

RESIDENT FEEDBACK RE: PROPOSED CHANGES TO SHORELINE PROTECTION ORDINANCE

UPDATED 10.7.19

To Long Beach Town Council,

I am submitting the below input on the proposed amendment to Section 154.2016.1 of the Town of Long Beach, Indiana Code of Ordinances (Attached). If you have any questions or require clarifying information, please feel free to contact me at the cell number identified in the email below. Due to work conflicts with proposed meeting time I will be unable to attend the meeting, as scheduled.

I fail to see how the proposed amendment to Section 154.206.1 – Stairs onto the Public Trust, meets the intent of the existing ordinance as documented in the following excerpt from the proposed amendment:

"WHEREAS, it is the intent of this Ordinance to add additional provisions to Chapter 154 that will adequately address the necessity for property owners to continue to protect their property while balancing the public interest in the conservation and enhancement of the natural shoreline environment and the adjacent Public Trust Lands"

As written, the proposed changes prohibit property owners "from constructing permanent stairs over existing seawalls if the stairs project onto or otherwise touch the public trust property. However, retractable ladders shall be permissible to the extent otherwise permissible under the law provided that any such ladder does not extend more than three feet (3') from the base of an existing seawall."

To understand the intent and value of the proposed amendment I would ask how this change promotes the conservation and enhancement of the natural shoreline environment and the adjacent Public Trust Lands? The fact that a property owner has a stairway that is installed on an existing seawall that provides the property owner access to the use of the Public Trust Lands does not adversely impact the protection of the Lake Michigan shoreline. In fact, a section of the proposed ordinance amendment allows for the construction of stairs and contradicts the assertion that the stairs associated with a sea wall adversely impacts the protection of the shoreline. The section referenced specifically states:

"Notwithstanding the foregoing provisions, stairs over dunes on properties without seawalls are permissible as these stairs tend to protect the natural dunes that protect lakeshore properties. The intrusion of these stairs onto the public trust should be minimized."

Of note, the stairs over dunes without seawalls are identified as a feature that tend to protect the natural topography of the shoreline. How can stairs on a seawall have an adverse impact on the natural topography? Additionally, the stairs over dunes on properties without seawalls are allowed on public trust land, contrary to the access allowed by stairs constructed on sea walls.

It is clear the proposed amendment, as written, directly usurps the rights and privilege of lakefront property owners to enjoy the use of the beaches directly adjacent to their private property. Additionally, the proposed amendment imposes restrictions on the rights of property owners that negatively impacts the right of lakefront property owners to enjoy a privilege that has been in existence for many years as identified by the following section of the proposed amendment:

"WHEREAS, the shoreline of Lake Michigan in Long Beach is a valuable natural resource that has for generations been enjoyed by the citizens of Long Beach and the State of Indiana."

So I ask, what is the intent of this proposed change? As written, it provides no additional protection for the Lake Michigan shoreline environment. Additionally, it takes away lake front property owners rights and privileges to enjoy the valuable resources of Lake Michigan, an action that is tantamount to the taking of an individual's rights without appropriate justification.

Gregg Hansen
Senior Emergency Preparedness Inspector
U.S. NRC, Region III
[2443 Warrenville Road, Ste. 210](#)
[Lisle, IL 60532](#)
(630) 829-9610 (w)
(224) 213-8885 (c)

Dear Members of the APC and Town Council,

I urge you to reject the proposed ordinance regarding construction of stairs and the movement of sand from sea walls.

Taking the latter item first, as you are well aware, the Town of Long Beach has no storm sewers. As such, all the rain water from the dunes where homes have been built and rebuilt expanded and more and more streets paved, south of Lake Shore Drive, flows down to the lake. Due to the town having no storm sewers, the water must flow through the property of the home owners to the north of Lake Shore Drive. In order to address the deluge of water that comes flowing toward our house, over the years, drains were installed. These drains run under our property and through the seawall (which has been there at least since the 1970's, long before we owned the home). The sand that is blown up against the seawall, over time, blocks these drains. By blocking the drains not only will our property be flooded but all of Lake Shore Drive will become a lake from stop 30 - 31. This is especially so since the Town has paved over the drain on the south side of Lake Shore Drive at stop 30 and all the water flows to the homes east of that point. We enjoy the natural look of the lake front as much as anyone else. However, unless and until the Town takes on the responsibility of dealing with the water run off from the homes south of Lake Shore Drive, the homeowners north of Lake Shore Drive should be permitted to address a problem. This ordinance would prohibit the homeowners dealing with the storm water problem, which is a problem that

is created by and effects the entire town. This ordinance would only serve to punish those who are doing their best to address the problem.

With regard to the stair portion of the ordinance, it seems premature to propose an ordinance where there has been no indication of the number and type of stairs that could potentially violate this ordinance. Moreover, it is unclear from the ordinance what definition of the "ordinary high water mark" the village is using. It will be difficult to follow an ordinance that is so vague.

I urge you to reconsider these ordinances and instead of trying to further divide the community, try to address the problems with solutions that would benefit the community.

Sincerely,
Margaret Carey

To Members of the APC and the Town Council:

I am writing to express our beliefs on the two proposals before the APC to prohibit stairs on sea walls that could potentially touch the public trust and the prohibiting of homeowners grooming their dunes on their property.

These two proposals are very hurtful and detrimental to the residents who own the property and also many of the neighbors surrounding their homes who access these stairs and use them freely. The home owner cannot control where the lake chooses to put its water at a certain time and should not be punished by stairs occasionally crossing the line. When the commission was asked how many stairs encroach and where are they, they answered that they did not know the answer to that and that no one had done a study of it. Also, even though my neighbors and I are severely impacted by this ordinance, we never received an official notice of this proposal. Did the DNR make an actual request for our town council to make this ordinance?

I found no record of this. Have there been excessive complaints about stairs impacting use of the beach or severe hardship caused by a home owner making his property accessible to his family, neighbors and friends.

