

LONG BEACH BUILDING COMMISSION

Meeting Minutes

February 10, 2017

APPROVED -
3/10/17
[Signature]

Call to Order by: Larry Wall @ 1:05 pm

- Roll Call: Joe Jogmen
 Robert Lemay
 Peter Byvoets
 Lou Mellen
 Lawrence P Wall

Approval of minutes from previous meeting:

January 13th meeting minute acceptance

Motion: P Byvoets

Second: J Jogmen

Vote Yay 3 Nay ___ Abstain ___

Carried

Commissioners report:

1. Report/spreadsheet/data –
 - a. January Summary
 - i. 11 permits with construction costs of \$183,301.66
 - ii. Fees ---\$1,075.00
2. Madison property update: Sold – Demolition is underway
3. Received 119 calls on permits and or information requests
4. Completed _____ site visits/inspections.
5. DNR floodplain workshop 2/9/17 – Pete & Larry attended

Old Business

1. Long Beach Country Club Parking Proposal review
 - a. 154.078 off street parking requirements
 - b. 9/19/16 Email to Haas requesting additional information
 - c. Letters/emails
 - i. 7/22/16 email to Tim Haas
 - ii. 7/22/16 answer from Tim haas
 - iii. 11/05/16 letter from Richard Wronski
 - iv. 1/25/17 Letter from Richard Wronski
 - v. 1/25/17 Letter from George McCarthy
 - vi. 1/26/17 letter from William Wallace
 - vii. 2/8/17 letter from Richard Wronski

- viii. 1/28/17 letter from Katie Pranckus
 - ix. 2/9/17 Letter from Kate Repenn
 - x. 2/10/17 Letter from William Wallace
 - xi. 2/11/17 Letter from Fren McNulty
 - d. Annette Corbett, general manager and David Grey board member from LBCC spoke on behalf of the LBCC about the proposed parking lot. Brian the green superintendent spoke about the gravel that was stored on the proposed parking lot site.
 - e. Mr & Mrs Stadler spoke in opposition to the LBCC parking lot proposal
 - f. Mr. Wronski spoke in opposition to the LBCC parking proposal and suggested that the LBCC has not acted in good faith.
2. 2908 LSD permit.
- a. Update on vacated land borders? Size? Common law OHWM
 - b. New site plan submitted by owner's representative We will need legal advice on qualifications listed on new survey.
 - c. Commission requested update to survey with 'common law water mark' noted on site plan
 - d. Received letter from Breen's , neighbor to the east on 1/26/17
 - e. Received letter from LBCA on permit application on 2/9/17
 - f. Wall at s/w corner of house encroaching on setback
 - g. View protection ordinance issues
 - h. Pat Sharkey of the LBCA spoke about the need for a determination of the 'new' high water mark per the appellate court decision
 - i. LBCA letter of 2/9/17 to the building commission were read into the record.
 - i. See attached exhibit 'A' for letter
3. Software – Webinar completed
4. 2105 Oriole Trail – any updates on site plan and coverage
- a. Lou will watch for activity
5. 2738 Floral Trail
- a. Lou found permit for stone wall work had been issued.
 - b. Next step – Lou will monitor and check with Falatovis on what is to be done.
6. 1412 LSD Chalik – demo house, septic and related structures, build new home.
- a. Still in review
 - b. Email sent and acknowledged with issues to resolve prior to review
 - c. Received letter from LBCA on permit application on 2/9/17
 - d. Discussion about a flood plain permit or need for a LOMA letter

- e. Discussion about what constitutes the 'new' high water mark
 - f. LBCA letter of 2/9/17 was read . See attached exhibit 'b'
7. 2018 Juneway Drive – Walker – Cermak New deck
- a. Septic location issues – Ray Cermak will get septic location and approval from LaPorte County.
 - b. Lou checked septic info provided during a site visit and ok'd deck location.
8. 2311 Grassmere – Stanton – Werner (contractor) bedroom and bath addition in basement
- a. Need LaPorte County Health approval on septic because of added bedroom
 - b. Drawings were changed deleting the bedroom.
 - c. Septic approval letter was received from LPHD
9. 2618 Hermoine – Scott – Jacobs (contractor) Interior renovation-
- a. May need more info Lou will meet with contractor Jacobs
10. Kowalski property permit and material storage issues. Lou will talk to Mr. Kowalski about getting a permit and establishing a finish date.

