

Hayes Township  
Zoning Board of Appeals  
Public Hearing  
August 15, 2022 10:00 am  
Hayes Township Hall  
09195 Major Douglas Sloan Road  
Charlevoix, Michigan 49720

The August 15, 2022 meeting of the Hayes Township Zoning Board of Appeals was called to order by Chair Thomas Darnton at 10:05 am.

**BOARD MEMBERS PRESENT:** Thomas Darnton (Chair), Rex Greenslade (Planning Commission Representative), Bruce Deckinga (Member), Rodney Slocum (Alternate) and Janice Vedder-Whipple (Alternate).

**ALSO PRESENT:** Kristin Baranski (Recording Secretary/ Clerk) and Ron Van Zee (Zoning Administrator)

Audience Members Signed In: LuAnne Kozma, Tim Boyko, Ellis Boal, Kim Fary, Roy Griffitts, Julie Collard, Lucy Moore, Maureen Whitehead, Debbie Narten, Danelle Hutcheson, Penny Hardy, Winnie Boal, Harry Golski, Jennifer S., Sandra P., Bob Jess, Sandra Witherspoon, Ayrie Moore, Todd Milar, Spencer McCormick, Christine Redman, Doug Kuebler, and Betty Henne.

**PLEDGE OF ALLEGIANCE:** Mr. Darnton started the meeting with the Pledge of Allegiance

**INTRODUCTION OF ZONING BOARD OF APPEALS MEMBERS:** All ZBA members introduced themselves.

**REVIEW AND APPROVAL OF THE AGENDA:**

Mr. Greenslade made a motion, with support from Mr. Deckinga, to approve the agenda as presented. A roll call was taken.

Yeas: Bruce Deckinga, Tom Darnton, Rex Greenslade, Janice Vedder-Whipple, Rodney Slocum

Nays: None

**Motion Carried**

**CONSIDERATION OF KOZMA APPEAL:**

Mr. Darnton called into question, if the ZBA had jurisdiction in this case. Can the ZBA proceed? There must be an administrative decision within the 30 days prior to Dec 20, 2021.

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Appellant has recognized this issue and alleges a document signed by Ron Van Zee on November 29th to be such a decision. The ZBA as a whole must first consider that question: Was the November 29th Affidavit an administrative decision? Mr. Darnton stated the Zoning Administrator and Appellant, will both be allowed time to state their beliefs. The ZBA will hear from both sides and the public on ZBA jurisdiction and decide it before addressing any other issues in the case.

Ron Van Zee (Zoning Administrator) stated the following:

- It was not an administrative decision (The Zoning Administrator has a role of issuing such things as a zoning permit, approving a parcel division or issuing a citation for a stop work order. An answer to a question, such as the response in question, is not an administrative decision.
- The response in question was on an affidavit, when Mr. Van Zee was asked a series of questions in regards to, at the time, a pending lawsuit in circuit court as a defendant.
- The question was 'if the same application were to be brought to you again, would you approve it'. Mr. Van Zee stated that after all permits from other agencies were issued, the applicant would have to come back to the Township for approval. The original permit was issued for the applicant to apply for permits through EGLE and Army Corp of Engineers as previously stated at the time of application as well as followed up with an email.
- Also stated in the same affidavit, was the statement that the property owners know that they cannot go forward because no permit has been issued by Hayes Township.

Mr. Darnton asked the appellant (Ellis Boal representing LuAnne Kozma) to address the question of ZBA jurisdiction, specifically what on the document from November 29<sup>th</sup>, 2021 was an administrative decision.

Ellis Boal stated the following:

- Objects to the amended agenda and would like the email regarding his opposition placed into record. Mr. Darnton placed the email into record. Mr. Boal stated it is unfair to have the ~~juridical~~ jurisdictional question brought up at the last minute.

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Mr. Darnton stated that ~~juridical~~ jurisdictional issues are always fundamental.

Mr. Boal Continued:

- Mr. Boal referenced the email with the revised agenda and questioned what parties was referenced and demands to see what documents prompted the revision of the agenda.

Mr. Darnton stated that he wanted to be clear that Kozma (Boal) is an appellant not a party, such as aggrieved party and that after the question of ZBA jurisdiction is decided that aggrieved party status will be determined. He is not conceding that the appellants are an aggrieved party.

Mr. Boal agreed that the aggrieved party issue is not before the ZBA at this moment and continued to question the email that referenced “parties”. In response to the jurisdiction question, Ms. Kozma stated the following:

- In the affidavit, the Zoning Administrator made many comments that were determinations and that determinations are appealable such as:
  - a boat basin or canal is regulated by EGLE or Army Corp

Mr. Darnton stated that the question is not if it was a determination, was it an administrative decision. Darnton references rule 3.01 and states that it does not give the ZBA jurisdiction unless there was an administrative decision made within 30 days of the when the appeal was filed.

