

Hayes Township Zoning Board of Appeals
Proposed Agenda, August 15, 2022
10:00 am

1. Chair declares Hearing open.
2. Pledge of Allegiance
3. Introduction of Zoning Board of Appeals Members
4. Consideration and Adoption of Agenda
5. Consideration of Kozma Appeal

A. Jurisdictional Question first: Can we proceed? There must be an administrative decision within the 30 days prior to Dec 20, 2021. Appellant has recognized this issue and alleges a document signed by Ron Van Zee on November 29th to be such a decision. We must first consider that question: Was the November 29th Affidavit an administrative decision. To both the Zoning Administrator and Appellant, please address that issue first. We will hear from both sides and the public on that question and decide it before addressing any other issues in the case.

B. ZBA considers whether it has jurisdiction to hear the appeal. If no, the hearing will be concluded. If yes, we will proceed to:

C. Zoning Administrator introduces case and presents exhibits.

D. Petitioner is recognized and he/she, or his/her agent, puts forth his/her case.

E. Board members report on their site inspections, if any, and ask questions they may have for the petitioner or his/her agent.

F. Discussion may take place between the petitioner and board members.

G. Members of the public, present, may speak.

H. Any correspondence received about the variance, is read or has been included in member's packets.

I. Anyone can ask the board questions regarding the petitioner's presentation or speeches that were given. The board will attempt to obtain the answers. Answers will be directed to the board chair. No discussion, questioning or answering, shall take place between any two or more persons except between board members and whoever has the floor.

J. Close the public comment portion of the hearing. (At this point, all public participation on the issue ends).

K. The Board reviews applicable Sections of the Hayes Township Ordinance.

L. The Board reviews the facts as known and discussion takes place gathering findings of fact until a member puts forth a motion including the findings of fact. Discussion continues regarding conclusions until a motion is made, seconded and passed determining the Appeal. Voting shall be by roll call and shall be recorded.

M. Hearing concludes upon passage of motion.

Hayes Township Charlevoix County Michigan
Zoning Board of Appeals

**Appeal of Determinations
by Hayes Township Zoning Administrator
Determined on November 29, 2021**

LuAnne Kozma, Appellant

Does the appeal involve a specific parcel of property? Yes
Parcel # 007-132-005-25 and adjoining parcel 007-133-005-30
10034 Anglers Cove, Charlevoix, MI 49720
Property owners: Scott and Debra Law

**Appeal of Zoning Administrator's
Determinations
And
Brief in Support**

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Dated: December 20, 2021

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Citations

Court Decisions

Fox and Associates Inc v Hayes Township, 162 Mich App 647 (1987)
Hess v West Bloomfield Township 429 Mich 550 (1992)
Hoffman v Porter Township, Michigan COA Case # 319409 (04-21-15)
Nixon v. Webster Township, Michigan COA Case # 343505 (1-21-20)
Square Lake Hills Condominium Assn v Bloomfield Township 437 Mich 310
(1991)

Exhibits

- A. *Hoffman v Porter Township*, Michigan COA Case # 319409 (04-21-15)
- B. *Kozma v Hayes Township*, Charlevoix Circuit Court case # 21-0604-27CZ, Defendants' Reply Brief, December 3, 2021.
- C. Laws' Boat Basin permit application to Hayes Township, 2019.
- D. Sullivan letter to Law, 2019.
- E. Zoning Administrator Report, August 2019.
- F. Emails between Van Zee and Law, 2019.
- G. Planning Commission packet, November 19, 2019.
- H. Planning Commission meeting minutes, November 19, 2019.
- I. Van Zee to Laws, November 25, 2019.
- J. Compiled Excerpts of Historical Hayes Township Zoning Ordinances
- K. Laws' joint permit to EGLE and USACE
- L. Laws' boathouse zoning permit application and permit issued
- M. Champion to Boal, 2021.
- N. Schrock to Dahlstrom, 2021.

O. *Fox and Associates Inc v Hayes Township*, 162 Mich App 647 (1987)

P. Knepp to DEQ, 1999.

Q. Ordinary High Water Mark, DeVos boathouse State permit documents

R. Graham to Scheel, 2012.

S. *Nixon v Webster Township*, Michigan COA Case # 343505 (1-21-20)

T. Champion to Narten, 2021.

Federal Regulations

33 CFR 320.4(j)(2)

State Statutes

MCL 125.3603(1)

MCL 125.3603(2)

MCL 125.3604(1)

MCL 125.3604(3)

MCL 324.30101(a) and (w)

MCL 324.30102(1)(f)

MCL 324.30102(1)(g)

Websites

Hayes Township Zoning Ordinance, <https://www.hayestownshipmi.gov/zoning-ordinance/>

Hayes Township Zoning Permit Application Packet, <https://www.hayestownshipmi.gov/wp-content/uploads/2019/09/zoning-permit-application-packet-2019.pdf>

Affidavits of LuAnne Kozma, Irene Fowle

I. Authority and duty of ZBA to hear appeals of determinations by the Zoning Administrator

Separately from the ZBA's power to simply “interpret” the Zoning Ordinance (“ZO”), including interpretations involving a specific parcel, and separate from hearing appeals of “decisions” whereby permits are issued or denied, or other approvals and denials, the ZBA may consider and reverse “determinations” made by the Zoning Administrator or Planning Commission, prior to the issuance or denial of permits, the holding of hearings, review of site plans, or the seeking of variances, under the Hayes Township Zoning Ordinance §§ 8.02, 8.03(4) - (6) and the Michigan Zoning Enabling Act, which states:

“The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance. ... *It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act.*¹

Appeals of determinations can be taken to the ZBA by “persons aggrieved” as well as officers of a local government.² For example, in *Hoffman v Porter Township* a planning commission chair appealed a determination of the deputy zoning administrator to the ZBA.³

“The concurring vote of a majority of the members of the zoning board of appeals

¹ MCL 125.3603(1). Emphasis added.

² MCL 125.3604(1).

³ Exhibit A - COA Case # 319409 (2015), unpublished.

is necessary to *reverse* an order, requirement, decision, or *determination of the administrative official* or body...”⁴

The statute and the ZO make no distinction between “final” determinations or other determinations.

II. Determinations appealed

On November 29, 2021, in the attached court affidavit,⁵ Hayes Township Supervisor *and* Zoning Administrator (“ZA”) Ron Van Zee made several sworn statements including historical context for the earlier zoning permit he issued for a “boathouse” and Planning Commission (“PC”) approval for a boat basin and channel, proposed by Scott and Debra Law for property they own on Lake Charlevoix. During litigation with Appellant, the Township finally admitted that both approvals expired a year after being issued/granted. ⁶

Van Zee’s statements included certain **determinations** in ¶¶ 4, 5, 16, 20 and 21 for how he handled the project in the past, and how he would handle the proposed project going forward. (The project as a single project is pending approval from a federal agency):

3. In August of 2019, Scott Law filled out a Zoning Permit Application for a boat basin. ...

⁴ MCL 125.3603(2). Emphasis added.

⁵ Exhibit B, *Kozma v Hayes Township*, Charlevoix Circuit Court case # 21-0604-27CZ, Affidavit by Ron Van Zee, November 29, 2021, at Bates # 16-19.

⁶ Exhibit B, Defendants’ Reply Brief, December 3, 2021, at Bates ## 11-14.

4. Although the "Site Plan Required" line is checked on the application, a site plan as defined in the Zoning Ordinance was not required for this construction.
5. There is nothing in the Hayes Township Zoning ordinance that regulates a boat basin or canal.
6. The boat basin or canal is regulated by EGLE and/or the Army Corp of Engineers.
7. Hayes Township determined in August of 2019 that no Zoning Permit was required from the Township regarding the boat basin or canal.
8. No zoning permit has been issued to Mr. and Mrs. Law as a result of the August 2019 Zoning Permit Application.
9. The Zoning Permit Application did, however, involve excavation within the Shoreland Protection Strip which is regulated in Section 3.14 of the Hayes Township Zoning Ordinance....
10. Section 3 .14(3) creates a shoreland protection strip located within fifty feet of the ordinary high water mark on Lake Charlevoix.
11. Section 3 .14(3) provides further regulations regarding any activity within that fifty-foot area.
15. On July 6, 2020, I received a Zoning Permit Application from the Laws for an attached boathouse....

16. The "Site Plan Required" line was checked on the application by the applicant and not me. A site plan was not required for the boathouse.

17. The Law property is zoned R-1 (Low Density Residential).

18. The Law property is used for a single-family residence which is a permitted use in the R-1 district per Section 4.05 of the Hayes Township Zoning Ordinance....

19. Pursuant to Section 3.05(1) of the Zoning Ordinance ... a building that is structurally connected to the principal building is considered part of the principal building and not subject to regulation as an accessory structure.

20. The boathouse is to be attached to the house making it part of the house and not an accessory structure.

21. The proposed boathouse did not require Planning Commission or site plan review pursuant to Section 5.03 of the Zoning Ordinance ... and is a permitted addition to the house that can be approved by the Zoning Administrator.

The determinations can be summed as follows:

- The project is two discrete projects—boathouse that requires a Zoning Permit from the ZA, and boat basin/channel that requires no Zoning Permit from the ZA, and no site plans for review for either.

- The affidavit asserts there is *nothing* in the ZO that regulates a basin or channel/canal—site plans and permits are not required. “Activity” in the Shoreland Protection Strip is regulated but review is relegated only to Shoreland “Landscaping” after destruction and removal of Shoreland is allowed by the state and federal agencies. Only the state and federal agencies can approve or disapprove basins and canals. The Township is in effect powerless over these excavations and can neither permit or deny their construction.
- The affidavit asserts o site plan is required for the boathouse, the boathouse is to be structurally connected as an addition to the residence and by virtue of that connection alone, is determined to be intended for residential use, is a permitted construction, and can be approved unilaterally by the ZA.

On December 3, 2021, the Township submitted a reply brief in *Kozma v Hayes Township* on behalf of the Township and Van Zee, to which the Van Zee Affidavit was attached, that speaks of the Affidavit at page 4 as a “determination”:

While it is likely true that if the Laws receive their permits from the Army Corps of Engineers and EGLE and come back to the Township for issuance of a zoning permit for the attached boathouse, Ron Van Zee would likely approve that given what he states in his Affidavit and his determination that [it] is compliant with the Zoning Ordinance.

Similarly, then-ZA Larry Sullivan's letter of August 2019 made a determination that the boathouse could have only one dock (unless the Laws might establish it as a marina). He added this determination was appealable: “In any case, all decisions made

by the Zoning Administrator may be appealed to the Hayes Township Zoning Board of Appeals.” The Laws did not appeal, nor did they seek a marina permit from the Township. But, they would need to reapply and new determinations still need to be made, or else the multiple docks will be a *nuisance per se*.

The point is that Van Zee through his attorney referred to his own affidavit as a “determination,” as indeed it is. Because the attorney represented the Township too, the Township itself has given its blessing. This means it is appealable to the ZBA.⁷ And by this appeal all acts in furtherance of it are stayed by Statute and Ordinance.⁸

To explain “determinations” further, a ZA may for example inform a property owner that it is his or her determination that the ordinance requires the owner to provide a site plan with specific data for a zoning permit for one part of the project, a variance for another part of the project, a special use permit for another part of the project, or perhaps a rezoning would be required. Administrative determinations are appealable by the property owner prior to seeking or obtaining permits, variances, rezonings, or other permissions. Other persons can also appeal those determinations. Some determinations might be that the project is not allowed at all.

III. Interpretations requested if ZA reverses determination

With this appeal to the ZBA, Appellant asks to reverse the ZA’s 2021 determinations that the Laws’ proposed boathouse/boat basin/boat channels/and event and dining facility—shall be treated as two separate projects—with only the boathouse *sans boat basin and channel* requiring a zoning permit, while the boat basin and channel

⁷ MCL 125.3603(1), (2); ZO §§ 8.02, 8.03(6), 8.04.

⁸ MCL 125.3604(3); ZO § 8.11.

is treated as a separate project not requiring a zoning permit from the ZA for excavation and construction, the approval for excavation and construction left only to other agencies, not the township, while only receiving minor review by the Planning Commission for landscaping on what remains after such drastic removal of the Shoreland Protection Strip.

This appeal cannot be mooted prior to the ZBA's own determination unless the ZA reverses himself on the fundamental determination that the project is two discrete projects, and the reversal is on all parts of his determinations, requiring the Laws to apply for the entire project at the same time, and requiring a zoning permit for the entire construction after detailed review of site plan and scale drawings for all constructions and excavations involving boat basin, channel and boathouse, and determining that the boathouse while attached to the residence does not qualify it as a residential use since the intended use inside the building is for hosting large, commercial events in a residential zone, and is not compliant with the ordinance.

The appeals of the ZA's determinations, only if completely changed by the Zoning Administrator⁹ as described above, shall be treated as a Request for Interpretation(s) as described below.

All determinations and decisions regarding this Appeal must be made the the ZBA in a public meeting, as required in the Hayes Township Rules of Procedure adopted July 1, 2020, and as required by state statute.

⁹ It would be improper for the Zoning Administrator to keep changing the determinations in an effort to moot Appellant's appeals. Mr. Van Zee has flip-flopped many times before.

IV. Appellant

Appellant Kozma is a year-round resident and registered voter in Hayes township, and a riparian part-owner of two waterfront properties at 9330 and 9300 Woods Road on Lake Charlevoix, on Anglers Cove near the Law property, 3 and 4 parcels east of, and within sight and sound of the proposed project. She is a “person aggrieved”¹⁰ of the ZA’s determination that the Laws’ proposed boat basin and channel are not regulated by the ordinance, and that the Township has “nothing” in its ordinance and is powerless against their construction. She disagrees with this determination and provides evidence in this appeal that the ZA’s determination violates the zoning ordinance. If the ZA’s new determination regarding the boat basin and channel/canal results in their construction without—or with—Township review or approval, it would create a nuisance *per se*¹¹ and cause unique harms to her, including detrimental ecological and economic impacts caused by the removal of protected shoreland on the lake so close to her conservation-easement protected property.

Similarly she is a “person aggrieved” by the ZA’s separate determination that the proposed “boathouse” is a permissible addition to the house by virtue of its structural connection, despite its intended use and that no site plan for this is required of the Laws for township zoning permitting going forward. She contends the process determined in 2021 by the ZA will allow a very large structure, plainly designed for holding large events and as a dining facility as part of an expansive resort development, to be constructed without proper zoning administration, depriving her of the due process such a non-residential facility requires. The ZA has determined the project “can be approved” but without review and proper determination of its actual intended use, which will create a nuisance *per se* that will harm Kozma’s quiet enjoyment of her own property.

¹⁰ MCL 125.3604(1).

¹¹ ZO § 3.01

V. Background of the pending project, specific parcel of property involved

Hayes property owners Scott and Debra Law first submitted a site plan and application for “boat basin” in August 2019 for their property at 10034 Anglers Cove, Parcel # 007-132-005-25. With it was a single page, “Boathouse Drawing Conceptual Design” for the “Law Cottage” dated 1-11-3019 [sic] showing an area with no walls or roof discernable, boats inside an inland marina near the house, and an artificial boat basin and artificial channel cut into the shoreland of Lake Charlevoix, including excavation of a 30 x 50 foot swath of Shoreland Protection Strip. The plan indicated “boathouse by others.” An outdoor walkway labeled “dry laid walkway connection” was depicted with paver stones like those around the residence, leading toward the Laws’ residence.¹²

Then-ZA Larry Sullivan reviewed the application and wrote to the Laws¹³ that month, answering four questions that he raised. (He did not give the public the answers in his Zoning Administrator’s report.)¹⁴ He informed the Laws he made determinations and “findings” that the boat basin and channel seawalls would require a variance from the ZBA, there were too many docks proposed and a “marina permit” would be needed, and the Shoreland Protection Committee would need to review the plans. The Laws never did seek a marina permit from the Township or a variance from the ZBA. Sullivan signed the application and indicated a site plan was required.

In a flawed process, the Township did not bring Tip of the Mitt Watershed Council member of the Hayes Township Shoreland Protection Subcommittee into an October

¹² Exhibit C, Laws’ Boat Basin application to Hayes Township, 2019.

¹³ Exhibit D, Larry Sullivan letter to Scott Law, August 26, 2019.

¹⁴ Exhibit E, Zoning Administrator Report August 2019.

2019 site visit, where newly-installed ZA Van Zee and the Laws' developer, Bob Drost, also met. No site review photographs or measurements of stakes in the ground were ever taken by Van Zee, as determined by Appellant in several Freedom of Information Act requests to the Township, although they were required by ordinance.¹⁵ The Shoreland Protection Subcommittee's site review meeting was not minuted or approved.

On or about October 19, 2019, Van Zee—while still only the township supervisor, not the ZA, visited Scott Law and with the Laws' project developer Bob Drost, went on a tour of his 400+ acres of contiguous properties. He learned of Law's "master plan" for developing the entire property as a large commercial development that would include, Law explained the next day in an email memorializing the visit:

One of the main goals of buying what is now over 400 acres was to allow people from our charitable foundation, our employees, family and friends the opportunity to benefit from this property and hopefully to allow families recovering from traumatic medical and health events to have opportunity to experience Michigan.¹⁶

...

