HAYES TOWNSHIP
BOARD OF TRUSTEES REGULAR MEETING
March 11TH, 2024 7:00 PM
HAYES TOWNSHIP HALL
09195 MAJOR DOUGLAS SLOAN RD
CHARLEVOIX, MICHIGAN 49720
ZOOM 849 2451 3210

The March 11th, 2024, meeting of the Hayes Township Board was called to order by Supervisor Ron VanZee at 7:00 pm.
Board members present were Matt Cunningham (Trustee), Julie Collard (Treasurer), Doug Kuebler (Trustee), April Hilton (Deputy Clerk/Recording Secretary), Ron VanZee (Supervisor) and Kristin Baranski (Clerk)
Audience Members signed in: Stan Boris, Andrew Wilson, LuAnne Kozma, Connie Foster, David Zipp, Deb Narten, Ed Bajos, Jim McMahon, Ellis Boal, Todd Millar, Rod Slocum, CT Martin, Tim Boyko, Janet Simon, Alexander Curley, Katherine Simon, Bill McCarry, Sherry McCarry, Betty Henne, Shelly VanWart, Melvin Czechowski, Mary Mills, Dee Berg, Laura Ford, Gerry Mills, Donald Gregory, Diane McMahon, and Sharon Hoffman.

CALL TO ORDER
Supervisor Ron VanZee called the meeting to order at 7:00 pm.

PLEDGE OF ALLEGIANCE

REVIEWED & APPROVED AGENDA
Move Assessor Presentation after approval of agenda.
Ms. Baranski made a motion, supported by Mr. Kuebler to approve the agenda as amended.
Yays: Matt Cunningham, Julie Collard, Doug Kuebler, Ron VanZee, and Kristin Baranski.
Nays: None Motion Carried

ASSESSOR PRESENTATION:
Alisa, Hayes Township Assessor, presented an annual report to the board and public.
Clarified the tax classification process and clarified classification is different from Zoning.

PUBLIC COMMENTS:
Public comment opened and closed at 7:15.
Public comments included:
- Correspondence Attached to the Minutes.

Closed at 7:21

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APPROVAL OF FEBRUARY 12TH 2024 BOT REGULAR MEETING MINUTES:

Ms. Baranski made a motion, supported by Mr. Cunningham to approve the February 12th, 2024, Board of Trustees regular meeting minutes as presented.
Yeas: Julie Collard, Ron VanZee, Matt Cunningham, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

TREASURERS REPORT

Ms. Collard presented a written report reporting all Hayes Township account balances.

CLERKS REPORT: APPROVAL OF WARRANTS

Clerk, Ms. Baranski, presented the warrants in the amount of $45,909.32.
Ms. Baranski made a motion, supported by Ms. Collard, to approve Township warrants out of the General Fund in the amount of $45,909.32. A roll call was taken.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

Ms. Baranski made a motion, supported by Ms. Collard to approve the installment payment for the EMS building loan in the amount of $10,248.13, the total installment payment will be offset 100% by the LCEMSA monthly lease payment. A roll call was taken.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

Ms. Baranski made a motion, supported by Ms. Collard, to approve three invoices from the ARPA fund in the total amount of $24,936.50. A roll call was taken.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

Ms. Baranski made a motion, supported by Ms. Collard to approve the purchase of new computers for the Treasurer, Clerk, Deputy Clerk, and Assessor up to the amount of $1900.00 per computer.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

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COUNTY COMMISSIONER REPORT

Robert Jess was not present.

PARKS AND REC. REPORT

Parks and Rec did not meet.

PLANNING COMMISSION

Mr. Cunningham presented the Planning Commission Report. The next regular Planning Commission meeting is March 12th, 2024, at 7:00 pm.

ZONNING BOARD OF APPEALS

ZBA did not meet.
Doug presented a report on Murry Road and Upper Bay Shore. Signs have been ordered!

ZONING ADMINISTRATOR REPORT

Ron VanZee presented a Zoning Administrator report.
Report available at the Hayes Township Hall.

TRUSTEES:

Mr. Cunningham wanted to Thank everyone who helped with the improvements at Hayes Township Hall. Stated the hall looks great!

SUPERVISOR REPORT: Ron VanZee presented a supervisor report.
Informed the Board and public he will be on vacation for the next couple weeks.

CHARLEVOIX ROAD COMMISSION ESTIMATES-MAPLE GROVE:

Mr. Kuebler made a motion, supported by Mr. Cunningham to approve posting for bids for the Maple Grove Road construction.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

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LCEMS FENCE PROPOSALS:

Ms. Baranski made a motion, supported by Mr. Kuebler to approve the bid estimate from Harbor Fence Company in the amount of $4,997.00 from the ARPA fund, for a split rail fence with gate around the pond at the LCEMS building. A roll call was taken.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

FEE SCHEDULE UPDATE:

Ms. Baranski made a motion, supported by Ms. Collard to approve the Fee Schedule updates as discussed.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler, and Kristin Baranski.
Nays: None **Motion Carried**

PUBLIC COMMENTS: Public comments opened at 9:15 pm.
Comments included:

- Supports the purchase of the split rail fence.
- Does not think $12 is enough for a FOIA coordinator.
- Asked who cuts the grass at the Cemetery.
- Asked for the shoreline properties on the Zoning Admin report be handle correctly and thoroughly with the Planning Commission. Correspondence attached to the minutes. Would like to talk to the Auditor about an Invoice from the City of Charlevoix.
- Thanked the Township for everyone's hard work and improvements to the Hall. Disappointed in the Voice. Would like the board to look into the Fence at the Reith Riley Green Pit.
- Would like an update on the old administration accounts issue brought up at the previous meeting.