On the matter of the dune grooming. Our sea wall is many, many yards away from the edge of the lake. Ten families along stop 17/16 went together in about 1984 to have a state of the art sea wall put in by Oselka Engineering in New Buffalo, Mi. This sea wall is buried and out of site today and is bothering no one and causing no damage to anything. There is no stop at 17 and many neighbors across the street and from inland access the beach from our property and keep their belongings here. We have always kept our weep holes open in the wall and free to discharge the water that cascades down from the dunes to the south of us and Moon Valley. At times this is a constant heavy stream of water. No home owner is at fault for the water stream. Many neighbors are not able to groom or keep the weep holes open and so it is doubly important that we do this. When the water backs up, causing an inland lake, all the septic systems stop functioning. I feel your decisions regarding these matters are punitive and not for the benefit of the village. They only add to the divisiveness already existing in the village. As

the gentleman at the APC meeting the other night said.—He is sick of living in a village where it is constant "Us against Them" attitude.

It would be very easy for a town to co-operate with residents to achieve goals that work for all. I have been told by a man at a public meeting who is currently working with the town that we people who live on the lake are selfish, mean and greedy. If I have questions regarding motives for ordinances such as this, this could be the reason why.

I urge you to permanently do away with these ordinances and work with home owners to achieve the best for everyone and the village as a whole.

Anthony and Joan Carey

1612 Lake Shore Drive

Long Beach In. 46360

Sent from Joan's iPad

Dear Town Council,

I have read your new ordinance proposal and minutes from the most recent previous meetings on the subject.

As a lakefront owner, I feel your proposed ordinance is over reaching. I am opposed to being able to repair my steps to the beach, should they need repair. I would think the public stop steps and all private steps to the lake should be maintained for safety.

In addition I am opposed to being able to groom the outgrowth of non indigenous plants and other plants that encroach upon my property that bring deer, deer ticks, and aggressive sea grass that kill the very plants/grasses we want to grow.

I oppose this ordinance.

Respectfully,

Risé Wendt

Long Beach Advisory Plan Commission:

In regards to Chapter 154, Section 154.206.1 Stairs onto the Public Trust

Every day the ordinary high water mark changes. Every day the amount of the lakefront property

owners' sea wall exposure varies. Some days it is 6 feet, some days 8ft or 10 ft etc., as such, it is impossible to have stairs that safely slope down off of a seawall that is varying in size and expect that it only extend 3 feet from that wall. Since the beach is a changing, natural resource, you obviously cannot put a number on how far stairs can extend from the seawall. Safety should be the first concern always, not worrying about how far a staircase extends.

Long Beach Lakefront property owners pay their share in taxes to have direct access to the beach just as all Long Beach residents pay taxes to have access to the beach.

Are people complaining about this?

People need to understand that the rise and fall of the water and the subsequent size of the beach is a naturally occurring cycle that all Long Beach residents need to adjust to together.

David & Michelle Benoit
2230 Lake Shore Drive

Sent from my iPhone

Hello;
I live on the beach at 1908 LSD.
My beach is relatively "flat" and I can access the beach (in both directions) rather easily.
My three neighbors have not been able to "groom" their beaches and have "sand shelves" that have been cut into the dune by the waves.
They can get to the beach by sliding down the "shelf" but find it impossible to get back up because the "shelf" is so "sharp" or "steep".
How does the Town of Long Beach intend to deal with the "shelves" that will be created at the public stops ?????
Thank you,
Gary Rochowiak

I am very much opposed to this new ordinance. It will only divide our wonderful community more

I have been a homeowner in Long Beach since 1986. I am a resident of Indiana and will be voting in the next election. I live at 2404 Florimond and please stop making living here more

divided. Thank you
Janet Andreotti

While not a full-time resident (yet), our family moved to LB in 1956 and my sibling and I now share our family home. In all of the years either living here or while visiting my parents, there has never been a problem with lakefront homeowners and the steps they installed to access the beach. Why are you creating an issue now? If some folks are building more than access steps, come up with guidelines to ensure they don't build into the public beach. But, if the steps are within their property line, let them build away.

As for moving sand, if it's within their property and they aren't violating any state/DNR laws, that's their right as a property owner. If they try to move sand that's on public property, that should not be allowed.

My suggestion is to focus on big picture issues and not the little things.

Bert Carstens
2965 LSD

Doug Frait <thedoktr8@aol.com>
Thu 9/19/2019 6:25 PM

this is in the town.s best interest and should be enacted

Thank you for addressing the concerns of the public in regards to the increasing amount of stairs projecting from homes onto the public trust property on the beaches of long beach.

I believe allowing retractable ladders still allows homeowners convenient and safe access directly from their homes onto the beach. Furthermore, the ladders will be a reasonable amount from the base of the sea wall to still allow usage but not impeding on the beach where people traverse and sunbathe/play. Furthermore, ladders that aren't retractable pose a hazard at nighttime as well as create debris in the lake and beaches after storms if these stairs are poorly constructed or made of wood which we have all seen floating along with lake this year.

I believe this is a fair compromise to the current situation we have of high lake levels and eroding beaches. If guidelines aren't established to govern this construction we could inevitably face each and every lakefront home with its own set of stairs going out 10+ feet,

or any length they choose, from their sea wall - thereby reducing the amount of beach/sand for traversing and sunbathing even further.

Thank you,
Kendra and Jeff Bartlett
2102 Oakenwald Drive

Long Beach Advisory Plan Commission

Robert Lemay

Peter Byvoets

Nick Meyer

Meg Collins

Bill Powers

Richard Jercich

Doug Wickstrom

I am writing this email today to express my sincere concerns about the proposed amendments to the town ordinances. My notes appear below and I am planning to attend the meeting this evening.

Background

I grew up in St. Joseph Michigan, attended Notre Dame, and have lived in the Chicago area but have returned to this region countless times. In 2015, I invested my family resources in this specific property at 2320 Lake Shore Drive to enjoy direct access to the Lake Michigan beach.

Unlike many in this community who seem to focus on conflict, I am not part of any alliance or association, nor am I involved in any legal proceeding or a political party. I am a well-intentioned neighbor trying to get something repaired to restore safe access to the beach. As I grew up, I was taught that being a good neighbor was one of life's most important contributions. Neighbors communicate, help each other and collaborate to solve common problems. It is important for everyone to understand that I am not concerned about neighbors in Long Beach using the beach in front of my sea wall. I have met new friends and found that we can learn a lot from discussions when we share the beach together.

