

AGENDA
HAYES TOWNSHIP, CHARLEVOIX COUNTY
PLANNING COMMISSION
April 16, 2024 7:00 pm
Hayes Township Hall
9195 Major Douglas Sloan Road
Charlevoix, Michigan 49720
ZOOM

<https://us02web.zoom.us/j/83601481092?pwd=bTRvd01yc2NtSHY5MXkrZDUxVDMrZz09>

Meeting ID: 836 0148 1092

Passcode: 068828

+1 312 626 6799 US (Chicago)

1. Call To Order
2. Pledge of Allegiance
3. Review and Approval of Agenda
4. Declaration of Conflict of Interest, if any
5. Review and Approval of Draft Minutes- March 12th, 2024
6. Public Comment
7. Report of Township Board Representative to the Planning Commission
8. Report of Zoning Board of Appeals Representative to the Planning Commission
9. Zoning Administrator Report
10. New Business
 - Assessor Presentation via ZOOM
 - Review Shoreline Landscape Plan 08045 Mulberry Lane
 - Review Zoning Ordinance Section on Zoning Board of Appeals
11. Old Business
12. Set/Confirm Public Hearing Dates- Public Hearing on US 31 North rescheduled for May 6th 2024 due to additional application requirements.
13. Set/Confirm Date of Next Regular PC Meeting- May 21st 2024.
14. Planning Commission Comment
15. Adjournment

Public Comment at Meetings of the Hayes Township Planning Commission

The Hayes Township Planning Commission values public input and offers an opportunity for the public to comment at its meetings. This affords the Planning Commission the opportunity to hear your views and remarks. If you speak, you should not expect to engage the Planning Commission members or any staff in discussion or debate.

Planning Commission Members will not respond to comments made during the Public Comment unless it becomes necessary to ask a clarifying question, correct a factual error, or to provide specific factual information.

Questions about Township matters are best directed to individual Board members or Township staff (Planner, Zoning Administrator, or Assessor) between meetings. Contact information is available on the township website at: hayestownshipmi.gov.

The availability of public comment is recognized by the Michigan Open Meetings Act. The Act provides that rules may be adopted for orderly comment from the public. To that end, the following rules have been established by the Planning Commission:

1. A person who wishes to speak during Public Comment will sign in and signify that they would like to speak on the form.
2. The person will begin by stating their name, spelling it out if requested.
3. The person addresses the Chairperson, or other person chairing the meeting, on behalf of the entire Planning Commission. Public comment is NOT to be addressed to individual Planning Commission members, to any township staff present, or to other members of the audience.
4. For the first Public Comment period, there is a three (3) minute time allotment for each speaker. The time limit may be extended by the Chairperson or majority of the Planning Commission members present. If a speaker uses less than three (3) minutes, they may not use the remaining time at that Public Comment. A speaker may speak only once at Public Comment. There is no provision for another audience member to 'donate' their three (3) minutes to another speaker. For the second Public Comment session speakers are limited to 1 minute each.
5. A speaker will be out of order if the speaker disrupts the meeting, fails to be germane, speaks longer than the allotted time, uses vulgarities or makes a personal attack on a Planning Commission member or Township employee that is unrelated to the performance of that person's duties.
6. If a speaker is called out of order, that speaker will not be able to speak again at the same meeting except by special leave of the Planning Commission. If the speaker continues to disrupt the meeting or is disorderly, law enforcement will be called to remove the speaker.
7. The Chairperson, or other person chairing the meeting, will have the discretion to permit members to speak at times other than the times reserved for Public Comment.

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CALL TO ORDER: Chairperson Roy Griffiths called the meeting to order at 7:00 p.m.
Members present: CT Martin, Mark Snyder, Matt Cunningham, and Roy Griffiths (Chair)
Excused: Derek Burnett, Marilyn Morehead and, Rex Greenslade
Also, present: April Hilton (Deputy Clerk/Recording Secretary), Ron VanZee (Zoning Administrator) and Kristin Baranski (Clerk).
Audience: Stan Boris, LuAnne Kozma, Ellis Boal, Sherry Baker-McCoy, Janet Simon, Andrew Wilson, Mel Czechowski and Jim McMahon.

PLEDGE OF ALLEGIANCE:

REVIEW AGENDA:

Mr. Snyder made a motion, supported by Mr. Cunningham, to approve the agenda as presented.
Yeas: Matt Cunningham, Roy Griffiths, Mark Snyder, CT Martin.

