

Hayes Township Zoning Board of Appeals
Agenda
October 3, 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. Continuation of hearings pertaining to the December 22, 2022 Application
 - A. Review and approve Minutes of meeting of August 22, 2022
 - B. Review and approve Minutes of meeting of August 29, 2022
 - C. Recognize conclusion of December 20, 2021 and September 27, 2021 Applications.
6. Convene ZBA to consider Request for Interpretation Filed 8/31/22 by LuAnne Kozma
 - A. Seat Regular Members of ZBA
 - B. Consider reasons for conflict of interest or other reasons for recusal/non attendance of regular members; seat alternates
7. Consider whether Applicant's requests 1 through 3 can be heard by the ZBA
 - A. Review opinion of counsel
 - B. Applicant may respond to opinion of counsel
 - C. ZBA deliberates and votes on the scope of review of the Application
8. Consideration of Applicant's August 31, 2022 Application
 - A. Applicant is recognized and presents the interpretation request.
 - B. Zoning Administrator responds to the interpretation request.
 - C. Board members report on their site inspections, if any, and ask questions they may have for the petitioner or Zoning Administrator.
 - D. Discussion may take place between the petitioner and board members and or between the Zoning Administrator and board members.

- E. Any correspondence received about the variance, is read or has been included in member's packets.
 - F. Members of the public, present, may speak. 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.)
 - G. Close the public comment portion of the hearing. (At this point, all public participation on the issue ends).
 - H. The Board reviews applicable Section(s) of the Hayes Township Ordinance.
 - I. 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. Voting shall be by roll call and shall be recorded. Motions dealing with an ordinance interpretation shall be stated with the following parts:
 - (i). The list of exhibits which is the printed information presented by the applicant and/or the Zoning Administrator.
 - (ii). The list of facts which is the information pertinent to making a decision structured as a "Finding of Fact" on the case.
 - (iii). The conclusion, decision, of the Zoning Board of Appeals. This motion, or part of a motion, shall include the rationale and/or reason, for why the conclusion was made.
9. The hearing is over and the board may take up any further business it may have pending, prior to adjournment.

Respectfully submitted:

Tom Darnton
Chair, Hayes Township Zoning Board of Appeals

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

1
2 The August 22, 2022 meeting of the Hayes Township Zoning Board of Appeals (ZBA) was
3 called to order by Chair Thomas Darnton at 10:03 am.
4

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

8 ALSO PRESENT: Kristin Baranski (Recording Secretary/ Clerk); Ron Van Zee (Zoning
9 Administrator) arrived at
10

11 Audience Members Signed In: Winnie Boal, LuAnne Kozma, Ellis Boal, Maureen Whitehead,
12 Debbie Narten, Danelle Hutcheson, Leslie Cunningham, Harry Golski, Lucy Moore, Doug
13 McCombs, David Kemme, Tim Boyko, Roy Griffiths, John Donahue, Spencer McCormick,
14 Ayrie Moore, Todd Millar, Kelly Preston
15

16 **PLEDGE OF ALLEGIANCE:** Mr. Darnton started the meeting with the Pledge of Allegiance
17

18 **INTRODUCTION OF ZONING BOARD OF APPEALS MEMBERS:** All ZBA members introduced
19 themselves.
20

21 **CONSIDERATION OF MINUTES FROM PRIOR MEETING:**

22 Mr. Greenslade made a motion, with support from Ms. Whipple-Vedder, to approve the June
23 1, 2022 minutes as amended.

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

26 Nays: None

Motion Carried

27
28 Mr. Slocum made a motion, with support from Mr. Deckinga, to approve the July 12, 2022
29 minutes as amended.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

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

Nays: None **Motion Carried**

Mr. Slocum made a motion, with support from Mr. Deckinga, to approve the August 15, 2022 minutes as amended.

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

Nays: None **Motion Carried**

REVIEW AND APPROVAL OF THE AGENDA:

Mr. Darnton made a motion, with support from Mr. Greenslade, 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**

PETITIONER IS RECOGNIZED AND PRESENTS THE INTERPRETATION REQUEST:

Mr. Darnton, Chair, recognizer the interpretation request's petitioner.

Mr. Boal named all the petitioners for the interpretation request, LuAnne Kozma, Elisabeth Hicklin and Irene Fowle.

Mr. Boal stated the following:

- Corrected the spelling of Crozier in his previous emails
- Feels strongly that the agenda follow the order of business as per the ZBA adopted rules
- Zoning Administrator should not have an opportunity to respond after the interpretation presentation

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

60 Ms. Baranski (Recording Secretary) suggests to the Chair (Darnton) that the ZBA members
61 adopt the agenda prior to proceeding.

62
63 Mr. Boal questions where Zoning Administrator is.

64
65 Mr. Darnton states that he received a message this morning that the Zoning Administrator
66 has been delayed and will be arriving late.

67
68 Mr. Boal states that he is requesting the ZBA follow the specified order per the ZBA rules.

69
70 Mr. Darnton states to the ZBA board members that he thoughtfully constructed an agenda
71 that makes sense for an interpretation hearing. He feels the order of business that is
72 specified in the rules is geared to an appeal hearing in which there has been a decision that is
73 being appealed. Being that this is an interpretation hearing, the ZBA and petitioners are
74 best served by the petitioner stating what is being asked for interpretation followed by the
75 Township Zoning Administrator presenting the Township's position on those items. Mr.
76 Darnton asks the ZBA members how they believe the interpretation should be heard.

77
78 Janice Vedder-Whipple requests the petitioner to write down the specific interpretation
79 questions in order for the ZBA to make decisions during this meeting.

80
81 Mr. Greenslade concurred with Ms. Vedder-Whipple that paperwork supplied to the ZBA has
82 been cumbersome to sift through and the specific interpretation requests are not clear. Mr.
83 Greenslade provided a visual with a dumping of several binders packed with exhibits. He
84 seconds Ms. Vedder-Whipple's request for a simple answer of what is exactly being
85 requested for the interpretation. Mr. Greenslade recommended the ZBA rules need to be
86 revisited regarding the order of the meeting. He states it is logical for the petitioners to
87 present their request for interpretation and the Zoning Administrator should follow with a
88 response. Thus, he agrees with the agenda as presented by the Chair.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
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Charlevoix, Michigan 49720

Mr. Slocum agrees, that although each member has experience with Board meetings, the paperwork presented has made it tough for the ZBA to see a clear answer as to what the petitioner is seeking. He feels it would be unfair to the ZBA if not given a chance to hear the Zoning Administrator after the petitioner's presentation. He reminded everyone that we are all part of the community (Hayes) and wants to be fair to everyone and result in a good, honest interpretation. He too agrees with the order of the agenda as presented by Chair.

Mr. Boal replied:

- He acknowledged the voluminous amount of paperwork provided.
- He stated that whatever the board decides the petitioner will live with.
- He noted that the Croizer case did follow the rules of order and was an interpretation case.

Mr. Boal passed out to each ZBA member a copy of the petitioner's Finding of Facts.

Mr. Darnton questioned how this pertained to the question of which agenda the ZBA was going to follow.

Mr. Darnton made a motion, with support from Mr. Greenslade, to approve the agenda as presented.

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

Nays: None

Motion Carried

Mr. Boal recommended that when the ZBA takes a vote to not say Yea or Nay as it was difficult to hear on the recording but to state support or opposed.

Mr. Boal read into the record (attached) names, in alphabetical order of those on written correspondence.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

120 Mr. Boal referenced previous comments made by Township officials (Ron Van Zee and Roy
121 Griffiths) that this is about a personal neighbor dispute. Mr. Boal stated that this is about a
122 serious issue. Mr. Boal stated that precedence does not apply to this case while referencing
123 several local as well as State cases.

124
125 Ms. Whipple-Vedder again stated to the Chair that although she (the ZBA as a whole) just
126 received additional information from the petitioner and she is still unclear as to what the
127 petitioner is asking for in regards to the interpretation.

128
129 Ms. Kozma explained that the additional paperwork she handed out is her presentation, the
130 interpretation requests are within the presentation and she will cover later. Ms. Kozma will
131 advise the ZBA members on the documents what she wants them to get out of each
132 document.

133
134 Ms. Kozma stated that the Zoning Administrator should be presenting the case but she will
135 do it. She has reviewed all Hayes Township ZBA minutes and the Zoning Administrator
136 always presented the case.

- 137 • Case filed by LuAnne Kozma, Elisabeth Hicklen and Irene Fowle on September 27
- 138 • It is about an anticipated project that would take place at 10034 Anglers Cove
- 139 • Property owners are Scott and Debra Law at that same address
- 140 • Parcel ID 15-007-132-005-25
- 141 • Parcel is 9.1 acres
- 142 • Residences staddles two parcels
- 143 • Zoned R-1
- 144 • Water feature adjacent
- 145 • Ordinary High Water Mark (OHWM) set for Hayes Township at 582.3' IGLD 1985
- 146 • Two agencies have approved two different projects (EGLE and Army Corp)

147
148 Ms. Kozma presented a slide show.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

150 Introduction of Petitioners

- 151
- 152 • Three docks and two docks respectively, within view of Law property, on same cove
 - 153 on the lake
 - 154 • Kozma's location on Lake Charlevoix, 3 parcels (two homes), 610 feet of shoreline
 - 155 • Fowle/Hicklen's location closer, within 300 feet of Law property line
 - 156 • Parcels are nearly completely forested, only native plants, natural shoreland, deep
 - 157 greenbelts greater than 160 feet; one Kozma/Boal parcel is completely undeveloped
 - 158 forest land
 - 159 • Kozma: Conservation easement with Little Traverse Conservancy in 1990 on 5 acres,
 - 160 deed-restricted conservation easement on another 10 acres, with 2 other owners in a
 - 161 PUD
 - 162 • Ms. Kozma shared a video of their property and shoreline as well as video of the Law
 - 163 waterfront property
 - 164

165 Present Exhibits

- 166 • Plans approved by other agencies- Army Corp permit as well as State of Michigan
- 167 EGLE
- 168 • Schaefer statement to court
- 169 • Plans submitted to the Township as well as plans submitted to other agencies
- 170 • Interactions between township officials and Laws
- 171 • Shoreline Protection Strip
- 172 • Ordinary High-Water Mark
- 173 • Commercial nature of the boathouse
- 174

