

County of Antrim - Planning Commission

Jill Barnard  
Mike Hayes  
Bill Bailey

Jim Gurr, Chairman  
Rick Teague, Vice-Chair  
Barbara Bradford, Secretary

Laura Stanek  
Christian Marcus  
Ron Tschudy

Minutes - July 5, 2016

Board of Commissioners Room, 2nd Floor, Antrim County Building, Bellaire, Michigan

Members Present: Jim Gurr, Bill Bailey, Barb Bradford, Mike Hayes, Christian Marcus, Rick Teague, Ron Tschudy  
Members Absent: Jill Barnard, Laura Stanek  
Staff and Others: Pete Garwood, Janet Koch, Stan Moore

**1. Meeting called to order at 5:35 p.m. by Chairman Jim Gurr**

**2. Pledge of Allegiance**

**3. Conflict of Interest Disclosure**

None.

**4. Public Comment**

Bruce Laidlaw, an Eastport resident, said he was here to address the Planning Commission opposing the proposed Torch Lake Township zoning ordinance amendments. He said no other ordinances that he could locate in Antrim County allowed decks to be constructed within the property setbacks.

Bob Spencer, a Kewadin resident, said he would reserve his comments until the agenda item was discussed. Anja Dickinson, a property owner on Oak Park Dr., Central Lake, also deferred her comments.

**5. Approval of Minutes**

**Motion by Rick Teague, seconded by Bill Bailey, to approve the minutes of the June 7, 2016 meeting as presented. Motion carried – unanimous.**

**6. Torch Lake Township Zoning Ordinance Amendment**

The Planning Commission reviewed the difference between the existing ordinance and the proposed amendment (**attached pgs. 3-4**). A discussion of setback requirements ensued. Janet Koch, Associate Planner, said the existing language of the Township’s Zoning Ordinance Chapter II, Section 2.16B allowed the construction of decks and stairways inside of setbacks; the proposed amendment notes a specific square footage for that construction in addition to other modifications.

Mr. Laidlaw said the deck described in his letter to the Planning Commission on July 1 (**attached pg. 5-10**) had been constructed in the fall of 2014. Mr. Spencer said at the October 8 County Board of Commissioners meeting a motion that objected to the variance had been approved. The Board had been notified of the variance request due to the County-owned property within the 300’ notification distance.

**DRAFT**

Mr. Laidlaw noted that the County's Master Plan stated on page 10-2 that "The County also has 27 miles of shoreline along Grand Traverse Bay (Lake Michigan). These water areas provide scenic beauty, wildlife habitat, and recreation. They should be protected, or they will not be able to continue these functions."

Stan Moore, Michigan State University Extension Educator, indicated that it would be appropriate for the Township's zoning ordinance to reference complying with U.S. Army Corps of Engineers regulations and the 2005 Michigan Supreme Court decision *Glass v. Goeckel*.

The Planning Commission noted that adoption of the amendments would create an inconsistency with Chapter 11 of the Antrim County Master Plan, specifically the final sentence on page 11-4; "Communities with [shoreline] developments should be aware of the environmental constraints these properties may have and work with the owners to minimize negative environmental impacts."

Also noted was that Section 2.16.B of the Township's zoning ordinance conflicted with its existing Section 7.03.A, which states every platted or unplatted lot in the R-1 Residential district shall have "an unoccupied front lot line setback having a minimum distance of fifty (50) feet."

The Planning Commission also recommended that future zoning ordinance amendments include a distinction between the Great Lakes and the inland lakes.

**Motion by Rick Teague, seconded by Barb Bradford, that the Planning Commission, after further review of the proposed zoning ordinance amendments, found that there are incompatibilities between the Antrim County Master Plan and the proposed Torch Lake Township Zoning Ordinance amendments to Section 2.16.B and Section 19.02B and recommends the Torch Lake Township Board not approve the amendments as written. Motion carried - unanimous.**

**7. Capital Improvement Plan (CIP) Projects**

The newly submitted CIP projects had been included in the agenda packets. The Planning Commission reviewed the new projects. Ms. Koch said the completed CIP will be submitted to the Finance Committee for approval at their July 11 meeting. When the CIP is approved, the final document will be presented to the Planning Commission.

**8. Various Matters**

Ms. Bradford said she appreciated that the Planning Commission was part of the planning process for the Capital Improvement Plan.

**9. Public/Member Comment**

Mr. Tschudy and Ms. Bradford both expressed their appreciation that concerned citizens attended the Planning Commission meeting.

Meeting adjourned at 7:25 p.m.