Our future plans include zip lines, horse barn for trail riding and therapeutic activity, *a dining facility for guest and events*, a winery facility, fly fishing lake and possible golf holes. All private use for friends, family, charity and local organization as we see fit!

...

Please also let me know how we can help you as you take on this challenging [ZA] position....¹⁷

Van Zee responded the next day, his first day on the ZA job, saying:

¹⁵ ZO § 9.02(4).

¹⁶ Exhibit F, Scott Law and Ron Van Zee email exchange, October 2019. Bates ## 80-82.

¹⁷ Exhibit F, (Exclamation point in original, italics added.)

After hearing your plans and understanding better, not only what you are doing in other places, but also what your intentions are for this property, I would like to thank you for your service to the community. As we discussed Saturday, often times people are afraid of change they do not understand. Thank you for your letter explaining your long term goals ... but mostly for your willingness to share such an absolutely beautiful place, eventually with so much of the community. ...

I will make sure the public is informed.¹⁸

The “Subcommittee’s recommendations and report”¹⁹ was listed on the November 19, 2019 Planning Commission agenda. It had several key facts incorrect, including that: an application for a private basin *and boathouse* had been applied for, EGLE and USACE permits *had been already granted*, and *the ZA determined the project meets the requirements for granting a permit* except for review of the shoreland landscaping plan. Implicit in the last finding was that the ZA had told the PC that a permit was required for the project to begin.

Sullivan’s letter, cc’d to Planning Commissioner Roy Griffitts, was never shared with the entire Planning Commission and was not in the packet²⁰ for the November 2019 meeting. In addition to the Subcommittee report, the packet only contained two different Drost documents that were submitted to the township after the initial application, not the original conceptual plan attached to the application. What planning commissioners saw was a revised conceptual plan labeled “Shoreline Planting Schedule” that left off the words at the top: “boathouse by others” and “dry laid walkway connection.” The second document was simply a stylized color aerial photograph that didn’t show a building, boat basin or channel in the proposed location at all, just a listing of plants labeled “Shoreline

¹⁸ Exhibit F.

¹⁹ Exhibit G, Planning Commission Packet, November 19, 2019 at Bates #87.

²⁰ Exhibit G, at Bates ## 83-89.

Plant Inventory.” The other planning commissioners who were not on the subcommittee who did the site review and had the original conceptual plan, did not have a site plan before them to indicate that part of the plan was a boathouse. It looked like a marina in a boat basin (without walls or roof).

Despite all this and the misinformation, the project received approval, under instructions from Van Zee which are contrary to those of his 2021 affidavit:

The Zoning Administrator has determined that the project meets the requirements for granting a zoning permit with the exception of a review of a Shoreland Landscaping Plan, as the project will involve modifications to the shoreland protection strip. ... The Shoreland Protection Committee supports the approval of the proposed site plan.

...Matt Cunningham made the motion; with support from Marilyn Morehead, to accept the report and recommendation from the Shoreland Protection Subcommittee and approve the plan.²¹

ZA Van Zee sent the Laws a letter shortly after saying the PC “approved your application, with conditions, for *boat basin* and shoreland improvements.”²² The PC's site plan approval expired a year later per ZO § 5.03(9), admitted to by the ZA in his November 29, 2021 affidavit.

Eight months after the “boat basin” application, on July 6, 2020, the Laws applied

²¹ Exhibit H, Planning Commission meeting minutes, November 19, 2019. Emphasis added.

²² Exhibit I, Van Zee to Laws, November 25, 2019. Emphasis added.

for a zoning permit for the “boathouse.”²³ Again “site plan required” was checked. The application was signed by the ZA. Contrary to Van Zee’s Affidavit, scale drawings actually were required by ordinance²⁴ and this was repeated in the Township’s permit application instructions to provide a plot plan giving accurate dimensions on either a scale drawing or rough sketch. But, “drawings shall be required on all structures and shall contain the following information: 1. Existing and intended use of the structure; 2. Dimensions...including height...” The Laws provided these, as will be detailed below.

The ZA took just two days to issue the zoning permit for “Attached boathouse.”²⁵ No written zoning report was made informing the community of this permit issuance. No mention of the building’s intended use as an event and dining facility was made on the permit. No stakes in the ground, no photographs, no measurement, violating the ordinance.²⁶ Twelve months later, the permit expired according to the ordinance.²⁷

During litigation between the Appellant and the Township from October 29 through December 10, 2021, the Township reversed itself from its previous official positions stated at September 2021 meetings that extended the permits and/or denied that the permits had expired. The Township finally admitted that the Planning Commission’s approval in 2019 and the zoning permit issued to the Laws for the boathouse on July 11, 2020 are both expired and no longer valid.²⁸ These expired approvals are not being appealed.

²³ Exhibit L. Bates ## 150-166.

²⁴ ZO § 9.02(2).

²⁵ Exhibit L. Bates # 151.

²⁶ ZO § 9.02(4).

²⁷ ZO § 9.02(5).

²⁸ Exhibit B, Defendants Reply Brief, pp 1-4.

But the Laws' entire "boathouse," boat basin and channel project (including dredging in Lake Charlevoix) permit application is still pending with the US Army Corps of Engineers, the Michigan Department of Environment, Great Lakes and Energy (EGLE) has already issued a permit, and the ZA has newly determined there are now no Township requirements for the Laws to submit a new application or site plans to Hayes Township or obtain a Township zoning permit or any other permission or approvals—not even performance bonds—to construct and excavate the boat basin and channel portion of the overall project. The ZA is saying, in effect, the Township is *powerless* to require anything at all of the Laws for boat basin and channel, no need for any review, no need for any future decision making. The 2021 ZA determination is the township's final say in the matter on the boat basin and channel, unless the ZBA makes a determination to reverse it. Otherwise, once the federal and state permits are in, bulldozers will have free reign to construct the boat basin and canal/channel. The shoreland is now eminently endangered.

Likewise, in his 2021 Affidavit and brief to the Charlevoix County Circuit Court, the ZA and Township have stated the boathouse project is "compliant with the ordinance"²⁹ still, by virtue of its connection to the Laws' residence, making it a part of the house and that he would "likely approve"—without a site plan or any required drawings—after federal and state permits are obtained by the Laws.

VI. Hayes Township Zoning Ordinance sections involved in this appeal

Section 1.02 Purpose

Section 2.01 Rules of Construction

Subsections (1), (2), (3), (4), (5), (6), (8), and (9)

²⁹ Exhibit B. Bates ##14, 18.

Section 2.02 Definitions

Accessory Building or Structure
Accessory Use
Alteration
Basement
Boat and/or Canoe Livery and Boatyard
Buildable Area
Building
Building Envelope
Building Height
Erected
Excavating
Food Preparation Area
Grade, Natural
Impervious Surface
Lot, Waterfront
Natural State
Nuisance Factor
Off-Street Parking Lot
Ordinary High Water Mark
Principal Use
Setback
Shoreland Protection Strip
Site Plan
Special Use Permit
Structure
Structural Change or Alteration
Use
Variance
Zoning Permit

Section 3.01 The Effect of Zoning

Section 3.02 Nonconformities

Section 3.04 Principal Uses

Section 3.05 Accessory Buildings

Section 3.14 Waterfront Regulations

Section 4.05 Low Density Residential District (R-1)

Sections 5.01, 5.02, 5.03 and 5.04 Site Plan Review

Sections 6.01 and 6.02 Special Use Permits, Purpose and Uses Subject to Special Use Permits

Section 7.01.15(B) Resource Mining, Extraction and Fill
Sections 8.01 through 8.11 Zoning Board of Appeals
Section 9.01 Zoning Administrator
Section 9.02 Zoning Permit
Section 9.03 Conditions
Section 9.05 Fees
Section 9.06 Performance Guarantee
Section 9.07.1 Nuisance Per Se
Section 9.07.2 Inspection
Section 9.07.3 Penalties
Section 9.07.4 Stop Work Order
Section 9.08 Conflicting Regulations
Sections 10.01 and 10.02 Ordinance Adoption and Amendment, Public Hearing Requirements

VI. Argument

1. Boat basin and channel/canal

The ZA's determination on November 29, 2021 that there is "*nothing*" in the Hayes Township Zoning Ordinance regulating the construction of boat basins and canals/channels³⁰ is a new determination, a reversal of the determination the Township made in 2019, and completely false. This determination puts Lakes Charlevoix, Michigan and Susan and their shoreland at risk, is in violation of the Township's ordinance and indeed all of the Township's previous ordinances that since 1973 have protected the lake by protecting the shoreland around it.³¹

The ZA made additional determinations that he will make no further requirements of the Laws to apply for a zoning permit or provide *site plans* for the boat basin and

³⁰ Exhibit B, at Bates # 17.

³¹ Exhibit J, Compiled Excerpts of Historical Hayes Zoning Ordinances. (Exhibit 22 from September 27 Requests by Appellant).

channel going forward, nor will a *zoning permit* be required or issued for their construction.

However, numerous provisions in the ZO prohibit a boat basin and canal/channel within 100 feet of the Ordinary High Water Mark, prohibit the destruction of the Shoreland Protection Strip and any part of it, prevent excavation of fill, dirt, gravel and/or sand in an R-1 zone, and prohibit the *construction of anything* without a zoning permit. The proposal for a boathouse/dining and event facility is also dependent upon the construction of a boat basin and channel for its use and function as a boathouse (but not as a dining and event facility) and the multiple proposed constructions are sub-parts of a single development project. As such, the boathouse's *building envelope* includes the constructed, artificial boat basin and channel.

As discussed below, the following ZO sections provide language that regulate (and/or prohibit) boat basins and channels/canals:

- 1.02, 1.02(B)
- 2.02 (Several definitions, as described below)
- 3.01
- 3.14 (1)
- 3.14 (2) (A), (D)
- 3.14 (3) (A), (B), (C), (H), (I), (K)
- 3.14 (4)(E), (H)
- 3.14 (4)(H)
- 3.14 (5)
- 3.14 (8) (A)
- 3.14 (8) (B)(iii)

4.04(3)(H)

4.05

5.03(5)(A)(2)

5.04

9.01

9.02

9.07(1)

Section 2.02 Definitions that have relevance or pertain to boat basins and canals

The following definitions contain language that pertain to the construction of boat basins and channels (with some emphases added to mark appropriate parts):

Alterations: Any change, addition or modification in construction or type of use...”

Building Envelope: The area upon a lot where a principal building or structure and any attached or detached accessory structures are or are intended to be constructed. For a residential use, the *building envelope shall mean the area upon a lot, parcel, or site condominium unit where a dwelling and any accessory structures, including but not limited to garages, storage sheds and decks, are or are intended to be constructed.*

Dock: A temporary or permanent structure, built on or over the water, supported by pillars, pilings, floats, or other supporting devices.

Excavating: Excavating shall be the earth moving, filling or removal of earth, sand, stone, gravel, or dirt.

Lot, Waterfront: A lot having frontage directly on a lake, river, or stream. The portion adjacent to the water is considered the water frontage. The waterfront is considered the front lot line.

Natural State: An area where bedrock soil and vegetation is left undisturbed and void of structural improvements. An area that is untouched and undisturbed by

man. An area that is declared a natural state will remain as presently is, without improvements, mowing, removal of trees and shrubs or contouring, filling or removal of soil. Previous land use may show the effects of human uses such as fences, foundations, orchards, etc. These may be considered for inclusion as a natural state at the discretion of the planning commission if and only if there is no further use or improvement of these effects. If any of these previous effects are to be utilized they will not be considered as a natural state.

Ordinary High Water Mark: The line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation. On Lake Charlevoix the ordinary high water mark shall be the legally established lake level of 582.3 feet IGLD 1985, and on Lake Michigan the ordinary high water mark shall be the legally established lake level of 581.5 feet IGLD 1885.

Setback: *The minimum required horizontal distance from the applicable right-of-way line, easement, Ordinary High Water Mark or property line of a lot within which no buildings or structures may be placed, except as otherwise provided in this Ordinance.*

Shoreland Protection Strip: *A strip of land fifty feet in depth landward from the Ordinary High Water Mark, placed so as to be parallel to the body of water.*

Site Plan: The drawings and documents depicting and explaining all salient features of a proposed development so that it may be evaluated according to the procedures set forth in this ordinance, to determine if the proposed development meets the requirements of this Zoning Ordinance.

Special Use Permit: A permit grant with approval by the Township Planning Commission for a use of land in a district that does not conflict with any other permitted land use in the district when such a special use is as specified in this Ordinance for that district.

Structure: *Anything constructed or erected, the use of which requires location on the ground or attachment to something having permanent location on or below the ground.*

Zoning Permit: A zoning permit is written authority as issued by the Zoning Administrator on behalf of the Township *permitting the construction*, moving, exterior alteration *or use of* a building or *land* in conformity with the provisions of this Ordinance.

Sections prohibiting boat basins and channels in Shoreland Protection Strip

The definition of Shoreland Protection Strip in Section 2.02 is critical to understanding where it is and what can and cannot be done to it: “*A strip of land fifty feet in depth landward from the Ordinary High Water Mark, placed so as to be parallel to the body of water.*” (Emphases added). The 50 feet mark is not measured from the property owner’s lot line but from the Ordinary High Water Mark (OHWM). This also requires an understanding of what the OHWM is and how it operates.

The OHWM is not the same as how high or low the lake level is at at any point in time, or the levels that vary from year to year. Lake levels rise and fall constantly. But over time, they ordinarily go about as high as a certain point. The OHWM is the “line *between upland and bottomland* that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.”^{32 33} Once observed and determined as to what elevation that mark is, some lakes, like Lake Charlevoix, have been legally codified as a constant vertical elevation by local, state and/or federal law. Hayes Township legally codified it this way: “On Lake Charlevoix

³² ZO § 2.02, “Ordinary High Water Mark.”

³³ The Hayes Zoning Ordinance does not define “upland” or “bottomland.” MCL 324.30101 defines them as: “‘Bottomland’ means the land area of an inland lake or stream that lies below the ordinary high-water mark and that may or may not be covered by water” and “‘Upland’ means that land area that lies above the ordinary high-water mark.”

the ordinary high water mark shall be the legally established lake level of 582.3 feet IGLD 1985.” Any land above that elevation is upland, any land below it is bottomland.

Going back to the definition of Shoreland Protection Strip, the strip of land measured 50 feet landward from the OHWM, means the uplands are what’s being protected as “the strip.” Below the OHWM is not the Shoreland Protection Strip.

Section 3.14, “Waterfront Regulations,” prohibits the removal of the Shoreland Protection Strip —ie, uplands—in several subsections. Section 3.14(3) says “A Shoreland Protection strip shall be required on all waterfront lots. The Shoreland Protection Strip ***shall include all of the land area*** located within fifty (50) feet of the Ordinary High Water Mark of a lake or a stream abutting or traversing the property in question.” (Emphasis added). This is unambiguous. All of the land area means *all*, not just a portion. Not just the vegetation. All is all of the uplands.

Section 3.14(3)(H) states: “Natural vegetation cover, including trees, shrubs or herbaceous plants shall be maintained on at least eighty percent (80%) of the lake or stream frontage within the Shoreland Protection Strip...The vegetation on the *remaining* twenty percent (20%) may be cleared for a single view corridor, or selective trees removed to provide a filtered view throughout the frontage, provided the cumulative total of the trees removed do not exceed that allowed twenty percent (20%) of the frontage” (Emphasis added).³⁴ The subsection continues “When trees are removed, root systems shall be left in place for shoreline stabilization.” All of this, too, is unambiguous. Solely vegetation can be removed from 20% of the shoreland—but not

³⁴ The 20% mandate is repeated in bold typeface in ZO § 3.14(3)(A): “The Shoreland Protection Strip shall not be altered more than 20% under any condition, except to remove dead trees or shrubs, remove invasive species, or for selective trimming of trees as permitted in 3.14.3I.”

tree roots. Put another way, 80% must be naturally-vegetated land, and 20% can be "not natural" or non-vegetated/cleared land, but only with certain conditions for the purpose of views of the lake. The 20% of the Shoreland Protection Strip without natural vegetation is *remaining* in place. Not excavated and hauled away.

Section 1.02 states the purpose of the entire ZO is to "promote the public health, safety and general welfare," "encourage the use of lands in accordance with their character... and limit the improper use of land," and "consider the character of each district, its suitability for particular uses, the existing property values and natural resources, and the general and appropriate trend and character of land, building and population development." The character of the Shoreland Protection Strip 50 feet from Lake Charlevoix's OHWM—which is all residentially zoned—is maintained with specific ordinance language to restrict development to proper land use. Structural development—with a limited number of acceptable exceptions—here is "improper use." The intent of the 50 feet of protected shoreland is to "protect the lake," a long-established goal and purpose of the Hayes Township Zoning Ordinance going back decades.