175 Interpretation Requests

- 176 • Case was originally filed on September 27, 2021
- 177 • Case should have been decided by Christmas of 2021 per ZBA rules
- 178 • Sued Township twice to have case heard

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

Since filing on September 27, 2021

- Township agreed during litigation that permits expired (Shoreline Landscaping plan and zoning permit for boathouse)
- Laws have not reapplied for either
- Project is urgent because on June 9, 2022 US Army Corp of Engineers approved a permit for
- EGLE needs to review revised plans for approval
- Laws signed a permit on May 26, 2022 for Army Corp
- Sarah Schaffer stated in Circuit Court that they want to build a dining facility for their family for Christmas dinner
- Army Corp and EGLE plans are different (Laws need a modified approval from EGLE)
- Ms. Kozma read an email exchange between staff at EGLE discussing a difference of opinion regarding effects of project
- FOIA from Army Corp regarding purpose of boathouse: Lower level for boat slips and watercraft, etc storage. The upper level is a large event space suitable for large events. 2 days later, a email was sent changing the proposed use of the boathouse stated the upper level will be kayak and canoe storage.
- Approved by USACE: Excavate 210 feet back from uplands, 120 foot by 90 foot boat basin, now 43' x 55' channel removing Shoreland Protection Strip, 90' x 60', 2-story boathouse over the waters of Lake Charlevoix, dredging 130' out into lake, 14,011 cubic yards of shoreland removed, bring lake to structure

Corporate Resort/Commercial

- Sited letter between Van Zee and Scott Law
- Amassed over 400 acres
- Corporate resort for employees, charitable foundation and organizations; dining facility for guests and family
- According to the international building code A-2 occupancy for public assembly

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

- 208 • Big enough to sit 350 guests around tables
- 209 • Public men's and women's bathrooms

210

211 The "Storage" Ruse

- 212 • Cited emails from Laws to USACE
- 213 • Plans have changed but design of building has not

214

215 Interpretation Requests

- 216 • Shoreland Protection Strip and Waterfront Regulations Section 3.14 including
- 217 subsections (8) and Section 2.02 Definitions
- 218 • OHWM would move horizontal: Sections 2.02 and 3.14(2)
- 219 • Section 9.01: Illegal for Zoning Administrator to approve plans for excavation
- 220 • Section 9.01 Zoning Administrator cannot make changes to the zoning ordinance
- 221 • Section 9.02(5) Zoning permit expires after 12 months if little or not substantial
- 222 construction has been done

223

224 Ms. Kozma provided information on Hayes Township fighting Fox and Associates and the
225 development of a funneling project (Oyster Point).

226

227 Ms. Kozma read Protecting Michigan Inland Lakes: A Guide for Local Governments.

228 Highlights included:

- 229 • Local government fills the gap in lake protection and have authority
- 230 • 90% of lake life is born, raised and fed in first 10-15 meters of shoreland
- 231 • One of the most effective ways to protect is minimum setbacks
- 232 • Undisturbed means no construction
- 233 • Keep root systems intact, limited tree trimming
- 234 • Protective measures should be applied consistently

235

236 Ms. Kozma presented how it relates directly to what the Hayes Township Ordinance states.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

Shoreland Protection Strip

- “A strip of land 50’ in depth landward from the Ordinary High-Water Mark, placed as to be parallel to the body of water”
- Section 3.14 Waterfront Regulations

Ordinary High-Water Mark (OHWM)

- The line between upland and bottomland; physical characteristics
- On Lake Charlevoix legally established as 582.3 feet IGLD 1985
- Definitions of bottomlands and uplands are not defined within the ordinance but the State of Michigan (MCL 324.30101) defines bottomlands as: land area below the OHWM that may or may not be covered by water and uplands as: land that lies above OHWM

Section 3.14 Waterfront Regulations

- Intent to preserve waterways and lakes be preserved in natural fashion
- Hayes Township Master Plan supports protection of water resources
- 3.14 states Shoreline Protection Strip shall be required and shall include all of the land 50 feet of OHWM
- Shoreline Protection Strip’s purpose is to protect the lake by filtering soil erosion, providing a filter for removal of pesticides, fertilizers and other potential water pollutants and to maintain a visual barrier
- 3.14 (2)(A): No structures (named 4 items) shall be allowed within 100 feet of OHWM on lakes Michigan and Charlevoix and 80 feet on Susan Lake)
- 3.14 (3)(D): Walkways or stairs for water access shall be allowed with specific constrictions

Meeting recessed for 5 minutes.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

- 3.14 (3)(C): The ordinance states “shoreline retaining structures shall be permitted with appropriate agency approval”; Ms. Kozma stated that this should be construed to mean ‘structures that retain or maintain the existing shoreline to stop erosion.’
- Definition of Structure as defined in the ordinance “anything constructed or erected, the use of which requires location on the ground..” Petitioner is asking the ZBA to interpret a boat basin as a structure.
- Ms. Kozma compared the excavation/construction of a boat basin to that of a septic system, which is forbidden.
- Ms. Kozma stated “erected includes built, constructed, reconstructed... required for a building or structure. Excavation, fill, drainage and general land improvements shall be considered part of erection.” Boat basin is dug out and erected (sides, etc)
- 3.14(3)(H): Natural vegetation cover including trees, shrubs or herbaceous plants shall be maintained on at least 80% of the lake or stream frontage within the Shoreland Protection Strip... the vegetation on the remaining 20% may be cleared for single view corridor. Frontage is equal to land.
- Ms. Kozma was emphatic that there is no corresponding clause that refers to 20% of land removal, that 20% refers solely to vegetation removal.
- 3.14(3)(H): When trees are removed, root systems shall be left in place for shoreline stabilization.
- Laws’ planned boat basin and channel would take out trees and tree root systems, possible some asphalt.
- Section 3.14(3)(I): Ordinance states: “selective trimming of trees to allow for filtered views is permitted within the Shoreland Protection Strip so long as the overall health of the tree is not compromised and is not included in the allotted 20% removal.”
- Section 3.14(3)(K): It is in violation of the zoning ordinance to alter or disturb the Shoreland Protection strip... If altered or disturbed corrective measures are required (Fill material placed within strip shall be removed; only soil or rocks consistent with the composition of the pre-existing on-site soil and rock are allowed when necessary for regrowth; Shoreland Protection Strip shall be replanted with native species)

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

- Waterfront Regulations Highlights: undocked boats may be stored as long as shoreland protection strip is not disturbed; damage caused during removal of seasonal docks shall be repaired within 30 days; and new construction or renovation on a waterfront lot restoration or renovation of Shoreland Protection Strip shall be required; 3.14(3)(A) The Shoreland Protection Strip shall not be altered more than 20%, under any condition, except to remove invasive species, or for selective trimming of trees as permitted in 3.14.3. (In keeping with H, I and J).
- In response to letter written by Planning Commission members as part of comment: Section 3.14(8) Waterfront Development Review: (A) Intent of Waterfront Development Review process is to promote the gradual, long-term restoration of the Shoreland Protection Strip (compliance with waterfront regulations; areas of land waterward of OHWM require MDEQ and/or Army Corp permits; compromise is not anywhere in the ordinance; Shoreland Landscaping Plan requirements; Review of plans by Shoreland Protection Committee; prior to issue of permit- detailed inventories of existing 50-foot Shoreland Protection Strip, all structures within 100 ft of OHWM and planned changes to Shoreland Protection Strip. Ms. Kozma stated that previous violations should not be considered. Mr. Boal added the language was stated as not intended but was approved; cannot look at considered intent. He continued that compromise is not true. Ms. Kozma stated that she has reviewed all planning commission meeting minutes and spoke about the Brady Graham warrant for not abiding with Township order to restore Shoreland Protection Strip. Waterfront Review was added to enforce the ordinance.
- Section 3.14(4): Marinas are not defined in ordinance, not designated uses in waterfront lot R-1, not allowed because of Shoreland Protection Strip. Dock and boat parking on existing bottomlands not Shoreland Protection Strip. No such restriction on excavation of bottomlands. No permitting process is defined thus does not permit marinas.
- Ordinance History:
 - 1973 Ordinance (adopted in 1974) had a Greenbelt Zone. In 1979 boat houses and bath houses were removed and replaced with “No building or

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

structure....shall be erected closer than 50 feet from the shoreline at normal high water level..."

- Each updated version has stronger lake protection language
- Ordinary High Water Mark (OHWM)
 - Per Drost plans, property owners admit OHWM will move into artificial boat basin
 - Ms. Kozma presented the plans as approved by USACE and EGLE.
 - Devos and Packer basin are below Lake Charlevoix OHWM and are bottomlands
 - Bringing the lake to the structure is same as putting a structure on the lake
 - Hayes Ordinance definition mirrors State of Michigan's definition
 - Federal definition is based on physical marks and codified elevation of 581.5 (IGLD 1985)
 - Ms. Kozma provided documentations from agencies and experts that OHWM moves in
 - Ms. Kozma states Hayes Township cannot say the OHWM would not move

Interpretation Requests:

Would a permanent building with a permanent roof that is built part on uplands and mostly over the waters of Lake Charlevoix in an artificial basin, where the waters become the jurisdiction of both USACE and EGLE because the lake waters inside the basin are also "Waters of the United States", violates the 100-foot setback from the OHWM requirement in 3.14(2)? Kozma responded yes. (Boathouse building is not one of the 4 allowed structures within 100 feet of the OHWM.)

Tom Darnton recessed the meeting at 12:32 to resume at 2:00 pm.

"Any Zoning Permit under which substantial construction has not started or if no substantial construction has been done in the furtherance of the zoning permit, the zoning permit shall expire after 12 months from date of issuance." This is one of the basis of the appeals/interpretation request. The petitioner is asking the ZBA to

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

354 interpret: Is there any other date from which a zoning permit shall expire except date
355 of issuance?

356
357 Section 9.01 "It shall be unlawful for Zoning Administrator to approve any plans or
358 issue any permits for excavation or construction until such plans have been inspected
359 in detail and found to conform to this ordinance." "Zoning Administrator shall under
360 no circumstance be permitted to make changes to this ordinance or to vary the terms
361 of this ordinance in carrying out the duties of Zoning Administrator."