Public comments closed at 8:06 p.m.

BOARD OF TRUSTEE COMMENT:

Ms. Collard thanked for all the resident's participation through the tax season.
Mr. VanZee thanked everyone who worked the election.

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ADJOURNMENT: Mr. Kuebler made a motion, supported by Mr. Cunningham, to adjourn at 8:08p.m.
Yeas: Matt Cunningham, Julie Collard, Ron VanZee, Doug Kuebler and Kristin Baranski.
Nays: None **Motion Carried**

Respectfully Submitted,
April Hilton
Hayes Township Deputy Clerk/Recording Secretary

To the Hayes Township Board of Directors,

After listening to the presentations last Monday night (2/12/2024) regarding how much these people are costing ($85,000+) us, the tax payers, I am very angry! This amount of money in comparison to the Hayes Township's overall yearly budget is ridiculous. This is a very large amount of money that could be spent on much more constructive and needed projects that would benefit many of us taxpayers in the township.

I am not sure, but maybe the Township or the tax payers could sue these obnoxious people for these damages, when they are using frivolous law suits to antagonize our township leaders and waste their time...? I, for one, would be happy to donate to a fund to help stop this senseless waste of time and money. I have spoken with many others who also feel the same way.

It is too bad that these people cannot spend their time on more constructive projects that could help the residents of Hayes Township.

I would also like to thank the Board for doing a great job and also for tolerating this nonsense. Keep up the good work!

Sincerely,
Doug & Missy LaBelle
*Hayes Township residents for over 20 years

To: Kristin

From: Nancy Simon, Hayes Township resident

I begin this letter to you extending my sincere praise and admiration for the many decisions and actions you have taken to enhance and protect our desire to limit industrialization and commercial development. Hayes Township residents are grateful to be located here and people seeking to locate here are envious of us.

Some of the reasons our township is such a desired location is because of our wonderful parks, our beautiful library, our EMS , fire stations and our fully transparent and hard working township supervisor, treasurer, clerk, trustees and all the volunteers on committees.

While I am not someone who takes advantage of our Charlevoix Community Pool, I believe it is an ESSENTIAL component of how we take care of so many residents in the area. The pool provides thousands of our residents the opportunity to support their physical well-being, take lessons, learn life saving skills, overcome disability challenges and congregate for social events.

Please do not overlook the importance that the pool provides for the youth and seniors to establish and maintain social connections. In this era of mental health and loneliness concerns, the pool provides an affordable and fun opportunity for people to gather.

I feel that we need to ensure that the pool can remain an important component of our community by seeking the 10 year millage assessment. I would recommend that it be placed on the August ballot to make sure it does not get overlooked.

Thank you for giving my request serious consideration.

Sincerely,

Nancy Simon

Todd Millar

From: Ellis Boal <ellisboal@voyager.net>
Sent: Friday, April 28, 2023 3:26 PM
To: Todd Millar
Subject: Re: Rieth Riley

Todd,

Sorry, I did say I would get back sooner.

The judge did not deny the petition, only the TRO.

The clients are not interested in the RR proposal and will pursue a PI on the petition. Their backs are against the wall and they have nothing to lose. We lost any chance to end the current 8-week excavation operation but if successful we can stop future operations.

Thinking more on the RR laches defense, for which it cited no case law, I am researching whether laches can ever apply to enforcement of a judgment as opposed to filing of a complaint.

Reviewing the prior litigation my impression is the Township did not take a strong position one way or another, perhaps because it was compromised by irregularities in handling the SUP petition back then. That problem would not apply now. The Township cannot be neutral. Judge Hayes seemed to be asking the Township to say what it thinks. It has to choose one side or the other, and we ask that it be our side.

This being an equity case not a law case, we are in effect appealing to the conscience of the chancellor. The word "advisory" has to mean something, not nothing as RR is claiming.

What that "something" is was not spelled out in 1991 because everyone just assumed H&D would take its own "advice" and stick closely to the "advisory" schedules. The CEO's 1991 testimony was summarized and credited by Judge Pajtas -- that the revised plan "would not extend the mining in terms of the time for extraction" -- even though it was not spelled out completely. That means there <u>was</u> a time for extraction which would not be extended.

If RR today were right, it would mean that the four schedules incorporated by H&D into the Judgments were all fake-outs, bargains in bad faith, the schedules as last revised could always have been extended out to 71 years, and H&D knew it back then but didn't say it.

When you spoke to the Township saying it has to stick by the Consent Judgments, you seemed to be unaware of what Pajtas held, and we hope that holding changes your mind.

Pajtas did not believe H&D acted in bad faith and the Court today is bound by that.

Also I don't have the impression that "demand" has fluctuated "significantly" since 1991. RR would have the burden of proving demand level changes since it is the one which knows the industry. A change in demand level cannot be proven just by its self-interested say-so.

Ellis

On 4/28/2023 11:14 AM, Todd Millar wrote:

Ellis,

I was hoping to hear back from you earlier this week regarding Rieth Riley's offer to shorten the mining time frame down to 5 years. I would like to capitalize on this momentum if your clients are interested. Please advise where we are.