This overall purpose is reiterated in Section 3.14(1), the Waterfront Regulations "intent" section: "The waterways and lakes in and adjacent to the lands of Hayes Township are invaluable assets to the economy and quality of life, and therefore *must be preserved in a natural fashion* to main health of these waterways as well as the natural beauty of Northern Michigan. Thus, the owners of waterfront lots have an added responsibility regarding *the preservation and protection* of these natural resources, water quality and community scenic and recreational values." (Emphasis added). Construction of an artificial boat basin and channel is contrary to "preservation and protection" and contrary to the public interest.

Removal of the Shoreland Protection Strip is also in stark opposition to Section 3.14(8)(A): “It is the intent of the Waterfront Development Review process described below to promote the gradual, systematic, and *long-term restoration* of the Shoreland Protection Strip.” (Emphasis added).

Inside the mandatory *land* area 50 feet landward from the OHWM, permitted land use and activity does not include “boat basin” or “channel” just as it does not permit “boating,” for a very practical reason: you can’t boat on land, only on the lake over bottomlands (and bottomlands is not the Shoreland Protection Strip). Removal of the upland above the OHWM in order to “boat” would be a conversion (loss) of uplands to bottomlands, destroying the very purpose of the ordinance’s mandate to protect the Shoreland Protection Strip, which “is to protect the lake by preventing soil erosion, *providing a filter* for the removal of pesticides, fertilizers and other potential water pollutants, and to maintain a visual barrier.”³⁵ The land cannot filter anything if the land is not there at all. Only uplands can serve this function, not bottomlands.

Destruction of shoreland by removal and excavation is damage to the land, which is prohibited in Section 3.14(4)(H): “Any damage caused to the Shoreland Protection Strip during the process of installing or removing seasonal docks, shall be repaired within 30 days...” Destruction, removal and excavation are also prohibited by Section 3.14(3)(K): “It is in violation of the Zoning Ordinance to *alter or disturb* the Shoreland Protection Strip except to move dead trees or shrubs, remove invasive species, or for selective trimming of trees as permitted in 3.14.3I. If altered or disturbed, the following corrective measures are required...The Shoreland Protection Strip shall be replanted” and “Where native shoreline vegetation does not exist, a combination of naive

³⁵ ZO § 3.14(3). Emphasis added.

vegetation shall be introduced in a naturalized planting pattern as exemplified by neighboring shorelines that have not been disturbed.”

The types of permitted alterations and disturbances are actions that do not harm or minimally harm the uplands. Excavation of shoreland is in the category of alterations or disturbances that cause severe—and in fact irreparable harm and obliteration—so it is not possible to consider removal and excavation as permitted types of alteration and disturbance.

Section 3.14(3)(C) says “*shoreline retaining* structures shall be permitted with appropriate agency approvals” but this should be construed to mean that the structures be used to *retain* or maintain the *existing* shoreline to stop erosion. This cannot be interpreted to mean they can be used in conjunction with activities prohibited in the ordinance such as excavation to remove Shoreland Protection Strip, which is protected from harm.

Even an *undocked boat*—which is not even a structure—is prohibited from disturbing the Shoreland Protection Strip.³⁶

Sections prohibiting construction/excavation without site plan and zoning permit

A principal purpose of zoning is to “encourage the use of lands in accordance with their character.”³⁷ Zoning permits are required for all activities, structures, and uses without which they are nuisances *per se*.³⁸

³⁶ ZO § 3.14(4)(E).

³⁷ ZO § 1.02(B).

³⁸ ZO § 3.01.

Section 3.01, the Effect of Zoning in subsection (1) states: “In order to carry out the intent of this Ordinance, no use or activity on a piece of land shall be allowed or maintained, no building or structure or part thereof shall be allowed to be used, constructed, remodeled, altered, or moved upon any property *unless it is in conformance with this Ordinance, and a zoning permit has been obtained*, except in the case of lawful nonconforming uses.” (Emphasis added). It is a violation of Section 3.01 to allow construction such as this without a zoning permit. The Zoning Permit definition is consistent with this section.

Section 9.01 prohibits the ZA from abusing his power to issue zoning permits without reviewing plans in detail:

The Zoning Administrator shall have the power to grant or deny Zoning Permits and to make inspections of buildings or premises necessary to carry out the duties in the enforcement of this Ordinance. *It shall be unlawful for the Zoning Administrator to approve any plans or issue any Permits for the excavation or construction until such plans have been inspected in detail and found to conform to this Ordinance.* The Zoning Administrator shall under no circumstances be permitted to make changes to this Ordinance or to vary the terms of this Ordinance...

A “site plan” is to have “drawings and documents depicting and explaining all salient features.”³⁹ All site plans require preservation of landscape in its “natural state insofar as practical”⁴⁰ where it “will remain as it presently is, *without* improvements, mowing, removal of trees and shrubs or contouring, filling or *removal of soil.*”⁴¹

³⁹ ZO § 2.02.

⁴⁰ ZO § 5.03(5)(A)(2).

⁴¹ ZO § 2.02. Emphasis added.

If there is no site plan, a performance bond cannot be required.⁴²

Waterfront Regulations require, within the Shoreland Protection Strip, a “waterfront development review” process as an “added layer of review”⁴³ and requires detailed inventories of existing vegetation and planned vegetation changes.⁴⁴ The inventories do not include planned earth changes, because such alterations are prohibited elsewhere in the ZO. Note, too, in this section that the detailed inventory of all structures within 100 feet of the OHWM similarly does not refer to what kinds of structures might be allowed or not allowed, because the ZO covers that in the setback provision.⁴⁵

Sections requiring structures to be setback 100 feet from OHWM

Implicit in the ZA's determination is that channels and basins are not “structures.” But by definition in the ordinance, “structure” is:

*Anything constructed or erected, the use of which requires location on the ground or attachment to something having permanent location on or below the ground.*⁴⁶

Certainly an artificial basin or channel is located “on the ground” and even “below the ground.” The Laws’ proposed boat basin and channel would require specific locations on the ground: adjacency to Lake Charlevoix, adjacency to each other, and to the proposed building/boathouse/dining and event facility.

⁴² ZO §§ 5.03(11), 9.06.

⁴³ ZO § 5.04.

⁴⁴ ZO § 3.14(8)(B)(iii).

⁴⁵ ZO § 3.14(2).

⁴⁶ ZO § 2.02.

But are they “constructed”? Yes. The ZA admits it in his Affidavit ¶ 4.⁴⁷ And correctly so. “Constructed” refers to something which is built, created, or given form by a plan. Artificial channels and basins, built with powerful earthmoving machinery fit easily. Michigan statute also describes them as “constructed.”⁴⁸

Section 3.14(2) Setback Area Regulations, does not mention boat basins, channels and canals in the list of exceptions permitted within the 100 foot setback, but that does not mean the regulations permit them. The language is “*no structures* (with the exception of a patio/deck, walkway, retaining wall, launching ramps and/or docking facilities including steps) shall be allowed within one hundred (100) feet of the Ordinary High Water Mark” for Lake Charlevoix. Importantly it does not say setback from the property lot line, but from the OHWM, the line demarcating the uplands from the bottomlands. Giving specific exceptions expressly limits the exceptions to just those particular structures. The exception language does not use a generic term followed by examples of the type. It does not say “with the exception of *structures such as* a patio/deck, walkway....”

Even if the list of specific exceptions above is interpreted to mean examples of like structures, using the statutory interpretation principle of *ejusdem generis*, (meaning

⁴⁷ Exhibit B, at Bates #17.

⁴⁸ MCL 324.30102(1)(f) states one *constructs* “an artificial canal, channel... pond, lake, or similar waterway where the purpose is ultimate connection with an existing inland lake or stream.” (At that point the construction is on uplands and the construction is a structure according to the Zoning Ordinance). MCL 324.30102(1)(g) defines the last step as “*connecting*” “any natural or artificially constructed waterway, canal, channel,.. pond, lake, or similar water with an existing inland lake or stream for navigation or any other purpose.” (It is at that point when the waters of Lake Charlevoix would fill the excavated upland that transforms the land from uplands to bottomlands.)

“of the same kind”), boat basins and canals do not fall within the same category of structures that are exceptions to the prohibition of “no structures” within the 100 foot setback. The exceptions specified are all small, on-grade land-based structures that do no or limited harm to the shoreland below them. A boat basin and channel are structures that require construction below grade (excavation) that by design do considerable harm to—actually loss of—the shoreland.⁴⁹ None of the exceptions converts uplands to bottomlands.

The intent of this section of the ordinance must be taken in the context of the ordinance as a whole, which includes the specific requirements additionally placed on the structures that are excepted. A deck is permitted but is limited to "one *at-grade* patio/deck, not to exceed two hundred (200) square feet may be located within the 100-ft. setback following review and approval by the Zoning Administrator to *ensure the structure will be installed in a manner which will cause the least negative environmental impact.*"⁵⁰ Walkways or stairs for water access shall be allowed, provided they do not exceed six feet in width, *are constructed in such a way that stormwater is slowed, take the most environmentally sensitive route* between each destination and are not constructed in such a way that they expand the deck beyond the two hundred (200) square foot maximum.⁵¹ Similarly, docks cannot damage the shoreland and if they do, the owner shall repair the damage within 30 days of being notified of the violation.⁵² Ramps are allowed in the Shoreland Protection strip, if they do not disturb and alter it,

⁴⁹ Boat basins and canals are more like septic systems and septic fields—excavated below grade—that would do harm to the lake, and these are prohibited by ZO § 3.14(3) (G).

⁵⁰ ZO § 3.14(2)(A). Emphasis added.

⁵¹ ZO § 3.14(3)(D). Emphasis added.

⁵² ZO § 3.14(4)(H).

and are not consisting of anything but “soils or rocks consistent with the composition of the pre-existing on-site soil and rocks.” “Any and all fill material placed within the Shoreland Protection Strip shall be removed.”⁵³

The ordinance requirement which is ignored by this ZA determination is the horizontal location of the OHWM. The vertical OHWM elevation is a constant, whereas the horizontal location or perimeter of the lake is the line between uplands and bottomlands. If land that was once upland is now bottomlands, the horizontal location of the OHWM moves with the earth changes. The very definition of OHWM is the line between upland and bottomlands.

Without a site plan, the horizontal location of the OHWM cannot be determined. Horizontal location of the OHWM is needed to assess compliance with protection of “all of the land” in the 50-foot Shoreland Protection Strip.

The horizontal location is also needed to measure the 100-foot structure setback.⁵⁴

In the Laws’ joint application to EGLE and US Army Corps⁵⁵, they indicate correctly which structures they propose to construct *below* the OHWM (as relocated by opening of the artificial channel): entrance channel landward of the OHWM [distinguishing it from the proposed dredged 130-foot channel in Lake Charlevoix’s natural bottomlands], boathouse basin center, boathouse basin sides, boathouse main building and boathouse annex.⁵⁶ Drost Landscaping scale drawings also correctly

⁵³ ZO § 3.14(3)(K)(I).

⁵⁴ ZO §§ 3.14(2); 5.04.

⁵⁵ Exhibit K, Laws’ Joint Permit Application to EGLE and USACE. July 21, 2020. Bates # 125-149.

⁵⁶ Exhibit K, at Bates ##146-147.

indicate how the OHWM would move into the constructed boat basin and channel.⁵⁷ Indeed, the US Army Corps acknowledged in emails to Appellant's counsel that "excavation of a channel and/or basin contiguous with Lake Charlevoix, thereby expands the extent of the ordinary high waters of Lake Charlevoix throughout the entire channel and/or basin."⁵⁸ Michigan EGLE said the same: "It is the interpretation of the WRD that the OHWM would follow the new shoreline contour, although this is not clearly define[d] within Part 301 or its administrative rules."⁵⁹

The Township cannot enforce the ordinance without knowing where the OHWM is, if it cannot correctly distinguish between uplands protected by the Shoreland Protection Strip provisions and bottomlands, and it cannot determine anything without a site plan and scale drawings.

Low-Density Residential R-2 Zone prohibits an excavation project of this scale

The character of the land and the existing natural resources define the waterfront properties in Low-Density Residential R-1 zoning under Section 4.05, where "the permitted uses are intended to provide for residential and related uses and those compatible with such, with the intent to keep residential areas relatively quiet and free from detrimental influences." Boat basins and channels are not permitted uses nor uses subject to special use permits. Nor are excavations that involve extraction of sand, gravel, dirt or fill. The Laws calculated in their joint application to the state and federal agencies that *7,152 cubic yards of shoreland* would be removed for the proposed

⁵⁷ Exhibit L, Laws' boathouse permit application to Hayes Township, July 6, 2020. "Section C" at Bates# 157.

⁵⁸ Exhibit M, Champion letter to Boal, August 24, 2021. Bates #167-169.

⁵⁹ Exhibit N, Schrock to Dahlstrom, September 2, 2021. Bates #170-172.

channel and boat basin.⁶⁰ Compared to the only residential zone, Rural Residential, where excavation for extractive earth materials is permitted by the Township, only excavation of less than 200 cubic yards is allowed without site plan review or a zoning permit.⁶¹

Sections treating boat basin, channel and boathouse as single project

The Laws's proposed boat basin and channel are not dependent on the boathouse structure, but the boathouse —only the boathouse use, not the dining and event facility use—does depend on the presence of the boat basin excavated under it and in front of it, and on the excavated channel that would connect the basin to the lake. That is, the boathouse's building envelope⁶² includes the accessory structures of basin and channel. Excavation of the basin and channel and excavation to create the boathouse are one and the same. Without constructing the entire envelope, the boathouse portion could not be *used* for boats. Section 9.02(1) states: "No building or structure subject to the provisions of this Ordinance shall hereafter be erected... used..nor shall any associated excavation or filing of land commence until a ...Zoning Permit has been issued." In other words, basin and channel excavation is not a separate permitted project that commences before a permit for the entire project. As such, the proposed channel and basin part of the *building envelope* violates the 100 foot setback requirement.

As the Laws' joint permit application to the state and federal agencies explains, after they would dredge the channel in Lake Charlevoix bottomlands (using the Shoreland Protection Strip as a staging area for the dredged spoils), the project construction sequence on-land would begin with digging out the basin and boathouse

⁶⁰ Exhibit K, at p.147.

⁶¹ ZO §§ 4.04(3)(H) and 7.01.15(B)

⁶² ZO § 2.02, "Building Envelope."

footprint areas:

Construct (dredge) proposed entrance channel in Lake Charlevoix from elevation 570.0 feet IGLD1985 inland to the OHWM (elevation 581.5 feet). Deposit spoils on shore, within footprint of future inland portion of the entrance channel, and truck away to remote upland repository. Then excavate inland basin and boathouse footprint areas, plus inland entrance channel except for a 25-foot wide "plug" sufficient to keep out Lake Charlevoix waters during construction of the boathouse structure. When inland areas are all satisfactorily completed, siphon water from Lake Charlevoix into newly completed basin. Lastly remove earthen "plug" allowing the newly filled basin to connect to Lake Charlevoix.⁶³

After the act of connecting, the waters of Lake Charlevoix would be expanded and the excavated basin and channel would become bottomlands of Lake Charlevoix.

The physical line between the uplands and bottomlands, the OHWM, would be changed and now be located along the perimeter of the channel and basin.

The two proposed constructions—of boathouse and basin/channel— are inseparable and constitute a single project. However, previously they were erroneously submitted to the Township separately as discrete projects. In contrast, the entire development project was applied for in its entirety to the state and federal agencies. EGLE and USACE would not conceivably consider them as separate “projects.” To not do the same with the Township would violate the ordinance at Section 9.02.

Previous boat basins in Hayes Township do not set precedent for allowing them

Three existing boat basins in Hayes Township pre-date the Laws’ proposal. The first was the Packer basin at 08112 Boyne City Road. It was originally constructed in the 1960s, prior to Hayes Township writing its first zoning ordinance in 1973, so it is a non-

⁶³

Exhibit K, p. 143.

conforming use.⁶⁴ Accordingly it does not set a precedent.

The second was the Oyster Bay (or Pointe) Condominium development built on the former Camp Charlevoix property. That excavated boat basin was allowed only as a result of a consent judgement in 1987⁶⁵ and so it, too, does not set a precedent. The Township vigorously fought the case trying to prevent funnel development and had the support of the Michigan Townships Association and Tip of the Mitt Watershed Council, both of which contributed money to the Township for the case. Since then, Michigan Supreme Court decisions reversed the *Fox* decision⁶⁶ and under the law today the Township would have won and the Oyster Bay boat basin would not exist. A subsequent request in 1999 to construct a “pond” within that development was nixed after the township Zoning Administrator wrote the State: “The Township’s objection is based on the potential adverse effect any excavation, particularly between the residences and Lake Charlevoix, may have on lake quality” and “the reasoning behind requiring setbacks from the lake, as well as shoreland protection strips is to keep nutrients from reaching the lake. Therefore if a permit is issued to construct this ‘pond’ it will represent significant impacts on the public interest.”⁶⁷

⁶⁴ ZO § 3.02.