362
363 Ms. Kozma states the following:

- 364 • ZBA has all the powers and responsibilities of Zoning Administrator (cannot vary the
365 terms of the Ordinance)
- 366 • Cannot vary the definition of Shoreland Protection Strip; 100% of uplands protected
- 367 • Cannot vary the ordinance and allow construction of a building that straddles the
368 OHWM and over a lake's waters
- 369 • Cannot vary the Waterfront Development Review process to allow residents to break
370 the law and ignore Shoreland Protection Strip requirements (ensure compliance to
371 compromise)
- 372 • After a ZBA decision cannot negotiate a court settlement with any aggrieved party
373 that changes the terms of the ordinance as interpreted by the ZBA and goes against
374 its decision.
- 375 • Section 10.1 and 10.2 process by which the Township can amend the Ordinance (after
376 recommendation by Planning Commission) and a public hearing.

377
378 Can the Zoning Administrator vary the terms regarding expiration of a zoning permit
379 or the re-application process? Can the ZBA and Board of Trustees vary the terms of the
380 Zoning Ordinance without amendment by the Planning Commission, public hearing
381 and County review? Kozma answered no.

Hayes Township
Zoning Board of Appeals
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DRAFT
August 22, 2022 10:00 am
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Charlevoix, Michigan 49720

QUESTIONS FOR INTERPRETATION

1. Is the Shoreland Protection Strip by definition uplands, not bottomlands?
2. Is the Ordinary High-Water Mark for Lake Charlevoix a codified elevation of 582.3 feet IGLD 1985, and also defined in the ordinance in terms of physical characteristics on the land, using the same definition as “Inland Lakes and Streams Act”?
3. Are artificial boat basins and channels considered “structures” according to the Zoning Ordinance definitions of “structures” and “erected”?
4. Do the Zoning Ordinance Waterfront Regulations, Section 3.14 subsection (1) thru (4) and (8) protect and prohibit any excavation of the Shoreland Protection Strip, including boat basin and channels?
5. Regarding Section 3.14(2) setbacks, Does the Ordinary High Water Mark location change horizontally when a lake’s configuration changes and shoreland/uplands are converted to bottomlands?
6. Were boat houses and bath houses permitted in the first Hayes Township Ordinance but were intentionally removed and then prohibited?
7. Does bringing the waters of Lake Charlevoix inland to a structure violate the 100 foot setback requirements because the Ordinary High Water Mark would change location horizontally and defeats the purpose of the setback?
8. Can the Zoning Administrator allow a commercial use in R-1 residential zone?
9. Can “unwritten philosophy” or “consultation or compromise” ever guide the Zoning Administrator or Planning Commission or ZBA in making decisions? Can the Ordinance be used as a “bargaining chip”?
10. Is there any other date from which a zoning permit shall expire except the date of issuance?

The petitioner ended the presentation of case.

Ellis Boal added comments on the following:

- Not asking if particular permit (Law boathouse/Landscaping Plan) is expired.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

- No procedure for approval process of a marina in current ordinance, perhaps should be included in future draft.
- Fox and Associates case, even if Judge rules, it needs to come back to ZBA and the ZBA will rule. Ms. Kozma clarified that the Judge ruled that Township did not have rights over the bottomlands.

Ron Van Zee, Zoning Administrator, responded.

- Zoning Ordinance is a very complicated document and is in constant process of being updated
- Current Zoning Ordinance is the law.
- Cannot be prepared for everything (example of zip lines).
- The definition of Ordinary High-Water Mark varies from the site of 582.3 IGLD in the Ordinance. The definition is not the same as Army Corp nor EGLE definition. This is an example of what the Planning Commission has been working on to correct with the Ordinance rewrite.
- Have never made a zoning decision in 2 minutes time as was presented.
- Mr. Van Zee requests time to prepare answers for the specific interpretation request questions spelled out at the end of the presentation.

The following members reported site visits for interpretation:

Tom Darnton (visited property many times from the water)

Rex Greenslade (been by property several times but has not gone on land as it is an interpretation request)

Mr. Darnton opened the floor for ZBA members to ask questions of the petitioners or the Zoning Administrator.

Rex Greenslade asked the petitioner if they had any knowledge of the Laws having an easement in conservancy on any of their parcels. Mr. Boal stated he did not know but

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
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Charlevoix, Michigan 49720

believes there may be an area in the center of their parcels but it would be public knowledge on the County website.

Rex Greenslade asked the petitioner for specific justification of using the term commercial regarding the project. Ms. Kozma referenced exhibit 29 and statements that Mr. Law has made that state he intends to use it for his employees and charitable foundations. Kozma also cited an affidavit from Jessie Dixon that he walked the property during a corporate retreat. Kozma added that on the County website a Zotec partner is listed on one of the parcels. On a map there is a site that includes a clubhouse. Mr. Boal added that after the Laws are gone the next owners can use it for other purposes. Ms. Kozma stated that the County attorney asked the Laws for a letter stating that they would not use the pavilion as a corporate retreat center.

Janice Vedder-Whipple asked for clarification from the petitioner if the final slides from the presentation were the questions for interpretation. Ms. Kozma responded yes. Ms. Vedder-Whipple wished she had that list earlier to prepare for case. Ms. Vedder-Whipple also questioned if the Supreme Court ruling regarding what constitutes a family clouds the reference to commercial event based upon how many people can fit in a building. Ms. Kozma stated they can put a large event center else where on the property, it does not belong on the lake. Ms. Kozma speculates that the Laws have several additional parcels on the lake and that they could put marinas in at each, really make it a event center (golf course, clubhouse, ride up on a boat, etc.). Ms. Kozma feels that Laws building a commercial center on the lake to look out at the Boals property was not the intention of the Ordinance.

Tom Darnton questions a couple of the interpretation requests.

- He asked Mr. Van Zee, regarding Section 9.01 (It shall be unlawful for Zoning Administrator to approve any plans or issue any permits for excavation or construction until such plans have been inspected in detail and found to conform to the Ordinance) if Van Zee had any disagreements with the language specifically if

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

473 Zoning Administrator can amend the ordinance. Mr. Van Zee responded "No, I
474 cannot amend the Ordinance.

- 475 • Mr. Darnton asked Mr. Van Zee (interpretation request regarding the expiration of
476 permits) if Zoning Administrator can ignore the language regarding permits expiring
477 after 12 months. Mr. Van Zee replied no.
- 478 • Mr. Darnton clarified for Mr. Deckinga the above questions he asked Mr. Van Zee.

479
480 Mr. Greenslade asked the Zoning Administrator, in reference to the letter written to the ZBA
481 signed by Roy Griffiths, Ed Bajos and Marilyn Morehead, how is the Ordinance interpreted
482 with the issue of compromise. Mr. Van Zee responded he is not part of any compromise;
483 first he reviews application for a change of the footprint on a property, he is part of a site
484 visit (documents what is on site) and the Shoreland Review Committee (after a site visit)
485 makes decisions on the process on how to make that specific parcel more compliant. Mr.
486 Van Zee states that the whole reason Brady Graham (as referenced earlier by petitioner) had
487 a bench warrant issued was he ignored a court order.

488
489 Mr. Slocum questioned where the channel will be on the Law property and if there are trees
490 currently in that location. Mr. Van Zee responded that there is a road currently there and
491 that yes, some trees would be taken out if boat basin is completed. Mr. Slocum asked if
492 there is any provision for mitigation allowance in the Ordinance. Ms. Kozma referenced
493 exhibits that the area where proposed boat basin show trees would be removed. Mr. Boal
494 stated that he agrees with Mr. Van Zee statements that he (Mr. Van Zee) is not part of any
495 compromise.

496
497 Mr. Darnton reported that all correspondence has been received by all ZBA members and it
498 is all packets and members have read all letters.

499
500 Mr. Darnton opened public comments. He stated the comments are limited to 3 minutes.
501 Public comments included:

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

- Deb Narten: Asked several questions including: How did plan review begin, How did the Board support the future plans that are not agreeable for a R-1 area; How did the Township respond to the talk about building this in a R-1 area; Why was it not stated to the Laws that the Township has laws that forbid projects like this. Hopes that this board choses to honor those laws and protects the lake. Why don't the Laws say: We are never going to build this project because of the laws of the Ordinance.
- John Donahue: Long time resident everyone needs to look forward and think about our children and their children and what's good for this planet
- Tim Boyko: Looks like the perfect project for a PUD (Public Hearing requirement, displace public fears)
- Lucy Moore: Planet is at stake, local council is making big decisions, Lake Charlevoix is a jewel and shoreland is connected, the ZBA's job is to protect the land and the lake, work together residents and ZBA, encourage ZBA to take responsibility seriously to protect the Lake and land, Laws are not above the law, the difference appears to be about money (getting money into the county), using the example of building a McDonalds on property in reference to the Law Project
- Harry Golski: Attorney for Scott and Debra Law; ZBA is not being asked to greenlight or approve project, stop project or amend the ordinance- the ZBA is being asked to interpret the Ordinance that is already on the books. Previous commentors who requested the ZBA to stop this project or stop harm do not understand what the role of the ZBA is. Talk about R-1 versus commercial zoning and what is not being discussed is that commercial zoning has to do with the use of the property not the type of structure. If there is a use problem in the future, the Zoning Administrator issues a violation, it is the use that is a violation not the type of building. Feels the questions about the Zoning Administrators authority and actions are an appeal disguised as an interpretation and is being asked for as an improper request. In Section 3.14 language that was not sited "On Lake Charlevoix the OHWM shall be legally established as 582.3 feet IGLD 1985." It does not matter what any other agency uses but what language the Hayes Township Ordinance uses. Shoreland Protection plan was approved by the Planning Commission in 2019 with no appeal by

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

the petitioners and when they missed the deadline to appeal, they decided to request it as an interpretation.