NEW Business

11. 1534 LSD permit Application – Dempsey – Interior and exterior renovation and addition over garage
- a. LPW recused himself from discussion about the project
 - b. Mr. Hay discussed the project with the commission
 - c. Commission informed Mr. Hay that the project could not be approved at this time because of non-conforming property issues and proposed increase in volume of structure
12. 3001 Loma Portal Way – Permit application Dunne – Interior and exterior renovation
- a. In review
13. 2225 LSD – Lynch – Deck...want to convert 400 sq ft of driveway to sod /grass to allow for deck to be built under the 35% coverage rule.
- a. Waiting for new drawings and permit application
14. 2110 LSD – Lou stopped to deliver AV permit and found a major renovation going on without a permit. Stop work order issued until receipt of permit app. AV work allowed to continue.
15. 2944 LSD – Stop work order issued for renovation work going on without permit.
16. RECEIVED AFTER CUTOFF DATE
- a. Received drawings and permit app on 2/7/17 2022 Belleviere – Wilson – interior and exterior renovations

b. Received on 2/7/17 2008 Melrose Dr – Kludt – new concrete patio

Public Comment

None

Next Meeting scheduled for March 10th 2017 @ 1:00 pm

Adjournment: Motion: P Byvoets

Second Joe Jogmen

Yay _3 Nay ___0___ Carried

Meeting Adjourned @ _____pm



Long Beach Community Alliance

February 9, 2017

Building Commissioner Larry Wall
Building Commission Members
Town of Long Beach
2400 Oriole Trail
Long Beach, Indiana 46360

Re: Building Permit Application for 2908 Lake Shore Drive

Dear Sirs:

I am writing on behalf of the Long Beach Community Alliance ("LBCA") to advise you that pursuant to the Indiana Open Records Act, we have reviewed the Permit Application currently pending before the Building Commission for construction on the property located at 2908 Lake Shore Drive. Our review indicates that certain information necessary to demonstrate compliance with the Public Trust Doctrine and the Long Beach Building and Zoning Code has not been provided by the Permit Applicant

1. **THE PERMIT APPLICATION FAILS TO DEMONSTRATE CONSTRUCTION WILL NOT TAKE PLACE BELOW THE COMMON LAW ORDINARY HIGH WATER MARK.**

The Survey provided appears to be out-of-date (recertified Jan. 26, 2016) and fails to show the location of the "common law ordinary high water mark" which has recently been declared by the Indiana Appellate Court to be the boundary of the Public Trust lands on the Lake Michigan beach. This is critical because no construction may be permitted on Public Trust Lands that would prevent or interfere with the public's use of any part of the Lake Michigan beach below that point.

From a January 18, 2017 email in the permit file from the Permit Applicant, Mr. Peter Raphael, it appears he is unaware of this change in the law. His contention that the Indiana Department of Natural Resources regulatory OHWM elevation is the boundary of the Public Trust Land is legally incorrect. That regulation was declared to be invalid by the Indiana Appellate Court on December 7, 2016. Specifically, the Appellate Court held:

As the OHWM prior to 1995 was the common law OHWM as held in Shively, 152 U.S. at 41, the DNR's staking the OHWM at the measurements set forth in 312 IAC 1-1-26(2) most certainly conveyed or curtailed the rights of the people of Indiana in Lake Michigan. Therefore, that portion of the Indiana Administrative Code is invalid, and the OHWM remains that defined by common-law. [emphasis added]

In a footnote, the Appellate Court noted that "The factors used to define OHWM under the common law are also found in 312 IAC 1-1-26(1)." Opinion, p. 19-20. The common law factors stated in that Section are:

"1) The line on the shore of a waterway established by the fluctuations of water and indicated by physical characteristics. Examples of these physical characteristics include the following:

- (A) A clear and natural line impressed on the bank.
- (B) Shelving.
- (C) Changes in character of the soil.
- (D) The destruction of terrestrial vegetation.
- (E) The presence of litter or debris."