Submitted and Approved

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Barb Bradford, Secretary  
Antrim County Planning Commission  
Date:

Note: existing/unchanged text is in black – **proposed changes are in red. The proposed below are the same as reviewed during the Planning Commission meeting of May 3.**

Section 2.16 - GENERAL LOT AND YARD AREA REQUIREMENTS FOR ALL ZONE DISTRICTS.

B. FRONT, SIDE, & REAR LOT LINE SETBACK AREA USES.

Every part of every front, side and rear lot line setback area shall be open and unobstructed by structures from the ground up to the sky with the following exceptions:

1. Fences shall be allowed in all lot line setback areas.
2. Ground level unenclosed and uncovered porches and decks shall be allowed to extend into the front or rear lot line setback, with at least one outside access to the deck or porch, not to extend into the side yard setback area. It shall also not infringe upon the thirty five (35) foot setback from the road right of way.
- 2. Unenclosed and uncovered porches, decks and walkways shall be allowed in the front or rear lot line setback, but not to extend into the side yard setback area. They shall also not infringe upon the road right of way.**
3. Properties having multiple ground levels shall be allowed to have stairways between dwelling and non-dwelling ground levels and an unattached deck on a non-dwelling level within or extending into the front line setback of waterfront properties or the rear lot line setback of non-waterfront properties not to exceed fifty (50%) percent of the setback area.
- 3. Stairs and walkways in the front or rear lot line setback area shall have a maximum width of 48 inches. Landings which are part of walkways or stairways shall not exceed 64 square feet. Any porch or deck in the front or rear lot line setback area shall conform to the following provisions:**
  - 1) Maximum area of 324 total square feet of decking per setback.**
  - 2) The porch or deck shall not exceed an average of 18 inches in height as measured from the finished surface to the ground at the corners of the porch or deck facing the interior of the lot.**
  - 3) So as not to impact the dark night sky, only stairways and walkways may be illuminated by shielded and downward directed tread lighting only.**

*Note: existing/unchanged text is in black – the proposed changes in red below are the same as reviewed during the Planning Commission meeting of May 3. The proposed change in blue was approved at a Torch Lake public hearing on June 14.*

Section 19.02B - ZONING PERMIT EXEMPTION. Ground level decks and non-permanent accessory storage buildings (having no footings or foundation) constructed for residential usage and located in the Agricultural (A), Residential (R-1 and R-2), Village Residential (VR), Village Business (VB) or Timber Reserve (T) Districts having an exterior dimension of two hundred (200) square feet or less and a height not exceeding twelve (12) feet (accessory buildings) shall be exempt from the permit requirements of this ordinance. These buildings shall not protrude into the front yard and shall conform to all setback requirements of the district in which the building is located.

**Section 19.02B - ZONING PERMIT EXEMPTION. Decks and accessory storage buildings not located in setbacks, having no footings or foundation, under two hundred (200) square feet, and a height not exceeding twelve (12) feet (i.e., accessory buildings only) shall be exempt from the permit requirements of this ordinance. These structures shall not protrude into the front yard setback and shall conform to all setback requirements of the district in which the structure is located.**

**R. Bruce Laidlaw**

Attorney

PO Box 151, 5103 Old Park Road, Eastport, Michigan 49627 231-599-3136

July 1, 2016

Janet Koch  
Antrim County Associate Planner  
Via email to [kochj@antrimcounty.org](mailto:kochj@antrimcounty.org)

Re: Torch Lake Township Zoning Amendment Regarding Setbacks

Dear Ms. Koch:

I see that the Torch Lake Township setback amendments are back on the county planning commission meeting agenda for its July 5 meeting. You may recall that you and I spoke regarding the proposed changes after the matter was last before the county planning commission. The matter is before the commission again because there was improper notice of the township's first public hearing. I was unaware of the matter because it was not posted on the township's web site.

The second public hearing on the proposed amendments was scheduled for June 14, 2016. The township planning commission proceeded with the hearing despite being informed that the hearing notice gave the hearing location as being at the former township offices, and despite the notice incorrectly indicating that the proposed amendments were available on the township web site. Three members of the public spoke in opposition to the proposal. Only the commission chair addressed the proposal. There was no discussion among the commission members before they voted unanimously to approve the proposal.

After the matter was last before the county planning commission, I copied the planning staff in a letter regarding my objections to the proposal. My letter included a mistaken understanding of the source of the current zoning provisions on setback. With the help of FOIA I was able to trace the language to a January 25, 2001 township board meeting. I have attached a copy of the minutes of that meeting including the actual ordinance language.

The township's planning consultant recommended allowing decks projecting no more than 50% into lakefront setbacks. Inexplicably, the board changed the distance limitation of the encroachment to 50% of the area of the setback.