⁶⁵ Exhibit O, *Fox and Associates Inc v Hayes Township*, 162 Mich App 647 (1987).

⁶⁶ *Fox Associates v Hayes Township* (1987) held under the then-enabling act (TRZA) that the township could only regulate land rights not water rights. Though the township's setback regulations are quoted in the dissent, setback was not at issue. What was at issue was regulation of docks, a water issue over which the Court said the township had no TRZA control. The precedential value of the decision evaporated when the Michigan Supreme Court overruled it in *Hess v West Bloomfield Township* 429 Mich 550 (1992) and *Square Lake Hills Condominium Assn v Bloomfield Township* 437 Mich 310 (1991). Which is to say Hayes Township should have won it legally but didn't, thereby being put in a poor bargaining position for the later consent judgment.

⁶⁷ Exhibit P, Knepp to DEQ, August 2, 1999. Bates #182-185.

The third was the DeVos property at 07480 Indian Trails, which does not conform to the 100 foot setback from the OHWM for both the boathouse and basin/channel. Applications filed by the property owners and the permits granted by state and federal agencies clearly show the OHWM would and did change horizontally to the new location inside the perimeter of the basin⁶⁸, making it a nuisance *per se* according to the ordinance.⁶⁹

The ZA at the time sought the township attorney's opinion on the "setback question."⁷⁰ The attorney responded "because you want to be sure that the new structures will all be located outside of the required setbacks, you need to know the point from which to begin measuring those setbacks." There were different definitions for setback and "lot line, front" than today's ordinance. "Setback" then was calculated from the "water feature" and a waterfront lot's front lot line was the "water frontage," while Section 3.14(B) set the Shoreland Protection Strip as measured from the "1985 IGLD high water mark." The attorney reasoned that the references to "legally established lake level of 582.3 feet IGLD 1995" meant the 100 foot setback must be measured from the *existing* OHWM before construction, and "not the shore of the newly created channel." Mistaking a fixed vertical elevation for a fixed horizontal location of OHWM was in error. Artificial channels and basins change everything—changing uplands to bottomlands and changing where the uplands and bottomlands meet in certain locations, changing the horizontal location of the OHWM. Compounding the error, the attorney did not even consider whether the channel and basin were structures or whether they

⁶⁸ Exhibit Q, Ordinary High Water Mark documents for Devos boathouse, May 31, 2012. From Hayes Township files obtained by Appellant via FOIA. Bates ## 186-196.

⁶⁹ ZO § 9.07.1.

⁷⁰ Exhibit R, Byran E, Graham to Jonathan Scheel, Hayes Township ZA, March 16, 20s12.

destroyed the Shoreland Protection Strip. The Township allowed the project. No ZBA decision was made regarding it.

A township attorney's opinion cannot substitute for a ZBA determination. The allowance of a nuisance *per se* by error does not set a precedent that negates the township zoning ordinance or permits the Township to keep making decisions that violate the ordinance in the same way.

2. "Boathouse"/Dining and Event Facility

As quoted previously, it is the ZA's determination that the "boathouse" is "compliant with the ordinance" and he "would likely approve" mainly by the reasoning that the attachment to the residence means, the boathouse serves residential uses too. A review of the ZA's past actions is instructive. In this particular case ¶ 15 of Van Zee's Affidavit states:

On July 6, 2020, I received a Zoning Permit Application from the Laws for an attached boathouse. See Exhibit 4.

But as can be seen, his Exhibit 4⁷¹ consists of a single page, filled-out application form with no scale drawings, site plan, or plot plan.

This exhibit was not truthful. The Laws did provide detailed site plans and scale drawings as indicated in the ordinance at Section 9.02 Zoning Permit, and communicated in the following instructions to zoning permit applicants:

"There shall be submitted with all applications for zoning permits one (1)

⁷¹ Exhibit B at Bates #43-44.

copy of a plot plan, giving accurate dimensions on *either a scale drawing or a rough sketch. Drawings shall be required on all structures* and shall contain the following information: 1) Existing and intended use of the structure; 2) Dimensions: include proposed building with dimensions (including height); lot or parcel dimensions, front, side, and rear yard distances to lot line or other structures.⁷²

The box was checked on the one-page application for “site plan required” and Van Zee signed it. (Van Zee’s Affidavit claimed the applicant checked the box, “and not me”). Since it was a structure, a rough sketch was not adequate, detailed scale drawings were required. Under the heading “Proposed Use of Property” the Laws’ application cited by the Affidavit says “boathouse attached” with the two words apparently in different handwriting. “Attached” is also in lighter ink similar to Van Zee’s signature and his other writings on the page. In any case, the Laws provided very detailed site plans and scale drawings just the same.

But attached to *what*? If the ZA reviewed solely the one page application, he couldn’t possibly know what the “boathouse” was attached to. Yet, the affidavit contends the building is “structurally connected” to and “part of the principal building.” Except that no “principal building” is identified.

The documents provided with the Laws’ application⁷³ contained 7 scale drawings by landscape architectural firm Drost Landscaping showing the dimensions and placement of the channel and boat basin. Four pages of large architectural drawings by architectural firm Andre Poineau Woodworker Inc. showed building elevations and floor

⁷² Hayes Township Zoning Permit Application Packet, contains instructions, <https://www.hayestownshipmi.gov/wp-content/uploads/2019/09/zoning-permit-application-packet-2019.pdf>

⁷³ Exhibit L. Bates ## 150-166.

plans to scale, depicting the use of the Main Floor (Figure 1)⁷⁴ as a dining and event facility with a large approximately 4,500 square foot area dominating the floor, with 22 large windows across the lakeside, and with luxury amenities in service to it for large groups: commercial kitchen and food serving area, elevator, fireplace, stairs, large storage closet for tables and chairs, men's and women's restrooms, and food serving area, along with outside decks, annex and covered entryway.

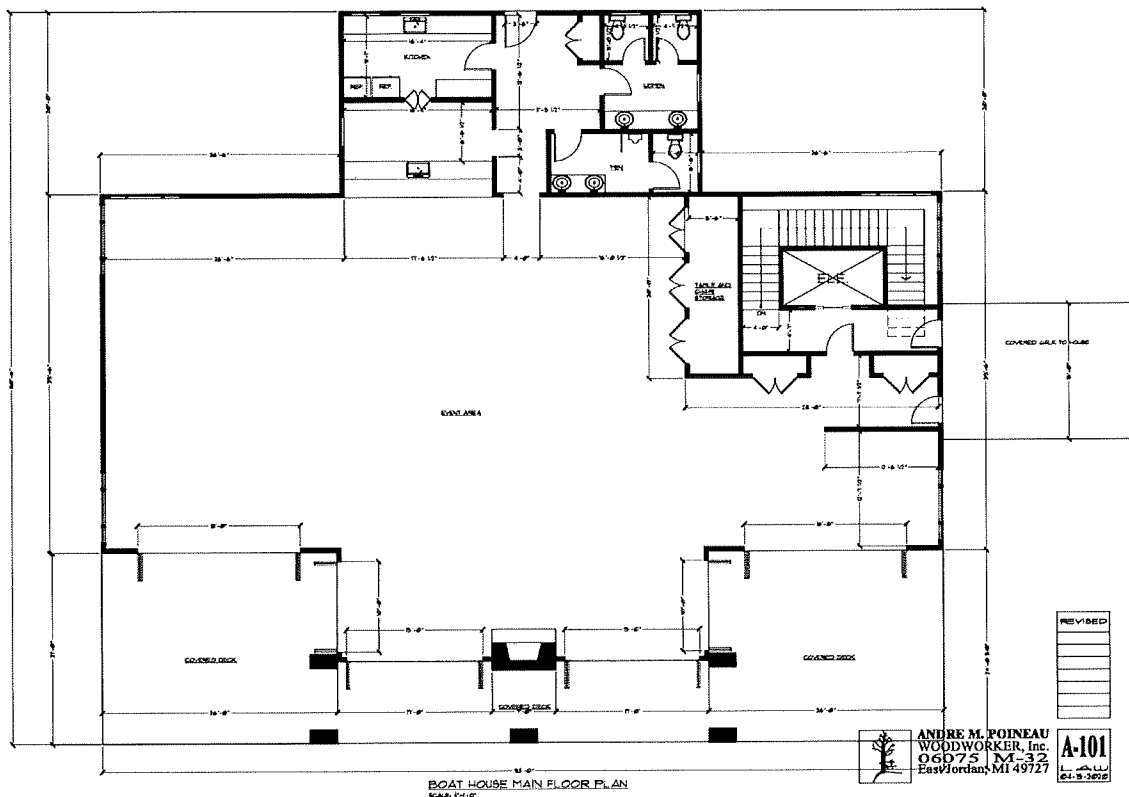


Figure 1, from Exhibit L, Bates # 164. (printed from uploaded Joint Permit, EGLE.)

The Lake Level floor plan (Figure 2) depicted the boat storage area and docks,

⁷⁴ Figures 1, 2, 3 and 4 are from Exhibit L but reproduced here for convenience.

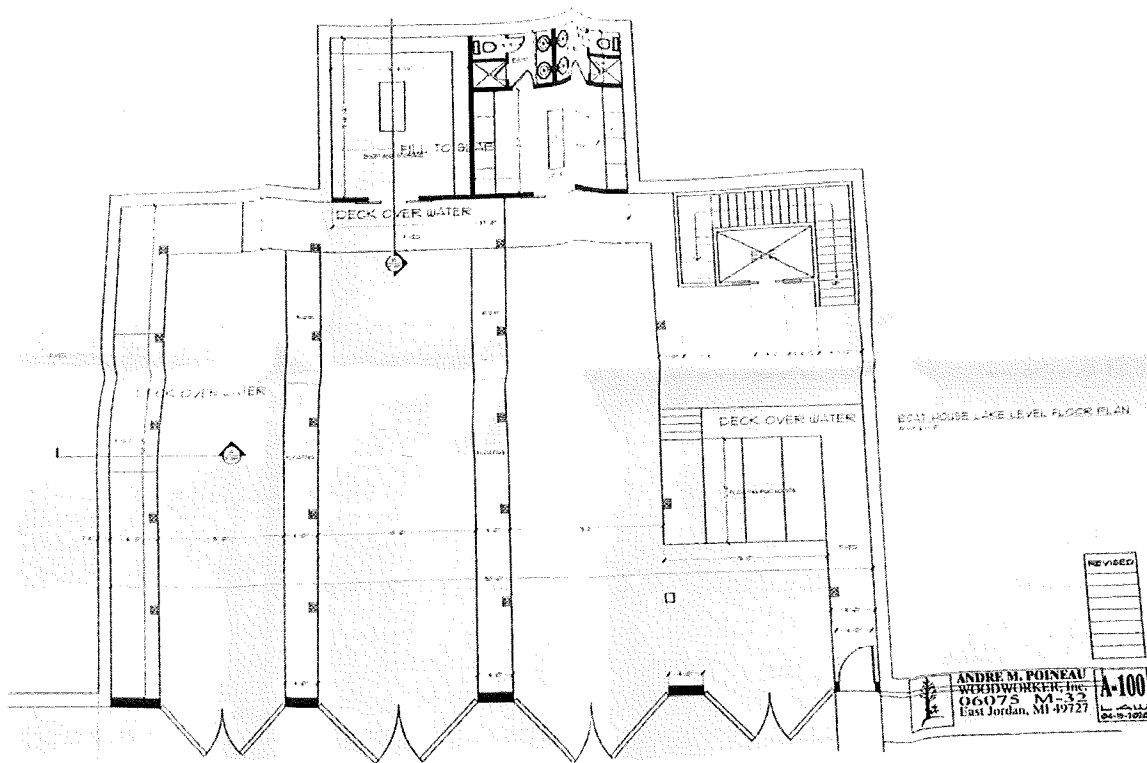


Figure 2, from Exhibit L, Bates # 163.

more bathrooms, a locker room and mechanical room, elevator and stairs. Another floor plan showed the footings designed to scale. A large lakeside elevation (Figure 3) showed the enormity of the two-story stone structure and its height, which is higher than allowed for an accessory building, and cathedral ceilings above the Main Floor. A scale drawing in color labeled “Boathouse Site Plan” (Figure 4) by Poineau showed the layout of the proposed development including the channel and boat basin with the boathouse attached to the residence with a covered walkway.

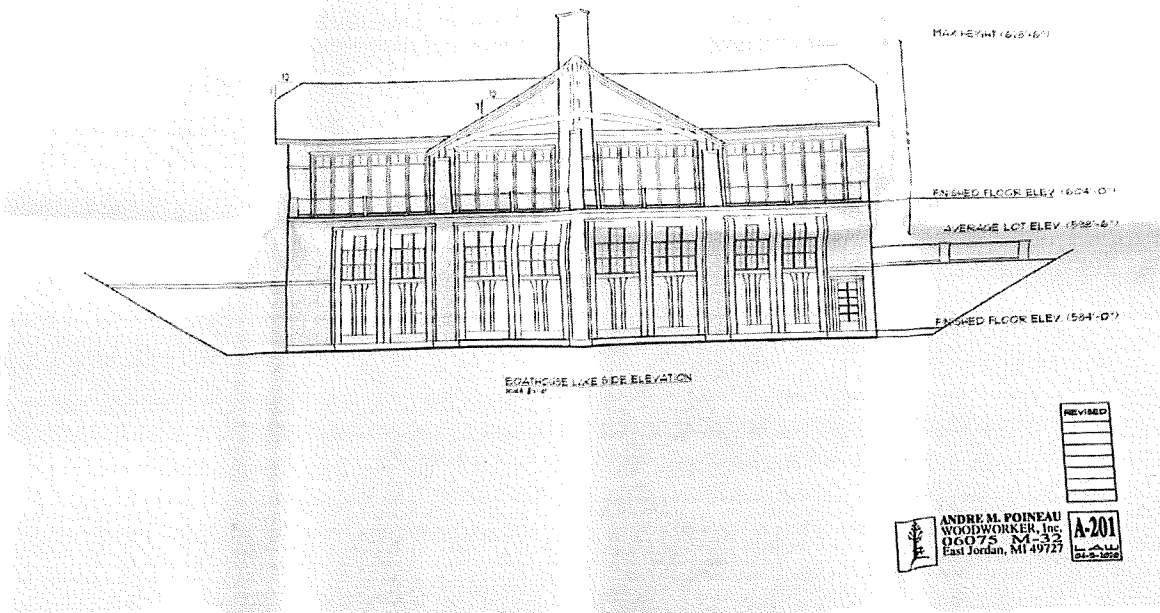


Figure 3, From Exhibit L, Bates # 166.

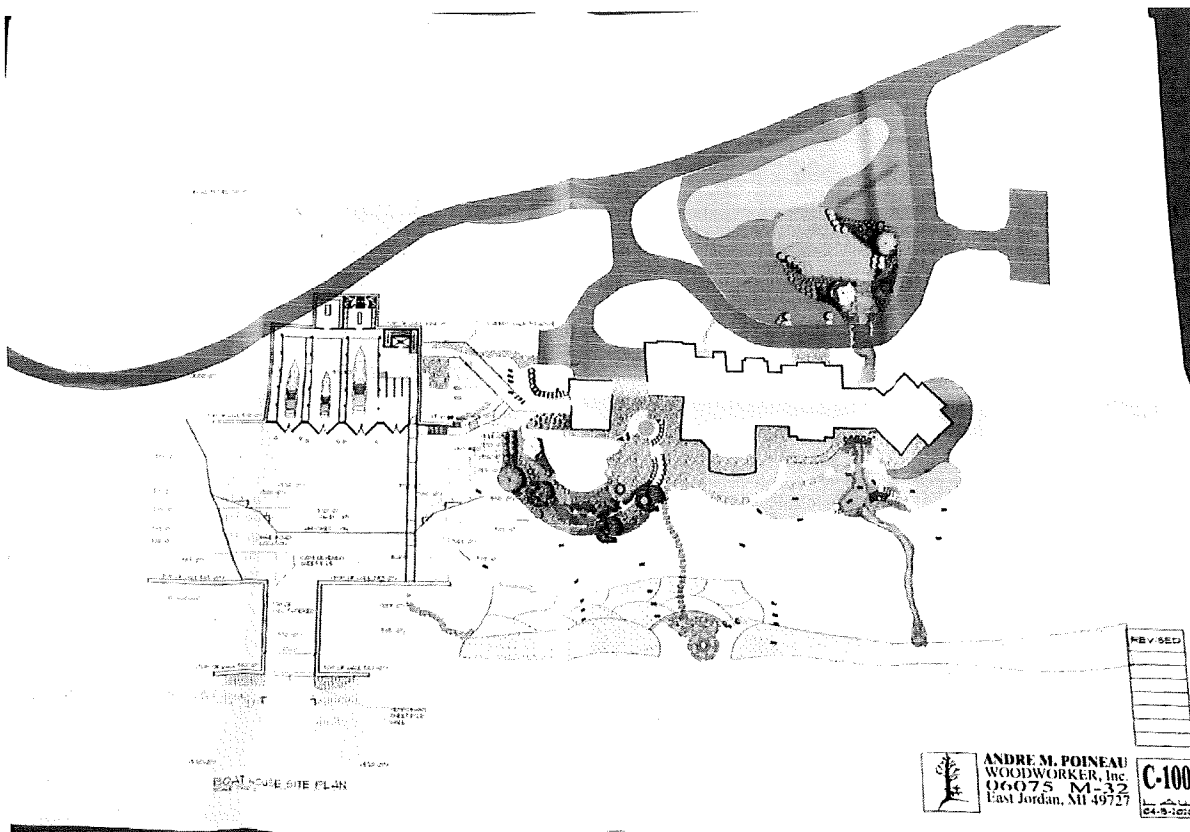


Figure 4 from Exhibit L, Bates # 162.