Thanks

Todd

Todd W. Millar
Attorney

DIRECT 231.486.4519 EMAIL tmillar@parkerharvey.com

PARKER HARVEY PLC
901 S. Garfield Ave. Suite 200, Traverse City, MI 49686
MAIN 231.929.4878 FAX 231.929.4182 www.parkerharvey.com

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PARKER HARVEY
A Northern Michigan Law Firm

February 26, 2024

LuAnne Kozma

Via E-mail
luannekozma@gmail.com

RE: **City of Charlevoix Invoice**
Our File No. 1932.00

Dear Ms. Kozma:

The Township supervisor has asked that I respond to your allegations that the Township owes the City of Charlevoix $98,027.01. The issue of amounts allegedly due to the City of Charlevoix for ambulance services came to my attention in late July or early August 2023 when the Township was conducting its due diligence. I was provided with a copy of the June 1, 2019, Charlevoix Emergency Medical Services Agreement for Ambulance Services, the Calculation of the 2019 EMS Services, as well as numerous invoices from the City of Charlevoix. The invoice at issue is dated July 29, 2020, in the amount of $90,105.84. The invoice merely states that the $90,105.84 is for "Ambulance Contract with the City of Charlevoix through year ending March 31, 2020." Hayes Township's share of the estimated unfunded EMS costs for the year ending March 31, 2020, was only $48,713.76. Additional documentation to support the $90,105.84 invoice was requested from the City but never received. Based on the documentation that the Township and I received, it was my conclusion that Hayes Township did not owe the invoiced amount. If the City of Charlevoix were going to pursue payment of that invoice, it would need to provide additional documentation which, to date, has yet to be supplied. The invoice is now almost four years old, and it is my understanding that the City is not pursuing any unpaid amounts.

Very truly yours,

PARKER HARVEY PLC

Todd W Millar

Todd W. Millar

TMW:kes

CC: Ronald VanZee via email
Ellis Boal via email

Todd W. Millar
Attorney

DIRECT 231.486.4519 EMAIL tmillar@parkerharvey.com

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901 S. Garfield Ave, Suite 200, Traverse City, MI 49686
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[Quoted text hidden]

2 attachments

23.04.28 Email from Boal to Millar(479706.1).pdf
172K

23.04.18 Letter_RRCCI to T. Millar for Twsp(479713.1).pdf
238K

RIETH-RILEY CONSTRUCTION CO., INC.
100% Quality • 100% Employee Owned • Over 100 Years

April 18, 2023

Mr. Todd Millar
Parker Harvey
901 S. Garfield Ave, STE 200
Traverse City, MI 49686

Sent via electronic mail

Mr. Millar:

I've received your letter dated April 14, 2023 regarding Rieth-Riley's Green Pit in Hayes Township, Charlevoix County, MI and the recent Town Hall meeting held on April 6, 2023.

1. Yes, Rieth-Riley forwarded an email to the Township on April 11, 2023, noting that Ms. Anderson declined multiple attempts by Rieth-Riley to inspect her home and added *"[she] had no problem with Rieth-Riley."* Rieth-Riley remains willing to examine and vet the concerns of Township residents on a case-by-case basis and further to cooperate with Township residents, as part of its practice of neighborly stewardship over the Green Pit and its other operations in Hayes Township.

2. Regarding the schedule issue of the Consent Judgment:

First, Rieth-Riley does not have the information to either accept or reject statements about the contemporaneous concerns or motivations voiced by the Intervenors to the 1989 Consent Judgment (as amended in 1991 and 2004). Please forward those to me at your earliest convenience.

Additionally, and regardless of any contemporaneous concerns of the Intervenors, Rieth-Riley would oppose any amendment to the Consent Judgment because the language which actually made it into the Consent Judgment is clear and unambiguous.

Read literally, the proposed Schedule of Mining and Restoration attached to the Consent Judgment as Exhibit D *". . . reflects the **goals** of the parties in attempting to both mine and restore the subject lands."* Just as Rieth-Riley presently wishes to mine and restore the Green Pit within the next five (5) or ten (10) years, it may have been H&D's goal to mine and restore it within thirty (30). A goal is not a deadline, *however. Further, as you advised the Township residents at the meeting, any schedule of mining was ". . . advisory only . . . depending on the needs of the industry and Plaintiff . . ."* per Paragraph 11 therein. As you further noted at the Town Hall, the Intervenors received skilled counsel who signed off on the Consent Judgment on their behalf. Their skilled counsel was surely aware that a Court speaks through its written Orders and terms will not be implied. Had the Intervenors and Plaintiff truly agreed upon a time limit, it could and should have been written into the Consent Judgment to avoid the kind of argument that is currently being advance in the face of an Order which states that the discussed schedule *"is advisory only."* **As such, Rieth-Riley's position has not changed: the language which made it into the Consent Judgment did not and does not give H&D, Inc. (now Rieth-Riley) any deadline with which to exhaust or abandon its property.**

P.O. Box 477 • 3626 Elkhart Rd. • Goshen, IN 46527
Phone: (574) 875-5183 • www.rieth-riley.com

Finally, it should be noted that when asked at the Town Hall, Rieth-Riley's intention was to indicate that the "life expectancy" of the Green Pit remains about thirty-six (36) years under current factors like present market demand and existing reserves. If Rieth-Riley were to accelerate its extraction schedule—ignoring the above factors—it could deplete and restore the Green Pit within five (5) years. But, depleting such a resource without certain future demand for its product creates significant financial risk to Rieth-Riley. **However, since the Township Board desires that Rieth-Riley significantly shorten the extraction time period, Rieth-Riley is prepared to offer that it will complete its extraction operations by the end of five (5) calendar years from the date any such agreement is reached, provided that the Township waives any claim that Rieth-Riley must adhere to any other contrary schedule. Further, the Intervenors must agree, by an amendment to the Consent Judgment or other written agreement, along with the Township, that they will instigate no further court action during those five (5) years, nor seek to amend the Consent Judgment further, or interfere in any way with Rieth-Riley's operations at the Green Pit or Bay Shore Pit sites.**

3. Rieth-Riley rejects the notion that its Green Pit disturbs or harms ambient air in the Township. The ambient air surrounding quarries, mines, and pits throughout the United States have been measured thousands of times using rigorous protocols and US-Environmental Protection Agency methods. In *every* case, the ambient silica levels in air surrounding sand/gravel mines were found to be consistent with the background levels that exist throughout the US. **The collected data supports the conclusion that aggregate quarries are *not* a significant source of ambient silica, which the EPA concluded in 1996.** The Occupational Safety and Health Agency acknowledges silica as an occupational health risk. As such, Rieth-Riley protects its employees and adheres to federal and state requirements.

