



Long Beach Community Alliance, Inc.

Long Beach "Beautiful" - Let's Keep It So!

PRESS RELEASE

May 31, 2017

ANOTHER VICTORY FOR GOOD GOVERNMENT IN LONG BEACH: INDIANA APPELLATE COURT RULES SEAWALL PERMITEE'S CANNOT CIRCUMVENT THE TOWN OF LONG BEACH BOARD OF ZONING APPEALS

Long Beach Community Alliance (LBCA) has more favorable news to report for Long Beach residents concerned about illegal construction activities on the Lake Michigan beach.

On May 30, 2017, the Indiana Appellate Court in *Osborne v. Town of Long Beach et al.*, Cause No. 46A03-1607-PL-1698, ruled against beachfront owners and developers who sought to circumvent the statutory process for review of Building Permits before the Town of Long Beach Board of Zoning Appeals (BZA) in order to build three seawalls. LBCA had appealed those Building Permits in January 2016 for failure to comply with Town Ordinances designed to protect the beach. But, rather than defend the Building Permits before the BZA, the beachfront owners and developers sued the Town and LBCA in the LaPorte County Superior Court in February 2016 to try to stop the appeals from going forward and to get an order allowing them to build the contested seawalls. *Osborne v. Town of Long Beach et al.*, Cause No. 46D02-1602-PL-0204.

LBCA and the Town both quickly moved to dismiss the Osborne lawsuit, arguing that it was an improper attempt to circumvent the authority of the BZA contrary to the Indiana Zoning Code and well-established Indiana law on the doctrine of "exhaustion of administrative remedies." But the Superior Court denied those motions and only after multiple hearings and extensive briefing ultimately dismissed the *Osborne* Complaint finding that LBCA had a "vested right" to have its appeals heard by the BZA.

The Appellate Court agreed with LBCA and the Town and held that the Osborne case should have been dismissed at the outset because the *Osborne* Plaintiffs had "failed to exhaust their administrative remedies" before going to court. Because the *Osborne* Plaintiffs had bypassed the BZA fact-finding and review process, the Appellate Court held that the Superior Court had no jurisdiction to review the Osborne claims for declaratory or injunctive relief, including their request for a preliminary injunction to allow them to build their seawalls. The statewide significance of this case was underscored in an *amicus curiae* brief filed by the Association of Cities and Towns and the Indiana Municipal Lawyers Association which argued that respecting local BZA authority is fundamental to the orderly review of zoning decisions across the State.

Although the Appellate Court's decision may be appealed to the Indiana Supreme Court, this is the third victory for LBCA opposing these non-compliant seawalls. It is also the second Appellate Court ruling in the last six months in LBCA's favor in its struggle to protect the Lake Michigan beach from illegal private development.

Together these victories send the message that key Long Beach Ordinances governing construction on the Lake Michigan beach cannot be ignored and that the Town's authority to interpret and apply its ordinances cannot be circumvented.

For further information, visit the Long Beach Community Alliance webpage at www.lbcall.org or contact LBCA Board Member Patricia Sharkey at (312) 981-0404.