Beach Stairs

For over a year now, I have been working to secure permission to repair my beach stairs. As a matter of record, I want to assure everyone here that Peter Kelly and I have made every effort to follow guidelines and seek appropriate permissions necessary to restore safe access to the beach from my property. Thanks to a neighbor I learned about tonight's meeting and adjusted my plans to be here since this meeting appears to be targeted to my project and to organize opposition to my repair project and prevent me from securing safe access to the beach.

I am no longer surprised, but continue to be disappointed so many are lining up to oppose my project so I feel compelled to set the record straight on the chronology of this project.

- My stairway is an existing legal structure that was built, and previously repaired, with permission. It now needs to be repaired and adjusted to be more safe and secure.
- The proposed design is consistent with many other beach stairways and is necessary for safe access given the topography of the land the town and I share at stop 24.
- The modified stairway design will have no adverse impact on the beach environment.
 - It will be suspended from the sea wall and not touch the sand.
 - It will only extend ~3 feet from wall
 - I am open to a retractable solution as long as its design allows safe access
- The elevation at the bottom of the stairway (585.7) will be above established guidelines as indicated in diagram submitted to the DNR
 - This is ~4 feet above the DNR ordinary high water mark (OHWM 581.5).

- This is ~2 feet above the level of my 2320 beach on 9.5.18 (time of application).
- This is ~1 foot above the local Flood Plain Elevation of 584.7.

Concerns with proposed ordinance

I oppose the proposed amendment and because it unfairly targets my situation and prohibits a safe access to the beach. It is also not in the towns interests to prevent timely repairs that could prevent things from getting worse. Finally, it is an existing structure for which this committee has publicly stated would be exempt from the new elements involved in the shoreline ordinance.

The natural topography of my land sits 9 feet above the shore so there is a need for a safe and secure structure to climb up and down. A ladder at an angle from 9 feet to 3 feet does not seem safe for children to climb.

- The town stops utilize stairs to safely navigate safe passages across seawalls based on the natural topography (Stop 22 is an example)
- Homeowners who do not have seawalls are allowed to retain the use of stairs to safely access the beach
- Why can't homeowners with a seawall do the same?

Finally, I would like to repeat my objections stated in the July 10, 2018 email to this organization which is still posted on the website that cites the extremely complex permission process and the absence of a grandfather clause for existing structures. This was repeatedly spoken about in front of this commission but it appears that those of us with existing structures have been targeted with prohibitions against the repair and maintenance of them.

At this juncture, therefore, I am respectfully requesting your guidance and willingness to **be a neighbor** and collaborate with me to restoration of my beach access at 2320 Lake Shore Drive.

Thank you for your attention and consideration.

Sincerely,

Jim
Brintnall

Brintnall.jim@gmail.com

630-209-6194

From: Jim Brintnall <brintnall.jim@gmail.com>
Sent: Monday, July 9, 2018 1:19 PM
To: 'lbplemay@gmail.com' <lbplemay@gmail.com>
Subject: feedback on shoreline ordinance

Robert LeMay,

Thank you for the opportunity to provide feedback on the proposed shoreline ordinance. I have attended both public hearings, listened to the town's shoreline consultants, and reviewed the draft documents on the website. I have several concerns and do not support this proposal as drafted—the scope of requirements necessary to secure permission for construction or repair appear to be extraordinarily complex and unreasonable. These rising lake levels are the most significant challenge for all of us to deal with and it requires long term collaborative solutions and reasonable approaches to dealing with the high tides that threaten the beach everyone enjoys.

As this great lake rises and starts to damage our town property at stop 24 and elsewhere, or our personal property, it sometimes necessary to take timely corrective action and repair structures to prevent further property damage or erosion of the property itself. During both meetings, there were verbal assurances from your committee that repair of existing structures would be permitted in their existing position (regardless of its location relative to the 106.6 line etc.) and that this 'grandfather' clause was always intended to be part of this initiative. While this is alluded to on page 13 (154.206) I believe that this language needs to be further clarified so that the right to repair existing structures in existing positions is more clearly documented.

Thank you.

Jim Brintnall

2320 Lake Shore Drive

I wanted to provide my thoughts on the following:

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LONG BEACH, LAPORTE COUNTY, INDIANA AMENDING PROVISIONS OF TITLE XV, CHAPTER 154.200, ET SEQ. GENERALLY KNOWN AS THE LAKE MICHIGAN SHORELINE PRESERVATION OVERLAY ZONING DISTRICT

I own a beachfront home at 1406 Lake Shore Drive. It seems overly burdensome to not be able to maintain a path from my house to the beach which involves the removal of dune grass. I agree that the Dune and the vegetation are important from both an erosion and aesthetics perspective; however, there needs to be some ability to maintain a path on the Dune in a respectful way.

Robert Brown

CEO North America, Managing Director

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To: Long Beach Advisory Plan Commission

We built our home at 2728 Lakeshore Drive ten years ago. For 7 years before that, we lived off the lake and were regular beachers at Stop 23 where we developed lots of friendships. We now share a seawall built in the 20s or 30s with our dear neighbors and the sellers of our property, who also lived off the lake for many years. Beach access did not exist on our part of the seawall so our landscaper/contractor erected stairs to the beach from our property - stairs of which we take as much pride and care as we do our home. These stairs were approved by the Town Council and we have enjoyed beach access year round and the company of our many friends and neighbors who visit Stop 28. Our great lake is to be enjoyed as well as honored and respected.

The revised ordinance proposed by the Long Beach Town Council would do little, if any, good for our beautiful lakeshore. Rather, it will sprinkle our beaches with temporary, junky metal and wood ladders. The town already has the authority to approve stairs on a seawall, and so can control accordingly what it may deem inappropriate.

In addition, this proposal could result in injuries to Long Beach residents and their guests trying to scramble over approved seawalls. There is no reason for the town to add a safety and health hazard to Long Beach residents and their guests.

Prohibiting repairs would also certainly endanger people. Repairs are intended to keep our citizens safe, whether it be to a bridge or a sidewalk, or a stair. The safety of our citizens is one of the most important duties of the Long Beach Town Council. *It is inconceivable that a town would prohibit a repair to an existing, approved stair structure. If it could do that, why couldn't it prohibit any kind of repair to any structure? In addition, the vagueness of the proposed language would result in arbitrary and capricious decisions.*

As for the grooming restriction, it would not protect Lake Michigan, but rather potentially harm it. The Indiana DNR has agreed and approved grooming as it deems appropriate and in the best interest of Lake Michigan. Any question of protecting Lake Michigan should be done with the agreement and a concurrence by the Indiana Department of Natural Resources. This is their area of expertise.