Further, **under the Michigan Vehicle Code trucks must have a load covered with firmly secured canvas or similar type of covering to prevent contents from dropping, sifting, leaking, blowing off, or otherwise escaping.** When no load is present, however, tarping or covering trucks necessarily is not required. As indicated in an April 12, 2023 email to the Township, the trucks which were the subject of a townsperson's recent complaint *were not* hauling a load and therefore were not required to be tarped. As Rieth-Riley continues to conduct extraction operations, it will appropriately vet and handle every complaint it receives.

Rieth-Riley also acknowledges that recent complaints about H&D's past restoration efforts have been made, both by a select few local residents and by various local media outlets, but these complaints are unfounded. **The lone unrestored portion of the Green Pit is not actually *a part* of the Rieth-Riley-owned Green Pit, it belongs to Emmet County and Rieth-Riley has no control over Emmet County's land .**

4. (Omitted Intentionally)

5. In review of the past reclamation inspection reports, it appears the most common practice was for H&D, Inc. to schedule the annual inspection, then promptly notify the Township Clerk of the time and date for the inspection. H&D would also invite the Township Clerk along with any Township Representatives to attend. Historically, it appears H&D permitted one Intervenor (JoEllen Rudolph) to attend these inspections, which she did, on four (4) total occasions. Unfortunately, on April 14, 2023 Rieth-Riley was served with a Motion and Request for Temporary Restraining Order by five (5)

Intervenors, including JoEllen Rudolph, via their attorney, Mr. Ellis Boal. **As such, Rieth-Riley opposes the Township Board's recommendation that a representative of the Intervenors be present at any future inspection of the site by Mr. Bauer or other expert.**

6. Rieth-Riley has considered the Township residents' request for an opportunity to purchase portions of the Green Pit. **Conceptually, Rieth-Riley is not at all opposed to such an agreement.** However, any such agreement would need to be in the form of a right of first refusal granted to and on behalf of *all* interested Township residents, with one voice and singular representation. Formation of an entity by the interested residents would be preferable. Rieth-Riley would insist such entity (or group of residents) had legal representation.

To conclude, I acknowledge the Township's request for a letter to certain property owners; Rieth-Riley will consider this request. I appreciate your review of this letter and welcome you to contact me with any other questions or concerns you may have.

Sincerely,

RIETH-RILEY CONSTRUCTION CO., INC.

Keegan M. Brennan

CC: Jim Pemberton, Ron VanZee, Gary Schenk (all via email only)

Gmail

clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Errors in the March 2024 Hayes Township Voice

3 messages

s Boal <ellisboal@voyager.net> Sat, Mar 9, 2024 at 10:55 AM
To: Ron VanZee <supervisor@hayestownshipmi.gov>, kristin baranski <clerk@hayestownshipmi.gov>, treasurer@hayestownshipmi.gov, Matt Cunningham <trustee2@hayestownshipmi.gov>, Doug Kuebler <hayestrustee5@gmail.com>
Cc: JoEllen <jobee949@gmail.com>, "kmmagnolia@gmail.com" <kmmagnolia@gmail.com>, kevin willis <kwillisc@yahoo.com>, LuAnne Kozma <luannekozma@gmail.com>, Todd Millar <tmillar@parkerharvey.com>

Hayes Township Board of Trustees,

I write to call attention to errors in the March issue of the *Hayes Township Voice*, mailed to every resident, appearing now on the Township website at *https://www.hayestownshipmi.gov/march-2024-hayes-township-voice/* .

(I may have other comments later about the March *Voice*, but the following come immediately to mind, insofar as the newsletter discusses the gravel pit litigation.)

First the *Voice* says ignorantly the piece was written in part by the "Hayes Township Council." There is no "Hayes Township Council." I know the Township attorney well enough to know he would never have made these errors. The *Voice* was referring evidently to you as the author, the Hayes Township Board.

Second, in April I filed a Petition in the gravel pit litigation for JoEllen Rudolph, Kevin Willis, and Kathy and Vic Martinchek. I attach a copy. We opposed Rieth-Riley's continued mining of the Green Pit near Bay Shore.

A passage in the *Voice* says this of the result:

> "The practical outcome was that the petitioners spent a lot of money in attorney fees, forced the Township that was sued by petitioners and part of the lawsuit to spend money on attorney fees, only to wind up exactly where they would have been had they accepted the settlement proposal put forth by Rieth-Riley and the Township at the mediation back in August 2023."

I did not charge for my work, nor for that of LuAnne my wife and para-legal, on the Petition. The *Voice* claim that I made "a lot of money in attorney fees" is just false. Your reporter made it up without asking. Who was that? All the Petitioners paid for were out-of-pocket expenses: courtroom poster boards and fees for the mediation, filing, and copying.