Van Zee had all these in front of him in July 2020 when he issued the zoning permit for “attached boathouse and covered walkway” in just two days’ time. The Planning Commission did not. To say, now, that he didn’t require site plans then, is false because the instructions clearly indicate that drawings were required for all structures. And it does not explain how he could possibly know that the plans called for a “covered walkway.” It also doesn’t give him any excuse for saying now in 2021, when he knows the actual, intended non-residential uses of the proposed building, as part of a 400+ acre commercial development contiguous to this facility, that the proposed uses of the building “are in compliance with” the Zoning Ordinance for a single family residence in zone R-1.

The estimated event area space of about 4,400 square feet,⁷⁵ depending on room set up, has enough room for 733 standing guests, or 550 people both standing and seated, or up to 366 people at round tables.⁷⁶ There are six toilets. At 100 people per toilet, a maximum number of guests would be about 600. By either measure, one can get an idea of the immense size of the Laws’ planned dining and event facility.

Putting a structure for large events *directly over the lake* is an extraordinary violation of the ordinance, which requires a 100-foot setback from the OHWM. The filtering role of a 50-foot mostly naturally-vegetated Shoreland Protection Strip, as well as the additional 50 feet setback, is to provide protection for the lake from the various activities and concerns associated with structures such as houses and other buildings. Anything that would go into Lake Charlevoix as a result of the event center, its structure and activities that go on inside, goes into the whole lake, completely defeating the

⁷⁵ Measurement is estimated from Poineau Main Floor plan for dining/event facility (Exhibit L at Bates # 164, counting only the area labeled “event area, as approximately 289 sq ft and outside covered decks as another 1522 sq ft for a total of 4,420 sq ft.

⁷⁶ <https://www.banquetttablespro.com/space-and-capacity-calculator>

purpose of the setback.

Compare the situation in the attached unpublished *Nixon v Webster Township* decision of the Michigan Court of Appeals last year,⁷⁷ when a landowner sought a ZBA interpretation that his “wedding barn” was within the use of “seasonal agri-tourism” allowed in Agricultural Districts in Webster Township. The ZBA held two public hearings where most community members expressed concerns regarding

noise, traffic, light pollution, waste, and safety issues related to wedding barns, as well as the potential disruptions to the rural character of the Agriculture District and the Township.⁷⁸

Noting that the Ordinance did not define “agri-tourism,” the ZBA relied on dictionaries and the Michigan Agricultural Tourism Advisory Commission’s definition to interpret that a wedding barn was not within that use, that is, weddings did not share characteristics with activities associated with seasonal agriculture such as hay rides, corn mazes, and pumpkin patches. The Court of Appeals agreed, concluding that wedding events are not associated with a particular agricultural product or harvest season. The Webster Township ZBA and Court of Appeals agreed weddings have concentrated traffic patterns, sounds that are not traditionally agricultural, and determined weddings “do not promote the rural character” of that district.

Similarly, the “boathouse” actual intended uses fly in the face of just boat storage for a single-family residence. None of the anticipated events that would be held in the Main Floor of the structure has anything to do with the sheltering, storage or

⁷⁷ Exhibit S, COA Case # 343505 (1-21-20).

⁷⁸ Slip opinion, p 2.

maintenance of boats.

The Laws' history of large, loud parties, noisy helicopters and fireworks, and a Jumbotron screen which lit up the Lake, in the “relatively quiet” R-1 district⁷⁹ – documented in the attached affidavits of Kozma and Fowle and in Scott Law's email of October 20, 2019⁸⁰ – which would all be institutionalized and magnified if the event building is allowed – is analogous to the issues associated with events to which community members testified in *Nixon*.

Allowing a commercial, non-residential use in an R-1 residential zone would be “spot zoning” condemned by the Ordinance.⁸¹

The Van Zee Affidavit also states the ZO “did not require Planning Commission or site plan review,” supposedly under ZO § 5.03. But any building has to have a permit, and the structure “shall be staked on the ground” first, before a permit can even be considered.⁸² If the building would entail any “new use” the owner must also produce a “site plan.”⁸³ The “site plan” is to have “drawings and documents depicting and explaining all salient features.”⁸⁴ If approved without a site plan, the building would be a nuisance *per se*.⁸⁵

⁷⁹ ZO § 4.05 (1).

⁸⁰ Exhibit F, Bates ## 79-82.

⁸¹ ZO § 10.01(1)(C)(5)(g).

⁸² ZO § 9.02(1) and (4).

⁸³ ZO § 5.03(1)(A).

⁸⁴ ZO § 2.02.

⁸⁵ ZO § 9.07.1.

Certainly for the Laws, an insulated event center to feed hundreds would be a “new use,” having nothing to do with residential use.

Finally, a “new use” unrelated to residency on a single lot is forbidden.⁸⁶

Army Corps regulations incidentally do not preempt those of the Township: “The primary responsibility for determining zoning and land use matters rests with state, local, and tribal governments.”⁸⁷

The Zoning Ordinance intentionally no longer permits boathouses, as a review of the history of the evolution of the Hayes zoning ordinance shows. The word “boathouse” is not defined in the ZO and appears nowhere in it. In the Township’s original ZO of 1973, though, “boathouses” and “bathhouses” *were* permitted on the shoreline. But in 1979 both terms were removed. and in a marked departure, replaced with “no buildings or structures” were allowed closer than 50 feet from the shore. The word “boathouse” never appeared again in ZO iterations, the shoreland protection strip grew in size as did the setback requirements, through time. ⁸⁸

A late breaking “revision” to the Laws’ “boathouse” plans, as indicated by recent communication from the Army Corps and accompanying documents, is an attempted disguise of the actual intended use by changing one label on the building’s Main Floor plans main room from “event area” to “STORAGE.”

⁸⁶ ZO § 3.04.

⁸⁷ 33 CFR 320.4(j)(2).

⁸⁸ Exhibit J, and see pages 98-100 and 103-106 for references to boathouse in 1973 and language that began in 1979 stating “no structures” within the setback.

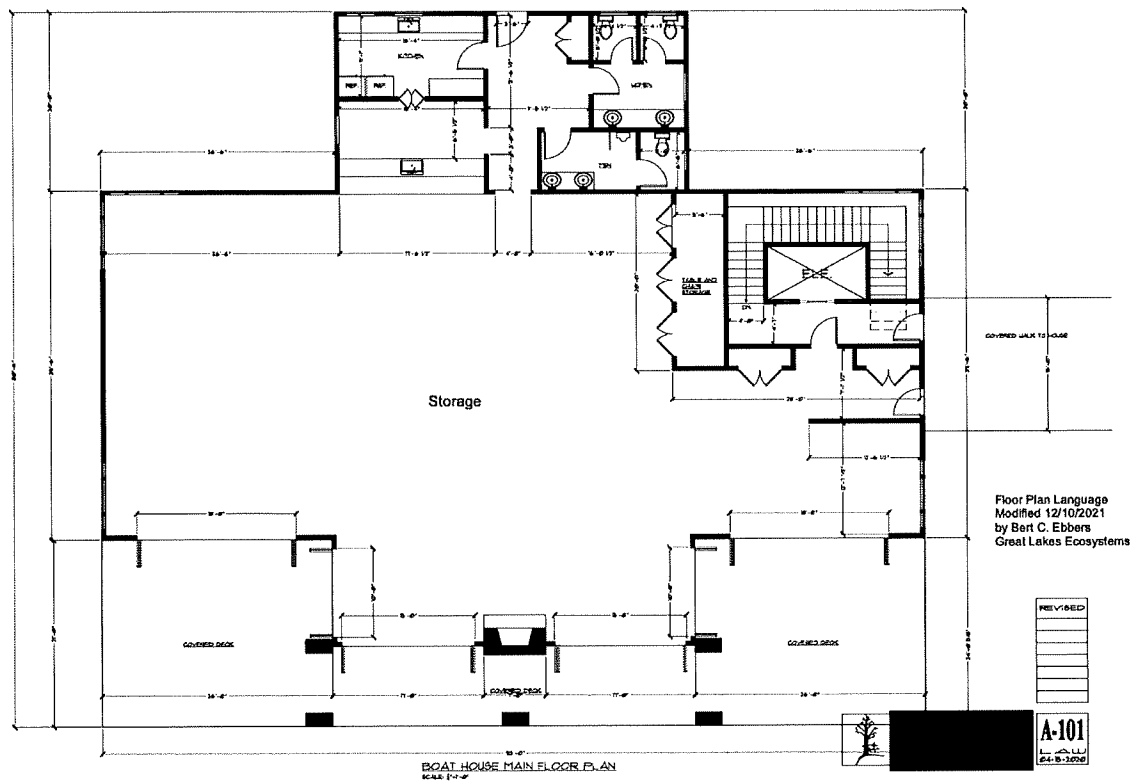


Figure 5—Only one word changed on “revised” plan: “Storage” instead of “Event Area” (From Exhibit T, Bates # 223).

The claimed change is not credible in any respect.⁸⁹ The building’s design is unchanged. Still there are the luxury amenities of large room with cathedral ceilings for events, and all the auxiliary rooms serving the main area’s function: commercial kitchen, food serving room between kitchen and event room, large storage closet for tables and chairs, men’s and women’s restrooms, elevator, fireplace, 22 tall windows looking out over the lake, and large outdoor covered decks. To build a huge, multi-million dollar,

⁸⁹ Exhibit T, Communication from April R. Champion, USACE, to Deborah Narten, December 15, 2021, with attachments.

stone structure designed by a renown architectural firm that designs and builds upscale, high-end residences, and to construct a second story for an oversized 4,500 square foot area for “storage” of a few canoes and kayaks doesn’t pass any kind of smell test. One could buy a brand new fleet of canoes every year more cheaply than build this expensive building and rip up the shoreland for their storage. Hauling canoes and kayaks up from floating docks through a building and up an elevator to put them in a fancy event room, is obviously not the intended use.

Besides, the large event area would be available for *events* during the boating season after (supposedly) removal of canoes and kayaks, providing its *actual intended use* for large events for employees and guests of the Laws. Large fleets of canoes and kayaks and their need for luxury storage buildings were not mentioned on the tour Van Zee took with Scott Law. But “dining facility for guest[s] and events” was. The design of the building and the amenities inside it attest to the truth that the intended use has not changed. The absurdity —and lack of candor—of it is astonishing and it should fool no one.

VI. Appeal to ZBA to reverse the ZA’s determinations

With this appeal to the ZBA, Appellant asks to reverse the ZA’s 2021 determinations that the Laws’ proposed boathouse/boat basin/boat channels/and event and dining facility—shall be treated as two separate projects—with only the boathouse *sans boat basin and channel* requiring a zoning permit, while the boat basin and channel is treated as a separate project not requiring a zoning permit from the ZA for excavation and construction, the approval for excavation and construction left only to other agencies, not the township which has “nothing” in its ordinance regulating boat basins and canals/channels, while only receiving minor review by the Planning Commission for

landscaping regarding the project's after-effects—on what remains after such drastic removal of 700 cubic yards of Shoreland Protection Strip.⁹⁰

If the ZBA does not reverse, it would allow a boat basin and channel to destroy Lake Charlevoix's protected shoreland and render the Shoreland Protection Strip requirements completely meaningless.

Also with this appeal to ZBA, Appellant asks to reverse the ZA's determinations that the proposal for "boathouse" is "compliant with the ordinance," can be approved by the ZA without anything more than one sheet of paper with the words "boathouse, attached," that the intended use of the project proposed is implied from the word "boathouse" to mean that is *its only intended use*, and that by virtue of its physical attachment to the principal residence, that this project is a residential use, when the ZA knows otherwise from the facts presented to him. He knows that the Laws have a "master plan"⁹¹ for this parcel and their entire 400-acres of contiguous property, including other waterfront parcels. An entire private resort is being planned on residentially-zoned property. This is a non-residential dining and event facility.

Proposed findings of fact:

1. The Laws' proposed plans for boathouse/dining and event facility designed over

⁹⁰ Exhibit K on page 146 indicates 703 cubic yards of Shoreland Protection Strip would be excavated for the 30 x 55 foot entrance channel leading from Lake Charlevoix to the boat basin. Exhibit K on page 146 indicates 3067 + 767, a total of 3,834 cubic yards would be excavated for the boat basin center and sides located in front of the boathouse, and on page 147 it indicates the portion of the boat basin located directly under the boathouse would require excavation of another 2300 cubic yards. Total excavated would be 7152 cubic yards within the 100 foot setback.

⁹¹ Exhibit F, on Bates # 81.

an excavated artificial boat basin and connected to an excavated artificial channel which would be connected to Lake Charlevoix, is a single project that must be treated as such in a single zoning application and detailed site plan review required for all parts of it. They are in one ‘building envelope.’ Site plans that have already been submitted to the Township (but with expired permissions) already depict it as one project, and the same, entire project plans were submitted to EGLE and USACE as a single project.

2. Boathouses (“attached” to something or not) are not permitted by Hayes Township ordinance and have not been since 1979, after the ordinance having at first expressly permitted them, replacing it with language that mandates that “no structures” are allowed within 100 feet from the waters of Lake Charlevoix and other lakes. ZO § 3.14(2)

3. The definition of Shoreland Protection Strip and ZO § 3.14 provide language that “all of the land area” measured 50 feet landward from the OHWM means the *uplands or* shoreland, not bottomlands.

4. The OHWM is the physical line between uplands and bottomlands. Therefore, a change in location of the uplands and bottomlands by construction of an artificial channel and boat basin changes the location of the OHWM. Excavation of a channel and/or basin contiguous with Lake Charlevoix expands the extent of the ordinary high waters of Lake Charlevoix throughout the entire channel and/or basin, and the new OHWM would follow the new shoreline contour. Accordingly construction of the artificial channel and basin would move the setback requirements inland.

5. The restrictions in the Shoreland Protection Strip prohibit the upland’s destruction and prohibits excavation and construction of boat basins and channels because it would

be a conversion of uplands to bottomlands, removing the Shoreland Strip itself and changing the OHWM. Conversion is prohibited because it would defeat the purpose of the uplands remaining in place to filter harmful substances from reaching the lake. The purpose of protecting the Shoreland Protection Strip from harm is to protect the lake from harm. ZO § 3.14

6. Artificially constructed boat basins and canals/channels are structures as defined in the ordinance: “anything constructed... requiring location on the ground.” ZO § 2.02

7. All construction requires zoning permits. ZO § 3.01

8. All parts of the Laws’ project requires construction and as such it is unlawful for the ZA to approve plans or issue a zoning permit for their construction until such plans have been inspected in detail and found to conform to the ordinance. (ZO § 9.01)

9. While “boat basin” and “canal” and “channel” do not appear in the ZO by name, they are not among the named exceptions of structures or activity that are allowed within a 100-foot setback from the Lake. Even if other “like” structures or activity are permitted, boat basins, canals and channels are not in the category of exceptions permitted within a 100-foot setback from Hayes Township lakes, because they do maximum damage, rather than minimal environmental impact as the exceptions do, and therefore are not permitted. ZO § 3.14(2)

10. The Laws’ architectural and landscape architectural scale drawings, already provided as required, depict on site plans the intended use of the “boathouse” structure to be solely an event and dining facility on the main floor, with other amenities for that purpose including kitchen and food serving rooms, mens and women’s rest rooms,

elevator, fireplace, outdoor decks, large windows for viewing the lake, and large storage closet for tables and chairs, and on a scale and size designed for hundreds of people, far beyond use by a single family residence. It is a commercial, non-residential use and not allowed in R-1.

11. A December 10, 2021 change (on page 223 of Appellant's exhibits) of a single word labeling a room on the Laws' main floor plan—but no changes in architectural design—from "Event Area" to "Storage" is not consistent with the building's unchanged design plans that show it is still intended for use as a dining and event facility on the Main Floor.