Mr. Boal stated that determinations are appealable and referenced the Hoffman decision that is in the record. Mr. Boal added that if the ZBA determines that there is no jurisdiction, that on pages 10-11 of the appeal it requests that as an alternative the questions in the appeal be then considered an interpretation request. Mr. Boal stated that there is still an interpretation request in front of the ZBA and they are prepared to present, letters have been sent in commenting on case, there are exhibits and witnesses. It is important to hear the case because the Laws stated in court last week that they anxious to proceed with the shovels because they want to have a Christmas banquet at the boathouse. The

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determination that no permit is required for a channel or a basin is wrong. It is important that the matter is decided today.

Ms. Kozma stated the following:

- 8.04 states that the ZBA can exercise power and reverse or affirm wholly or partly or modify the order that affirms the order, a requirement, a decision or a determination.
- Ms. Kozma stated that the two cases are two separate cases. She paid two separate ~~\$750.00~~ \$700.00 fees.
- Ms. Kozma referenced the Crozier/Beek ZBA case that was filed as an appeal and was determined as an interpretation.

Mr. Darnton restated that the ZBA is working to determine if there is jurisdiction to hear the case. Mr. Darnton stated that this hearing has been noticed as an appeal and not an interpretation.

Chaos ensued. Appellant Ms. Kozma shouted over Mr. Darnton and other ZBA members. Out of order shouts from the public.

Janice Vedder-Whipple called for a 10-minute recess, supported by Rex Greenslade.

Yeas: Bruce Deckinga, Tom Darnton, Rex Greenslade, Janice Vedder-Whipple, Rodney Slocum

Nays: None

**Motion Carried**

Mr. Darnton called the meeting back to order.

Mr. Darnton asked the appellant how much time he would like to answer the question regarding ZBA jurisdiction. Mr. Boal replied he would like 5-10 minutes.

Mr. Darnton stated that the public will be able to make comments on the question of jurisdiction.

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Mr. Boal stated his case for the ZBA having jurisdiction over this matter.

- The interpretation today is different than the interpretation is tomorrow.
- Boathouse attached to the main house with a sidewalk connecting is part of the interpretation request for today not in next weeks.
- The ZBA can decide merits of the case as well as jurisdiction at the same time after hearing the case.
- The application was filed for an appeal with the appellant is willing to amend the request to an interpretation as per the Crozier ~~Croizer~~/Beek case.
- The appellant is willing to amend the appeal from December 20, ~~2022~~ 2021 per page 10 of the appeal, it states that if it is not considered appealable than it will convert to an interpretation request.

Ms. Kozma added:

- A reference to the Crozier/Beek ZBA case and the amendment from variance request to interpretation.

Mr. Van Zee stated:

- An administrative decision is an action that is related to an application made to the township. At this time there is nothing in front of the Township. He reiterated, that if the Laws take one shovelful out of dirt, he will issue a stop work order.

Public Comment related to the question of jurisdiction:

Penny Hardy: Non Hayes Township Resident; founding member of non-profit corporation founded to protect public trust (Lake Charlevoix); were the members duly appointed to their posts; If Mr. Van Zee makes a decision without issuing a permit it is a administrative decision; believes in majority over individual rights

Tim Boyko: Believes ZBA has jurisdiction and to stop pulling the Charlie Brown and Lucy act and let the case be heard

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Jennifer Schaefer: Nobody disagrees that Lake Charlevoix needs to be protected and that when there is an administrative decision than there is a right to appeal; Appeal brief includes Authority and Duties of ZBA (answers jurisdiction question), determination appeals (not a request for interpretation), no determinization was reversed so no conversion to interpretation, decision has to be active, affidavit is only a statement of facts not a determination. ZBA does not have jurisdiction here. All of Ron Van Zee's statement in the affidavit are in the past tense therefore do not signal a current determination.

Ellis Boal responded to the public comment made by Jennifer Schaefer. The statements in Ron Van Zee's affidavit are described as determinizations and bound the Township, Tom (Darnton), Ron (Van Zee) and Kristin (Baranski) to that.

LuAnne Kozma stated that Ms. Shaeffer's comment that Van Zee's comments were all past tense is incorrect. Ms. Kozma also stated that Mr. Van Zee just reversed his position just now and it is prime time to hear the interpretation.

Sandra Witherspoon: read her letter (attached) aloud.

