

Hayes Township  
Zoning Board of Appeals  
Public Hearing  
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.

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

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

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

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

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

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

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

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

Meeting reconvened at 10:33 am.

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

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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- Nay

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

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Mr. Darnton then questioned: “Is the word “compromise” anywhere in the ordinance?” Mr. Van Zee responded no.

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

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

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

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

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

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

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

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**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.

Rex Greenslade- Yea

Bruce Deckinga- Yea

Tom Darnton- Yea

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Janice Vedder-Whipple- Yea  
Rod Slocum- Yea

**Motion Carries**

Request B.

Tom Darnton made a motion, with support from Bruce Deckinga, that Sections 9.01 and 9.02(5) of the Zoning Ordinance requires that a zoning permit expires after 12 months from date of issuance unless substantial construction has occurred to further that specific permit. A roll call was taken.

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

**Motion Carries**

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

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

Mr. Darnton begins the deliberation regarding Waterfront Development review process. He reads: under Sections 5.04 and 3.14.8 operates as the only layer of review rather than an added layer of review of the site plan by the Planning Commission and denies the public due process and 3.14.8.d violates the intent of 3.14.8.a. Mr. Darnton asks the ZBA if they have a clear understanding of what the actual request is.

Mr. Millar states the above request was withdrawn by the requestor. He continues to state the request of interpretation regarding 3.14.8 violates due process is not within the authority of the ZBA to determine if any section of the Ordinance is valid or not. The responsibility of the ZBA is to interpret what is written. The validity question would lie in the

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hands of the circuit court. He believes the requestor is asking for a determination on slide 42.

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

Mr. Darnton asks the petitioner for clarification.

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

Request E:

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

Rex Greenslade- Yea

Bruce Deckinga- Yea

Tom Darnton- Yea

Janice Vedder-Whipple- Yea

Rod Slocum- Yea

**Motion Carries**

Request F and Request G previously withdrawn.

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

Rex Greenslade- Yea

Bruce Deckinga- Yea

Tom Darnton- Yea

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Janice Vedder-Whipple- Yea  
Rod Slocum- Yea

**Motion Carries**

Petitioner questions the ZBA about the second interpretation request.

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

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

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

Ms. Kozma requests a vote of members.

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

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

ZBA members will hold October 3, 2022 at 10 am open for a meeting.

Bruce Deckinga made a motion, with support from Rod Slocum, to adjourn the meeting.

Rex Greenslade- Yea  
Bruce Deckinga- Yea



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Tom Darnton- Yea

Janice Vedder-Whipple- Yea

Rod Slocum- Yea

**Motion Carries**

Respectfully Submitted,

Kristin Baranski

Hayes Township Clerk/Recording Secretary