In summary, this proposed action endangers the environment and the citizens and guests of Long Beach, Indiana, and encroaches on the property rights of its citizens *without a clear and substantial benefit to the community*. The stated objective of the Long Beach Town Council is sound, but this proposed ordinance and amendment do not accomplish those purposes and should be withdrawn.

In addition, one of our most serious current problems in Long Beach would be greatly increased if this proposed revised ordinance is approved. It would highly likely result in new, expensive litigation on several fronts, including new property owners, existing property owners with approved stairs, and residents and guests of Long Beach that are injured as a result of this type of endangerment. It is not appropriate to increase the already very heavy burden Long Beach tax payers pay for [litigation](#) .

Respectfully submitted,

Leslie V. Denvir

2728 LakeShore Drive

Markjoldis <markjoldis@gmail.com>

Mon 9/30/2019 10:28 AM

- towncouncil@longbeachin.org;
- Ed Gaussein;
- William Eichhorn;
- jimvecc@gmail.com;
- jon@shabica.com

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Thank you for the opportunity for public input on this proposed ordinance. I am not in favor of the town dictating what we can and cannot do on our property. The facts are the city trying to deny access to the beach over our seawall. The current stairs have been in place for probably 30 years. As you know overtime the stairs may have to be replaced . according to this ordinance you are denying us the ability to rebuild repair and replace the steps in the future, again you are as a city Council taking control over our property. It's very hypocritical that the city can rebuild their wooden stairs at the beach stops but as a private homeowner we will not be able to even though both sets of stairs may now or in the future be in the what you referred to as public trust land. Moving forward at least there should be a grandfather clause for all current stairs for repairing and replacing and there should be a process for the vacant lot for them to show cause for putting stairs in. In conclusion I think this ordinance it's something we do not need. Mark Oldis 2944 Lakeshore Dr.

Sent from my iPhone

Patrick Stinson <patstinson@sbcglobal.net>

Mon 9/30/2019 12:33 PM

- towncouncil@longbeachin.org

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We strongly oppose the proposed APC changes to Long Beach's Shoreline Protection Ordinance. These changes are unnecessary as proven over the past decades. The ongoing maintenance of the stairs, seawalls and dune grooming have not had any negative effect on our shorelines and have enhanced the safety and access. In addition, the maintenance has helped to protect the shoreline and dunes.

As evidence of this, for years the Indiana DNR has issued permits to allow dune grooming. They have the knowledge, expertise, resources and experience to make these determinations. The DNR is also well aware of the natural flow of Lake Michigan's bed of sand from east to west.

The APC members at the its September 16, 2019 meeting had said they asked the DNR for guidance regarding these shoreline issues. The aforementioned permits issued by the DNR should be considered as guidance in itself.

At the September APC meeting Pete Byvoets stated, "Stairs above the Public Trust, the definition here in my opinion, the Town has no authority to regulate those stairs." So why would the Town have authority to regulate dune grooming or seawalls above the Public Trust?

This isn't about sight lines or the environment, this is about safety and property protection.

What will the APC come up with next, deny homeowners the right to remove snow from their property?

Respectfully,

Pat & Laurie Stinson
1516 Lakeshore Dr., LB

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William Eichhorn <wweichhorn@gmail.com>
Mon 9/30/2019 1:27 PM

- towncouncil@longbeachin.org;
- Mark Oldis

Long Beach Advisory Plan Commission,

We strongly oppose the proposed Shoreline Protection Ordinance. We purchased our lake front home to enjoy the lake. Without stairs to the beach we would have no way to access the beach other than to go to a Stop and walk back to our beach area. I am not a lawyer but eliminating our access to the lake from my lake front home seems un-American if not illegal.

We are strong supporters of actions to protect the lake shore and lake. We understand the balance between the public's interests and private rights of home / land owners. This proposed ordinance, however, goes beyond what is reasonable. Restricting our ability to access the lake that adjoins our property seems as obstructive as restricting our access to the public road that adjoins our property would be.

I believe the "public trust property" that the ordinance attempts to protect refers to the public land below the OHWM. That seems to me to be a troubled definition given the uncertainty of exactly where the OHWM is on any given property.

It also seems hypocritical that the town can repair its stairs to the beach but private land owners can not based on the proposed ordinance.

In addition to our home on the lake front we have an adjoining empty lot. Eliminating the future right to build stairs from that lot to the lake dramatically decreases the value of that lot. The town should not have the right to take this value from us without compensation. This is not an eminent domain seizure of property where there would at least be fair value compensation. Therefore it seems to me to be a poorly thought through ordinance that would not stand up in court if challenged.

We feel this ordinance to be fair must be revised to:

- Enable existing and future property owners to maintain and replace their stairs in perpetuity.
- Allow a process for new construction on currently empty lots or on existing lots to successfully petition for access to the lake from the property.'

We appreciate your consideration of our input.

Bill & Lee Eichhorn
2940 Lake Shore Drive
Long Beach, IN . 46360
Mobile: 630-842-3753

Knight, Michael <Michael.Knight@btlaw.com>
Mon 9/30/2019 2:27 PM

- townCouncil@longbeachin.org

Dear Council and APC Members:

I represent Longwood Partners, LLC, 2216 Lake Shore Drive, Long Beach, Indiana. My client objects to the Section 154.206.1 proposed ordinance for the following reasons:

1. The newly proposed Section 154.206 “Stairs onto public trust” ordinance seeks to unconstitutionally take away the riparian owners’ constitutional right to access the navigable water to which their property abuts. Make no mistake, the State of Indiana acknowledged that Gunderson, and those similarly situated, are “riparian,” have property that touches/abuts Lake Michigan and whose property has constitutionally protected rights. These rights include:
 - (1) the right of access to navigable water;
 - (2) the right to build a pier out to the line of navigability;
 - (3) the right to accretions; and
 - (4) the right to a reasonable use of the water for general purposes such as boating, domestic use, etc. [*Parkinson v. McCue*, 831 N.E.2d 118, 128 \(Ind. Ct. App. 2005\)](#). See also WATER AND WATER RIGHTS § 6.01(a) at 6-7 and 6-8 (bundle of riparian rights includes at least the following rights: access to the water; to build a wharf or pier into the water; to use the water).