Third, the *Voice* claims twice that "the Township was sued by Petitioners." This is also false. It was H&D which sued the Township in 1987. Dozens of residents intervened a year later. Consent judgments were reached which provided for a 25-year life of the mine.

Last year the Petitioners asked the Court to enforce the 25-year period. . The Petition concluded with a request that the company be ordered to cease operations because the period was over.

We made no claim against the Township. Indeed our 50-page post-hearing brief defended the Township as not being a source for the company's false claim that one of the Petitioners had served on the Township Board without protesting that mining continued after the 25 years.

The Township attorney did not call or need to call any witness in Court, did not cross-examine any Company or Petitioner witness, and did not file a post-hearing brief. He sat silently on the clock through two hearings, save for remarks at the start to the effect that the 5-year stipulation agreed to by Rieth-Riley might become moot.

Our litigation also exposed the anti-competitive practice of Rieth-Riley and Team Elmers not bidding against each other for the same jobs. The US Department of Justice in Chicago is looking into it. Victims may include the LTBB Tribe, the County, the Township itself, or others.

Accordingly the *Voice* reference to the "the Township that was sued by petitioners" was fabricated and false. Again, please identify your source.

Finally, the Petitioners' approach to the litigation was not all-or-nothing. They approved every major decision of the case, including at the mediation to which we did not come empty-handed. We offered to allow Rieth-Riley to mine for one more year. The Company refused, though evidence at the hearing showed it could have mined all the gravel it was able within the one year.

The Company's 5-year offer conveyed to us at the mediation would also have required the Petitioners to settle all other claims. Two which came up later were its lack of wire perimeter fencing which resulted in injury to neighborhood children, and Company use of prohibited Townline and PinCherry Roads for hauling gravel.

The Judge observed on the record that Rieth-Riley was "mining like crazy." At the end he "encouraged" us to pursue the other claims with an expert.

As noted, the Petitioners and Township were not adversary. It would have been constructive had the Board sent me a draft of the piece before going to print, whereby the errors would have been avoided.

In any event, please distribute corrections in the next issue.

Because this comment would take more than three minutes to read aloud, please attach a copy to the next Board minutes. I will appear then and summarize it in the time allowed.

Thank you.

Ellis

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petition-final.pdf
225K

JoEllen Rudolph <jobee949@gmail.com> Sat, Mar 9, 2024 at 4:27 PM
To: Ellis Boal <ellisboal@voyager.net>
Cc: Ron VanZee <supervisor@hayestownshipmi.gov>, kristin baranski <clerk@hayestownshipmi.gov>, treasurer@hayestownshipmi.gov, Matt Cunningham <trustee2@hayestownshipmi.gov>, Doug Kuebler <hayestrustee5@gmail.com>, "kmmagnolia@gmail.com" <kmmagnolia@gmail.com>, kevin willis <kwillisc@yahoo.com>, LuAnne Kozma <luannekozma@gmail.com>, Todd Millar <tmillar@parkerharvey.com>

Good job. One omission. The original settlement offer from RR via Todd Millar in April 2023 included the demand that we give up all rights to sue RR for any reason. That was the main reason we did not
accept RR's 5 year offer back at the Intervenor's first meeting with you in April 2023 and proceeded to file our lawsuit against RR. With that provision still demanded at the August mediation, we would not agree.

[Quoted text hidden]

Todd Millar <tmillar@parkerharvey.com> Mon, Mar 11, 2024 at 12:32 PM
To: JoEllen Rudolph <jobee949@gmail.com>, Ellis Boal <ellisboal@voyager.net>
Cc: Ron VanZee <supervisor@hayestownshipmi.gov>, kristin baranski <clerk@hayestownshipmi.gov>, "treasurer@hayestownshipmi.gov" <treasurer@hayestownshipmi.gov>, Matt Cunningham <trustee2@hayestownshipmi.gov>, Doug Kuebler <hayestrustee5@gmail.com>, "kmmagnolia@gmail.com" <kmmagnolia@gmail.com>, kevin willis <kwillisc@yahoo.com>, LuAnne Kozma <luannekozma@gmail.com>

I am attaching Mr. Boal's email response to me of April 28, 2023, wherein he relays that the Petitioners were not willing to settle this matter. Nowhere in the email response does he mention the alleged requirement that petitioners must give up all claims against Rieth Riley. I understand where that belief is coming from given the language used in the letter from Rieth Riley that I have also attached. However, I do not read the Rieth Riely letter that way. My belief and understanding was that so long as Rieth Riley complied with the settlement agreement and any applicable provisions of the consent judgment, you would not sue them again. It would be unrealistic for Rieth Riley to think it could get you to agree to settle and then do anything it wants with immunity. That was not their offer nor their demand in my opinion. However, no one ever indicated that as a problem so as to give the parties an opportunity to explore that issue. Everything is up for negotiation. If we had known that was the issue, we could have addressed it. It was never raised.

Todd

Response to Hayes Board of Trustees on Hayes *Voice* article on "Litigation Spawned by the Law Project" claimed to be written by the Township "Council"

The March 2024 issue of the Hayes *Township Voice*, mailed to every resident, and downloadable at *https://www.hayestownshipmi.gov/wp-content/uploads/2024/03/Hayes-Township-Voice-March-2024.pdf*, reports on Township litigation resulting from plans of the Law family to excavate and build a boat basin and boathouse/event center capable of seating 350 guests, as part of a 500-acre corporate resort, some of which they have been building. However, their land is zoned R-1, "low-density residential" which is supposed to be "relatively quiet," on Lake Charlevoix. The Laws claimed they are abandoning their boathouse plans. But if they still intend to use residential land for corporate activities, this violates the Zoning Ordinance and the Township must vigorously enforce against such non-residential uses.