In order to ensure compliance with the law and protection of the public's rights, the Building Commission must require that the permit application for construction on the 2908 Lake Shore Drive property include a survey of the location of the common law OHWM on the property based on an expert delineation of these physical characteristics.

2. THE PERMIT APPLICATION FAILS TO DEMONSTRATE COMPLIANCE WITH THE LONG BEACH FLOODPLAIN ORDINANCES.

The Permit Application for construction on the 2908 Lake Shore Drive property does not demonstrate that the construction will not take place in or disturb land located within the Lake Michigan AE Zone "Floodplain" as mapped by the Federal Emergency Management Agency (FEMA) and shown in the attached 2013 FIRM Map or within any "Flood Prone" area as recognized by the community. The Permit Application also doesn't comply with the requirements of §155.36 and include information necessary to determine compliance with the floodplain construction standards stated in §155.50 and 155.51.

As the FIRM indicates the location of this proposed new residence is within the mapped AE Zone, the Applicant must either:

- 1) Apply for a Floodplain Development Permit, consistent with the application requirements in §155.36, and demonstrate compliance with the Chapter 155 (including the General Standards in §155.50 and Specific Standards in §155.51) and obtain BZA

approval of that Floodplain Development Permit pursuant to Long Beach Ordinance 154.91;

OR

2) Demonstrate and certify that the entirety of its new construction will be:

A) Located at elevations at least 2 feet above the FEMA base floodplain elevation and obtain a FEMA "Letter of Map Amendment" ("LOMA") documenting FEMA's concurrence in those certified elevations. Given the sever rise in Lake levels on the Lake Michigan beach over the last year, it is critical that the elevations provided be current, that those elevations be certified as of the date the elevations are taken by a professional surveyor, and that a LOMA verifying FEMA concurrence be included with the Permit Application,; AND

B) Located outside any Flood Prone Area, which is defined as "any land area acknowledged by a community as being susceptible to inundation by water from any source." See §155.05. Consideration of whether a location is actually Flood Prone, even if it is above the 2013 FEMA base elevation, is critical due to the sever rise in Lake levels on the Lake Michigan beach over the last year.

3. THE PERMIT APPLICATION FAILS TO DEMONSTRATE COMPLIANCE WITH THE REQUIREMENTS OF ORDINANCE §154.112 FOR EARTH CHANGES AND ALTERATION OF THE TOPOGRAPHY

The Permit Application does not contain sufficient information for the Building Commission to determine compliance with the requirements of Long Beach Ordinance §154.112 consistent with the Town's goal of minimizing changes to the current dune topography. Again, given the sever rise in Lake levels on the Lake Michigan beach over the last year, it is critical that current topographical elevations across the development site be certified together with the proposed changes in topographical elevations.

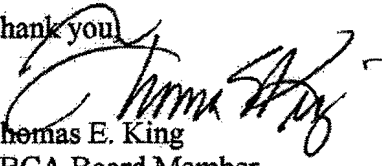
§ 154.112 PERMIT REQUIRED FOR EARTH CHANGES AND TO ALTER TOPOGRAPHY.