These rights were not changed by the Gunderson lawsuit.

This commission now seeks to take away the owners’ right to access the lake—the very reason why the owners bought and built here; the reason why these properties cost what they do. These owners still have property abutting Lake Michigan and have a constitutional right to access the Lake from their property. You cannot prohibit their access. This ordinance seeks to punish those whose properties abut the Lake. However, these owners have a superior right to *access* the Lake and they have an *equal right* in the use of the Lake. This ordinance is a taking of the owner’s constitutionally protected right to access the Lake and another invitation to a lawsuit against the Town;

2. This ordinance wrongly assumes all seawalls abut the public trust; this has not been shown for any property;
3. This ordinance wrongly assumes that north of every seawall is public trust property; this has not been shown for any property;

4. This ordinance wrongly assumes stairs preserve the dune but somehow seawalls do not; there are no such facts to support this illogical conclusion; see the washed out stop 24 stairs;
5. This ordinance is unnecessarily duplicative of the “topography” and separate “sand moving” ordinances already on the books;
6. This ordinance wrongly fails to allow “grandfathering” of properly permitted items and is a taking of same, another invitation to a lawsuit;
7. This ordinance wrongly assume that the Town, not the IDNR, has the authority to regulate the area of the public trust (assuming without conceding, that any stairs may be in the area governed by the IDNR);
8. The approved “temporary” or retractable ladder, no more than three (3) feet away from the base of the wall, is unsafe, not suitable for children, elderly or infirmed, not safe for first responders and contrary to building and general safety standards;
9. Finally, this ordinance wrongly and only in a wrong conclusion fashion claims to be a public health, safety and welfare matter. It is not. It merely seeks to punish the Lakefront owners.

We urge you to withdraw this proposed ordinance, leave the riparian owners alone in the quiet enjoyment of their lakefront property and avoid further litigation.

Thank you for your consideration.

Michael Knight

Michael Knight | Partner

Barnes & Thornburg LLP

700 1st Source Bank Center, 100 North Michigan, South Bend, IN 46601-1632

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Jason Linn <jlinn@linnllc.com>

Mon 9/30/2019 2:58 PM

- town council@longbeachin.org

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2516 Lake Shore Drive:

We have been at this address for over 30 years and have had and to continue to have this wonderful family home that we are so lucky to have! 3 generations of our family have spent 6 months out of the year at this home, with a 4th just beginning. We love long beach, it is in our blood and hopefully will continue to be a part of our family for generations to come!

The past few years however have put a stain on our town and yes it is our town too, with the laws, ordinances, and “socialist “ policies coming out of the town council of LB without check. The latest is not being able to upgrade or even repair stairs for beach access coming off of a sea wall. Some of these homes have high sea walls that are 50+ years old - including ours - that have been under serious wave damage this year with the high water levels. The stairs and walls will need to be repaired most likely next spring, as this winter is going to be especially brutal with waves unchecked! Being as it is still private property - we reserve the right and freedom to repair, fix, replace, as the homeowners see fit, without any daily fine. Safety is also a primary issue, besides the fact it is private property - and we aggressively oppose this preposterous ordinance.

Regards,

Jason Linn

Jason Linn

jlinn@linnllc.com / 312.896.2008 (direct)

Linn & Associates

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Jim Vecchio <jimvec@me.com>
Mon 9/30/2019 3:32 PM

- townCouncil@longbeachin.org

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Jim Vecchio 2948 LSD

I am not in favor of the new ordinance regarding seawall stairs and dune maintenance

I feel this is a another invasion of property rights of people who have purchased lakefront homes and will lend itself to lawsuits which we are paying against ourselves.

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tom.vujovich@gmail.com
Mon 9/30/2019 3:46 PM

- townCouncil@longbeachin.org

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My wife and I own 1806 Lakeshore Drive. Our permanent home is Columbus, Indiana.
I am writing to request your consideration of the following points in the proposed ordinance.

5th Whereas : this should include property owners whether they are residents or not. By virtue of state law, we pay the highest residential property tax since this is a second home. Additionally, because we are not full time residents we put the least amount of strain or demand on the town's public services or other institutions supported by our tax dollars. Some recognition of this would be appropriate.

This Whereas also talks about the "significant economic value to Northwest Indiana" provided by the Long Beach Lakeshore. I don't believe that this claim can be supported by data. If so, it would be helpful to know what that value (short of residential tax revenue) would be. This Whereas feels like a nice sentiment but lacking veracity.

6th Whereas: addresses the necessity for property owners (lakeside only?) to continue to protect their property while, balancing the public interest. This clearly implies that property owners are not protecting their property while the town board has imposed rules and ordinances which make this difficult if not impossible, e.g. sea wall restrictions and septic moratorium.

7th Whereas: there is nothing in the proposed ordinance impacting public health, safety or welfare. Again, seems like you are trying to make a case where none exists. If there are legitimate examples enumerate them.

Section 1. Stairs onto Public Trust

This says that the stair can be no more than 3' from the base of the sea wall. Depending on the height of the wall this may create a dangerous angle. The ordinance needs to provide greater flexibility as long as it doesn't endanger the public.

Second Paragraph - the Ordinance States the need for property owners to protect their property. This paragraph prevents that from happening. As written, a property owner could not provide even basis maintenance and repair to an existing stair. If the stairs must be replaced due to a dangerous condition that is one thing but as stated this is overreach. Most communities permit improvements as long as the non-conformance isn't increased. I have served as a member of our communities Board of Zoning Appeals as well as President of the Plan Commission and this is not consistent with Columbus or most other communities I am familiar with.

Third Paragraph - implies that seawalls contribute little to nothing in preserving or growing of the dune. I don't believe the science would support this. The distinction the ordinance makes between properties with an existing sea wall and those without doesn't make sense to me.

2.(d) - a fine of \$250 per day is unreasonable if it does not give consideration to weather, season and availability of plant material. I appreciate the need to discourage those who would knowingly violate any ordinance. The way this is written seems only to exact retribution unreasonably.

Thank you for the opportunity to express my concerns. I, too appreciate the importance of protecting the natural resource that we have along the Lakeshore. My belief is that the proposed vehicle for doing so is flawed. Greater discussion and conversation with those whose property is directly impacted would be a better step. It is my understanding that the first public hearing on this was overwhelmingly against the ordinance. Since the revised version did not show the mark-ups I can't tell where the town may have reconsidered and revised its thinking. This is unfortunate.