- Roy Griffiths: recognized the petitioners time spent on research, we are not at odds on what we trying to accomplish just at odds with methodology, lots of virtue signaling (my property is better than other properties/more in compliance), reflected on the start of this 3 year public battle (fought in newspaper/Facebook), invited ZBA to read records of the minutes about the amendment of the Ordinance of 2018, presented only Public Hearing (snapshot did not include all of the deliberation that took place over time), ZBA has been told what you cant do and what you must do- encourage the ZBA to do some research and make up their own mind. Legal definition of precedent: legal as Mr. Boal presented and the common man understanding of actions speak louder than words; rules that are ignored are not really rules; ZBA has ability to create substantial justice for the Township; shock that Mr. Boal would call people (who are not 100% in compliance with the Shoreland Protection rules) criminals and if 100% compliance is enforced there will be a lot of angry Hayes Township property owners
- Spencer McCormick: Great Lakes Policy Specialist, Little Traverse Bay Bands of Indians (federal recognized Tribe; retain hunting, fishing, gathering rights; 14 million acres in State of Michigan and adjacent Lake Michigan). Interested in this project because of concern of negative impact of water quality, ecologically integrity and in particular project exercising rights, with a structure right over the trust waters, can physically restrict tribe people from exercising treaty rights; letter regarding Ordinary High Water Mark; Hayes Township has adopted same definition as State of Michigan (make sense for Hayes Township to interpreted same as State of Michigan); Mr. Van Zee replied to letter with Hayes Township does not control the OHWM; depend on other agencies; agencies have determined the OHWM would move in;

Ms. Kozma addressed Mr. Griffiths comments. Agrees with Mr. Griffiths support of the Shoreland Protection Strip but states that a review is triggered by very specific items (non-

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

conforming issues). It promotes the gradual long-term restoration of the shoreline, does not allow compromise.

Mr. Boal apologize for using the term criminals in regards to anyone who violates the Ordinance. Mr. Boal stated the word shall is in Michigan Zoning Enabling Act. (you shall determine). He also addressed Mr. Golski's comment about the OHWM and stated it did not address how it is defined horizontally (the base of the argument). He is not attacking the permit from 2019 as it has expired. Mr. Boal made a comment that Mr. Van Zee stated that Hayes Township does not enforce the OHWM.

Ms. Kozma corrected Mr. Boals comment regarding Mr. Van Zee's comment to state that Hayes Township does not decide where the OHWM is.

Mr. Darnton closed Public Comment and recessed meeting until 3:55 pm.

Meeting resumed at 3:56 pm.

Mr. Darnton made the statement that the meeting will adjourn at 5:00 pm.

Mr. Darnton begin the deliberation of the Zoning Board of Appeals. He started with two key points.

1. Does the Zoning Ordinance prohibit the construction of a canal and basin?
2. Does the OHWM follow with the newly created body of water?

Deliberation of item 1:

The ZBA referred to Section 3.14 in the Zoning Ordinance.

Mr. Slocum asked a question about process. What is the Township's role in this when there is no permit?

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

Mr. Darnton stated that there will multiple lawsuits and upon Township attorney's advice, the ZBA was to go ahead with an interpretation hearing. Mr. Darnton continues that ZBA rules were not drafted with Interpretation Hearing in mind.

Deliberation continues:

- Does the Ordinance, as written, precludes any development of this sort, any project that digs a channel or a canal that cuts an excavation into the Shoreland Protection Strip?
- Todd Millar, Hayes Township Attorney, suggests the ZBA be very careful how the question is posed as the Zoning Administrator will have to enforce in the future and using statements like, 'projects such as this' is too broad, need to be specific.
- Mr. Darnton stated that at the beginning of deliberations, the ZBA is trying to come to a consensus. The set of facts or circumstances will help determine the interpretation meaning.
- Mr. Greenslade questioned 3.14 regarding the Shoreland Protection Strip. Section 3.14(H) states must be 80% maintained and questioned what the total frontage is for this project. Mr. Greenslade states he believes the most important thing the Board needs to consider are roots left in place to stabilize the shoreline.
- Ms. Vedder-Whipple questions if some roots can be left in to stabilize. The answer is probably not as it is a deep channel.
- Mr. Slocum states that trees will need to be removed.
- Ms. Vedder-Whipple states that for an interpretation case, they are not looking at a specific project and at the Ordinance as a whole.
- Mr. Slocum states that often lawyers will say 'you can rule in or rule out'. The Ordinance is silent on channels and marinas, was it intentional to not incorporate into Ordinance.
- Mr. Darnton stated that the Shoreland Protection Ordinance has a difficult job of managing vastly different properties. There are things allowed in Township owner parks that would never be allowed on a privately owned property. Fundamental principal of 80% of the property needs to remain in natural vegetative state and a

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

sub-committee is established to help develop a plan for the remaining 20%.
Compromise has become a dirty word but it doesn't have to be. It is thoughtful
people sitting down and trying to solve a very complex problem. Mr. Darnton stated
how different the Shoreline is in Charlevoix Township and that Hayes Township has
much more natural Shoreline and he believe it is a result of the Shoreline Protection
Strip and how the Township has been developing it. Mr. Darnton did not find
anything in the Ordinance prohibiting a project such as this nor did he find anything
in the Ordinance that stated it was a property right. He stated it is not a question of
compromising the Ordinance but how to decide the language applies to one piece of
property at a time.

- Mr. Slocum stated that there has been conversation about density and he has
personal experience with large families and ZBA needs to be careful with language.
- Mr. Greenslade disagrees with Tom Darnton and states that he does not believe that
20% of the shoreline can be disturbed. He believes the Ordinance states that you can
only trim trees for 20%.
- Mr. Deckinga asks how many feet of shoreline this parcel has.
- Mr. Darnton states that this decision will apply to a property if it is 100 feet or 1000
feet. Does the Ordinance allow it or not?
- Ms. Vedder-Whipple verifies that this would include anything that goes into the
property, whether it is channel or a dock.

Ms. Vedder-Whipple made a motion that because of language in 3.14.3(H) there cannot be
an excavated channel.

Mr. Greenslade adds the amendment of, 'when trees are removed and roots cannot be left
in for shoreline stabilization.'

Ms. Vedder-Whipple agreed to the amendment.

Mr. Greenslade questioned what happens if a property owner does not have trees, can they
have a channel.

The motion is read back to ZBA.

Mr. Slocum refers back to Section 3.14(H) and states it says 'natural vegetation'

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

Todd Millar (Township Attorney) asked the Zoning Administrator to remind the ZBA to review Section 3.14 Setback Area Regulations language includes 'as when provided here'. Excavation is allowed to put in a patio or a deck. In Section 3.14(A) they allow you to excavated to anchor a dock into the uplands. In Section 3.14(8)(ii) refers to Army Corp or DEQ permits requirements which suggests that it is allowable within the Shoreland Protection Strip with proper permits. The Ordinance does not say if you can or cannot have a basin but other parts of the Ordinance need to be reviewed. Mr. Greenslade suggests verbiage including 'root systems left in place'.

The motion on the floor is read back to the ZBA.

The motion is revised to read:

Mr. Greenslade made a motion, with support from, based on language in 3.14(3)(H) including, when trees are removed, roots shall be left in place for shoreline stabilization, the excavation of a channel is not permitted.

Ms. Vedder-Whipple requests an opinion from the Township Attorney.

Todd Millar, Township Attorney, states that he is slightly confused. He states it reads that if you have to remove tree roots to build a channel it is not allowed.

Mr. Slocum suggests starting the motion with No channels are allowed.

Mr. Millar agrees starting the motion with that is a better choice.

Mr. Greenslade states he questions if that is within the purview of what the ZBA can do.

Mr. Millar suggests maybe rereading the interpretation request and focus on excavation and perhaps not channels.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

682 Mr. Greenslade made the motion, with support of Ms. Vedder-Whipple, the Hayes Township
683 Zoning Ordinance Waterfront Regulations Section 3.14 Subsections (1) thru (4) and (8)
684 protect and prohibit any excavation of the Shoreland Protection Strip for an artificial boat
685 basin or channel. A roll call was taken.

686 Rod Slocum Yea

687 Rex Greenslade Yea

688 Tom Darnton Nay

689 Janice Vedder-Whipple Yea

690 Bruce Deckinga Yea

Motion Carried

691

692 The next set of issues has to do with the OHWM.

693 Mr. Darnton asks if they need to consider.

694

695 Mr. Greenslade states that yes.

696

697 Mr. Darnton starts the discussion with, if there is excavation does the OHWM move in.

698

699 Mr. Greenslade refers to the definition and states the previous Township Attorney's
700 statement does not make sense to him. It shouldn't make difference what causes it but if a
701 shoreline changes and the OHWM moves then the setback change and a structure still needs
702 to be 100 feet back from the OHWM.

703

704 Mr. Deckinga asks for the Attorney's opinion.

705

706 Mr. Millar states there is case law (unpublished Court of Appeals Opinion) out there that
707 court states that water flowing into a (smaller) boat basin and channel did not change the
708 OHWM. It has been stated that a larger boat basin or channel may cause the OHWM may
709 move in. Mr. Millar reminds the ZBA to consider what was the intent of the drafters of the
710 Ordinance was when they stated the OHWM is 582.3 IGLD 1985.

711

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

Mr. Greenslade believes the State and Federal authorities' opinion should be taken into consideration.

Mr. Darnton explains that this is a biological concept that makes a lot of sense when you are talking about OHWM and define it by where vegetation changes. Mr. Darnton clarified a reference made earlier to a letter from Guy Meadows. It was in regards to the erosion of sand dunes along Lake Michigan. If the water is causing a shoreline to constantly change (sand in and out) then it is not possible to establish setbacks. That's why there was a need for the adopted 582.3 IGLD 1985.

Mr. Greenslade made a motion, with no support, that the Ordinary High Water Mark location horizontally changes when a lake's configuration changes and uplands convert to bottomlands.

Mr. Darnton suggests that this is the time that was agreed upon to end the meeting.

Mr. Deckinga made a motion, supported by Ms. Vedder-Whipple, that the Ordinary High-Water Mark be at as established elevation level in the Ordinance and will remain with the natural shoreline.

ZBA members began discussion.

Ms. Vedder-Whipple requested input from Mr. Millar.

Mr. Greenslade made a motion, supported by Mr. Slocum, to adjourn the meeting until next Monday, August 29, 2022 at 10:00 am.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 22, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

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

743 Slocum

744 Nays: None **Motion Carried**

745

746

747 Meeting adjourned at 5:13 pm.

748

749

750 Respectfully Submitted,

751

752 Kristin Baranski

53 Hayes Township Clerk/Recording Secretary

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

The August 29, 2022 meeting of the Hayes Township Zoning Board of Appeals (ZBA) was called to order by Chair Thomas Darnton at 10:00 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); Ron Van Zee (Zoning Administrator) and Todd Millar (Township Attorney)

Audience Members Signed In: Winnie Boal, LuAnne Kozma, Ellis Boal, Debbie Narten, Danelle Hutcheson, Paul Hoadley, Tim Boyko

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

PUBLIC COMMENT: Following the advice of the Township Attorney, Mr. Darnton opened a public comment on items not related to agenda items.