A building permit is required to modify the topography of any zoning lot from its current condition. It is a goal of the town to retain the current dune topography to the maximum extent possible and require developers of zoning lots to plan the development of the zoning lot so as to minimize changes in topography. All applicants for a building permit shall be required to submit a topographic survey, signed by a Indiana Registered Surveyor, showing the existing topography of the zoning lot and proposed final topography of the zoning lot. In granting a permit, the Building Commissioner shall determine that:

- (A) The planning and design of the of all structures, revetments, retaining walls and the like are designed to minimize the amount of topographic change of the zoning lot necessary for the construction of the proposed buildings and structures.
 - (B) The level and shape of all finish grading will complement the natural land form of the zoning lot and all abutting lots and rights-of-way.
 - (C) That proposed landscaped areas will complement the natural land form of the zoning lot and all abutting lots and rights-of-way.
 - (D) That the proposed changes of topography minimize disruption of existing plants and/or ground cover on the zoning lot and all abutting zoning lots.
 - (E) That the proposed changes of topography provide for adequate fire safety access as determined by the Town of Long Beach Fire Chief.
- (Ord. 0203, passed 6-10-02)

We respectfully request your careful attention to these identified application deficiencies. Ensuring that laws and ordinances designed to protect the Lake Michigan beach are strictly and uniformly enforced is of high importance to the residents of our Town. Until these deficiencies in this Permit Application are remedied with data and documentation assuring compliance with the Public Trust boundary and the Long Beach Building and Zoning Code, a Building Permit for this proposed cannot and should not be issued.

Thank you


Thomas E. King
LBCA Board Member
On Behalf of the Long Beach Community Alliance

Cc: Building Commission Members
Town Attorney



Long Beach Community Alliance

February 9, 2017

Building Commissioner Larry Wall
Building Commission Members
Town of Long Beach
2400 Oriole Trail
Long Beach, Indiana 46360

Re: Building Permit Application for 1412 Lake Shore Drive

Dear Sirs:

I am writing on behalf of the Long Beach Community Alliance ("LBCA") to advise you that pursuant to the Indiana Open Records Act, we have reviewed the Permit Application currently pending before the Building Commission for construction on the property located at 1412 Lake Shore Drive. Our review indicates that certain information necessary to demonstrate compliance with Public Trust Doctrine and the Long Beach Building and Zoning Code has not been provided by the Permit Applicant

1. THE PERMIT APPLICATION FAILS TO DEMONSTRATE CONSTRUCTION WILL NOT TAKE PLACE BELOW THE COMMON LAW ORDINARY HIGH WATER MARK.

The Survey provided appears to be out-of-date and fails to show the location of the "common law ordinary high water mark" which has recently been declared by the Indiana Appellate Court to be the boundary of the Public Trust lands on the Lake Michigan beach. This is critical because no construction may be permitted on Public Trust Lands that would prevent or interfere with the public's use of any part of the Lake Michigan beach below that point.

Specifically, the Appellate Court held:

As the OHWM prior to 1995 was the common law OHWM as held in Shively, 152 U.S. at 41, the DNR's staking the OHWM at the measurements set forth in 312 IAC 1-1-26(2) most certainly conveyed or curtailed the rights of the people of Indiana in Lake Michigan. Therefore,

that portion of the Indiana Administrative Code is invalid and the OHWM remains that defined by common-law. [emphasis added]

In a footnote, the Appellate Court noted that "The factors used to define OHWM under the common law are also found in 312 IAC 1-1-26(1)." Opinion, p. 19-20. The common law factors stated in that Section are:

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- (E) The presence of litter or debris."

In order to ensure compliance with the law and protection of the public's rights, the Building Commission must require that the permit application for construction on the 1412 Lake Shore Drive property include a survey of the location of the common law OHWM on the property based on an expert delineation of these physical characteristics.

2. THE PERMIT APPLICATION FAILS TO DEMONSTRATE COMPLIANCE WITH THE LONG BEACH FLOODPLAIN ORDINANCES.

The Permit Application for construction on the 1412 Lake Shore Drive property does not demonstrate that the construction will not take place in or disturb land located within the Lake Michigan AE Zone "Floodplain" as mapped by the Federal Emergency Management Agency (FEMA) and shown in the attached 2013 FIRM Map or within any "Flood Prone" area as recognized by the community. The Permit Application also doesn't comply with the requirements of §155.36 and include information necessary to determine compliance with the floodplain construction standards stated in §155.50 and 155.51.

