA Closed Meeting Minutes, seconded by Jakubiak

Roll Call Vote: Barr - supported, Spencer - supported, Houghton - supported, Cook - supported, Jakubiak - supported.  PASS 5/0

    The now approved ZBA Closed meeting minutes from 11.08.17 were turned back into the recording secretary by Barr, Houghton, Spencer, Cook and Jakubiak.

**4.      Recusal**

Dave Barr asked if there were any recusal issues pertaining to any agenda items, there were not.

**5.       Consideration of the Laidlaw Appeal**

Barr explained the purpose and procedure of this meeting

Barr outlined goal of meeting

1. Determine if Laidlaw has standing.  If so, proceed to step 2 and 3, if not go directly to step 3.
2. Determine if the after the fact permit issued was done so properly or should be rescinded.
3. Interpret the zoning ordinance at Laidlaw’s request

Barr asked Houghton if any new correspondences had been received since ZBA last meeting.  Houghton affirmed and read from the correspondence received that afternoon from property owners adjacent to Bucklew / Petrillo regarding Laidlaw’s standing and their support thereof.

Barr asked if there were any other new correspondences and there were not.

Barr invited Bruce Laidlaw to present his case;

Laidlaw read from a prepared speech which he has submitted in its entirety to the ZBA to be kept with these meeting minutes.

Barr then asked if anyone had questions for Mr. Laidlaw

Spencer - Requested copies of Laidlaw’s remarks be distributed

Laidlaw - The narrative given tonight is one of the exhibits presented

Houghton - asked for description of existing deck (dimensions)

Laidlaw - stated to look at the permit 34x16 deck is now 24x16 deck with a 10x16 hole (void).

Barr asked Martel for comments

Martel stated TLT did not offer Mr. Laidlaw a refund if he withdrew his appeal.  When ZBA ruled shed/deck not allowed, Vey said it would be legal if detached and Martel agreed.  The deck under the old language was legal.  No mention of ground level decks.  Issues with OHWM complicated this.  DEQ did rough measure but did not immediately tell us that it was only a rough measure.  Bucklew / Petrillos had a survey conducted.  The goal was compliance.  We have a penalty for violations, our goal isn’t to beat up landowners who violate the zoning ordinance.  If deck is legal but shed is not, move shed to legal. Martel explained his agreement with issuing the permit

Cook - Permit dated 7/27/17?

Martel - Yes, the deck was in compliance, it wasn’t a matter of it being wrong.  The time and handling of this matter certainly could have been improved, but the permit is valid and that’s where I stand with it.

Barr asked for any other questions for Martel - there were not

Barr asked if there was any public comment regarding Mr. Laidlaw’s standing or the after the fact permit

Wendell Johnson - Attorney for the Bucklew / Petrillos now came before the ZBA

Johnson made his presentation.  At the request of Bob Spencer, Johnson will provide the ZBA with written copies of his remarks, which will be included with these meeting minutes.

    Barr asked for other public comments

Sue Calu 724 S. Golden Beach Drive, Kewadin, MI  49648

Property owner on East Bay - Property is zoned as a marina.

She states: DEQ says 50’ setback makes the waterway clear and open (navigable) and OHWM does not matter when the watermark is visible and it is set for a reason.  How did the township permit this without a DEQ and Soil and Erosion permits?  They are lengthy and expensive permits to issue and they do not exist here.  There is danger from debris when OHWM is up.  Much lumber, decks, docks, hoists etc. ends up in her marina.  It’s dangerous and disgusting.  The township must stop issuing permits that do not first have DEQ, Soil and Erosion, Army Corp and county building department permits issued first.  Restore the natural beauty, not 1 person’s wan for a deck that is going to destroy it for all.

    Johnson - My clients are not zoned a marina.  My clients DO have a soil and erosion permit from 2015 - copies were then distributed. (issued 4/22/15).  DEQ permit and Soil and Erosion permit copies will be made and distributed by Johnson and will be exhibits C and D.

Barr asked for any more public comment

Jerry Klinefelter of 1853 San Marino Trail stated upon moving here in 2000 for the view and ability to walk the beaches is aware of individual property owners’ rights.  I like open beaches.  2 Things about OHWM: #1 No matter what is established, it is not a point on the beach.  It is an elevation.  If water goes higher, the OHWM is moved inland - you could have something on the beach one day and not the next.  The property line moves; OHWM steaks are all gone underwater.  #2 Old zoning ordinance says the deck protrudes into the setback but this isn’t a step down.  The deck comes up 3 feet full length to its non-conforming with the old ordinance as well.