- Ellis Boal (representing the petitioner) objected to the public comment period stating the public has had a chance already and that the Board should continue with deliberations.
- Mr. Millar restated that the Public Meeting Act requires a public comment period

CONTINUATION OF DELIBERATION:

Motion on the table is read as: Bruce Deckinga made a motion, supported by Janice Vedder-Whipple, that the Ordinary High-Water Mark be at as established elevation level in the ordinance and will remain with the natural shoreline.

Mr. Greenslade disagrees and made a case for the OHWM to move in with an artificial boat basin.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

31 Mr. Slocum referenced a letter in exhibits exemplifying the movement of the OHWM within
32 a changing shoreline.

33
34 Mr. Greenslade referred back to the 10 questions requested for interpretation.

35
36 Mr. Darnton states that the application filed on September 27, 2021 had seven questions as
37 well as appeal questions and he is working off the original questions on the application and
38 not the additional paperwork presented.

39
40 Mr. Greenslade states he does not have the original application.

41
42 Mr. Deckinga called to question the matter on the floor with support from Janice Vedder-
43 Whipple.

44
45 Bruce Deckinga made a motion, supported by Janice Vedder-Whipple, that the Ordinary
46 High-Water Mark be at as established elevation level in the ordinance and will remain with
47 the natural shoreline.

48
49 Mr. Greenslade is not comfortable with making a decision nor going on with this meeting
50 since he does not have the original application in front of him.

51
52 Mr. Millar interjects that a motion to adjourn trumps all.

53
54 Rex Greenslade made a motion, with support from Rod Slocum to recess for 5 minutes at
55 10:26 am.

56
57 Meeting reconvened at 10:33 am.

58
59 Mr. Greenslade located his copy of the original application filed on September 27, 2021 in his
60 original binder. He stated he has reviewed the paperwork.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

A call was made to end all discussion regarding matter on the floor. Unanimously supported.

Request D: Bruce Deckinga made a motion, supported by Janice Vedder-Whipple, that the Ordinary High-Water Mark be at as an established elevation level in the ordinance and will remain with the natural shoreline. A roll call was taken.

Rex Greenslade- Yea
Bruce Deckinga- Yea
Tom Darnton- Yea
Janice Vedder-Whipple- Yea
Rod Slocum- Yea

Motion Carries

Next item up for discussion is:

- Waterfront Review process under 5.04 and 3.14 denies due process to the public
- 3.14 denies intent of ordinance

LuAnne Kozma clarified that it is not a matter of compromise and that is the interpretation request. A permit triggers the review process of shoreline. Ms. Kozma states that in slide 42 is the request.

Mr. Darnton question Mr. VanZee (ZA) if 3.14(8)(A) if the intent of the Waterfront Review Process is to promote the gradually restoration of the shoreline protection strip.

Mr. VanZee (ZA) stated yes and included the word systematic.

Mr. Darnton continued any land waterward of the OHWM requires permits from Army Corp and MDEQ (EGLE) due to the fact that any work would disrupt the shoreline and

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

90 compromise the Shoreland Protection Strip and thus the quality of the protection of the
91 water. Mr. Van Zee agreed.

92 Mr. Darnton then questioned: "Is the word "compromise" anywhere in the ordinance?" Mr.
93 Van Zee responded no.

94
95 Mr. Darnton then continued with "Does the Ordinance require a shoreline landscaping plan
96 which shall address conditions set forth in Section 3.14 (1-5)?" Mr. Van Zee responded there
97 are different levels (actions) that are dependent on what has been applied for. Mr. Darnton
98 asked if for any waterfront parcel there must be a shoreland landscaping plan that
99 addresses the shoreline? Mr. Van Zee responded there is a requirement for a landscaping
100 plan for any development on a waterfront project except in the items addressed in the
101 Ordinance.

102
103 Ms. Kozma stated that the request for a permit triggers the shoreland review process to
104 ensure compliance, not compromise.

105
106 Mr. Millar stated that the petitioner has repeatedly stated that they are withdrawing
107 argument E. Mr. Millar does not believe that the Township has in writing the request for a
108 particular interpretation request (Slide 42) and he states the petitioner needs to file a new
109 application if that is what the ZBA determines.

110
111 Mr. Greenslade states that it (interpretation request) is in the original application about
112 "unwritten philosophy" and the Zoning Administrator(ZA) has already addressed that as
113 well as no compromise.

114
115 Mr. Darnton asked ZA to clarify that he is required to strictly adhere to the Ordinance.

116
117 Ms. Kozma stated that the meeting Mr. Millar referred to had no quorum and this meeting
118 public notice included Section 3.14.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

Mr. Darnton made a motion to open public comment, supported by Rex Greenslade.
Unanimously approved with a voice vote. **Motion carries**

PUBLIC COMMENT

- Ms. Kozma stated that she is opposed to public comment; goes against the ZBA rules of procedure and is setting it up to bounce back to the ZBA by a judge and ZBA is also not doing finding of facts
- Mr. Griffiths stated that this is an interpretation request and thus is about what words are actually written in the Ordinance not what is wished to be in the Ordinance; the Township reviews each property as an individual case and how to systematically and gradually restore the Shoreland Strip
- Debbie Narten is disappointed in how the ZBA has determined the OHWM

Public comment closed.

DELIBERATION OF ZBA

Rex Greenslade referred to Mr. Griffiths comments and states that the ZBA needs to determine what they are trying to do today and work to that end point.

It is suggested that the statement be made that the Ordinance states what it states.

Mr. Millar recommends that the ZBA make a motion and vote on each request.

Mr. Darnton stated that the appeal is off the table and ZBA is currently reviewing the original (5 items) interpretation request.

Request A.

Tom Darnton made a motion, with support from Bruce Deckinga, that 9.01 requires strict adherence to the Zoning Ordinance without any unwritten philosophy or compromise that would detract from the requirements of the Ordinance. A roll call was taken.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

150

151 Rex Greenslade- Yea

152 Bruce Deckinga- Yea

153 Tom Darnton- Yea

154 Janice Vedder-Whipple- Yea

155 Rod Slocum- Yea

Motion Carries

156

157 Request B.

158 Tom Darnton made a motion, with support from Bruce Deckinga, that Sections 9.01 and

159 9.02(5) of the Zoning Ordinance requires that a zoning permit expires after 12 months from

160 date of issuance unless substantial construction has occurred to further that specific permit.

161 A roll call was taken.

162

163 Rex Greenslade- Yea

164 Bruce Deckinga- Yea

165 Tom Darnton- Yea

166 Janice Vedder-Whipple- Yea

167 Rod Slocum- Yea

Motion Carries

168

169

170 Mr. Darnton states that Request C was decided last week.

171

172 Mr. Darnton states that OHWM (Request D) was decided with the motion earlier in the

173 meeting.

174

175 Mr. Darnton begins the deliberation regarding Waterfront Development review process. He

176 reads: under Sections 5.04 and 3.14.8 operates as the only layer of review rather than an

177 added layer of review of the site plan by the Planning Commission and denies the public due

178 process and 3.14.8.d violates the intent of 3.14.8.a. Mr. Darnton asks the ZBA if they have a

179 clear understanding of what the actual request is.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

180
181 Mr. Millar states the above request was withdrawn by the requestor. He continues to state
182 the request of interpretation regarding 3.14.8 violates due process is not within the
183 authority of the ZBA to determine if any section of the Ordinance is valid or not. The
184 responsibility of the ZBA is to interpret what is written. The validity question would lie in the
185 hands of the circuit court. He believes the requestor is asking for a determination on slide
186 42.

187
188 Mr. Darnton directs the ZBA to address the issues requested on slide 42.

189
190 Mr. Darnton asks the petitioner for clarification.

191
192 Ms. Kozma replied to established that there is no compromise on the Shoreland Protection
193 Strip. The request is to clarify during the process the Zoning Administrator has no ability to
194 compromise.

195
196 Request E:
197 Tom Darnton made a motion, with support from Janice Vedder-Whipple, to confirm that the
198 Ordinance is clear in that strict compliance with the Shoreland Protection Strip (SLPS) is a
199 requirement and nothing can be completed that is inconsistent with the expressed language
200 of the Ordinance. A roll call was taken.

201
202 Rex Greenslade- Yea
203 Bruce Deckinga- Yea
204 Tom Darnton- Yea
205 Janice Vedder-Whipple- Yea
206 Rod Slocum- Yea

Motion Carries

207
208 Request F and Request G previously withdrawn.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

210 Bruce Deckinga made a motion, with support from Rod Slocum, to adjourn the August 29,
211 2022 meeting at 11:29 am.

212

213 Rex Greenslade- Yea

214 Bruce Deckinga- Yea

215 Tom Darnton- Yea

216 Janice Vedder-Whipple- Yea

217 Rod Slocum- Yea

Motion Carries

218

219 Petitioner questions the ZBA about the second interpretation request.

220

221 Mr. Darnton states that after review, the document that was submitted on November 29,
222 2021 was for an appeal of a determination and the ZBA has already determined that it was
223 not a determination. Mr. Darnton does not feel there is enough material (Clear statement)
224 to amend to an interpretation request.

225

226 Mr. Boal requested 7 days to reform the interpretation material.

227

228 Mr. Darnton stated his intention was to respond to requestor in writing. He provided a
229 verbal response to the question. The ZBA is not prepared to go forth with interpretation
230 today.

231

232 Ms. Kozma requests a vote of members.

233

234 Mr. Darnton states that he is within his role of Chairman. There are still questions regarding
235 if the meeting of an additional interpretation, was properly requested and noticed.

236

237 Mr. Darnton requested support or opposition from fellow ZBA members in regards to his
238 handling of the December 15, 2021 opinion. Mr. Greenslade supported and suggested the
239 ZBA choose a date to resume.