Jason Brabbs: Resident of Evangeline and on their ZBA and a certified natural lakeshore practitioner. Blown away that EGLE approved project and not so surprised about Army Corp. New member of ZBA and still learning but understanding is that ZBA has jurisdiction over everything in the ordinance. EGLE permits do not give greenlight to override Township.

Sandra Prichert: Co-founder of We the People of Boyne. Similar issues with the use of the public trust (Lake Charlevoix). EGLE defers to local agencies. All boils down to Public Trust Doctrine; responsible to public trust over individuals. Public interest prevails over private interests.

Tom Darnton closed the public comment portion and open deliberations.

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Bruce Deckinga questioned Ms. Schaeffer regarding the comment that the Laws were going to start digging/building and if they are not then this is all a waste of time.

Ms. Schaeffer stated there is no permit, no pending application, no plans right now to obtain a permit. This is a waste of time.

Mr. Deckinga wanted in record that they are not currently proceeding.

Mr. Boal stated from a transcript he and LuAnne transcribed from court that suggests the Laws do not want to put the shovel down. That they want a space to entertain their large family.

LuAnne Kozma stated that it doesn't matter what they are planning on doing locally here, what does matter is that they have a EGLE permit as well as an Army Corp permit.

LuAnne Kozma would like to chance to explain the interpretation request and the ZBA has no option but to hear case.

Rex Greenslade stated that Section 8.03 of the Zoning Ordinance states "except for Planning Commission decisions concerning Special Use Permits a decision by Zoning Administrator decisions is appealable." Mr. Greenslade feels that the public interest in the case encourages the ZBA to hear the case.

Ron Van Zee shared the process of this project. Mr. Van Zee's predecessor (Larry Sullivan) received application for boat basin and boathouse. Mr. Sullivan emailed to applicants (Laws) with several questions. The Laws did not reapply until after Mr. Van Zee became Zoning Administrator at which point he told them that was not going to work. They then came back again with another permit application with an accessory structure that referred to it as a boathouse. He responded that won't work (accessory building restrictions) and sent the Laws away. The Laws applied a third time, this time for an attached structure that met all restrictions (setbacks, attached to primary residence) and is allowed in the Hayes

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Township Ordinance. The permit that was issued met all of the requirements of the Zoning Ordinance (sat back more than 100' from the water/front yard setbacks; met all rear and side yard setbacks; did not exceed the height requirements, did not include basement. Based on that permit the Shoreland Review Committee then reviewed it regarding the application. Shoreland Review Committee added even more plantings and sent the plan to Planning Commission for approval. The Zoning Administrator had ~~not~~ no choice but to approve the application, by law.

Ellis Boal stated the following:

- The Zoning Board of Appeals allowed Ron Van Zee to present his case and never called him out of order.
- The appellants should be allowed to state their case.
- Mr. Van Zee just reaffirmed his decision.

Tom Darnton stated he still has concerns about whether the ZBA has jurisdiction to go forward.

Rodney Slocum stated his experience of decades involved in communities, military and feels the ZBA does not have jurisdiction based upon his experiences.

Ellis Boal stated again that the appeal is to convert into an interpretation request.

Rex Greenslade made the motion that the hearing, in the best interest of the public, move forward, whether the Zoning Board of Appeals has jurisdiction, with support from Bruce Deckinga. A roll call was taken.

Yays: Rex Greenslade, Bruce Deckinga

Nays: Tom Darnton, Rod Slocum, Janice Vedder-Whipple

**Motion Failed**

Rex Greenslade made the motion to move forward with the hearing as an interpretation, with support from Janice Vedder-Whipple. A roll call was taken.

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Yays: Rex Greenslade, Bruce Deckinga

Nays: Tom Darnton, Rod Slocum, Janice Vedder-Whipple **Motion Failed**

Tom Darnton requested some input from the Township attorney, Todd Millar.

Public comment from the crowd believes the ZBA is abrogating its authority.

Tom Darnton asked the attorney to help frame the question of jurisdiction properly. Todd Millar informed Tom Darnton that as Chair of the ZBA he can make a motion.

Tom Darnton made the motion that the ZBA determined that the affidavit that was filed on November 29, 2021 was not an administrative decision within the meaning of the Zoning Ordinance and therefore the ZBA does not have jurisdiction to consider an appeal, with support from Rodney Slocum. A roll call was taken.

Yays: Bruce Deckinga, Tom Darnton, Rod Slocum, Janice Vedder-Whipple

Nays: Rex Greenslade **Motion Passed**

Ellis Boal requested an answer in regards to jurisdiction in an interpretation request.