The *Voice* complains of legal expenses incurred in defending three suits filed by LuAnne Kozma and even complains of Zoning Board of Appeals (ZBA) cases brought by her (and two other residents) which were supported by 50 additional residents, two organizations and one tribal government who made public comments in favor of protecting the shore, upholding the ordinance, and against a corporate resort.

The *Voice* does not mention that the Laws sued the Township in 2022, to overturn one of the ZBA interpretation decisions where Kozma, Irene Fowle and Elisabeth Hicklen prevailed. The ZBA held that our Zoning Ordinance does indeed prohibit excavation of the shoreland for a boat basin or channel. Despite all this, the Laws still wanted to excavate the shore and build that large building over the water. Six months later in 2023, they abandoned the lawsuit.

The reasons Kozma and neighbors Fowle and Hicklen requested Interpretations of the Zoning Ordinance in the first place, is because Township officials had violated the Zoning Ordinance permitting the project and asserting the expired permits remained valid. In 2019, the Planning Commission approved a "shoreland landscaping plan" for the Laws which included a large excavated boat basin and canal cut some 200 feet back into the lake's shoreland. In July 2020, the Zoning Administrator issued a zoning permit for a 2-story stone boathouse and event center building over that excavated boat basin. In 2021 when we and our neighbors found out about the project, we realized the permits had expired according to the Zoning Ordinance, and told the Township so. Tip of the Mitt Watershed Council argued the same.

However, Township officials insisted in meetings that September that the permits were not expired, the Township approvals were still good, and the Laws could move

forward. The Zoning Administrator insisted there was an "unwritten philosophy" that somehow could trump the Zoning Ordinance. The September 2021 ZBA filing included appeals of the Township officials' 2021 determinations that the (now-expired) 2019 and 2020 permissions continued in effect despite the passage of a year and the 1-year time limit of the ZO.

The filing also included five Interpretation Requests regarding: the 100-foot setback is from the new Ordinary High Water Mark in the case of an artificial excavation; the Waterfront Regulations prohibited shoreland excavation; that there is no such thing as "unwritten philosophy" that a Zoning Administrator can use to not follow the ordinance; the purpose of the waterfront review process was to ensure compliance, not "compromise … rather than the strict mandates"; and zoning permits expire one year after the date of issuance.

After the first ZBA case was filed, we found we had to sue the Township just to force the Township to follow the rules to hold ZBA hearings timely, properly-notice them, and to re-populate the ZBA itself.

A second ZBA appeal case was filed in December 2021 after the Zoning Administrator made determinations in an affidavit that the boathouse met all zoning regulations and he would permit it again, and boat basins and canals only need to be permitted by state and federal agencies, not the Township.

Eventually, in August 2022, nearly one year after filing the first ZBA case, (and 8 months after the second case) we prevailed on every interpretation request presented except one, described below, despite vigorous attempts by the Supervisor/Zoning Administrator Ron Van Zee, his Deputy (and Planning Commission Chair and ZBA member) Roy Griffitts, and the ZBA Chair Tom Darnton to delay and defeat them.

The Township's deliberate delays included:

- The Zoning Administrator/Supervisor refused to transmit the September 2021 filing to the ZBA "immediately" as required by state statute. Kozma sued. The Township promptly capitulated whereupon she withdrew the case.

- The ZBA refused to hold hearings within 45 days as required by its rules, preceded by a 15-day public notice as required by statute. Kozma sued again about this. The Township finally admitted the Planning Commission decision and boathouse zoning permit had both expired. That mooted those

two appeals.

- ZBA public hearings on the five Interpretation Requests were then set for January-February 2022. Kozma, Township officials, and the ZBA spent hours in preparation. But in the middle of the hearings the Township sabotaged them, causing them to be held completely all over again, by (a) a prohibited statement by then-ZBA member Roy Griffitts that despite zoning laws, "freaking multi-millionaires" can do "whatever they damn well want; it's private property," and (b) even Griffitts being on the ZBA despite being a Township employee serving at the "pleasure" of the Supervisor (who is also the Zoning Administrator).

- Public hearings were again scheduled for April 20 and 27, 2022. However the Township Clerk published defective and untimely public notices. And ZBA member Griffitts who had shown his bias in favor of the Laws, remained on the ZBA. Kozma sued on these points and the hearings were called off.

- Finally the hearings were noticed for August 22 and 29, 2022. They were held properly after public notice. Decisions were made and became official at the next ZBA meeting on October 3. Kozma, Fowle and Hicklen (and the Community) had prevailed on four of the five Requests.

One ZBA Interpretation, preventing excavation of the Shoreland Protection Strip, effectively stopped the Laws' boathouse plans. With the Laws backing out of their lawsuit, the ZBA Interpretation stands, and governs the shoreline today throughout the Township, conferring enormous benefit on our lakes and streams.

We see that wording to ignore the Township shoreland protection provisions of the ordinance if state and federal permits are obtained, or even if the Planning Commission finds it acceptable, to allow an alteration of more than 20% of the shoreline, (giving the Commission variance-giving power, something it cannot do), was inserted into the draft Zoning Ordinance the Planning Commission is reviewing, soon after the ZBA clarified that excavation is prohibited. The Township is still attempting a run-around our Ordinance to allow the Laws' excavation. We hope the re-populated Planning Commission will remove this language.

The single Kozma suit filed in the spring of 2022 which the Court declared should not have been filed, sought in main part to force Roy Griffitts off the ZBA for the reasons outlined above and to cancel improperly-noticed hearings scheduled at the time

for April. These goals were accomplished during the suit.