Hayes Township
Zoning Board of Appeals
Public Hearing
DRAFT
August 29, 2022 10:00 am
Hayes Township Hall
09195 Major Douglas Sloan Road
Charlevoix, Michigan 49720

240
241 ZBA members will hold October 3, 2022 at 10 am open for a meeting.
242
243 Bruce Deckinga made a motion, with support from Rod Slocum, to adjourn the meeting.
244
245 Rex Greenslade- Yea
246 Bruce Deckinga- Yea
247 Tom Darnton- Yea
248 Janice Vedder-Whipple- Yea
249 Rod Slocum- Yea **Motion Carries**
250
251 Respectfully Submitted,
252
253 Kristin Baranski
254 Hayes Township Clerk/Recording Secretary

Hayes Township

Zoning Board of Appeals – Appeal and Interpretation Application

09195 Major Douglas Sloan Road

Charlevoix, Michigan 49720

231-547-6961

zoning@hayestownshipmi.gov

GENERAL INFORMATION

Owner/Applicant Luanne Kozma

Mailing Address 9330 Woods Rd.

City Charlevoix State MI Zip 49720

Telephone 231-547-2828 Email Luannekozma@gmail.com

PROPERTY INFORMATION (If Applicable)

Property Tax Code Number: 15-007- 132 005 25

Legal Address 10034 Anglers Cove, Charlevoix MI 49720

Nearest Road Intersection Boyer City Rd & Anglers Cove

Please type or print; fill in all blanks and return with \$700.00 fee payable to Hayes Township

Appeal Request ☐ OR Interpretation ☒

Of the following Zoning Ordinance Section(s), case or approval: (Please be as specific as possible in order to present a clear request to Zoning Board of Appeals)

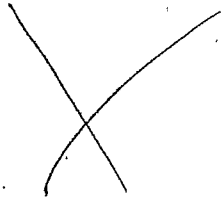
See attached list for all.
3.14(2) in terms of bathhouses not being ~~allowed~~ ^{allowed}
2.02 definitions for: Principal Use, Use, Accessory
Building.
9.02(6), 3.05, 4.05, 5.03, 3.15

See attached Zoning Board of Appeals Procedures

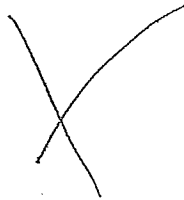
Please review the online copy of the zoning ordinance for the exact section number.

www.hayestownshipmi.gov

DESCRIBE REASON FOR REQUESTED VARIANCE,
INCLUDING EXACT SIZE AND TYPE OF VARIANCE NEEDED.



DESCRIBE THE PRACTICAL DIFFICULTY THAT EXISTS
What are the unique conditions of your situation)?



EFFECT ON APPLICANT IF VARIANCE IS DENIED

What specific problem(s) would be created to you, as applicant, if your request is not granted? What rights that others enjoy, will you be denied if this variance is denied?



EFFECT OF REQUESTED VARIANCE ON OTHER PROPERTIES

If your variance request is granted, what effect will it have on the area? Does your request represent a change in the types of uses permitted? Will it hamper access by emergency vehicles or personnel? Will it restrict light, air, or access to adjacent properties? Will it in any other way create problems or concerns to other properties in the area?



LuAnne Kozma

Interpretation Request Filed August 31, 2022

Zoning Ordinance Sections requested for Interpretation, as described in attached Brief:

- § 3.14(2) in terms of boathouses not being allowed
- § 2.02 Definition of Principal Use
- § 2.02 Definition of Use
- § 9.02(6)
- § 3.15 Home Businesses
- § 2.02 Definition of Accessory Building
- § 3.05 Accessory Buildings
- § 4.05 Low Density Residential District (R-1)
- § 5.03 Site Plan

I. Requester

Requester LuAnne Kozma is a year-round resident and registered voter in Hayes township. She is 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 would be aggrieved of a ZBA decision that allowed the Laws' project near her of a boathouse, basin and channel, which have already permitted by both US Army Corps of Engineers (USACE) and the Michigan Department of Environment, Great Lakes and Energy (EGLE). If Hayes Township approved this project to be built, it would create a nuisance *per se*¹ 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. She contends the very large structure, plainly designed for holding large events and as a dining facility as part of an expansive resort development, would create a nuisance *per se* that will harm Kozma's quiet enjoyment of her own property. She appends an affidavit as Exhibit A, and a 3-minute video recording depicting her property shoreline and Shoreland Protection Strip as Exhibit B.

II. Interpretations Requested

1) A large "boathouse" building planned by Scott and Debra Law is not allowable per the ZBA's decision on August 22, 2022 that prohibited excavation of a channel and boat basin through the Shoreland Protection Strip leading to it, leaving it nonfunctional as a boathouse, and by § 3.14(2) which does not allow any boathouse in the Township at all, for any waterfront property. Storage buildings and garages on dry land (uplands) for

¹ ZO § 3.01

boats are allowable, but not a *boathouse* with a water body under it. Hayes Township's zoning ordinance has prohibited boat houses ever since amendment in 1979 and is still prohibited in the current zoning ordinance today, after explicitly permitting them in the first ordinance adopted in 1974.

ZO sections to interpret: **3.14(2)** and its prior versions in previous Hayes ordinances
Also rely on: ZBA decision on August 22, 2022 prohibiting excavation of Shoreland Protection Strip for boat basins and channels.

2) The Main Floor plan of the "boathouse" building planned by Scott and Debra Law depicts a public assembly occupancy use and building design, not a residential use or occupancy design, therefore not permissible in the R-1 Low Density residential zone.

ZO sections to interpret:

§ 2.02 Definition: Principal Use

§ 2.02 Definition: Use

§ 9.02(6)

§ 4.05 R-1 Zone, no large-scale commercial design or use allowed

3) A 5,400 square foot public assembly building for use for events and dining for hundreds of company employees or a charitable foundation, as the Laws claim they are building the boathouse/dining/event facility for, does not qualify as a Home Occupation in § 3.15 because the Laws' business, Zotec Partners has hundreds of employees who work at a headquarters in Carmel, Indiana and the proposed building would be more than 25% of size of the Laws' residence at 10034 Anglers Cove. Such use and occupancy would create conditions that would constitute a nuisance to neighboring property owners and the Township as a whole, violating § 3.15.

ZO sections to interpret:

§ 3.15 Home Businesses

§ 4.05 R-1 Zone, no large-scale commercial use allowed

4) Attachment of one building to another by a 100-foot covered walkway does not constitute a “structural connection” making them one building, and does not negate the necessity to follow the strict mandates in all the other requirements of the ordinance, in particular looking at intended use and design of the building to determine if it is an appropriate building and use for the zone. An inappropriate building design or intended use on a residential property disallows such a construction, despite its attachment. If mere attachment was the only requirement that would allow a resident to build something “attached” to the residence in such a tenuous way, any number of inappropriate, non-residential buildings, structures and uses would be permitted that would create nuisances *per se* throughout the residential zone. An interpretation of the Accessory Building definition can only be that residential additions and uses allowed in the residential zone are the only types of attachments allowed to be attached to a residence.

ZO sections to interpret:

§ 2.02 Definition: Accessory Building

§ 3.05 Accessory Buildings

§ 5.03 Site Plan

Also use: ZBA decision, August 29, 2022 that entire the Zoning Ordinance must be followed strictly.

Kozma Interpretation Request dated August 31, 2022

Interpretation #1:

Application pages:5; 16-19

ZO sections to interpret:

Section 3.14(2)

HAYES TOWNSHIP ZONING ORDINANCE

Section 3.14(2) Waterfront Regulations (Article III-page 7)

2. Setback Area Regulations

Except as provided herein, 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 on Lake Michigan and Lake Charlevoix, and eighty (80) feet on Susan Lake, and such excepted facilities shall meet the side yard setbacks for the district in which they are located.

Kozma Interpretation Request dated August 31, 2022

Interpretation #2:

Application pages:6; 19-22

ZO sections to interpret:

Article 2.02 Definition: Principle Use

Article 2.02 Definition: Use

Article 9.02(6) Zoning Permit

Article 4.05 R-1 Zone (Low Density Residential)

Please find below the requested Sections for interpretation as well as Zoning Ordinance page number references.

HAYES TOWNSHIP ZONING ORDINANCE

Section 2.02 Definitions Principal Use (Article II-12)

Principal Use: The main use to which the lot is devoted and the primary purpose for which the lot exists.

HAYES TOWNSHIP ZONING ORDINANCE

Section 2.02 Definitions Use (Article II-16)

Use: The lawful purpose of which land or premises, or a building thereon, is designed, arranged, or intended, or for which it is occupied, or maintained, let, or leased, according to this Ordinance.

HAYES TOWNSHIP ZONING ORDINANCE

Section 9.02(6) Zoning Permit (Article 9-1)

6. The Zoning Administrator shall have the power to revoke or cancel any Zoning Permit in case of failure or neglect to comply with the provisions of the Ordinance, all other necessary permits have not been obtained or in the case of a false statement or misrepresentation made in the application. The owner shall be notified of such revocation in writing.

HAYES TOWNSHIP ZONING ORDINANCE

Section 4.05 R-1 (Article IV-5-6)

The following provisions shall apply to the Low Density Residential District (R-1).

1. Intent

The Low Density Residential District is designed to accommodate and encourage single family residential development and associated uses, in keeping with the

residential goals and policies specified in the Hayes Township Master Plan. 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.

2. Permitted Uses
 - A. Single family dwellings
 - B. Parks, playgrounds, recreational areas and community centers
 - C. Home occupations conducted completely inside the residence, subject to the provisions of *Section 3.15 Home Businesses*.
 - D. Accessory buildings and uses customarily incidental to the above permitted uses.

3. Uses Subject to Special Use Permit
 - A. Clustered residential development (Open Space Preservation Option), subject to the provisions of *Section 7.01 Supplemental Site Development Standards*.
 - B. Public buildings and facilities.
 - C. Places of worship and related religious buildings.
 - D. Accessory buildings and uses customarily incidental to the above special approval uses.
 - E. Cottage industries conducted outside the residence in the yard, garage or accessory structure, subject to the provisions of *Section 3.15 Home Businesses*.

4. Dimensional Regulations

Structures and uses in the Low Density Residential District are subject to the area, height, bulk and placement requirements in *Section 4.13 Schedule of Regulations*

Kozma Interpretation Request dated August 31, 2022

Interpretation #3:

Application pages:6; 22-24

ZO Sections to interpret:

3.15 Home Businesses

4.05 R-1 Zone

HAYES TOWNSHIP ZONING ORDINANCE

Section 3.15 Home Businesses (Article III-13)

Section 3.15 Home Businesses

While Hayes Township recognizes that many residents feel the necessity to work at home, the Township also recognizes the rights of all residents to be free from actual or potential nuisance which may be caused by non-residential activities conducted in a residential zone. The intent of this section is to provide standards to ensure home occupations and cottage industries are compatible with other allowed uses in residential districts, and thus to maintain and preserve the residential character of the neighborhood.