The need for any construction in lakeside setbacks is far from clear. None of the nearby municipalities with frontage on both Lake Michigan and inland lakes permit decks in the lake setback. However, if such setback encroachments are to be permitted, some limit on the distance of encroachment would be the only sensible approach. At the most recent public hearing the township's planning consultant acknowledged that the proposed language would permit deck construction all the way to the water's edge.

A deck built without a permit on the Lake Michigan beach near Barnes Park provides a good example of how allowing unlimited lakeside setback encroachment affects beach use. Here is a photo

taken this morning. Because of the rising level of Lake Michigan, in windy conditions, persons cannot walk past the deck without going into the lake water.



In our telephone conversation, you indicated that the county planning commission review of zoning changes was limited to advisory recommendation on whether a proposal conflicted with the county's master plan. That plan refers to the Chain of Lakes as a key natural resource and describes Torch Lake as "one of the most beautiful lakes in the world." Regarding Lake Michigan, the plan states:

The county also has 27 miles of shoreline along Grand Traverse Bay (Lake Michigan). These water areas provide scenic beauty, wildlife habitat, and recreation. They should be protected, or they will not be able to continue these functions.

Surely consideration of appearance of the lake shorelines is an appropriate consideration regarding zoning amendments authorizing construction all the way to the edge of the water.

The county planning commission is not limited to consideration of zoning effects on the master plan. Surely its authority for "review and recommendation" (MCL 125.280) includes consideration of zoning changes that conflict with public policy. The Michigan Supreme Court has *declared that there is a public right to walk along the shorelines of the great lakes* (*Glass v. Goeckel*, 703 NW2d 58, 473 Mich 667 (2005)) But the setback zoning proposal would allow structures that block that right of travel.

I respectfully suggest that there be a recommendation to reject or to modify the proposed ordinance changes. Please provide the Antrim County Planning Commission with a copy of this letter.

Very truly yours,

Handwritten signature of R. Bruce Laidlaw

R. Bruce Laidlaw

**TORCH LAKE TOWNSHIP**  
**PO BOX 477**  
**EASTPORT MI 49627**  
(231) 599-2036  
(231) 599-2981 FAX

SUPERVISOR  
CLERK  
TREASURER  
TRUSTEE  
TRUSTEE

Kim Schmidt 599-2313  
Doris Leech 599-2754  
Sharon Schultz 599-2730  
George Parker 599-2931  
Tom Stillings 264-5665

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MINUTES – TORCH LAKE TOWNSHIP BOARD MEETING  
JANUARY 25, 2001, TOWNSHIP HALL, EASTPORT

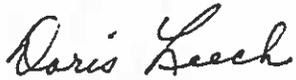
Present: Schmidt, Parker, Schultz, Stillings  
Absent: Leech

1. The pledge to the flag was given and the meeting convened at 7:32 p.m.
2. Minutes of December 19, 2000 open and closed meetings were approved and filed for audit.
3. Expenditures of all township funds were approved as submitted.
4. Reports were accepted from the EMS Director, Fire Chief, Treasurer and Zoning Administrator.
5. Public Comments were received inquiring whether the mileage reimbursement rate is sufficient for current gas prices (will be reviewed for next budget year), why fiscal year was changed some years ago to start April 1 (possibly to coincide with county fiscal year), and if 2001 road paving has been determined (Sugarbush, Bay Colony and Farrell roads, with Central Lake participation in Farrell Rd. cost).
6. Announcements/Correspondence: Schmidt announced he has had seven responses to his newspaper ad for the Planning Commission opening.
7. Wilkinson Homestead Historical Society-Betty Beeby: Beeby letter of Dec. 16, 2000 to the township board was read in which financial assistance was requested of the board. B. Beeby gave a verbal report of activities to date. The board indicated interest in giving some financial support upon their receiving their incorporation papers.
8. Zoning Amendment: Planning Consultant Sullivan submitted a complete copy of the Zoning Ordinance showing the material to be deleted and the material to be added as approved by the Planning Commission and which they recommended be adopted by the board. Resolution by Schmidt, seconded by Stillings to approve adoption of the zoning amendments as outlined in the zoning ordinance submitted with Sullivan's letter of January 23, 2001 with the provision that the last word in Section 2.16. B.3. on page 6 be changed from distance to area and the definition of "Structure" on page 110 be removed. Roll call vote: aye- Parker, Schultz, Stillings, Schmidt; nay – none; approved 4-0 with Leech absent.
9. Elk Rapids District Library: Tim Roach reported on results of a recent survey and current activities of the library.
10. Lot Split Request, Thomas Piraino letter dated 1/12/2001: Discussion, Schmidt will obtain letter from owner Nelson and draw up agreement and bring to the board for review.