Barr asked for more public comment

Sue Calu - Why are you (the ZBA) doing this when ultimately it is up to the DEQ and Soil and Erosion board?  You have no jurisdiction and No authority.  You gave permit but it’s obviously wrong.  Why are we trying to accommodate this deck when it isn’t in our jurisdiction?

Barr - Stated that our issue tonight was the appeal

    Spencer made a motion to close the public hearing at 8:51pm, Jakubiak seconded the motion and a roll call vote was taken.  Barr - yes, Spencer- yes, Cook - yes, Houghton - yes, Jakubiak - Yeas; PASS 5/0

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    Barr called zba meeting back in session at 9:06pm

The board deliberated

Spencer read zoning ordinance Section 20 regarding appeals rules of procedure; 20.04 jurisdiction and 20.09 required procedure.  Any person affected or aggrieved can ask for a review on the zoning administrator’s decision.

    Houghton Mi law says aggrieved means suffers a significant economic impact. Houghton stated Laidlaw did present a likely negative economic impact.

    Cook clarified that “affected / aggrieved” means they have a legal standing for a review only.  That is for standing only - for the review, not a conclusion.

    Laidlaw stated that in a document he shared with Martel on 1/27/17 states the “possible adverse effects” are not required to prove.  ZBA affirmed receiving and are enough for standing

    Spencer cited from the zoning ordinance; chapter 22 Enforcement and Violations

    Houghton - Laidlaw is adversely affected by the permitted structure in question (FINDING OF FACT)

    Cook - agree

    Spencer - agree

Cook made a motion to accept that Bruce Laidlaw has standing.

Bruce Laidlaw resides and owns property in close proximity to property in question.

Laidlaw’s use of the beach is adversely affected by the structure in question both visually and physically.

Spencer seconded the motion, roll call vote passed 5/0

Barr - Yes, Spencer - Yes, Jakubiak - yes, Cook - Yes, Houghton - Yes

    Spencer -  distributed prepared document entitled *Proposed Findings of Fact* and the board reviewed the document.

Motion was made by Cook to accept the “potential findings of fact” items A - M with the exception of item G, as outlined by Bob Spencer.  Motion was seconded by Jakubiak and a roll call vote was taken passing 5/0.  Barr - Yes, Spencer - Yes, Jakubiak - yes, Cook - Yes, Houghton - Yes

As a result, the following will be used as a basis of fact to make determinations of standing.

    Houghton - Made motion that the ZBA establishes that Bruce Laidlaw is accorded standing in matter based on the findings of fact of the record.  The motion was seconded by Barr and passed 5/0 after a roll call vote.    Barr - Yes, Spencer - Yes, Jakubiak - yes, Cook - Yes, Houghton - Yes

Board members deliberated more and report another “Finding of Fact”

Barr -  In the letter dated 5/26/17 from the zoning administrator to the Bucklew / Petrillo's there were outlined certain criteria that must be met before July 1, 2017.  A site plan showing all property boundaries, setbacks, lines and locations or existing and proposed structures, decks, sheds and buildings must be approved by the zoning administrator by 7-1-17.

Spencer - exhibits from Johnson (Bucklew?Petrillo) have expired dates.  The permit submitted from Soil and Erosion is expired by over a year.  The DEQ letter is not a permit The Army Corp letter states that if local approval is required and denied (which it was) then this (the approval of the Army Corp.) shall be void.  He summarized that an email from Vey to Bucklew Petrillo and Millar dated 6/30/17 referred to an earlier letter dated 5/26/17 outlining the denial of the requested 90-day extension and granting of a 30-day extension on the condition that the property be brought into compliance, and the criteria outlined how.  (see letters dated 5/26/17 and 6/30/17).

Barr - We have found the criteria outlined in the letters dated 5/26/17 and 6/30/17 was not met by 7/1/17 on all three issues.  No acceptable drawings, no signed work order / timeline and no copies of valid permits were presented.

**FACTS:**

Bruce Laidlaw is a long-term Lake Michigan frontage property owner and part-time Torch Lake Township resident whose property address is 5103 Old Park Road, Central Lake (Eastport), MI  49267

During the autumn of 2017, Mr. Laidlaw first observed a structure consisting of a shed with an attached deck being constructed on Lake Michigan beach property owned by the Bucklews and Petrillos.

On November 6, 2014, Mr. Laidlaw called the construction of this structure to the attention of the Township’s Zoning Administrator, who informed him that no zoning permit had been issued by the Township to the property owners.

There is one lot/parcel between Mr. Laidlaw’s property and that owned by the Bucklew/Petrillos, thus Mr. Laidlaw is within the 300-foot notice provision requirement of MCL 125.3103.

The property owners (Bucklew/Petrillos) have not submitted any appeal.