HAYES TOWNSHIP ZONING ORDINANCE

Section 4.05 R-1 (Article IV 5-6)

The following provisions shall apply to the Low Density Residential District (R-1).

1. Intent

The Low Density Residential District is designed to accommodate and encourage single family residential development and associated uses, in keeping with the residential goals and policies specified in the Hayes Township Master Plan. 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.

Kozma Interpretation Request dated August 31, 2022

Interpretation #4:

Application pages 7;24-25

ZO sections to interpret:

2.02 Definition: Accessory Building

3.05 Accessory Buildings

5.03 Site Plan

HAYES TOWNSHIP ZONING ORDINANCE

Section 2.02 - Definitions (Article II-1)

Accessory Building or Structure: Any building or structure that is customarily incidental and subordinate to the use of the principal or main building or structure, or a structure which is intended to be supplemental to an allowed use to be added in the future; accessory structures shall include, but are not limited to, accessory buildings, personal freestanding television and radio reception antennas, satellite dishes and signs. An accessory structure attached to a main building or structure shall be considered part of the main structure.

HAYES TOWNSHIP ZONING ORDINANCE

Section 3.05- Accessory Buildings (Article III-3)

1. 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.
2. A detached accessory building shall be located no closer to a front, side or rear lot line than the permitted distance for the principal structure on the same lot, except as otherwise provided in this Section.
3. An accessory building shall comply with all setback requirements and shall be located no less than ten (10) feet from any other building.
4. An accessory building shall be for personal use by the owner or occupant of the property, unless otherwise authorized by this ordinance.
5. A mobile home shall not be used as an accessory building.
6. An accessory building shall not be used, in whole or in part, as a dwelling.

HAYES TOWNSHIP ZONING ORDINANCE

Section 5.03 – Site Plan Review (All Districts) (Article V-1)

Required site plans give the Planning Commission an opportunity to review development proposals in a concise and consistent manner. The use of the site plan ensures that the physical changes in the property meet with local approval and that development actually occurs as it was planned and represented by the developer.

1. Circumstances Requiring a Site Plan: Site plans are required for the following uses:
 - A. All new uses and/or structures except one-family or two-family residential units on non-waterfront lots, associated accessory structures to one-family or two-family residential units, agricultural buildings in the Agricultural district and accessory buildings as a principal use, provided all requirements are met.
 - B. Expansion or renovation of an existing use, other than one-family or two-family residential use, which increases the existing floor space more than twenty five (25) percent.
 - C. Changes of use for an existing structure or lot.
 - D. Any special use permit.
 - E. Any use requiring off-street parking, as stated in the off-street parking schedule of this ordinance.
 - F. Other uses as required by this Ordinance.



clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

public comment for ZBA on October 3

Ellis Boal <ellisboal@voyager.net>

Fri, Sep 30, 2022 at 12:52 PM


kristin baranski <clerk@hayestownshipmi.gov>, Tom Darnton <tdarnton@me.com>, Rex Greenslade <greensladerex@gmail.com>, Rod Slocum <rodslocum@gmail.com>, Bruce
ckinga <bdeckinga@gmail.com>, Janice Whipple <jwwhipple65@gmail.com>
Cc: LuAnne Kozma <luannekozma@gmail.com>, Ron VanZee <supervisor@hayestownshipmi.gov>

ZBA,

I write to add one additional comment to this record, and provide you the 1-11-22 affidavit of Jesse Dixon which you saw before in one of LuAnne's previous cases, in which he tells of his 2021 walk along the OHWM of the Law property as a couple of dozen were gathering for a lawn party the Laws were hosting, and the remark of the security guard: "She said that helicopters would be bringing people in and out, and it was a party for the company (without identifying the company)."


Ellis

[Quoted text hidden]

 NOTARIZE-dixon-final-noDate.af.pdf
656K

Comments for the ZBA

1 message

 Henne <wm.henne@gmail.com>
Kristin Baranski <clerk@hayestownshipmi.gov>, Tom Darnton <tdarnton@me.com>, greensladerex@gmail.com

Thu, Sep 29, 2022 at 10:50 PM

Date: 9/29/2022

To: Kristin Baranski, Clerk, and Hayes Township Planning Commission

From: Bill Henne

Subject: Zoning Board of Appeals (ZBA) Hearing of 10/3/2022, on Interpretations

Kristin, Please distribute this letter to all members of the ZBA. I do not have all their addresses.

Tom and Members of the ZBA,

I am making these comments as a former Chair of the ZBA and of the Hayes Township Planning Commission.

You are being asked to interpret several sections of the Hayes Township Zoning Ordinance (ZO). While this is an unusual duty, it is clearly a function of the ZBA as authorized by the ZO as well as the Michigan Zoning Enabling Act (MZEA). You may be told by the township attorney and others that you do not need to hear some or all of interpretations requested because they are "preemptive". In my opinion, it is irrelevant whether or not they are preemptive. Both the ZO and the MZEA mandate that you must hear an interpretation appeal if a citizen asks for one.

It is your duty to hear this appeal in its entirety and consider all public comments. But you must base your decision only on the ZO, the MZEA and the Michigan Planning Enabling Act (MPEA).

I believe that the sections of the ZO that you are being asked to interpret are well written and are clear. All you really have to do is support the intent of each, which is to protect the environment and the interest ALL of your fellow citizens.

Good grief, Lucy

1 message

 boyko <tim@timboyko.com> Thu, Sep 29, 2022 at 2:57 PM
J. Rex Greenslade <greensladerex@gmail.com>, bdeckinga@gmail.com, clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>, hayestrusree5@gmail.com,
jvwhipple65@gmail.com, rjess@hotmail.com, "rodslocum@gmail.com" <rodslocum@gmail.com>, tdarnton@me.com

Dear members of the Zoning Board of Appeals,

Please be as diligent in finding reasons to hear the interpretations as in denying to hear them.

Contrary to recent advice, I believe it is in your core function to "usurp" the Zoning Administrator by providing clear unambiguous answers on the meaning of the Zoning Ordinance. Your interpretations are the final word at the Township level.

Please include all the interpretations requested for Oct. 3rd hearing.

Good grief, get off the bench and play ball.

Sincerely

Tim Boyko

Legal opinion from Township Attorney

3 messages


Tom Darnton <tdarnton@me.com> Tue, Sep 27, 2022 at 2:36 PM
 To: Kristin Baranski <clerk@hayestownshipmi.gov>, Tom Darnton <tdarnton@me.com>, Bruce Deckinga <bdeckinga@gmail.com>, Rex Greenslade <greensladerex@gmail.com>, Bob Jess <rjess@hotmail.com>, Doug Kuebler <hayestrustee5@gmail.com>, Rod Slocum <rodslocum@gmail.com>, Ron VanZee <Supervisor@hayestownshipmi.gov>, Janice Whipple <jvwipple65@gmail.com>
 Cc: LuAnne Kozma <luannekozma@gmail.com>

Colleagues,

Attached is a letter we have received from our township attorney regarding the upcoming hearing scheduled for October 3rd.

Tom

Tom Darnton
 Chair, Hayes Township Zoning Board of Appeals

 22.09.27 Darnton L01_signed.pdf
 528K

LuAnne Kozma <luannekozma@gmail.com> Wed, Sep 28, 2022 at 7:24 AM
 To: Tom Darnton <tdarnton@me.com>
 Cc: Kristin Baranski <clerk@hayestownshipmi.gov>, Bruce Deckinga <bdeckinga@gmail.com>, Rex Greenslade <greensladerex@gmail.com>, Bob Jess <rjess@hotmail.com>, Doug Kuebler <hayestrustee5@gmail.com>, Rod Slocum <rodslocum@gmail.com>, Ron VanZee <Supervisor@hayestownshipmi.gov>, Janice Whipple <jvwipple65@gmail.com>

Please send Mr. Darnton's letter requesting this opinion and all communications from the Laws or their representatives for this hearing, today.

I have not received the public notice in the US Mail of this hearing and do not know if the Laws and the adjacent property owners have been properly notified by US Mail.

I will respond to the attorney memo soon.

Thank you,

LuAnne Kozma

[Quoted text hidden]
 [Quoted text hidden]

Tom Darnton
 Chair, Hayes Township Zoning Board of Appeals

Tom Darnton <tdarnton@me.com> Wed, Sep 28, 2022 at 11:13 AM
 To: LuAnne Kozma <luannekozma@gmail.com>
 Cc: Kristin Baranski <clerk@hayestownshipmi.gov>, Bruce Deckinga <bdeckinga@gmail.com>, Rex Greenslade <greensladerex@gmail.com>, Bob Jess <rjess@hotmail.com>, Doug Kuebler <hayestrustee5@gmail.com>, Rod Slocum <rodslocum@gmail.com>, Ron VanZee <Supervisor@hayestownshipmi.gov>, Janice Whipple <jvwipple65@gmail.com>, Todd Millar <tmillar@parkerharvey.com>

My request was a verbal request. There is no letter requesting the opinion. I will leave it to the Clerk to provide any other information from the record.

Tom Darnton

Chair, Hayes Township ZBA
 [Quoted text hidden]



September 27, 2022

Tom Darnton, ZBA Chairman
Hayes Township
09195 Old US 31 N
Charlevoix, MI 49720

Via Email

RE: Kozma Interpretation Request dated August 31, 2022
Our File No. 1932.08

Dear Mr. Darnton:

You asked me to research and provide you with my opinion regarding the appropriateness of Kozma's August 31, 2022, Request for Interpretation. More specifically, Request Nos. 1 through 3 appear to be very specific and relate to the Law project which has yet to be permitted by Hayes Township. As set forth below, it is my opinion that the ZBA could conclude that Request Nos. 1 through 3 constitute a preemptive appeal and an attempt by the applicants to get the Zoning Board of Appeals to usurp the authority of the Zoning Administrator, and, in effect, dictate the outcome of an anticipated Law application for a land use permit. If the Zoning Board of Appeals were to take such a position, the Zoning Board of Appeals could choose to refuse to hear Request for Interpretation Nos. 1 through 3 as those matters could be addressed by way of an appeal if and when the Zoning Administrator makes a decision with respect to the Law project.