Sent from my iPad

Virginia Vecchio <vvecchio3@gmail.com>

Mon 9/30/2019 3:49 PM

- towncouncil@longbeachin.org

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I object to the Long Beach Advisory Plan Commission proposed changes to the existing Shoreline Protection Ordinance regarding seawall stairs and dune maintenance.

Once again, it seems like the Commission is trying to remove the rights of private property owners from the control of the property owner, which will only lead to more litigation. This proposal is putting unfair restrictions on the lakefront owners.

Virginia Vecchio

[2948 Lake Shore Drive](#)

[Long Beach, IN.](#)

Kathleen Hanley <kathymhanley@gmail.com>

Mon 9/30/2019 4:04 PM

- towncouncil@longbeachin.org

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Please note, I am forwarding the comments from Mr. Knight as my public comment.

Sincerely,

Kathleen Hanley

geocullen@aol.com

Mon 9/30/2019 4:23 PM

- towncouncil@longbeachin.org

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You have received an e-mail from attorney Michael Knight stating objections to the proposed lake front ordinance.

I wish to concur in his objections and further state there is no reasonable or logical basis for the ordinance in the first place.

It's time to stop proceeding with proposals that are not in the best interests of the entire community and which will only result in increased cost and expense to all the homeowners of Long Beach.

George Cullen
2724 Lakeshore Dr.

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Robert J Daley MD <rjdaleymd@gmail.com>

Mon 9/30/2019 4:46 PM

- townCouncil@longbeachin.org

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We have reviewed the proposed changes to the existing Shoreline Protection Ordinance. We are in complete agreement with Michael Knight's comments, which he has provided the Plan Commission.

In addition on the matter of "Dune Grooming", we have been maintaining a foot path to the beach on our property for over 50 years.

This path enables access to the beach from our private property. The size of this path has not varied over the years. We are not interested in damaging the dune or removing all of our dune grass. We are simply interested removing the wind-blown sand that accumulates in our path over the winter and restore our foot path each spring.

This ordinance as worded does not allow us to maintain our footpath. We don't find this reasonable or fair, when we see the town altering the dune at the bus-stops and in some places you have a wooden walkway on top of the dune all the way to beach. Please consider adding to this ordinance, allowing maintenance of a foot path to the beach.

Thank you for your consideration.

Moir K. Daley & Robert J. Daley M.D.

1420 Lake Shore Drive

Long Beach, Indiana

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NEIL DOYLE <neilpdoyle@gmail.com>

Mon 9/30/2019 5:07 PM

- townCouncil@longbeachin.org

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> My name is Neil Doyle and I am the owner of 1616 Lake Shore Drive.

> I am 100% against this proposed ordinance as well as any ordinance with heavier restrictions on Lake Shore Dr. owners versus all owners and/or those ordinances which infringe on basic property rights by law.

> I respectfully request the council to bring an end to the nonsense, anger, divisiveness and bitterness that have so far guaranteed years of litigation still ahead of us and that for which each and every resident will inevitably bear the cost.

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> Thank you

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nicola chalik <nchalik@hotmail.com>

Mon 9/30/2019 5:13 PM

- townCouncil@longbeachin.org

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I am in complete agreement with Michael Knight's comments which he has provided to the Plan Commission. In addition, with regard to dune grooming, I live between bus stops 14-15. I have a dune in front of my house. In order to provide beach access, I must maintain a beach path, which I or my family has done for over 50 years. I have a DMR permit to plow my narrow path to provide this access to both the elderly members of my family and the toddlers. I am not interested in removing this dune or changing the path, I just want to provide access. The ordinance as written does not allow for me to maintain the path which is located on my private property. Please consider modifying the ordinance to allow this access.

Nicola Chalik
1412 Lake Shore Drive
Long Beach

Mary O'Neil <brock327@aol.com>

Mon 9/30/2019 5:19 PM

- town council@longbeachin.org

I believe you have received an email from Michael Knight which lays out quite clearly why this ordinance should not be passed or even considered.
I concur with all of his statements.

Mary O'Neil
1532 LSD

Sent from my iPhone

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Gunderson, Dave <DaveGunderson@BoisePaper.com>
Mon 9/30/2019 6:00 PM

- town council@longbeachin.org

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To the Town of Long Beach,

I strongly disagree with the proposed changes to the Shoreline Protection Ordinance including the proposed rules for seawall stairs. I also am opposed to restricting dune grooming on private property.

My family lived on the beach for 50 years, and I was an eyewitness to the effect wind and waves had on the beach. For many years Lake Michigan was low creating a very large beach. During low water years dunes formed, only to be washed away when the lake returned to higher levels. Sometimes wind driven sand would cover our garden, patio, and other property requiring "dune grooming". In 1964 the dune was so high and steep in front of the seawall we needed to bulldoze it to allow access to the lake.

During high water periods only our seawall prevented our house - and Lake Shore Drive from washing away. Without Gunderson family money invested in a seawall, Lake Shore Drive would be gone.

Sincerely,
Dave Gunderson

I wholeheartedly agree with Attorney Michael Knight's following message.

Paulette Harnach <paharnach@yahoo.com>

Mon 9/30/2019 6:35 PM

- townCouncil@longbeachin.org

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I agree with Michael Knight.

Paulette Harnach

[2005 Lake Shore Drive](#)

[Long Beach, IN. 46360](#)

Sent from my iPhone

George Goich <dedoskip@me.com>

Mon 9/30/2019 7:54 PM

- townCouncil@longbeachin.org

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We agree with Michael Knights opinion of the APC is marking to the shoreline. George Goich a full time voting resident. Thank you

Sent from my iPhone

Michelle Benoit <mmbenoit@me.com>

Mon 9/30/2019 8:27 PM

- townCouncil@longbeachin.org

We agree with the statements by Michael Knight.