Mr. Laidlaw indicates that he enjoys and has a substantial interest in; 1) seeing the natural beauty of the Lake Michigan shoreline without the intrusion and clutter of man-made structures; and 2) that he has substantial interest protecting the shoreline and its environment from erosion.

In his sworn statement of 10/27/17 Mr. Laidlaw gave some examples of how he and his wife have been aggravated by the presence of the Bucklew/Petrillo deck crossing the full width of the beach.

TLT’s zoning ordinance provisions (section 5.04 and section 7.03) require adherence to set back requirements for structures including decks.  These zoning ordinance provisions protect Mr. Laidlaw

s substantial interest in property values.

The Bucklew/Petrillo structures harm Laidlaw’s substantial interest in the preservation of the un-obstructed natural shoreline of Lake Michigan and the protection of near-shore land from erosive forces caused by earth movement and construction in the near-shore environment.

The property owner’s actions to, in late 2014, build a shed/deck structure in the front yard setback of their property without first obtaining either the required permits or a variance from TLT’s ZBA has given rise to a nuisance per se under TLT’s Zoning Ordinance.  (Sections 22.01 and 2.02)

Mr. Laidlaw owns property within 300 feet of the Bucklew/Petrillo property, thus is entitled to receive public hearing notifications regarding the Bucklew/Petrillo shed/deck matters before the ZBA.  On occasions on which Mr. Laidlaw did not receive required notices of public hearings regarding the property at 5029 Old Park Road, Central Lake (Eastport) MI, he was being treated differently from the public at large by being denied his due process rights.

A letter dated 5/26/17 to the Bucklew/Petrillo from TLT Zoning administrator outlined the criteria needed by 7/1/17 to grant Bucklew/Petrillos a permit and or 30-day extension

The letter was followed up with an Email from TLT Zoning administrator on 6/30/17

Dates on documents submitted are after 7/1/17

Soil and Erosion permit #201-138 was not issued until 8/14/17; (past the 7/1/17 deadline)

Soil and Erosion permit submitted by property owner originally had expired

The contractor’s plan accepted by Bucklew was signed 7/4/17 (past the 7/1/17 deadline)

The contractor’s bid had the wrong scope of work outlined which did not pertain to the deck and shed compliance

The drawing dated 9/7/17 was not submitted before 7/1/7

The drawing provided did not comply with the zoning ordinance with application 1723

Motion was made by Bob Cook to accept the Findings of Fact as outlined and read by the recording secretary as provided to her.

Motion was seconded by Spencer

Roll Call Vote Passed 5/0

Barr - Yes, Spencer - Yes, Jakubiak - yes, Cook - Yes, Houghton - Yes

    Motion was made by Cook to invalidate permit #1723 issued 7/20/17 and refer the matter to the current zoning administrator for further action.

    Motion was seconded by Houghton

Roll Call Vote Passed 5/0

Barr - Yes, Spencer - Yes, Jakubiak - yes, Cook - Yes, Houghton - Yes

Barr asked Laidlaw what part of the zoning ordinance he would like interpreted.  Laidlaw stated that in light of the findings of the ZBA tonight, he needs nothing interpreted.

Spencer - Who notifies property owners of our findings this evening?

Barr - Houghton will work with Millar to draft correspondence to the neighbors.

**6.    Report on Planning Commission Matters - Norton Bretz**

Absent

**7.    Report from Zoning Administrator**

    Graber:  Investigating 11 situations of suspect zoning violation where Township permits do not exist.  One incident a landowner, to whom Deb sent a letter of violation, called to say Deb was correct, but that is not what she was told earlier this year on the phone by a township official.  Another incident of a non-conforming notice that was sent Graber states the landowner spent $20K based on what she was told was not in violation by prior zoning administrator.  Graber reported a demolition job on NW Torch Lake Drive has no permit and when she questioned the contractor she was told they were incorrectly informed by our township that demolition did not require permitting.  Other properties Graber is investigating are; Templin, Golden Beach, Basement change from crawl to full, among others.  She intends to keep investigating and consulting with the ZBA even when not in session for the winter.

**8.    Township Board Supervisors report**

N/A

**9.    Misc. Administrative Matters**

**10.    Summary of action items to be taken on or before the next ZBA Meeting April 11, 201** Barr -Distributed Rules of Procedure (front and back copies) for review for re-write ideas to present at next meeting.  Barr will compile, but wants all to work on until April.  Spencer was authorized to form a study committee of Spencer, Jakubiak, Houghton and Cook.

**11.    Comments / Concerns of the Public**

Comments were asked for by Barr and none were offered

**12.    Adjournment**

Motion to adjourn by Cook; Seconded by Spencer; PASS 5/0

Meeting closed at 11:56pm