Page 2: January 25, 2001 Township Board Meeting Minutes

11. Board Concerns: Stillings expressed concern re cracks in Golden Beach road surface.
12. Public Comments: Subjects discussed were: (1) cost of purchase and refurbishing of fire truck; (2) continuing a contract with the Elk Rapids District Library; (3) impact from suspension of Lifelink service; (4) grant information.

There being no further business, the meeting adjourned at 9:20 p.m. These minutes are prepared from a tape recording of the meeting and subject to approval at the next regular board meeting.



Doris Leech  
Township Clerk

levels.

- D. The soil is predominately made up of "somewhat poorly" drained and/or "poorly drained" organic and/or mineral soils as defined by the Cooperative Soil Survey of the U.S. Department of Agriculture.

Section 2.15 - SHORELAND PROTECTION ZONE. Certain lands in the Township abut Lake Michigan and have been designated as "high risk" erosion areas under the Shorelands Protection Act. Construction within any zone shall comply with the rules and regulations adopted under the Shorelands Protection Act and the height, area and width requirements contained within the zone in which the use would otherwise be allowed will be applicable.

Section 2.16 - GENERAL LOT AND YARD REQUIREMENTS FOR ALL ZONE DISTRICTS.

A. NON-DUPLICATION

~~In determining lot and yard requirements, no area shall be counted as yard to more than one structure or use, and no area necessary for compliance with the open space requirements for one structure or use shall be counted in the calculation or requirements for any other structure or use.~~

B. FRONT, SIDE, & REAR YARD USES.

~~Every part of every front, side and rear yard shall be open and unobstructed by structures from the ground up to the sky.~~

C. DWELLING PER LOT.

~~No more than one (1) dwelling shall be erected on a lot in the R-1 or V zones. In all other zones where residential uses are allowed, a second dwelling may be constructed provided sufficient area is present to meet all frontage, lot area, yard, parking, and setback requirements for each dwelling should the parcel be split at a later date. Where a lot is being developed as a Site Condominium Project, more than one Building Site may be located on a lot provided that sufficient area is present to meet all requirements as though each Building Site were a separate lot.~~

Section 2.16 - GENERAL LOT AND YARD AREA REQUIREMENTS FOR ALL ZONE DISTRICTS.

A. NON-DUPLICATION

~~In determining lot and lot line setback requirements, no area shall be counted as setback area to more than one principal structure or use, and no area necessary for compliance with the open-space requirements for one structure or use shall be counted in the calculation of requirements for any other structure or use.~~

B. FRONT, SIDE, & REAR LOT LINE SETBACK AREA USES.

~~Every part of every front, side and rear lot line setback area~~

shall be open and unobstructed by structures from the ground up to the sky with the following exceptions:

1. Fences shall be allowed in all lot line setback areas.
2. Ground level unenclosed and uncovered porches and decks shall be allowed to extend into the front or rear lot line setback, with at least one outside access to the deck or porch, not to exceed into the the side yard setback area. It shall also not infringe upon the thirtyfive (35) foot setback from the road right of way.
3. Properties having multiple ground levels shall be allowed to have stairways between dwelling and non-dwelling ground levels and an unattached deck on a non-dwelling level within or extending into the front line setback of waterfront properties or the rear lot line setback of non-waterfront properties not to exceed fifty (50%) percent of the setback ~~distance~~ *area*.

**C. DWELLING PER LOT.**

No more than one (1) dwelling shall be erected on a lot in the R-1 or V zones. In all other zones where residential uses are allowed, a second dwelling may be constructed provided sufficient land is present to meet all frontage, lot area, parking, and setback requirements for each dwelling should the parcel be split at a later date. Where a lot is being developed as a Site Condominium Project, more than one Building Site may be located on a lot provided that sufficient land is present to meet all requirements as though each Building Site were a separate lot.

**Section 2.17 - WATER SUPPLY AND SEWAGE**

building hereafter erected, altered or m used in whole or in part for dwelling commercial or industrial purposes, inclu other buildings in which persons custom provided with a safe and sanitary water su for collecting and disposal of all h water-carried domestic, commercial, indust may adversely affect health conditions. T facilities by the District Health Depart filed with the application for a Zoni provided. Temporary sanitation facilities days may be permitted by signed approval and must be properly screened from public

*2.16.B.3. approved with last word changed from "distance" to "area". 1/25/01 mtg of Imp. Board*

**Section 2.18 - GRADING.** No premises shall b increase the amount or velocity of su adjoining parcels.

**Section 2.19 - USE OF RECREATIONAL VEHICLES AS TEMPORARY DWELLINGS.** A one (1) time occupancy of no more than thirty (30) days per year may