12. Site plans are required to show all existing and proposed/intended uses of the building or structure. ZO § 5.01

13. Applicants are expected to be truthful, make no false statements or misrepresentations in the application and site plans are to reflect accurately the intended use. ZO § 9.02(6)

14. Approving a boathouse for boathouse-use only and as a residential use only, while the site plans clearly depict a large commercial-scale building and a commercial, non-residential use for large events by hundreds of people, would create a nuisance *per se* in a residential R-1 zone. ZO § 9.07.1

15. Communication from the Laws to the ZA in 2019 (Exhibit F, Bates ## 79-82). indicate the Laws plan to build a dining facility for their guests and employees as part of a much bigger resort filled with resort amenities on their 400+ acres of contiguous property.

Signed,
LuAnne Kozma 53
12/20/21



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Our beautiful shore land.

1 message

Chris Narten <ncnarten@gmail.com>

Sun, Aug 14, 2022 at 4:56 PM

To: CLERK@hayestownshipmi.gov

I implore the members of Hayes Township to keep our lake and it's shore land to remain pristine as it has been for the past 33 years I have been a resident of this township.

Chris Narten



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Save the Lake Charlevoix shore line for all .

1 message

marylee pakieser <mlpakieser@gmail.com>

Sun, Aug 14, 2022 at 4:36 PM

To: clerk@hayestownshipmi.gov

Cc: LuAnne Kozma <info@protectlakecharlevoixshoreland.org>

Dear ZBA members:

Please read my comments out loud and during both ZBA public hearings on August 15 for the Appeals case and August 22 for the Interpretation case.

My husband ,William C. Fowle and myself are very concerned about possible shoreline changes to property so near our property and also the negative impact going forward to impact more landowners and people who use this beautiful lake
The purpose of the zoning ordinance is to protect the Shoreline of Lake Charlevoix from harm and accordingly it created the Shoreland Protection strip, defined as all land 50 feet upwards from the ordinary high water mark (OHWM).

The ordinance protects the 50 foot

Shoreland strip in a number of ways:

- 1) by providing for a 100 foot setback from the lake (Ordinary High Water Mark) for all buildings;
- 2) by keeping structures away from the water of Lake Charlevoix;
- 3) by prohibiting any structure on or over its water;
- 3) by precluding commercial use of structures in a residential zone;
- 4) by specifically prohibiting boathouses, since 1979, and any structure except walkways, viewing decks, retaining walls, docks and ramps, within 100 feet from the OHWM of Lake Charlevoix;
- 5) by defining the OHWM in a way that has been supported by the Army Corps and State of Michigan as evidenced in their emails;
- 6) by prohibiting destruction, including excavation, of any of the land within the 50 foot strip above the OHWM, including boat basins and canals;
- 7) in providing that 20% of the 50 foot Shoreland strip can be used for removing vegetation only, it affirmatively prohibits the removal of root systems, and thus excludes all other forms of removal, including excavation of land and soil.

Please find that the Hayes Township Zoning Ordinance does indeed protect the shoreland from all destruction such as the project proposed for a boat basin, canal, and "boathouse"/dining and event facility over the waters of Lake Charlevoix.

MaryLee Pakieser MSN,RN,FNP-BC

William C. Fowle MSW

home address [1230 Randall Court Traverse City MI](#) 49486

Vacation home address [9370 Boyne City Rd. Charlevoix, MI](#)

cell :231-313-3817



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

ZBA Hearing RE: Law Boathouse on Lake Charlevoix

1 message

Sun, Aug 14, 2022 at 4:14 PM

Chris Boal <c.r.boal@gmail.com>

To: clerk@hayestownshipmi.gov

Cc: LuAnne Kozma <luannekozma@gmail.com>, Ellis Boal <ellisboal@voyager.net>

Dear Kristin Baranski and ZBA Members,

I have been working in the design and construction industry for 24 years. I was trained as an architect, and worked for architects and developers, and I now work for a large commercial construction company in Minneapolis, MN. In the early 2000's, I designed my father's (Stewart Boal Jr.) house at 9290 Woods Road, 49720, on Lake Charlevoix, and am familiar with the Hayes Township Zoning Ordinance.

I am concerned about the proposed channel-basin-boathouse of Scott and Debra Law, a few residences to the west of my father's place at 9290 Woods Road on Lake Charlevoix.

I write today particularly about the project's proposed covered angled walkway between the boathouse and the main residence, as pictured on the six pages of plans in the attached file, "Walkway Details.pdf" collected from the Laws' plans. I can see that these pages were prepared by different planners for the Laws on various dates, but what is common to all of them is the walkway. From scales on the drawings, the walkway is approximately 100 feet in length.

The Township Zoning Ordinance, Article II, Section 2.02 – Definitions, defines an "Accessory Building or Structure" as "any building or structure that is customarily incidental and subordinate to the use of the principal or main building or structure." Further, "an accessory structure attached to a main building or structure shall be considered part of the main structure."

Further, the Township Zoning Ordinance, Article III, Section 3.05 (1) - Accessory Buildings, states that "A building which is structurally connected to principal building by a roofed porch, breezeway or similar structure, shall be considered part of the principal building and thus not subject to the regulations for accessory structures."

Ellis Boal (my uncle) informs me that the Township Zoning Administrator wrote an affidavit last November 19, 2021, which included the following:


"19. Pursuant to Section 3.05(1) of the Zoning Ordinance, Exhibit 2, a building that is structurally connected to the principal building is considered part of the principal building and not subject to regulation as an accessory structure."

"20. The boathouse is to be attached to the house making it part of the house and not an accessory structure."

I do not believe that other builders or architects looking at the attached plans would consider the boathouse as "part of" the main residence, due to the proposed 100' covered walkway/breezeway. In my experience, a detached boathouse structure is "customarily incidental and subordinate to the use of a residence". In this case, the Law's boathouse, as shown on attached plans, should be considered a separate structure and evaluated as an Accessory Building or Structure in the Township Zoning Ordinance.

I agree with the Zoning Administrator's affidavit that the Law Boathouse should be connected to the house to be considered a part of the main building. However, in this case the proposed 100' covered walkway/breezeway does not keep to the spirit of the Township Zoning Ordinance or the Zoning Administrator's affidavit. I believe others in the design and construction community would agree. Accordingly, I support the appeal as it concerns the boathouse.

Chris Boal
1448 Park Dr.
Mound, MN 55364
c.r.boal@gmail.com
(720)-505-7417

 Walkway Details.pdf
3721K

Omar Feliciano

Dear ZBA members: Please read my comments out loud and during both ZBA public hearings on August 15 for the Appeals case and August 22 for the Interpretation case.

Omar Feliciano, recent Planning Commissioner

From personal experience, growing up most of my life along the Detroit River, and working as a Detroit law enforcement officer, in twenty-five years of service I never once entered the Detroit waters due to its pollution. So here I am living here for the past 10 years thinking of what will become of Hayes future. Will local steady minds with personal conviction for the "rule of law" prevail or will greed, power and influence destroy this ecosystem of freshwater for future generations. "You have to know the past to see the future"

The purpose of the zoning ordinance is to protect the Shoreland of Lake Charlevoix from harm and accordingly it created the Shoreland Protection strip, defined as all land 50 feet upwards from the ordinary high-water mark (OHWM).

Unlike legal opinions or recommendations of consultants, an interpretation by the ZBA establishes the meaning of the matter being interpreted and is deemed to be the actual meaning of the ordinance from that point forward, unless the ZBA's interpretation is appealed to the courts.

Requirements of a Local Ordinance: Serve a public purpose

An ordinance must advance a public purpose, not the interests of a private person or an arbitrary class of persons. An ordinance that grants special privileges to a single person or entity exceeds the scope of the governing body's powers. An ordinance must relate to local matters, not to matters of statewide concern. In addition, an ordinance must serve a lawful purpose, either as expressly provided for by law or as necessary for the general health, safety, and welfare of the community. *[Michigan Municipal League: Chapter 7: Local ordinances https://www.mml.org](https://www.mml.org)

The Michigan Zoning Enabling Act of 2006, Sec. 203: "A zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy... [https://www.legislature.mi.gov/\(x3eqqx2ix0ez34nsk1zysl45\)/documents/mcl/pdf/mcl-Act-110-of-2006.pdf](https://www.legislature.mi.gov/(x3eqqx2ix0ez34nsk1zysl45)/documents/mcl/pdf/mcl-Act-110-of-2006.pdf)

Excerpt from the online resource...

http://www.lakecharlevoixprotection.org/downloads/lake_charlevoix_protection_final_report.pdf

Enacting Shoreline Zoning Protections around Lake Charlevoix Project Overview and Recommendations

Hayes Township Planning Commission Meeting – August 16, 2016 In 2016 our current zoning administrator and township supervisor was on the Steering Committee Members* of Enacting Shoreline Zoning Protections around Lake Charlevoix Project Overview and Recommendations

*Ron VanZee, Zoning Administrator, Bay Township/Hayes Township

At that time Ron VanZee agreed that...

Based on previous shoreline protection work in the communities surrounding Lake Charlevoix, it is clear that local elected and appointed officials believe that maintaining the water quality of the lake is important for future economic development and quality of life in the region. In an effort to build upon previous shoreline protection work, the Enacting Shoreline Zoning Protections project was launched to help protect the water quality of Lake Charlevoix through the adoption of shoreline protection zoning standards in the ten jurisdictions surrounding the lake. The project promotes the understanding and acceptance of the need for shoreline protection standards in the City of Charlevoix, City of Boyne City, City of East Jordan, Bay Township, Charlevoix Township, Eveline Township, Evangeline Township, Hayes Township, Marion Township, and South Arm Township... Project partners working on this, and other, portions of the grant include Tip of the Mitt Watershed Council, MSU Extension, and the Lake Charlevoix Association.

At that time Ron VanZee agreed that...

Review and analysis of the work by the previous shoreline protection studies shows that local municipalities can be effective in protecting water quality by managing development and redevelopment on waterfront properties. The project team and steering committee used the findings of these previous studies to guide the creation of the shoreline protection recommendations for the local units of government around the Lake.

At that time Ron VanZee agreed that...

Current Shoreline Protection Zoning Standards in Hayes Township

Hayes Township has already gone to great lengths to protect the shoreline and water quality of Lake Charlevoix. The Township's Zoning Ordinance contains many standards and regulations that help prevent shoreline degradation, limit the impacts of stormwater runoff, and help prevent pollution of the Lake. The Township's residents, elected officials, and planning commissioners should be proud of their commitment to the continued protection of this valuable natural resource. The table on the following page illustrates the Zoning Ordinance's standards and regulations related to shoreline protection and indicates where they meet the recommendations created as a part of this project

Hayes Township – Existing Shoreline Protection Zoning Standards

Community	Hayes Township	
Zoning District	R-1	A
Defined High Water Elevation/OHWM	582.3' I.G.L.D.	
Setback from OHWM	100'	100'
Maximum Impervious Surface Coverage	15%	30%
Shoreline Buffer/Greenbelt Requirement	50'	50'
Native vegetation requirement in greenbelt	Yes	Yes
Prohibition of pesticides, herbicides, fertilizers in greenbelt	Yes	Yes
Specific prohibition of lawn in greenbelt	-	-
Requirement of trees/woody plants in greenbelt	Yes	Yes
Cutting/pruning of greenbelt vegetation limited	Yes	Yes
Prohibition of beach sanding in greenbelt	-	-
Prohibition of alteration of area between water's edge and high water elevation	-	-
Requires that new low-growing plantings be spaced for complete ground coverage in two years	-	-
Allows a single, small (200 s.f.) waterfront viewing platform in the greenbelt	Stricter	Stricter
Allows a single path (6' maximum width) through the greenbelt to the water	Yes	Yes
Allows for the maintenance of existing natural shoreline buffers, where they exist	Yes	Yes
Requirement that all county, state, federal permits be obtained prior to zoning permit being issued	Yes	Yes
Formal Planning Commission site plan review for all waterfront uses	-	-
Dock regulation	Yes	Yes
Specific keyhole/funneling standards	Yes	Yes
Prohibition of seawalls	-	-
Engineered stormwater control system requirement	Yes	Yes

At that time Ron VanZee agreed that...

Prohibit the alteration of the area between the water's edge and the high-water elevation *page 4*
Jurisdiction over inland lake bottomlands between the high-water elevation and the water's edge is concurrently held by both the Michigan Department of Environmental Quality and local units of government. Local zoning ordinances can regulate activities that take place in these areas, including the alteration of the ground and the construction of structures. It is recommended that the Zoning Ordinance be amended to prohibit the alteration of the area between the defined high-water elevation and the water's edge. The alteration of bottomlands between the water's edge and high-water elevation can negatively impact habitat that would be underwater when lake levels are high. It can also increase the risk of shoreline erosion. Specific language to prohibit the alteration of these areas could be included in a new section in Article IV - General Provisions or, potentially, within Article VI -Waterfront Overlay District of the Zoning Ordinance.

Recommendations for further shoreline protection zoning standards in Hayes Township

After reviewing the recommendations of the previous shoreline protection work groups and discussing appropriate shoreline protection standards for the ten jurisdictions surrounding Lake Charlevoix, the project team and steering committee identified specific categories for which recommendations should be made. Those categories are:

- High water elevation
- Shoreline setbacks
- Greenbelts or vegetated buffer strips
- Engineered stormwater control systems
- Maximum impervious surface lot coverage
- Conditions for issuance of zoning permits
- Formal planning commission site plan review
- Shoreline protection structures
- Keyhole and funneling practices **
- Number and use of docks

As shown in the table above, the Hayes Township Zoning Ordinance (Zoning Ordinance) contains many shoreline protection standards that align with the recommendations of the Enacting Shoreline Protections project.

****Keyhole development, also called funnel development,**

is the development of a large parcel that has a relatively small, narrow frontage on a body of water and is used more heavily than is typical from a single-family lot. These developments can include condominiums, campgrounds, or planned unit developments and often accommodate access by owners, residents, and guests. The conflicts that arise from these developments include increased boating traffic, increased shoreline erosion from boat wakes, water quality impacts, noise, and navigation issues. Local governments can alleviate some of these conflicts by establishing lot width requirements for access per dwelling unit and limiting the number of watercrafts per dock. Local governments can also set limits on motorized to non-motorized watercraft ratios.

At that time Ron VanZee agreed in all this. so, what happened that since 2016 moving forward he removed the last zoning admin and becoming zoning and supervisor himself and is now on a 180 degree turn against everything he first stood for from changing the entire Hayes Township Ordinance, to satisfy certain applications, causing undue financial burdens on the citizen of Hayes Township, failing to honor his social contract to us to removing me from the Planning Commission when felt threatened by me or anyone else when we don't agree on issues. This is a dangerous path to usurp his responsibilities to the "Rule of Law" for the moment.

Hayes Township officials are violating the zoning ordinance. Is this right for a residential zoning? To carve out a 30-by-55-foot portion of Lake Charlevoix's Shoreland Protection Strip for a channel, excavate a 120-by-90-foot boat basin, build a two-story boathouse, and dig 73-foot-wide channel 130 feet out into the lakebed. So, if this stands then all lakeshore properties are intitled to the same. If this is not heeded or restrained the physical configuration of Lake Charlevoix waterfront will dramatically change going forward.



Letter for ZBA meeting Monday August 15

1 message

Jonathan Friendly <jfriendly39@hotmail.com>

Sat, Aug 13, 2022 at 9:33 PM

To: "clerk@hayestownshipmi.gov" <clerk@hayestownshipmi.gov>

Dear Ms. Baranski,

I cannot attend the meeting Monday night but would like to have the following read at the meeting and a copy included in the minutes of the meeting.

Thank you for your help.

Jonathan Friendly

Dear Zoning Board of Appeals members,

When my wife and I were planning our lakeshore home 35 years ago, we spent a lot of time with Ethel Knepp learning what was and wasn't allowed on the lakefront. We were pleased to learn we could build a modest wooden walkway across the marsh that lies back of our stretch of lakeshore – and even more pleased to know that Hayes Township ordinances were very strict on preserving the lakeshore.

Those rules gave us a good feeling about our local officials being truly committed to keeping the lake in as much of its original beauty as it possibly could be. We felt privileged to be able to have a place on the lake and glad that the rules protected the interests of the whole township and not just those with the money to own lakeshore property.

It seems you are now being asked to soften those rules on behalf of the privileged few who would cut up the shore of the lake because they have the money to do so. The rules seem to say that its okay to clear some native vegetation along some stretch of the waterfront to have a sandy beach -- if you leave the root structures of the native growth in place. But as I read them, they don't allow cutting new channels THROUGH that lakeshore and essentially and permanently changing the lakefront by dredging out an unnatural basin. The township, the state and the Army Corps of Engineers have allowed construction of two marinas in the Hayes waterfront, but those did not create artificial new adjacent lakes and required approval from nearby landowners.

One of the best things Hayes has done consistently in the past is to make sure that no new boathouses were allowed – indeed no new structures within 100 feet of the lakefront. But if it were to now reinterpret those regulations to allow dredging a boat basin and erecting a huge boathouse/entertainment center directly over the basin, the township would be throwing away the very values it has been so diligent to protect.

