

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

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

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

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

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

CONSIDERATION OF MINUTES FROM PRIOR MEETING:

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

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 July 12, 2022 minutes as amended.

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

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

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, recognized 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

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

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

Mr. Boal questions where Zoning Administrator is.

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

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

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

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

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

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

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

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 Crozier 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.

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

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

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

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

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

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

Ms. Kozma presented a slide show.

Introduction of Petitioners

- Three docks and two docks respectively, within view of Law property, on same cove on the lake
- Kozma's location on Lake Charlevoix, 3 parcels (two homes), 610 feet of shoreline

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

- Fowle/Hicklen's location closer, within 300 feet of Law property line
- Parcels are nearly completely forested, only native plants, natural shoreland, deep greenbelts greater than 160 feet; one Kozma/Boal parcel is completely undeveloped forest land
- Kozma: Conservation easement with Little Traverse Conservancy in 1990 on 5 acres, deed-restricted conservation easement on another 10 acres, with 2 other owners in a PUD
- Ms. Kozma shared a video of their property and shoreline as well as video of the Law waterfront property

Present Exhibits

- Plans approved by other agencies- Army Corps permit as well as State of Michigan EGLE
- Schaefer statement to court
- Plans submitted to the Township as well as plans submitted to other agencies
- Interactions between township officials and Laws
- Shoreline Protection Strip
- Ordinary High-Water Mark
- Commercial nature of the boathouse

Interpretation Requests

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

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

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

- Project is urgent because on June 9, 2022 US Army Corps of Engineers approved a permit for it.
- EGLE needs to review revised plans for approval
- Laws signed a permit on May 26, 2022 for Army Corps
- Sarah Schaffer stated in Circuit Court that they want to build a dining facility for their family for Christmas dinner
- Army Corps 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 Corps 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

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

The "Storage" Ruse

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

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

Interpretation Requests

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

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

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

Highlights included:

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

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

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)

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

- 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~~ restrictions.

Meeting recessed for 5 minutes.

- 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.

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

- 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)
- 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

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

Shoreland Protection Strip (compliance with waterfront regulations; areas of land waterward of OHWM require MDEQ and/or Army Corps 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 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

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

- 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”, violate 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 interpret: Is there any other date from which a zoning permit shall expire except date of issuance?

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 this ordinance.” “Zoning Administrator shall under no circumstance be permitted to make changes to this ordinance or to vary the terms of this ordinance in carrying out the duties of Zoning Administrator.”

Ms. Kozma states the following:

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

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

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

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?

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

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.
- 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).

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

- The definition of Ordinary High-Water Mark varies from the cite of 582.3 IGLD in the Ordinance. The definition is not the same as Army Corps 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 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.

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

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 Zoning Administrator can amend the ordinance. Mr. Van Zee responded "No, I cannot amend the Ordinance.
- Mr. Darnton asked Mr. Van Zee (interpretation request regarding the expiration of permits) if Zoning Administrator can ignore the language regarding permits expiring after 12 months. Mr. Van Zee replied no.
- Mr. Darnton clarified for Mr. Deckinga the above questions he asked Mr. Van Zee.

Mr. Greenslade asked the Zoning Administrator, in reference to the letter written to the ZBA signed by Roy Griffiths, Ed Bajos and Marilyn Morehead, how is the Ordinance interpreted with the issue of compromise. Mr. Van Zee responded he is not part of any compromise; first he reviews application for a change of the footprint on a property, he is part of a site visit (documents what is on site) and the Shoreland Review Committee (after a site visit) makes decisions on the process on how to make that specific parcel more compliant. Mr.

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

Van Zee states that the whole reason Brady Graham (as referenced earlier by petitioner) had a bench warrant issued was he ignored a court order.

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

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

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

- 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

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

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 commentators 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 cited "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 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

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

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, ecological 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 interpret 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-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.

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

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?

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

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

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 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.

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

- 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'

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 Corps 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.

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

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.

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

Rod Slocum Yea

Rex Greenslade Yea

Tom Darnton Nay

Janice Vedder-Whipple Yea

Bruce Deckinga Yea

Motion Carried

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

Mr. Darnton asks if they need to consider.

Mr. Greenslade states that yes.

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

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

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

Mr. Deckinga asks for the Attorney's opinion.

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

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.

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

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.

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

Nays: None

Motion Carried

Meeting adjourned at 5:13 pm.

Respectfully Submitted,

Kristin Baranski
Hayes Township Clerk/Recording Secretary