As the FIRM indicates the location of this proposed construction may fall within the mapped AE Zone, the Applicant must either:

1) Apply for a Floodplain Development Permit, consistent with the application requirements in §155.36, and demonstrate compliance with the Chapter 155 (including the General Standards in §155.50 and Specific Standards in §155.51) and obtain BZA approval of that Floodplain Development Permit pursuant to Long Beach Ordinance 154.91;

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 - (C) That proposed landscaped areas will complement the natural land form of the zoning lot and all abutting lots and rights-of-way.
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Thank you



Thomas E. King
LBCA Board Member
On Behalf of the Long Beach Community Alliance


Cc: Building Commission Members
Town Attorney

LONG BEACH BUILDING COMMISSION AGENDA 2-24-2017

CALL TO ORDER @ 1:05 pm

Roll Call: _

Joe Jogmen Robert Lemay Peter Byvoets Lou Mellen Lawrence P
Jogmen, Byvoets, Lemay present

APPROVED
3/10/17


POSTPONE THE APPROVAL OF MEETING MINUTES To review at the next meeting

FOCUS ON THE APPROVAL OF BUILDING PERMITS

Permits/Info received prior to

1. Long Beach Country Club Parking
 - a. No additional information has been received
 - b. No action will be taken at this meeting
 - c. Comments have been received by a few homeowners in the area of the proposed lot
 - d. A permit fee has been received but no permit issued

Mr. Wronski commented on the history of the site since the trees were cut and presented the Commission with a brief alleging the town ordinance violations if the permit were issued. Mrs Shrader and John Hayes also commented on the proposed permit (both against)
2. 1534 LSD Project to increase the volume of a non-conforming structure (154.030) Current request not approved. Contractor provided options for revised submission. Dempsey updated plans received too late for review
3. 3001 Loma Portal: Require a site survey showing: Lou will communicate to the homeowner the following documentation requirements.
 - a. topographic elevations,
 - b. septic location
 - c. also the height of uppermost roofline from pre-existing grade.
4. 2944 LSD permit for water damage repair and various internal modifications for painting. (contractor registration---painting?) Permit approved pending on site inspection to determine the actual work to be done.
5. 2008 Melrose Drive: Approved pending septic location
6. 2022 Belleview---new prints received looks ok to approve. No foot print or volume change. Approved but need a list of sub-contractors (see below)
7. 2320 LSD Review looks fine. Approved
8. 2110 LSD Sound system install has become a \$125,000 remodel and install of wood burning fireplace. Citations for working without a building permit. 2 Building Permits approved but fines totaling \$1000 are levied for working without a permit.
9. 2604 Oriole Trail (Flagstone) Mr. Kowalski stated that he wishes to have an extended completion date of December of 2019. Indicated he felt there were other eyesores in the town that were even more ugly. He was told building permit is required for a retaining wall. We will discuss the issue at the next meeting. Permit expiration dates must be researched for current ordinance.

Additional permit requests pending

2225 LSD Rec. 2/20

2206 LSD Rec 2/22 requests permit extension and Lou will do on-site to ensure permitted work being performed. Fines due? Contractor workman's comp non-existent.

2943 LSD no permits application

1412 LSD awaiting additional info

2105 Oriole

2738 Floral Trail

2908 Raphael nothing

LBCC awaiting info.

Contractor registration process will produce a completed 'certificate' for the contractor. Joe will work with bill to institute the process and

Question for Larry: Do all of the sub contractors working for the general require contractor registration? What is the industry SOP?

SWO's are to be enforced by the Town Marshall

Fone for working without a contractor registration = \$100/day. SWO to be issued on the spot. Town Marshal to enforce if disobeyed.

Next Meeting scheduled for March 10, 2017 @ 1:00 pm