As you know, the Zoning Board of Appeals is a quasi-judicial body. Therefore, case law regarding pleadings before a court of law is relevant and applicable to the Zoning Board of Appeals. In this context, the case law regarding a plaintiff's labeling of a cause of action comes into play. The principal was succinctly summarized in *Windemere Park of Troy Operations, LLC v MA Engineering, Inc.*, Unpublished Court of Appeals case No. 346246, 346960; 2020 WL 2296870 (2020).

In a pleading, a party is allowed to "state as many separate claims or defenses as the party has, regardless of consistency and whether they are based on legal or equitable grounds or on both." MCR 2.111(A)(2)(b). Courts must, however, look beyond the procedural labels in a complaint and determine the exact nature of a plaintiff's claims. *MacDonald v Barbarotto*, 161 Mich App 542, 547; 411 NW2d 747 (1987). A court is not bound by a party's choice of label for a cause of action "because to do so 'would exalt form over substance.'" *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011), quoting *Johnston v City of*

Livonia, 177 Mich App 200, 208; 441 NW2d 41 (1989). A party cannot avoid dismissal of a cause of action through artful pleading; the gravamen of a plaintiff's actions is determined by evaluating the entire claim. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999).

Based on the above, simply because Kozma labels Requests Nos. 1 through 3 as interpretation, does not bind the Zoning Board of Appeals to that determination. The Zoning Board of Appeals can look at the exact nature of the claims and conclude, on its own, if it is in fact a request for interpretation or something else. In this case, Requests Nos. 1 through 3 are very specific and pertain to the proposed Law project. It is important to note that the Zoning Administrator has not been given the opportunity to pass judgment on any of these interpretations in the context of issuing a land use permit. Therefore, the nature of the request in this matter is more of a preemptive appeal and an attempt to get the Zoning Board of Appeals to dictate how the Zoning Administrator should analyze a land use permit application. This ignores the hierarchy of zoning decisions and effectively negates the Zoning Administrator's position and authority.

MCLA 125.3603(1) provides that:

The zoning board of appeals shall hear and decide questions that arise **in the administration of the zoning ordinance**, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals **is required to pass under a zoning ordinance** adopted under this Act. It shall hear and decide appeals from and review and administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this Act. (Emphasis added.)

Absent a decision by the Zoning Administrator, Request for Interpretation Nos. 1 through 3 do not appear to be "questions that arise in the administration of the zoning ordinance." Again, they appear to be attempts by the applicant to get the Zoning Board of Appeals to usurp the responsibilities of the Zoning Administrator. While the above cited statute does make reference to the Board of Appeals hearing and deciding matters it is required to pass under a zoning ordinance, the Hayes Township Zoning Ordinance Section 8.03(4) states that the ZBA "**may** also interpret the location of zoning district boundaries and may interpret the provisions of this ordinance." (Emphasis added.) There is nothing in the Zoning Ordinance that requires the Zoning Board of Appeals to pass judgment on any particular request for interpretation. Therefore, it is my opinion that if the ZBA were to determine that Request for Interpretation Nos. 1 through 3 were not proper requests for interpretation, the ZBA is not obligated to pass upon them. This is particularly true in light of the fact that once the Zoning Administrator receives a land use application that implicates the concerns raised in Request Nos. 1 through 3, an applicant with

Tom Darnton, ZBA Chairman
September 27, 2022
Page 3

standing would have the right to appeal that administrative determination to the ZBA at that point in time.

Very truly yours,

PARKER HARVEY PLC



Todd W. Millar

TWM:jl

Public comment for ZBA on October 3

Messages

Ellis Boal <ellisboal@voyager.net>

Tue, Sep 27, 2022 at 10:50 AM

To: kristin baranski <clerk@hayestownshipmi.gov>, Tom Darnton <tdarnton@me.com>, Rex Greenslade <greensladerex@gmail.com>, Rod Slocum <rodslocum@gmail.com>, Bruce Deckinga <bdeckinga@gmail.com>, Janice Whipple <jvwhipple65@gmail.com>
Cc: LuAnne Kozma <luannekozma@gmail.com>, Ron VanZee <supervisor@hayestownshipmi.gov>

Hayes ZBA,

I write in support of LuAnne Kozma's interpretation requests of August 31. I am her husband and the initiator of the longstanding conservation easement we have on our property. We live three docks down from the Laws' proposed "boathouse," and observe their property directly across the cove in our frequent summer swims and occasional all-season shore cook-outs.

1. The channel, basin, and boathouse together would constitute one "building envelope" as defined in the Zoning Ordinance. Per the ZBA interpretation of August 22 prohibiting excavation in the Shoreland Protection Strip, the boathouse could not function as such, having no water access for boats from Lake Charlevoix.
2. The main floor plan for the boathouse would be a public assembly space to accommodate and intensify the loud parties and helicopter traffic which the Laws habitually host, a use incompatible and inconsistent with the residential character of the other properties in a quiet R-1 zone. I note that in our recent litigation against the Laws about the boathouse, it was Scott Law's company, Zotec Partners, not the Laws themselves, which paid \$10,500 for their counsel fees.
3. The public assembly space would not qualify as a Home Business under the Ordinance.
4. The boathouse must be evaluated separately according to its own merits, not as an accessory to the principal residence. The proposed 100-foot walkway between the two, each with its own heating system, would not be a "structural connection" under the Ordinance's definition of "accessory building." Equally, a long sidewalk between two dormitories on a college campus would not make the two into one. If 2 = 1, then 3 = 2, and so on, an absurdity.

Ellis

clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Tue, Sep 27, 2022 at 3:21 PM

Reply-To: clerk@hayestownshipmi.gov

To: Deputy Clerk Email <deputyclerkhayes@gmail.com>

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Kristin Baranski
Hayes Township Clerk
9195 Major Douglas Sloan Road
Charlevoix, Michigan 49720
1.547.6961

laws boathouse

Messages

DONALD LADEN <dladen@me.com>

To: CLERK@hayestownshipmi.gov

Cc: info@protectlakecharlevoixshoreland.org

Mon, Sep 26, 2022 at 5:12 PM

I am writing to let you know of my opposition to this facility being built. I have owned a home in Charlevoix for over 20 years and paid a SIGNIFICANT amount of taxes. I am certainly a fan of letting people do what they want with their property (within limits!) but this clearly violates those limits. Not only does it violate them legally but it doesn't make sense to put neighbors homes in the position of inhibiting their enjoyment; this commercial undertaking has done that. When we built up here 20 plus years ago, the landscaper at the time (Bob Drost who apparently is working on this project) told us "you CANNOT do anything within 50 feet of this shore in terms of plantings etc". He was adamant that nothing like that could ever be built near the shore of the lake. What happened to that sentiment besides a lot of money changing hands?

Please respect the people who have been on this lake for years...sometimes, generations...everyone should follow the regulations that have been set forth.

Don Laden
05120 Sequanota Dr
Charlevoix

Pat Prikkel <pat@drprikkel.com>

To: DONALD LADEN <dladen@me.com>

Cc: "CLERK@hayestownshipmi.gov" <CLERK@hayestownshipmi.gov>, "info@protectlakecharlevoixshoreland.org" <info@protectlakecharlevoixshoreland.org>

Mon, Sep 26, 2022 at 6:43 PM

I like it!

Does this need to be done tonight for the hearing.

> On Sep 26, 2022, at 5:12 PM, DONALD LADEN <dladen@me.com> wrote:

>

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DONALD LADEN <dladen@me.com>

To: CLERK@hayestownshipmi.gov

Cc: info@protectlakecharlevoixshoreland.org

Mon, Sep 26, 2022 at 9:15 PM

My letter was in regards to the ZBA HEARING on Oct 3.

on

> On Sep 26, 2022, at 5:12 PM, DONALD LADEN <dladen@me.com> wrote:

>

> I am writing to let you know of my opposition to this facility being built. I have owned a home in Charlevoix for over 20 years and paid a SIGNIFICANT amount of taxes. I am certainly a fan of letting people do what they want with their property (within limits!) but this clearly violates those limits. Not only does it violate them legally but it doesn't make sense to put neighbors homes in the position of inhibiting their enjoyment; this commercial undertaking has done that. When we built up here 20 plus years ago, the landscaper at the time (Bob Drost who apparently is working on this project) told us "you CANNOT do anything within 50 feet of this shore in terms of plantings etc". He was adamant that nothing like that could ever be built near the shore of the lake. What happened to that sentiment besides a lot of money changing hands?

[Quoted text hidden]



zoning hayestownshipmi <zoninghayestownshipmi@gmail.com>

Comment Letter: Please Reject the Law Boathouse Project

1 message

Achali Hall <achalihall@yahoo.com>

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

Sun, Sep 18, 2022 at 1:37 PM

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

To the Chair of the Zoning Board of Appeals, Mr. Darnton,

Please read my comments out loud at the Zoning Board of Appeals hearing on October 3 at 10am challenging the Law Boathouse Project.

Again, I ask you to reject the Scott and Debra Law Boathouse project. The channel and basin portion of the project was rejected on August 22, 2022. This portion of the project, the large two story boathouse is a clear violation of the R-1 Low Density Residential Zone ordinance. The large structure is intended for hundreds of people: company employees or donators to the company foundation, not for a single family for home occupation. Attaching the boathouse to the residence by a 100 foot walkway does not make it part of the residence, nor can it be designated as an accessory building. The boathouse is clearly a separate structure. Saying otherwise is wrong.

Also, it makes no sense to build a boathouse without water under it. The Board has already rejected the channel and basin. Boats cannot navigate in and out without water! So there is no point in permitting a project that makes no sense!

Please note that my family, the Fowle family, own the neighboring property, with one lot between ours and the Laws. They are already noisy neighbors because of their loud parties, helicopters, and fireworks. Their proposed project is in the proportions of a resort. This would greatly magnify the noise, car and boat traffic in our neighborhood, which creates a nuisance or an irritant to its neighbors, that is to the Fowle family in particular, as well as our cousins, the Boals and Moores, summer residents for over 100 years.

I ask you to please reject the Law Boathouse project.

Thank you for your consideration.

Sincerely,

Susan Rankin (Fowle)

September 19, 2022

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

Ref: Interpretation of the Hayes Township Zoning Ordinance from LuAnne Kozma for project anticipated on property parcel#15-007-132-005-25 and address of 10034 Anglers Cove and Scott and Debra Law.

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. 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