It was a mark of respect for all township residents when Hayes bought the Camp Seagull property and made sure the land served everyone's interests and needs rather than the desires of a very rich few who would have carved that property up for McMansions and who would be beating on the township doors for permits to build and dredge and change the best things about our lake. The respect for the general welfare has served Hayes well in the past. I hope that respect will continue.

Sincerely

Jonathan Friendly

07700 Boyne City Road

231-547-0213



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Shoreland Protection strip and 100 ft. setback

1 message

Jim McMahon <jim_mcmahon_iii@yahoo.com>

To: "Clerk@hayestownshipmi.gov" <Clerk@hayestownshipmi.gov>

Cc: "Supervisor@hayestownshipmi.gov" <Supervisor@hayestownshipmi.gov>

Sun, Aug 14, 2022 at 8:55 AM

Dear Zoning Board of Appeals and Planning Commission members,

Please read this email aloud at your meeting and enter it into the official record.

The current Shoreland Protection strip and 100 ft. building structure setback from the ordinary high water mark (OHWM) have existed for well over 45 years in our Hayes Township ordinance. These requirements have contributed to the protection of our beautiful and healthy waterfront shores. Any effort to reduce these requirements or reduce enforcement of the ordinance will have severe negative and devastating consequences for all of us.

For the last eight (8) years in increasing volumes, our lake shores have been contaminated by algae during the spring and summer months. This is due to increasing nutrients in the water. This condition is unsightly and unsafe for both children and adults swimming in the water.

People come to our area because of the natural and protected shorelands and waters. People will not come here to enjoy our area when there is excess property development and contaminated water.

Please keep our current Shoreland Protection strip and 100 ft. waterfront setback in our ordinance intact and secure.

Please don't kill the natural and healthy beauty of our northern home of nearly 50 years. Don't kill this golden goose.

Thank you.

Jim and Diane McMahon

7377 Nine Mile Point Drive

Charlevoix, MI 49720

phone: 231-347-9829 (Hayes Township)



Protect the Shores of Lake Charlevoix Please!

1 message

Anne Perry <anne.morrison.perry@gmail.com>
To: clerk@hayestownshipmi.gov

Sun, Aug 14, 2022 at 11:21 AM

Dear ZBA members:

Please read my comments out loud during both ZBA public hearings on August 15 for the Appeals case and August 22 for the Interpretation case. They are as follows:

The Seventh Generation Principle is based on an ancient Iroquois philosophy that the decisions we make today should result in a sustainable world seven generations into the future. It is estimated that this philosophy was created between 1142 and 1500 AD. Seven generations are approximately 525 years into the future, which is counted by multiplying the 75 years of an average human lifespan by 7.

In keeping with the *The Seventh Generation Principle* your zoning ordinance protects the shores of Lake Charlevoix from harm for the future use of generations of children to come.

The creation of the Shoreland Protection strip, defined as all land 50 feet upwards from the ordinary high-water mark (OHWM), determines just how that will happen.

The ordinance protects the 50-foot Shoreland strip:

1. by providing for a 100-foot setback from the lake for all buildings as determined by the OHWM;
2. by prohibiting any structure on or over its water;
3. by specifically prohibiting boathouses, since 1979, and any structure except walkways, viewing decks, retaining walls, docks and ramps, within 100 feet from the OHWM of Lake Charlevoix;
4. by prohibiting destruction, including excavation, of any of the land within the 50-foot strip above the OHWM, including boat basins and canals;
5. by providing that 20% of the 50-foot Shoreland strip can be used for removing vegetation only, it prohibits the removal of root systems, and thus excludes all other forms of removal, including excavation of land and soil.

Please find that the Hayes Township Zoning Ordinance does indeed protect the shoreland above the OHWM of Lake Charlevoix from all destruction, specifically the current project proposed for a boat basin, canal, and boathouse.

The Seven Generations of Children of the future will appreciate your wisdom.

Thank you!

Sincerely,
Anne Morrison Perry and Tim Perry

54 S. South Long Lake Rd.
Traverse City, MI 49685

Be kind whenever possible. It's always possible. ~ Dalai Lama

231-649-1618
anne.morrison.perry@gmail.com



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Protect Lake Charlevoix's Shoreland

1 message

Natalie Kozma <nataliekozma@gmail.com>
To: clerk@hayestownshipmi.gov

Sun, Aug 14, 2022 at 1:20 PM

Dear Kristin Baranki and ZBA member,

I'm writing to share my comments and voice support for the Interpretation case LuAnne Kozma filed on Sept 27, 2021 and the Appeals case filed on Dec 20, 2021.

Please read comments aloud at the upcoming ZBA hearings in August.

I am deeply concerned about the proposed development project in Hayes Township on Lake Charlevoix. The project is a blatant violation of the zoning ordinances that are designed to protect the lake's ecosystem, and would set a dangerous precedent if the ZBA allows it to come to fruition. We're counting on you to enforce this ordinance, protect the environmental integrity of the lake, and the spirit of this community.

The project is not only invasive to the Lake, all the people who use it. I've had the special privilege to call Charlevoix home, and am part of a family that has had property on the shoreline for more than five generations. Calling the Law's project a "boathouse" is like calling a car a cupholder. The term implies the Laws are building an innocent structure when in reality the Laws are scheming to build a robust commercial complex that, once again, is in direct violation of the law.

Uphold the ordinance and it's many protections that protect the shoreland.

Best,
Natalie

--
Natalie Kozma
(248) 880-4177



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Public Comment for ZBA Monday August 15, 2022 at 10 am

1 message

Dale Scott <dscott@trueaccountingcorp.com>

Sun, Aug 14, 2022 at 1:27 PM

Reply-To: Dale Scott <dscott@trueaccountingcorp.com>

To: "clerk@hayestownshipmi.gov" <clerk@hayestownshipmi.gov>

Dear ZBA Members, Having read your Zoning Ordinance, it is clear to me that in Section 3.14 - Waterfront Regulations, under item 1. Intent, it is simply enough stated in the last sentence and I will quote here: "therefore a shoreland protection strip shall be required on all waterfront lots".

The seven points listed below are clearly described in your ordinance and must be protected by your ZBA actions.

Having been involved in creating the Steep Slope ordinance in Emmet County as part of my work as then serving Supervisor of Friendship Township, I understand the important and purposeful effort that goes into the formation of such ordinances. They must be enforced!

Please read my comments out loud and during both ZBA public hearings on August 15 for the Appeals case and August 22 for the Interpretation case.

The purpose of the zoning ordinance is to protect the Shoreland of Lake Charlevoix from harm and accordingly it created the Shoreland Protection strip, defined as all land 50 feet upwards from the ordinary high water mark (OHWM).

The ordinance protects the 50 foot Shoreland strip in a number of ways:

- 1) by providing for a 100 foot setback from the lake (Ordinary High Water Mark) for all buildings;
- 2) by keeping structures away from the water of Lake Charlevoix;
- 3) by prohibiting any structure on or over its water;
- 3) by precluding commercial use of structures in a residential zone;
- 4) by specifically prohibiting boathouses, since 1979, and any structure except walkways, viewing decks, retaining walls, docks and ramps, within 100 feet from the OHWM of Lake Charlevoix;
- 5) by defining the OHWM in a way that has been supported by the Army Corps and State of Michigan as evidenced in their emails;
- 6) by prohibiting destruction, including excavation, of any of the land within the 50 foot strip above the OHWM, including boat basins and canals;
- 7) in providing that 20% of the 50 foot Shoreland strip can be used for removing vegetation only, it affirmatively prohibits the removal of root systems, and thus excludes all other forms of removal, including excavation of land and soil.

Please find that the Hayes Township Zoning Ordinance does indeed protect the shoreland from all destruction such as the project proposed for a boat basin, canal, and "boathouse"/dining and event facility over the waters of Lake Charlevoix.

Thank you,

Dale S. Scott



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

public comment for Kozma ZBA appeal on August 15

1 message

billhicklen@charter.net <billhicklen@charter.net>

Sun, Aug 14, 2022 at 1:39 PM

To: "clerk@hayestownshipmi.gov" <clerk@hayestownshipmi.gov>

Cc: "luannekozma@gmail.co" <luannekozma@gmail.co>, "ellisboal@voyager.net" <ellisboal@voyager.net>

This is a public comment from Lisa Hicklen being sent from the email address of my husband Bill Hicklen.

I am a co-requester with LuAnne regarding her request of September 27. The purpose of this email is to comment separately about her appeal of December 20.

I support it for the reasons stated in LuAnne's affidavit which is in the ZBA record. I have been coming to Fowles Roost or lived here for some 72 years since my parents bought the place from the Crumps (sp?). Our house is situated hundreds of feet back from the wooded shore. We expect the disturbances which we hear coming from the Law property since they bought it a few years ago will increase with construction of the assembly facilities of the boathouse and basin.

Elisabeth (Lisa) Hicklen, [3612 Cliffs Drive, Petoskey, MI, 49770](#)

Betty Henne betty.henne@gmail.com

To: clerk@hayestownship.gov

Dear Kristin Baranski and Members of the ZBA,

Hayes Township has a strong, exemplary zoning ordinance in place for the protection of the shoreline of Lake Charlevoix; I urge the Zoning Board of Appeals to enforce it.

On June 13, I attended a good conference sponsored jointly by Tip of the Mitt Watershed Council and the Lake Charlevoix Association. The key question that started the discussions of all groups was "What would you like to see Lake Charlevoix look like in the future?" It is a good question. Everyone agreed that strong zoning ordinances needed to be in place and enforced to protect the quality of the lake.

The Hayes Township Zoning Board of Appeals must enforce the 50 foot Shoreline Protection Strip and 100 foot setback provisions of the Zoning Ordinance. Scott and Debra's construction violates these rules. It is extremely important that the ZBA enforce the rules and protect the lake.

Sincerely,

Betty Henne



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Input for ZBA

1 message

Jim Rudolph <jmr09799@gmail.com>
To: clerk@hayestownshipmi.gov

Sun, Aug 14, 2022 at 3:42 PM

Sunday August 14, 2022

TO: Hayes Township ZBA

In our previous letter we referred to a quote and we just learned that by putting quotation marks on it, that infers that it is an exact quote. We contacted the author of the quote, Joe Kimmell, for his opinion. Mr. Kimmell has been and is a member of many local environmental organizations. He also served on a planning and zoning board in a Charlevoix County township. He knows that he said something like the quote, but would be more comfortable with "Hayes township used to be one of the best townships for sensible lake protection, but I don't feel that remains true".

Jim & JoEllen Rudolph
Hayes Township residents



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Input for the ZBA

1 message

Jim Rudolph <jmr09799@gmail.com>
To: clerk@hayestownshipmi.gov

Sat, Aug 13, 2022 at 7:13 PM

August 14, 2022

To the Hayes Township ZBA:

We have lived in Hayes Township for over three decades. During that time, Hayes Township has always been recognized for its concern for the environment. In fact, that is why we chose to buy our home in Hayes Township.

Through the years the Hayes Township board and planning commission relied upon the expertise and advice of the local highly respected watershed council, Tip of the Mitt. The council's stated purpose is "to be dedicated to protecting the quality of our lakes, streams, wetlands, and groundwater through respected advocacy, innovative education, technically sound water quality monitoring, thorough research, and restoration actions".

In township surveys, Hayes Township residents have consistently prioritized protecting the quality of our lakes, streams, and wetlands. Accordingly, township zoning was developed to protect the quality of our lakes, streams, and wetlands.

Allowing a channel to be dug through the waterfront protection setback strip and construction of a boathouse on the water violates zoning that was designed specifically to protect water quality.

How is this any different than a request for a funnel or keyhole development? For example, if Dunmaglas bought the needed Lake Charlevoix frontage, would approval of the Law request establish a legal precedent that would force Hayes Township to approve allowing Dunmaglas to dig a channel and build a boathouse up near the golf course? Would this precedent apply to any or all other lake front owners?

A colleague who is on a planning commission in another Charlevoix County township recently said to me "A decade ago we all aspired to be like Hayes Township, now we live in fear we might".

Follow the zoning and deny this request to violate the waterfront protection setback strip.

Jim and JoEllen Rudolph
Hayes Township residents



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Ellis Boal public comment for ZBA hearings

1 message

Ellis Boal <ellisboal@voyager.net>

To: kristin baranski <clerk@hayestownshipmi.gov>

Cc: LuAnne Kozma <luannekozma@gmail.com>

Sat, Aug 13, 2022 at 1:23 PM

Kristin and ZBA,

In addition to being the co-representative of my wife LuAnne Kozma in her appeal of the Laws' channel, basin, and boathouse -- and being the co-representative of Irene Fowle, Elisabeth Hicklen, and LuAnne on their Interpretation Request -- my own comment follows, which I ask be read aloud at the ZBA hearing.

I could read it or someone else could.

I am a signer of the 1990 Conservation Easement held by the Little Traverse Conservancy, which LuAnne described and quoted in some detail in ¶ 15 of her 11-16-21 affidavit, Exhibit GG of her appeal.

We live at [9330 Woods Road, Charlevoix, MI, 49720](#), three docks west of the Laws.

The Conservation Easement notes values of great importance to the people specifically of Hayes Township, and the considerable development pressure that in 1990 we presciently anticipated.

As the easement states, protection against that threat is an important planning goal of local governments and area residents, particularly along the stretch of shoreline in and around Anglers Cove.

As described by several other commenters more expert than I, disfigurement and traffic along the shoreline would threaten the pristine quality of water, birds, terrestrial mammals, plants, wetlands, and relatively intact ecosystem.

The Easement adds considerably to our quiet enjoyment of the property. It will be disturbed if the party-meeting-assembly-boathouse-basin proposed near the eponymously named "Lawvoix Road," is built and begins to attract even noisier crowds and more helicopter traffic than we have experienced since they bought the land.

We will no longer be able always to expect quiet evening swims. Disturbance of such a swim was what first brought my attention to the Laws.

According to the appraiser in 1990, my grant of the easement diminished the value of our property by \$113,000. In exchange we gained the benefits described above. But we will lose those benefits if the neighborhood is disturbed by the Laws' development.

LuAnne and I are also one-third holders of what we term a "private easement" next door to the west at 9300 Woods Road, a condominium association. On our own lot we have a house built originally on Brown Road around 1880 and moved to its present location by my parents in 1950. Article IX(B) of the condominium bylaws, recorded under a master deed at the County starting at Liber 0964 Page 0096, restricts exterior lighting and the sizes of dwellings, and requires the lakeshore elements, of varying 120-140 feet width, to be kept in a natural state with indigenous species, and no fertilizers or chemicals (except if needed for public health), earth movement, or clear cutting.

We believe the Laws' proposal would similarly threaten the conservation values associated with the private easement.



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Protect the shoreline of Lake Charlevoix

1 message

Maggie Leonard <maggieleonard7006@gmail.com>
To: clerk@hayestownshipmi.gov

Sat, Aug 13, 2022 at 9:21 AM

Dear ZBA members:

Please read my comments out loud and during both ZBA public hearings on August 15 for the Appeals case and August 22 for the Interpretation case.

The purpose of the zoning ordinance is to protect the Shoreland of Lake Charlevoix from harm and accordingly it created the Shoreland Protection strip, defined as all land 50 feet upwards from the ordinary high water mark (OHWM).

The ordinance protects the 50 foot Shoreland strip in a number of ways:

- 1) by providing for a 100 foot setback from the lake (Ordinary High Water Mark) for all buildings;
- 2) by keeping structures away from the water of Lake Charlevoix;
- 3) by prohibiting any structure on or over its water;
- 3) by precluding commercial use of structures in a residential zone;
- 4) by specifically prohibiting boathouses, since 1979, and any structure except walkways, viewing decks, retaining walls, docks and ramps, within 100 feet from the OHWM of Lake Charlevoix;
- 5) by defining the OHWM in a way that has been supported by the Army Corps and State of Michigan as evidenced in their emails;
- 6) by prohibiting destruction, including excavation, of any of the land within the 50 foot strip above the OHWM, including boat basins and canals;
- 7) in providing that 20% of the 50 foot Shoreland strip can be used for removing vegetation only, it affirmatively prohibits the removal of root systems, and thus excludes all other forms of removal, including excavation of land and soil.

Please find that the Hayes Township Zoning Ordinance does indeed protect the shoreland from all destruction such as the project proposed for a boat basin, canal, and "boathouse"/dining and event facility over the waters of Lake Charlevoix.

Thank you,

Maggie Leonard
11525 N US 31
Charlevoix MI 49712
985-209-2012



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

no subject)

1 message

Jason Brabbs <jbrabbs@gmail.com>

Fri, Aug 12, 2022 at 10:58 AM

To: "Marlene Golovich, Clerk" <clerk@hayestownshipmi.gov>

Dear Hayes Township ZBA,

I am writing to express deep concern over the proposed boat house, inland basin and dredged channel for 10034 Angler's Cove, Charlevoix. I believe that each property owner has a right to develop their land in a way that best suits their lifestyle. That is, as long as it does not have a measurable negative impact on other members of the community. Based on a preliminary review of the concept plans provided to the public, I find they provide insufficient evidence to make a concrete conclusion at this point. I am surprised that you do also. From what I can see, the proposed dredging and artificial basin represent an approach to shoreline development that is not in sync with the Hayes Township Community nor the future good health of the Lake Charlevoix/Great Lakes watershed. At the very least this project needs a radical re-design that includes a robustly planted buffer along the entire shoreline setback and measures to mitigate any potential damage to surrounding properties. It is likely this incursion into the natural shoreline will have negative impacts to surrounding shorelines and the lake's water quality for many years to come. Please reconsider any move to approve this plan as is. If you have any questions or would like to discuss further please reach out. Thank you.

