



June 23, 2022

VIA EMAIL [supervisor@longlaketownship.com](mailto:supervisor@longlaketownship.com)

Ron Lemcool, Supervisor  
Long Lake Township  
8870 N. Long Lake Road  
Traverse City, MI 49685

Re: Long Lake Township Ordinance

Dear Supervisor Lemcool:

It has come to my attention that you have directed the Planning Commission and staff to not allow my client, Bob Barnes, to have a “proxy” present to participate in the Shoreline Subcommittee meetings which are currently ongoing. This development is but one of several developments that concerns my client, and should concern every citizen of the Township, as it is indicative of an apparent adverse bias against my client with respect to the development of contemplated Master Plan amendments. This letter is to identify these concerns so that they can be memorialized for the public record. I would respectfully request that this letter be made a part of the public record with respect to these matters, including the record of any amendment of the Master Plan or Township Zoning Ordinance which may result from the current Shoreline Committee efforts.

As you know, this Master Plan amendment process started with the Township’s adoption of a moratorium preventing the creation of any “manmade or artificial body of water...”. This moratorium was issued, not based upon any groundswell of new applications for land uses which would typically compel such an action, but instead, from the request of one land owner for a permit to create an access point for a proposed boathouse to Long Lake. The matter was then referred by the Township Board to the Planning Commission for the Planning Commission to consider potential changes in the Master Plan or Zoning Ordinance with respect to these types of activities. Once this matter arrived within the control of the Planning Commission, a motion was placed by a planning commissioner, mind you without any prior notice to the public, that the Master Plan should be amended in a way which would preclude the creation of any “manmade or artificial body of water ...”. This was done without taking any public comment or even offering the opportunity for public comment through public notice on the issue. On this basis, the Planning Commission took action adopting this non-noticed motion. I did review your attorney’s investigation letter regarding these odd departures from standard legislative practice where he opines essentially that so long as an action item is on the agenda, no public notice is required. Even if that were accurate, one has to seriously question the motives behind the action and whether or not adopting resolutions to change a Master Plan without any public notice or public comment is good public policy.

Also of concern with respect to the Planning Commission’s treatment of this matter, members of the Planning Commission stated twice on the record during Planning Commission meetings that the purpose of this Master Plan amendment endeavor is to specifically address my

client's proposed activity. I think that would appear, by most with any level of objectivity, to be "targeted enforcement" of these activities toward my client.

Next, as you are well aware, the Planning Commission created a Shoreline Committee to review shoreline activities in general. This endeavor led to the appointment of several subcommittees where Planning Commission members could interact and engage with concerned members of the public on the development of Master Plan goals for shoreline management. I requested to be on a subcommittee and I was declined the right to participate on a subcommittee, as I was not a Long Lake Township resident. I am not aware of any legal authority which permits a township to interpret a right of public engagement as vesting only in township residents. Even one of my law partners who *is* a Township resident was officially denied the right to participate on the subcommittee by Township staff. *Also, in the arbitrary assignment of individuals to subcommittee groupings by Township staff, I find it curious that the dredge activity subcommittee (Group A) was populated by no less than five members of the community who had previously articulated a strong position against my client's proposed activity. Some of those members not only showed up to offer public comment in opposition of my client's proposed project, they also placed their names on a list of individuals opposing my client's project and identified their opposition when applying to be on the subcommittee. Why the Township deemed it appropriate to "stack the deck" of Group A members with these unidirectional and galvanized individuals seems, to put it charitably, curious.* My client was invited to participate on the Group A committee but, due to a demanding work schedule, was not able to attend all of the committee meetings. My client requested that he be able to select me as his proxy to attend and participate in subcommittee deliberations, but that request was denied. Later, at least one member of the subcommittee indicated a willingness to allow someone to participate in place of my client if they were a Long Lake Township resident. No one voiced an objection at that time for such a proxy and I was told at the next meeting that you and the Township had consented to allow Connie Deneweth to participate as my client's proxy. At the very next meeting, my client had requested another Township resident to participate on his behalf since Connie could not attend and we were told "no" that person could not participate nor could I participate, and both my client's representative and I were instructed to sit outside the subcommittee circle and were permitted only to participate or comment if we were specifically called upon to participate. This is in comparison to two other subcommittee members who were allowed to have proxies *fully participate* for them when they were absent. As you can imagine, with a subcommittee that is nearly completely populated by my client's opponents, I was not called upon by any of the subcommittee members to participate. (However, I was allowed to offer one comment at the acknowledgment of the Township attorney, for which I am grateful to be given that slim opportunity to engage with the committee.)

As I am sure you or anyone else could predict, without my client's perspective being offered or available as any kind of counter-balance, the subcommittee quickly took a drastic turn towards universal prohibition of any type of dredge activity unless it was for a public use, such as parks, utilities, etc. This would obviously outlaw numerous other activities which might otherwise be lawful. The articulated intent of the majority of the subcommittee members is that any dredge activity should be totally prohibited without exception, variance, conditional land use permit process, etc. The subcommittee group has almost no other community member offering any

balance and even the one other member of the subcommittee who has offered an alternative perspective is routinely ignored and marginalized to the point where several members of the Group A subcommittee requested that the Planning Commission be instructed that it is the “overwhelming majority” of the subcommittee who believe that total prohibition and exclusion are the preferred land use mechanisms to be used in the Master Plan.

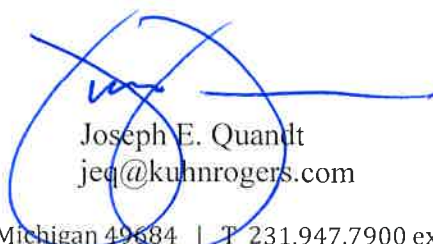
So, why am I writing this letter? I am writing this letter for two purposes. First, to put the Township on notice of these significant defects in traditional notions of due process and equal protection of the law which are typically afforded the public in any kind of public engagement when significant land use regulation changes are considered. My client has been precluded the meaningful opportunity to engage in the process due to the rules set up by the Township. What legal consequence this will have will have to be evaluated at some later date, as this process winds its way to a conclusion. The second purpose of this letter is to ask the Township Board and the Planning Commission whether or not the process which has been employed thus far fairly represents all perspectives in the community. It is an unfortunate fact that government is typically responsive only to the loudest and most engaged. That is a reality that plays itself out hundreds or thousands of times a day in local units of government across the country. However, what is unusual is to see a township government which appears to go out of its way to limit the engagement of alternative perspectives regardless of how objective or rational they may be simply because those points of view are different from the points of view of their vocal opponents. Most of the arguments I have heard from the vocal opponents to my client’s project are untethered to sound science, balanced land use policy, or rational justification for an activity. It is simply in opposition to something they feel is “out of character” or “not part of the lake’s history” or “out of step with tradition”. Distilled to its essential nature, this is basically one group that seeks to have their vision of the lake fulfilled regardless of the merit of any other proposal that may ever come in the future; whether it involves a boathouse, a family beach, an irrigation structure, a landscape pond, etc., all of which may be outlawed if the preferences of the subcommittee are given the manifest opportunity to become the articulated goals of the Master Plan and part of a subsequent ordinance.

I am hoping that my client, either individually or through a representative, may be allowed to participate more freely in the last two subcommittee meetings and that the Planning Commission and the Township Board have the opportunity to review any subsequent requests for action with the above referenced concerns in mind.

I appreciate your time and review of this letter and I look forward to any questions or comments which you may wish to send my way.

Sincerely,

KUHN ROGERS PLC



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Kuhn Rogers, PLC

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