We have a currently-pending suit contesting one erroneous ZBA Interpretation regarding the horizontal location of the Ordinary High Water Mark after excavation of an artificial boat basin. Its decision would allow current owners of artificial boat basins or channels in the Township to build buildings directly over the water of a lake, which violates the state statute requiring all R-1 zoned properties to live by the same setback rules. The Interpretation created an automatic variance for future buildings, which it cannot do.

The ZBA ruled simply from the gut, citing zero facts in doing so, in violation both of the Zoning Ordinance and state law. We are in Court seeking an order that the ZBA find facts for its decision, and in doing so might rule differently. Everyone knows this: You have a right, every time, to a decision based on facts. The Township and Circuit Court have so far argued only that Kozma has no standing.

Our response is we and every other Township shoreline owner have standing when the Interpretation is about something which will govern all of them this year, next year, and the years after. The Township has three pre-existing artificial basins, where according to the ZBA Interpretation the owners would be free to build structures over the water despite the 100-foot setback rule. Other shoreline owners cannot. But everyone should be prohibited, equally. It is a legitimate question on which the Courts should rule.

The complained-of litigation expenses could have been avoided if the Township had just done the right thing from the start, and enforced our Zoning Ordinance, protected Lake Charlevoix and its shoreland and said "no" to the Laws.

We don't see the Township wanting to comply while this Zoning Administrator continues to ignore, manipulate, and not enforce the Zoning Ordinance and while the Planning Commission entertains changes to the Zoning Ordinance that would allow the project. The ordinance does not permit commercial use for a corporate resort inside the R-1 residential zone.

Residents will remain vigilant. See page 5.

LuAnne Kozma, Ellis Boal
9330 Woods Road
Charlevoix MI 49720
March 11, 2024

Supporters who wrote or spoke on the record at ZBA public hearings in support of the interpretations by Kozma, Fowle and Hicklen:

Little Traverse Bay Bands of Odawa Indians
Michigan Loon Preservation Association
Tip of the Mitt Watershed Council
Chris Boal
Ellis Boal
Scott Boal
Stewart and Susan Boal
Winnie Boal
Tim Boyko
Jason Brabbs
Stephen Brede
Jessica Catt
William and Diane Conklin
Melvin Czechowski
Omar Feliciano
Frank Fowle
Noah Fowle
William Fowle
Jonathan Friendly
Penny Hardy
Betty and Bill Henne
Bill Hicklen
Paul Hoadley
Danelle and Mike Hutcheon
Anne Kantola
Debra Kochin
Greg Kozma
Natalie Kozma
Maggie Leonard
Margie Marks
Jim McMahon
Ayrie Moore
Lucy Moore
Chris and Debbie Narten
Marylee Pakieser
Anne Perry
Bud Pope
Sandra Pritchard
Susan Rankin
Jim & JoEllen Rudolph
Dale Scott
Nancy Solomon
Laurie Sommers
Shelly VanWart
Elliott Weissbluth
Mike and Maureen Whitehead

Charlevoix Area Community POOL

To Patrons of the Charlevoix Area Community Pool:

The Charlevoix Area Community Pool (CACP) has thrived for 26 years thanks to the generous support of our community. The Pool has programs for Patrons of all ages to enjoy - including indoor fitness, lap swim, recreational swim and swim lessons and water safety classes. The Pool serves almost 4,000 community members making more than 19,000 visits each year, including 400 school children.

This year the Pool millage will be up for a renewal vote and we have concerns with the proposed timing of the vote and millage duration. The Pool cannot continue to operate without the millage renewal and we would appreciate your support to help ensure the future of the Pool by **contacting (phone, mail or email) ALL your local township or city representatives to let them know:**

1) You support a pool millage **RENEWAL**
2) You support a **10-YEAR TERM** for the millage renewal versus a proposed 2-year term
3) You support the millage vote on the **AUGUST** ballot versus the proposed November ballot
4) You value the great programs the Pool provides to the community.

A **Millage Renewal Fact Sheet** and a **list of township and city officials** is attached for your reference.

If you have any questions, please contact the pool representative below:

Diane Herder, CACP President (City of Charlevoix)
dherder1027@gmail.com | c: 517-281-0721

Jon Cooksey, CACP Treasurer (City of Charlevoix)
cooksey@gmail.com | c: 415-377-1964

Janet Begrow Chambers, CACP Marketing & Development Manager (Charlevoix Township)
janet@charlevoixpool.org | c: 814-308-3168

Ed Russell, CACP Board Member (Hayes Township)
emk@charter.net | c: 231-330-4973

Feel free to copy the Pool on your correspondence to officials at info@charlevoixpool.org or mail a copy of your letter to: Millage Info, CACP, 11905 US 31 North, Charlevoix, MI 49720.

The Charlevoix Area Community Pool Board of Directors thanks you for your valuable support.

Diane Herder, President Naomi Singer, Vice President Sharon Hoffman, Secretary Jon Cooksey, Treasurer

Board Members: Chris Abbey, Joyce Maager, Babette Stolz, Jim Schwaderer, Fred Ziegel

Board Members Emeritus: Mike Dow, Dr. Steve Hansen

Charlevoix Area Community POOL

Is the Pool open to the public?

- Yes, the Charlevoix Pool is open to everyone.

Services are pay-per-visit with no annual membership fee.

What is the Charlevoix Area Community Pool (CACP)?