Tom Darnton stated a motion has passed that the ZBA does not have jurisdiction to consider the appeal request. Mr. Darnton put before the ZBA members the options of continuing this hearing with the interpretation request or moving the interpretation request to the following noticed meeting on Monday, August 22, 2022. Mr. Darnton states that he does not feel that the lack of jurisdiction decision disposes of everything that is pending.

Rex Greenslade suggests the appellant has a chance to decide if they are ready to move forward with the interpretation case.

Ellis Boal asks for a chance to discuss amongst themselves.

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Todd Milar, Township attorney, asks if the meeting has been noticed properly. He states that this meeting has been noticed as an appeal hearing not an interpretation hearing. He believes the two are different.

Ellis Boal responded to the attorney input. Boal stated:

- The notice was published as an appeal hearing.
- The notice did include the option for the public to come and review the case file.
- The case file includes the alternative request for an interpretation request.
- The above satisfies the notice requirement.

A 5-minute recess is allowed for the appellants to converse.

Tom Darnton resumes the hearing and reiterates the ZBA has determined that they do not have jurisdiction to hear an appeal and that now the question of the modification to an interpretation hearing is before the ZBA. He also notes that an overlapping yet separate interpretation request is scheduled for the following week.

Tom Darnton notes that the Zoning Administrator is not able to participate this afternoon.

Ellis Boal made the following statements regarding the interpretation request.

- It is not a problem for the Zoning Administrator to be absent.
- Appellant would like to go forward at this meeting with the interpretation request as they are prepared, have public comment ready, extensive presentation prepared that would be difficult to do next week at the same time as the separate interpretation request.
- He understands the proposal as follows:
  1. It would be understood that it is two separate interpretations with two separate records and two separate appellants.
  2. The interpretations would be taken one after the other.
  3. The hearing from today would be heard first.
- Ellis Boal states he understands they lost the appeal and will not try and erase.

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- Ellis Boal states that the Laws may get out their shovels and begin digging.

Jennifer Schaefer, on behalf of the property owners, object on principal of issue with notice. The notice was for an appeal of a determination made by the Zoning Administrator. The notice for interpretation notice was completely different. The public may have interest in one but not the other.

Ellis Boal states that the interpretation request is in the original appeal.

Tom Darnton clarified the appellant prefers the ZBA go ahead with hearing the interpretation request that was filed with the appeal at this hearing.

Ellis Boal confirmed and stated that the notice doesn't have to cover everything.

Jennifer Schaffer believes the notice is improper.

Tom Darnton states that there is nothing in the title of original appeal that references an interpretation. He notes that on page 10, section 3 of the memo it states that an interpretation is requested if the zoning administrator reverses the determination.

Tom Darnton questions the language in the memo and noted that all reference is to an appeal. He added that the question of jurisdiction is a moot point in hearing the interpretation request at the upcoming scheduled meeting.

Tom Darnton made a motion to adjourn the balance of the hearing until Monday, August 22 at 10 am and continue it as part of the interpretation hearing.

Tom Darnton opened discussion among ZBA members.

Rex Greenslade noted although it sounds convenient, he states it is in the best interest of the public to continue the hearing today. He acknowledges the noticing question from the

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township attorney but states that the interpretation request was in the original brief. He believes that the same noticing issue will occur at next week's meeting regarding the separate interpretation request.

Tom Darnton requested input from Todd Millar on the question of if the current meeting is adjourned until the following week's meeting and both interpretation requests are heard is the notice proper.

Todd Milar response included:

- Referenced the notice requirements of Zoning and Enabling Act (MCLA 125.31.03). A notice shall include a descriptive nature of the request.
- Pointed out that the current meeting was noticed as an appeal not an interpretation.
- Agreed with the statement that the appellants have the right to an interpretation request
- Questioned if the request for the appeal to convert to an interpretation request is proper.
- Recommended to adjourn and review if notice is proper for an interpretation.
- Remained firm in the belief that the notice for the current hearing was noticed for an appeal and not an interpretation.

Tom Darnton made a motion to adjourn the balance of the hearing until Monday, August 22 at 10 am and continue it as part of the interpretation hearing, with support from Janice Vedder-Whipple.

Ellis Boal noted that courts often schedule 3, 4, 5 or 6 motions in one day to hear and it is not unusual. It is not a problem for the interpretation cases to be heard one after the other.

Rex Greenslade suggested the public has a right to make comments before adjournment.

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**PUBLIC COMMENT:**

Public comments included:

- We live in a democracy where majority prevails. Elected officials have a duty to make sure rules and regulations are followed.
- Disbelief that the Zoning Administrator statement was not considered an administrative decision.

Tom Darnton adjourned the meeting.

Respectfully Submitted,

Kristin Baranski  
Hayes Township Clerk/Recording Secretary