David & Michelle Benoit

2230 Lake Shore Drive

Sent from my iPhone

Robert Boyce <boyceindustries@aol.com>

Tue 10/1/2019 11:23 AM

- towncouncil@longbeachin.org

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Yes, I agree with Michael

Robert Boyce

Judy Linn <judylinn10@gmail.com>

Tue 10/1/2019 12:25 PM

- towncouncil@longbeachin.org

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We totally agree with Michael Knight

Our Family lives 6 months of the year at 2516 Lakeshore Drive. We have owned it for 30 years. It is not a big, fancy house on the Lake. Just a cottage. However, we now have four generations who love it and love the Lake. We have sat quietly by and watched with sadness as Long Beach Town Council has waged their war against people who own lakefront property. When we bought our home, we could have purchased a beautiful large house off the Lake. However, we chose our home, because it was on the Lake.

My Father raked the beach when we had the Alewhites covering it. We have always picked up cans, junk, and whatever not just on our beach, but where ever we walked. My Mother and Sister owned the shop "Ladies of the Lake." They met so many interesting great people in their shop. My Mother gave knitting, crochet, and needlepoint lessons and my sister, an interior designer, worked her magic and sold antiques. Two of our sons met their wives in Long Beach. We may not be all year-round residents, but we certainly are locals.

Our country is divided with animosity and anger. Please lets us not continue to destroy the atmosphere of friendship and goodwill that we always had in Long Beach.

We are members of the Long Beach Community also, despite the fact we have the good fortune to live on the Lakefront.

Judy and Gordon Linn

Zach Neff <zachary.neff@sonoco.com>

Tue 10/1/2019 3:26 PM

- towncouncil@longbeachin.org

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This is a tough one for me because I am an avid support of the public's right to the beach and I volunteer on the Parks and Recreation Board. I don't think we would be having this conversation at all if it were not for the high water levels of Lake Michigan.

That being said, I walk on the beach nearly every day and I don't enjoy having to walk around and/or under stairs that are protruding onto the public beaches. Given the fact that we cannot have a rule that is only in effect based on weather and water levels, I believe it is fair to ask that they not build permanent structures that reach out onto public beaches. On the other hand, it is this type of rule that is going to cause further animosity between the Council and the lake front homeowners. They will certainly view ladder structures as hazardous and they will see using our Stops as a way down to the beach as a hardship. I am someone who wishes that this divide between the current leadership and the challenging party didn't exist, but given what I have seen so far it's not going away anytime soon. I am; however, in support of the rules.

I am strongly in favor of fining homeowners who damage and alter the dunes. The days of using heavy equipment to move sand and level the dunes need to stop immediately.

Zach Neff

2312 Foxdale Trail

Tracy Vedok <tracyvedok@sbcglobal.net>

Tue 10/1/2019 4:04 PM

- towncouncil@longbeachin.org

I agree with Michael Knights viewpoint.

Tracy Vedok

Sent from my iPhone8 Plus

Mike Johnstone <stones17@comcast.net>

Tue 10/1/2019 6:33 PM

- towncouncil@longbeachin.org

Long Beach Town Council,

I am in full agreement with Mike Knight's comments.

Mike Johnstone

Sent from my iPhone

Tim Perry, REALTOR/Mortgage Broker <tim@timperryteam.com>

Tue 10/1/2019 9:10 PM

- towncouncil@longbeachin.org

I agree with this attorneys email. Leave the people north of Lake Shore Drive alone!

Kathy <c.brown2006@comcast.net>

Mon 10/7/2019 8:09 AM

- towncouncil@longbeachin.org

This ordinance is ridiculous. You were setting the town up for more lawsuits. Yes the lake is very high. This too shall pass. Please do not pass this ordinance. Kathy Brown

Sent from my iPhone

Carol Sullivan <carolsulli@sbcglobal.net>

Mon 10/7/2019 11:33 AM

- townCouncil@longbeachin.org;
- Bill DeFuniak

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We live closer to Highway 12 than Lakeshore Drive, so we mostly ignore the caustic lakefront battles going on. But seriously, hasn't this war subsumed enough town oxygen? Even we have noticed that the Town Council's repeated ordinance actions aimed at boxing in lakefront homeowners are a waste of precious tax dollars, as costly lawsuits continue to ensue. Stop the madness already!

I wish the Town Council would pay more attention to the rest of the town's issues, starting with the condition of the Community Center on Oriole Trail. I am in that building several days a week for exercises classes and use of the YMCA, not to mention popular community events like The Girlfriend Sales. Just this morning I observed the extensive rust and peeling paint along the exterior wall across from the Pilates room. And don't get me started on the condition of the rest rooms. It's a disgrace when one considers what could have been done in upgrading this valuable neighborhood amenity instead of bleeding legal fees for the non-stop escalation of lakefront issues.

Let's get serious and move on.

Carol Sullivan
2602 Grande Mere Dr.

Jeff Koehler <cecefinn@gmail.com>

Wed 10/2/2019 12:23 PM

- townCouncil@longbeachin.org

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Hi Distinguished Council Members,

I have read the proposal and find them in line with what we would expect of property owners and caretakers of the lakeshore.

I do feel the fine of \$250 + Fixing the violation is low. A \$1000 fine may be more in line.

Thank you

From: J & D <jdmengel@comcast.net>
Sent: Monday, October 7, 2019 7:41 AM
To: Bill De Funiak <ClerkDeFuniak@lbpdin.com>
Subject: Beach access

Bill,

I believe the current beach access ordinance being proposed by the town council is unnecessary, unwarranted, and lacks any imaginable merit. In fact we can agree to disagree about the exact demarcation of private property to public. But the public portion of that is state jurisdiction not town. Hence the town lacks interest in this discussion. So, why would the town choose to create yet another issue? More legal battles at their cause.

What cause are these people serving?

I support the Michael Knight opinion document.

John Mengel

Sent from my iPad

From: Marci Meyer <marcimeyer@sbcglobal.net>
Sent: Monday, October 7, 2019 1:01 AM
To: Bill De Funiak <ClerkDeFuniak@lbpdin.com>
Subject: Please deliver to Long Beach Advisory Planning Commission/Town Council

To the members of the Advisory Planning Commission and the Long Beach Town Council:

Please be advised that I support Michael Knight's opinion (read below) of the proposed changes you are making to the LB Shoreline Protection Ordinance.