- The Pool is a 501(c)3 non-profit organization created in 1997 by community members who raised 100% of the funds required for the construction of the Pool from private donors and grants.
- Almost 4,000 users make more than 19,000 visits a year to the Pool for exercise and fun. Pool programs include:
    - Aquatic exercise classes and Fitness – attended mostly by seniors
    - Lap swimming – attended by adults of all ages
    - Recreational swimming including open swim and events for families
    - Swim lessons and water safety programs where students are bused to the pool during the school day. (About 400 students a year participate. Scholarships are available.)
    - Swimmers with disabilities
    - Lifeguard certification, local U.S. Coast Guard training and scuba diving training
    - Pool rentals and other special events for families

- The Pool is 100% accessible for users with disabilities with a pool wheelchair, pool ramp, and chair lift for the pool and hot tub and ADA accessible bathrooms. Charlevoix County Transit bus is available for some seniors to visit the Pool.
- A volunteer Board of Directors meets monthly to review programs, financials, staffing, funding and pool operations. Meetings are open to the public.
- Staffing includes one full-time manager, a part-time coordinator and 30 part-time staff for the check-in desk and lifeguarding.
- Pool financials are audited annually by an independent CPA firm. Accounting and payroll services are provided by Hoffman & Associates CPA in Charlevoix. More info is available on the Pool website at: https://www.charlevoixpool.org/annual-report

Questions may be directed to info@charlevoixpool.org or to any of the following CACP Pool representatives:

Diane Herder, CACP Board President 517-281-0721

Jon Cooksey, CACP Board Treasurer 415-377-1964

Janet Chambers, CACP Marketing and Development Manager 814-308-3168

Ed Russell, CACP Board Member 231-330-4973

WEBSITE: www.CharlevoixPool.org

Charlevoix Area Community Pool - 2024 Millage Renewal Fact Sheet

What is the Millage?

- The Pool has received funding from two 10-year tax millage assessments (2004, 2014) that were approved by the residents of the City of Charlevoix, Charlevoix Township and Hayes Township.
- The millage is listed on your Winter Property Tax statements as the "Recreational AU". It is less than 2% of an annual tax bill. The 2024 Pool millage tax is $33.33 for every $100,000 of taxable value.

Why is the millage vote important to the CACP?

- Millage revenue funded almost half of all Pool operating expenses in 2023. The Pool cannot operate without the millage.
- Millage revenue helps keep Pool user fees low. Residents of City of Charlevoix, Charlevoix Township and Hayes Township receive an additional discount (see below).
- Your property tax dollars help our community thrive. Other essential community services also rely on millage funding including the Charlevoix Library, Senior Centers, EMS, fire stations, county parks and schools.

Why is a 10-year millage renewal best for Pool operations?

- A millage of less than 10 years would negatively impact the Pool's operations because:
  - The Pool would have more difficulty obtaining grants and donations which funded 33% of operating expenses in 2023. Donors and foundations want to see long-term financial stability and a solid future.
  - The Pool would have difficulty making long term plans for staffing, donor-funded capital improvements and maintaining strong finances if the millage needed to be renewed every 2 or 5 years.

Why is a Pool millage vote on an August ballot better than on a November ballot?

- An August vote gives the Pool more time to plan for the future
- The November general election ballot will obscure the local Pool millage; even though more people vote in November, they will be focused on state and federal elections.

What is the role of the Recreational Authority Board and how is it involved in the millage renewal?

- Comprised of 7 municipal officials appointed by their respective city council or township boards: 3 from the City of Charlevoix, 2 from Charlevoix Township, and 2 from Hayes Township.
- Responsible for selecting the millage ballot date and the ballot language, including the millage duration.
- Certifies the millage assessment each September, collects millage payments from each municipality, and administers the millage payments to the Pool.

Do residents of the City of Charlevoix, Charlevoix Township and Hayes Township receive discounted Pool rates?

Yes, residents receive a 20% discount on all pool programs. The discount is shown in the Pool's Pricing information.

Gmail

clerk hayestownshipmi <clerkhayestownshipmi@gmail.com>

Support for the Charlevoix Area Community Pool

1 message

Jim McMahon <jim_mcmahon_iii@yahoo.com> Sat, Feb 17, 2024 at 8:58 AM
To: Ron Van Zee <supervisor@hayestownshipmi.gov>, Kristin Baranski <clerk@hayestownshipmi.gov>, Julie Collard <treasurer@hayestownshipmi.gov>, Matt Cunningham <tr ?@hayestownshipmi.gov>, Doug Kuebler <hayestrustee5@gmail.com>
Cc: .e McMahon <diane_mcmahon_1@yahoo.com>

Dear Hayes Township Board of Trustees,

The Charlevoix Area Community Pool is an important asset for Hayes Township residents and the entire nearby community. Whether you are a young person learning to swim, an older person recovering from surgery (rehab), or just someone desiring year-around indoor-access to a pool for exercise and the therapeutic benefits of water, the Charlevoix Area Community Pool is highly appreciated.

We understand there is some discussion to reduce the pool's milage term from 10 years to 2 years. The pool cannot sustain their operation on a shoestring. As governmental officials and business people, you know employee career paths and purchases of equipment and building maintenance require long term financial commitments.

Diane and I urge you to keep the milage term to 10 years. There are no other nearby community pools for public use. The Charlevoix Area Community Pool is a gem and a valued asset for our Hayes Township.

We appreciate Hayes Township's long term commitment to the pool. It's imperative that you sustain the 10-year milage term. Thank you.

Jim and Diane McMahon
phone: 231-347-9829

2 attachments

2024-02-02 Millage Patron letter.pdf
329K

2024-02-02 Millage FAQs for residents.pdf
359K