Jason Brabbs, MLA CNSP
Evangeline Township
231-412-0124



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Proposed Marina by Law's

1 message

Michael1BH <mbhutch6579@gmail.com>
To: CLERK@hayestownshipmi.gov

Fri, Aug 12, 2022 at 10:45 AM

Dear ZBA KMembers:

Please read my comments at both public hearings August 15 Appeals and August 22 Interpretation cases.

The purpose of the zoning ordinance is to protect the Shoreland of Lake Charlevoix from harm by enforcement of the Shoreland Protection strip ordinance. Land 50 feet upwards from the ordinary high water mark (OHWM) defines this area.

All buildings must be set back 100 feet from the OHWM.

Only 20% of trees may be removed and root structures should not be removed.

All construction, canals and marina basins in this area are expressly prohibited in the current ordinance.

Please do the job you are entrusted with by enforcing the current ordinances involved in this proposed project!

Mike Hutcheson
517-285-6475 Mobile
mbhutch6579@gmail.com



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

BA meeting

1 message

Danelle Hutcheon <dhutch3547@gmail.com>

Fri, Aug 12, 2022 at 9:52 AM

To: clerk@hayestownshipmi.gov

To the ZBA members:

Please read my comments aloud during both ZBA public hearings on August 15 and the Interpretation case on Aug 22.
Thank you

We have a zoning ordinance that protects the Shoreland of Lake Charlevoix in place already!!!! It is a good ordinance that protects the shoreland for 50' up from the ordinary high water mark. It provides for a 100 ft setback from the OHWM for all buildings. This is significant in the case of the Laws boat basin and Canal!

The zoning ordinance provides that 20% of the 50 ft shoreland strip can be used for removal of vegetation only,,,,prohibiting the removal of root systems, therefore prohibiting removal or excavation of land and soil. This is significant in the case of the Laws boat basin and Canal as well.

There are many protections in our zoning ordinance that i'm not mentioning as they have been brought up countless times at the many zoning meetings we have all attended in the past. You have heard them dozens of times.

I will speak a little about the "Boat House". It was labeled an event center and only changed recently as there has been public opposition. The plans project the idea of an event center still in a residential zone. I'm not believing the "large family scenario". Many of us have large families, many grandkids, spending holidays together in much smaller houses on much less property.

Thank You.

Mike and Danelle Hutcheson
Hayes township residents

Tim Boyko

8/11/22

The Shoreland Protection Strip and the strict setback from the OHWM are the foundation of this Township's long history of protecting the waters of our community. Please consider the following when dealing with the petitioner's requests.

When interpreting what activities are allowed in the Shoreland Protection Strip follow the opinion of your Zoning Administrator:

"Hayes Township cannot grant authority to dredge or excavate the shoreline of Lake Charlevoix. In fact, our ordinance prohibits excavation of the 50' greenbelt area." This is a quote by Hayes Township Zoning Administrator Ron VanZee in a letter to Spencer McCormick Little Traverse Bay Band on March 28, 2022.

When considering the location of the OHWM, be mindful of the predominance of evidence presented regarding the OHWM moving with any inland excavation as in the creation of a marina. The building setback from the OHWM is fundamental to the protection of our waters.

I ask the ZBA to uphold and confirm the language that protects Lake Charlevoix from structures being built on or over its waters, and protects all of the Shoreland Protection Strip.

Respectfully,

Tim Boyko



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Comments for ZBA hearing on 8/15/2022

1 message

Winnie Boal <wlboal@gmail.com>
To: clerk@hayestownshipmi.gov

Thu, Aug 11, 2022 at 2:57 PM

Date: August 11, 2022

To: Members of the Hayes Township Zoning Board of Appeals (ZBA) (Tom Darnton, Chair):
cc: Hayes Township Clerk Kristin Baranski

Re: The appeal filed by LuAnne Kozma on December 20, 2021 titled "Appeal of Determinations by Hayes Township Zoning Administrator Determined on November 29, 2021." The appeal pertains to Hayes Township Zoning Permit #20-07-01 for attached boathouse with covered walkway at 10034 Anglers Cove, Charlevoix, Michigan 49720; Tax ID 15-007-132-005-25 and 15-007-133-005-30, owned by Scott and Debra Law.

Please read my comments out loud during the ZBA hearing on August 15, 2022 and put them in the official record of this proceeding.

One of the purposes of the Hayes Township zoning ordinance is to protect the shoreland of Lake Charlevoix from harm, and to do so it identifies the shoreland protection strip, which is defined as all land 50 feet upwards from the ordinary high water mark (OHWM).

The ordinance protects the 50-foot shoreland protection strip in a number of ways:

- 1) by providing for a 100-foot setback from the ordinary high water mark for all buildings;
- 2) by keeping structures away from the waters of Lake Charlevoix;
- 3) by prohibiting any structure on or over its water;
- 4) by precluding commercial use of structures in a residential zone;
- 5) by specifically prohibiting boathouses (since 1979) and any structure except walkways, viewing decks, retaining walls, docks and ramps, within 100 feet from the OHWM of Lake Charlevoix;
- 6) by defining the OHWM consistent with interpretations by the Army Corps of Engineers and the State of Michigan;
- 7) by prohibiting destruction, including excavation, of any of the land within the 50-foot strip above the OHWM, including boat basins and canals;
- 8) in providing that 20% of the 50-foot shoreland protection strip can be used for removing vegetation only; it affirmatively prohibits the removal of root systems, and thus excludes all other forms of removal, including excavation of land and soil.

By any common sense reading of the Hayes Township zoning ordinance, it is perfectly clear that the project proposed by Scott and Debra Law violates the shoreline protections in the ordinance as well as violates the residential zoning of these parcels. Their project will disturb neighbors (as their noisy parties and gun range already do) and will seriously harm the shoreline and the environmental quality of Lake Charlevoix.

I urge the ZBA to find that the Hayes Township zoning ordinance does protect the shoreland from all destruction and that the project proposed by the Laws for a boat basin, canal, and "boathouse" will be destructive and in violation of the zoning ordinance. The "boathouse" appears to me to be a misnomer. It appears to me that there will be boats under the boathouse but that the second story will be an event space (as the Laws previously described it) with toilets right over the waters of Lake Charlevoix (which will have been expanded inland in violation of the ordinance), among other elaborate facilities. The second story appears to be designed for commercial use to entertain clients and business partners (as the Laws have previously described it) and not just for residential use, which does not appear to me to be allowed within a residential zone. But even if the boathouse were really just a boathouse, and not also a commercial space, the boat basin, canal, and excavation all appear to be in flagrant violation of the zoning ordinance.

Thank you.

Sincerely,

Winnie Boal
wboal@gmail.com
231-547-6859



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Re: Anne Kozma - ZBA cases

message

sb@pistontech.com <sb@pistontech.com>

Wed, Aug 10, 2022 at 5:54 PM

To: clerk@hayestownshipmi.gov

Kristin Baranski,

Please include the following comments at the ZBA meetings to be held August 15 and 22nd.

Ayres Boal purchased lake shore property over 100 years ago. His family built the main house on the bluff overlooking Lake Charlevoix plus two sleeping cabins for use in the summer and winter. Over the years, the property was divided, and the children built new homes to enjoy. Since those early years, the extended family have built homes and cabins on the bluff above and near the water. All succeeding generations have followed the rules set by Hayes Township to protect the value of the land and the environment. Therefore, the excessive violation of current rules by the Law Family should not be permitted.

Stewart and Susan Boal

9290 Woods Road

Charlevoix, MI 49720



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

 **boat house threat to Lake Charlevoix**

1 message

Debra Kochin <debrakochin5@gmail.com>

Tue, Aug 9, 2022 at 10:47 AM

To: clerk@hayestownshipmi.gov

Dear board of appeals: The proposed boat house and shore line Chanel would ruin tourist use of paddling along the preserved shoreline, ruin sport fishing and cause excessive noise pollution to another wise tranquil and pristine shoreline. It would greatly alter the looks of natural beauty by building a two story building on this shoreline also. Debra Kochin

Appeals



August 3, 2022

Hayes Township Hall
09195 Major Douglas Sloan Rd.
Charlevoix, MI 49720

Ref: Concerning the "Appeal of Determinations" from LuAnne Kozma, Elizabeth Hicklen and Irene Fowle against Scott and Debra Law's project to construct a boathouse with a covered walkway at 10034 Anglers Cove, Charlevoix, MI 49720

To whom it May Concerns,

Upon reviewing the above notice, I would like to express my view on the above request. Haggard's Plumbing & Heating is not opposed to the changes of the property and/or the request. We would like to see Scott and Debra Law's project approved. If a property owner is fortunate enough to have the ability and the recourses in this time to either build and/or improve their existing property, it would only help the economy continue to grow. It would prove positive for the local, county, and state to do all we can to improve and promote in anyways possible.

Sincerely,



John Haggard
Haggard's Plumbing & Heating



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Forward: Shoreline Protection -- to Zoning Board of Appeals

1 message

Melvin Czechowski <mhczechow@aol.com>

Thu, Aug 4, 2022 at 11:45 AM

Reply-To: Melvin Czechowski <mhczechow@aol.com>

To: "clerk@hayestownshipmi.gov" <clerk@hayestownshipmi.gov>

Kristin,

Could you please put my letter in the record for the upcoming Zoning Board of Appeals.

Regards,

Mel

Melvin H. Czechowski, Ph.D.

-----Original Message-----

From: Melvin Czechowski <mhczechow@aol.com>

To: CLERK@HAYESTOWNSHIPMI.GOV <CLERK@HAYESTOWNSHIPMI.GOV>

Sent: Mon, Jul 18, 2022 10:21 pm

Subject: Shoreline Protection

July 19, 2022

To: Hayes Township Planning Commission:

I am against any changes to the 50 ft shoreline protection. Shoreline protect should be kept, with no exceptions!

I have read the following and total agree with their statements.

- * Commercial building not allowed in residential zone.
- * "All of the land" of the Shoreland Protection Strip, 50 feet landward from the Ordinary High Water Mark of the lake is protected and must be in place to filter contaminants from reaching the lake.
- *Boathouses specifically not allowed since 1979.
- * Excavating into the shoreland to a depth of 570' (IGLD 1985) is by definition below the Ordinary High Water Mark, and converts uplands into bottomlands. Therefore, the proposed building would be placed below and straddling the OHWM, violating the ordinance that requires a 100 foot setback for buildings. The majority of the building would be over the waters of Lake Charlevoix after expanding the lake into an artificial basin.
- * Basins and canals are constructed and "erected" "structures" and are not allowable within 100 feet of the Ordinary High Water Mark, and certainly not allowed in the Shoreland Protection Strip.
- * Only 20% of vegetation is allowed to be removed from the 50 foot- Shoreland

Protection Strip, not the land itself. This is repeated throughout the ordinance by requiring that if trees are removed, 'root systems shall remain in place for shoreline stabilization" and requiring repair of the shoreland if docks or stored boats damage it.

— Again, no changes to the shore line protection act.

Regards,

**Melvin H. Czechowski, Ph.D.
6717 9 Mile Point Dr.
Charlevoix, MI 49721**



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Protecting the Shoreland Strip - Please read aloud at Aug 15th and 22nd ZBA Meetings

1 message

Greg Kozma <kozmagre@gmail.com>

Mon, Aug 1, 2022 at 7:35 PM

To: clerk@hayestownshipmi.gov

Cc: LuAnne Kozma <luannekozma@gmail.com>

To Ms. Baranksi and members of the ZBA,

As a resident and voter of Hayes Township, I'd appreciate the following statement be read aloud into the record regarding LuAnne Kozma's Appeal dated December 20, 2021 to the ZBA at the August 15 ZBA hearing, and again at the ZBA interpretation case hearing on August 22, brought by LuAnne Kozma, Irene Fowle and Lisa Hicklen. This letter is also my public comment for the written record for both cases.

"Others have written this body with objections that point out the specifics in which this proposal violates the zoning ordinance. You have no doubt heard that a building over the waters of Lake Charlevoix violates a 100 foot setback, and that the entire point of a setback is to keep structures away from the water. You have no doubt heard these objections before and while I certainly echo those concerns, my hope is to also provide you with additional perspective.

As a young person, it is difficult to articulate the anxiety, hopelessness, and overall exasperation many in my generation feel toward to state of the climate and the prospects for our future. We see the degradation unfolding around us. And we are old enough to remember it didn't use to be this way, yet not old enough to have any power or say in preventing further harm. We yell from the sidelines as people who won't be around to see the full repercussions of their actions steer us to the edge of a cliff.

And I get it, that may seem hyperbolic, and perhaps that's a fair characterization. After all, that is a global fear and this is a local issue. But it is *precisely because* it is local that it feels like such a preventable mistake. A precedent-setting mistake that will make it far easier for future commercialization of the lake.

I've no doubt those on this board love Lake Charlevoix for the same reasons as those who oppose this proposal. And I appreciate the immense pressure the board must feel to have such a powerful monied interest be pushing hard to move this proposal through. Great leaders rise to meet the moment, and I would implore you to rise to this moment and enforce the ordinance to safeguard our community for future generations."

Sincerely,

Greg Kozma
9330 Woods Road
Charlevoix MI 49720



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

wd: August 15 and August 22 hearing on Laws Development

1 message

Bud Pope <bud.w.pope@gmail.com>

To: Clerk@hayestownshipmi.gov

Sat, Jul 30, 2022 at 3:41 PM

-
To Hayes Township ZBA, Trustees, and Planning Commission:

Pls read our letter into the record for the Boathouse(Laws) hearing on August 15, and August 22.

We are owners of property for over 30 years on Birdland Drive with lakefront property. Our property is within a mile of the proposed development. We purchased property on Lake Charlevoix with environmental laws and application of those laws as an important priority for our family and future generations.

Without going into specific details, the Boathouse project does not meet those requirements and should not proceed in its current form.

In the past 2 years we revised our shoreline landscape(over 300ft) with a credible, long term, landscape firm from Charlevoix. We were impressed with their concern and adherence to the law and shoreline application along the entire Birdland waterfront - Our neighbors adhere to the setbacks and shoreline vegetation requirements as well.

Past comments that the developers have more legal funds, wealth, and attorneys to bypass the law is not what we expect from elected officials.

We urge you to defend the law and application of the law to protect our Lake for future generations.

Thank you for your service to our community.

Bud Pope, Chris Willis

7425 Birdland Drive, Charlevoix, Mi .



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

The Debra and Scott Law Boat Basin Project

1 message

Achali Hall <achalihall@yahoo.com>

Reply-To: Achali Hall <achalihall@yahoo.com>

Sun, Jul 17, 2022 at 7:16 PM

To: "clerk@hayestownshipmi.gov" <clerk@hayestownshipmi.gov>

To the Clerk at Hayes Township, Ms Baranski,

Please convey to the Hayes Township Commission my request to not grant a permit for the Scott and Debra Law Boat Basin Project. It is next to the Fowle/Boal/Moore extended family property that has been in my family for 100 years. The Laws have already broken the regulations with their constructions too near the water. This proposed project would seriously break other zoning laws, in particular it violates the Shoreline Projection Strip by removing the land itself with a channel and boat basin. A dining and event facility is clearly a commercial construction which is against residential use. It is like they are developing their own private Round Lake to attract tourist-like activity. Clearly this project does not fit into the spirit of residential use by property owners around the lake with quiet little piers and the spirit of respecting the woods.

Please do not allow this project or others like it. There is one near Oyster Bay, closer to Charlevoix where I was a guest for dinner. They had cleared the woods and had a lawn and open view down the lake to the east. I was shocked and hurt to see this, though I said nothing, wanting to be polite to my sister's good church friends.

We need to respect as best we can the spirit of the woods and lakes, to not disturb what nature has given us. Please reject the law project.

Thank you for your consideration,

Sincerely,

Susan Rankin (Fowle)



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

The Scott and Debra Law Boat Basin Project

1 message

Achali Hall <achalihall@yahoo.com>

Sun, Jul 17, 2022 at 6:03 PM

Reply-To: Achali Hall <achalihall@yahoo.com>

To: "clerk@hayestownshipmi.gov" <clerk@hayestownshipmi.gov>

Dear Ms. Baranski,

I just sent a comment to you. Please apply it to both ZBA cases by LuAnne Kozma. And please read my comments aloud at both hearings.

Thank you.

Sincerely,

Susan Rankin (Fowle)