Thank you,

Mary E. Meyer

2306 Fairway Drive

Long Beach, IN

(972) 741-5196 (cell)

Long Beach Community Alliance

September 30, 2019

To: Chairman LeMay and Members of the Town of Long Beach Advisory Plan Commission

From: Long Beach Community Alliance

Please accept the following comments on behalf of the Long Beach Community Alliance ("LBCA") in response to the Advisory Plan Commission's request for comments on certain

proposed amendments to the Town Shoreline Protection Ordinance,

1. LBCA objects to the proposed new Section 154.206.1 which would allow the Town Building Commission to issue a permit for permanent stairs to be suspended over a seawall and upon and above public trust property by up to three feet. The Town has no jurisdiction to issue permits for construction on or within the air space above the public trust beach. Certainly, the Town could not issue a Building Permit allowing one property owner to construct a structure extending onto or hanging over another person's property? The same is true in the case of property owned by the State and particularly when it is held in trust for the public.

2. This type of structure even if not touching the ground will interfere with and prevent public use of that portion of the public trust property. Even the State, which is the owner of that property, cannot allow a permanent structure to be built on the public trust shore. This would violate the public trust doctrine as recently explained by the Indiana Supreme Court in *Gunderson v. State*. The APC's proposed hanging stair rule exceeds the Town's authority and will be *void ab initio* upon adoption and subject to

litigation. While litigation is pending, this proposed new rule would only mislead the Town Building Commission and members of the public as to the scope of the Town's Building Permit authority and become a bad precedent in other cases.

3. A hearing was recently held by the Indiana DNR in the Michigan City Town Hall on a permit application involving a request by a Long Beach resident to construct a stair hanging over a seawall and above the public trust beach. (LM-220) A copy of LBCA's comments in that proceeding is attached here. Several Long Beach residents testified at the IDNR public hearing that they have observed structures, including stairs, hanging over the beach in disrepair and creating a public health hazard. Multiple photographs were submitted in that proceeding showing hanging stairs washed onto the beach or damaged and left hanging precariously over the public beach. The DNR has not yet acted on that permit application.

4. This same proposed new rule Section 154.206.1 would also appear to permit and even encourage the construction of stairs over dunes above and below the OHWM. It states, "Intrusion of these stairs onto the public trust should be minimized." Minimized?! The Town cannot permit ANY construction on the public trust shore. The Town must be very careful to avoid assuming it has authority to permit construction activity on the public trust shore – even minor construction.

5. Moreover, even as to stairs through the dunes above the OHWM, we disagree with the APC's stated assumption that allowing the construction of stairs "tend[s] to protect the natural dunes..." What evidence does the APC have of this? Notably, Michigan City has banned new trails through the dunes from private property based on its finding that it tends to weaken and erode the dunes. Before the APC adopts a rule encouraging private stairs being constructed through the natural dunes, it should require evidence that construction of such stairs will not contribute to erosion. Quite likely, when these stairs end at the edge of the dune, access to the beach will either require walking or sliding down the dune face or require construction activity on the dune face (which itself is eroding) and a landing below the OHWM which, as stated above, is impermissible under the public trust doctrine and beyond the Town's permitting authority.

LBCAs urges the APC to delete the proposed new Section 254.206.1 from the APC's proposal.

Thank you for the opportunity to present these comments.

Respectfully submitted,

Patricia F. Sharkey

Board Member

On Behalf of the Long Beach Community Alliance

From: Ed Gausselin <Egausselin@argentgrp.com>

Sent: Monday, September 30, 2019 4:49 PM

To: dougwickstrom@comcast.net <dougwickstrom@comcast.net>; peterbyvoets.lb@gmail.com <peterbyvoets.lb@gmail.com>; gorman195@sbcglobal.net <gorman195@sbcglobal.net>; meyernick@hotmail.com <meyernick@hotmail.com>; rjercich@gmail.com <rjercich@gmail.com>; Bill

De Funiak <ClerkDeFuniak@lbpdin.com>; deputyclerk@lbpdin.com <deputyclerk@lbpdin.com>; Kelly Gausselein <kelly@gausselein.com>; Christopher Willoughby <clw@braje-nelson.com>

Subject: Stairs Amendment to Zoning Ordinance

Commission Members:

First, I apologize for sending this to my existing list of commission members which does not include the newly named members.

With respect to the proposed amendment to Zoning, I cannot support the ordinance in its current format. I believe that the ordinance, if ultimately passed, will result in further resentment among those impacted, additional litigation given the questionable applicability in many areas along the lake shore and will render enforceability a “moving target” given the fluctuating nature of the Natural Ordinary High Water Mark. I also question the ability of the Town, its staff, the Town Council and the various commissioners and those in charge of permitting to handle the enforcement of this ordinance given the history of lax enforcement of ordinances that are already enacted and which have failed to address those matters that they are designed to address.

In regard to the Natural Ordinary High Water Mark, who will set the jurisdictional boundary of where the NOHWM begins and how often will this be updated in order to keep consistent with the real time (and ever changing) conditions of the Lake. It is logical that the Indiana Department of Natural Resources or the Army Corp of Engineers set this mark. However, it seems that the Town Council and the Commission seeks to enact an ordinance that will take priority over any IDNR regulation without understanding what the jurisdictional limit will be. It would seem that the logical party to enact, enforce and address violations of any such ordinance would be the Indiana Department of Natural Resources, who is better equipped to enact unified shoreline protection ordinances in a more consistent manner for all towns that are along the shoreline.

The ordinance seems to duplicate ordinances already in place that seek to govern the movement of sand and changing topography. Given the duplication, I believe that additional ordinances will need to be passed to eliminate the duplicative sections similar to the efforts to clean up the zoning code in 2018, at additional cost to the Town.

Finally, the ordinance, as drafted, seeks to limit certain rights of property owners along the lake, which were not changed or altered by the Gunderson decision. The Gunderson decision acknowledged that property owners along the Lake still possessed a superior right to certain aspects of the Public Trust Land. For instance, riparian rights remained unchanged by Gunderson. Additionally, the ordinance should not be applicable to land that abuts an owner's property that is not Public Trust property. This is the case for many of the impacted homes. Think stops 14, 15, 16, etc.

In the event that the Commission elects to move forward with the ordinance, despite the overwhelming and unanimous objection of the citizens at the prior meeting, the inherent difficulty in enforcing laws for which the limits are continually moving and which enforcement will likely lead to additional litigation, I have attached a copy of the ordinance that I have redlined to illustrate my proposed changes.

Thank you for your time and consideration on this important matter.

Ed and Kelly Gausselin