DECLARATIONS OF CONFLICTS OF INTERESTS:

None

APPROVAL OF MINUTES February 13th, 2024 REGULAR MEETING

Mr. Martin made a motion, supported by Mr. Snyder, to approve the February 13th, 2024, regular meeting minutes as presented.
Yeas: CT Martin, Matt Cunningham, Mark Snyder, Roy Griffiths.
Nays: none **Motion Carries**

APPROVAL OF MINUTES MARCH 6th, 2024 SPECIAL MEETING MINUTES:

Mr. Snyder made a motion, supported by Mr. Cunningham, to approve the March 6th, 2024, special meeting minutes as presented.
Yeas: CT Martin, Matt Cunningham, Mark Snyder, Roy Griffiths.
Nays: none **Motion Carries**

PUBLIC COMMENTS:

Public comments opened at 7:03 pm.
Comments included:

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- Complimented the Planning Commission correcting spelling errors in the minutes. Stated they feel there were errors made when creating the Voice this month.
- State they think it is against the open meetings act to have two sets of minutes approved at one meeting. Stated they feel the Planning Commission has not complied to the Shoreland protection Zoning Ordinance guideline.
- Stated they googled search who is responsible to enforce a township ordinance, answer they found was the Local Township shall hire a person or department responsible for enforcement.

Public comments closed at 7:11 pm

REPORT OF TOWNSHIP BOARD REPRESENTATIVE TO THE PLANNING COMMISSION:

Next meeting April 9th, 2024, at 7:00pm.

REPORT OF ZONING BOARD OF APPEALS REPRESENTATIVE:

N/A

ZONING ADMINISTRATOR REPORT:

Written report available at Hayes Township Hall.

New Business:

REVIEW OF ZONING ORDINANCE EDITS CONTINUE SUPPLEMENTAL SITE PLAN DEVELOPMENT

STANDARDS AND SECTION X (ZBA) TIME PERMITTING:

- CT will research farther into Gasoline/ Service Station.
- The Planning Commission came to a census to work with animal control, a commercial kennel needs to be on at least 5 acres. New definitions need to be created for "Doggy Day care" and "Grooming". Grooming may be able to fit into the "Home Occupation" category.
- Planning Commission will work on a new definition separating homes with wheels from Homes without wheels.
- Add Adult Foster care and Group Homes under 9.11.
- QQ. Needs to be amended to match state criteria.
- SS. Needs to be amended to match state criteria.
- Planning Commission will research more information on 9.14 Recreational Areas and Facilities and consult BRI for ideas and language.

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- Planning Commission will gather more information and language ideas for section 9.15 Resource Mining, Extraction and Fill.
- Planning Commission will research the State Regulations for 9.18 Sexually Oriented Business.
- Add Commercial and Industrial to SSS. Under 9.19 Storage Facilities. Planning Commission will research expanding the Storage Facilities section of the ordinance.
- Leave 9.20 and 9.21 as is in the Hayes Township Zoning Ordinance. May add State regulations.

Old Business:

SET/CONFIRM PUBLIC HEARING DATES:

Set a public hearing date for April 16th, 2024 during the Regular Planning Commission meeting as long as all the information is submitted in time from applicant.

SET/CONFIRM DATE OF NEXT PC MEETING –APRIL 16th, 2024.

Next Planning Commission regular meeting will take place on April 16th, 2024, at 7:00 pm.

PUBLIC COMMENT:

Public Comment Opened at 8:23

Comments Included:

- Suggestion for square footage be included for house trailers. Would like to see something in the ordinance regarding residents' yard being clean and orderly.
- Correspondence attached.
- Would like to know when spring clean-up will be.
- Suggested a geologist may have good insight for the mining section of the ordinance. Suggested hosting a special meeting for this.

Public Comment Closed at 8:25

PLANNING COMMISSION COMMENT:

- Mr. Griffiths clarified the planning commission reached out to MTA and verified reviewal of minutes do not have to be done at a special meeting they can be held and approved at the next regular schedule meeting.

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- Mr. Griffiths state not all Shoreline plans submitted need to come to the planning commission for review ,and there is a grid that identifies which level of review and approval is required.
- Mr. Griffiths responded to the suggestion for square footage of House Trailers. State it is an interesting idea, the Planning Commission is dealing with the issue of Tiny Homes and affordable housing. The Planning Commission needs to be consistent, because there is a lot of interest from residents and feels it would be in the Townships best interest to develop guidelines.
- Mr. Griffiths stated police power ordinance versus the Zoning Ordinance is as he understands it to be an enforcement difference which is determined by the Board of Trustees.
- Mr. Snyder stated from a functional standpoint, would like to see correspondences submitted to the Planning Commission a week prior to the meeting verses the day of the meeting. This gives the Planning Commission members time to read and digest the content within the correspondence.

ADJOURNMENT: Mr. Martin made a motion, supported by Mr. Snyder, to adjourn the meeting at 8:32 pm.

Yeas: Mark Snyder, CT Martin, Roy Griffiths and Matt Cunningham.

Nays: none **Motion Carries**

Respectfully Submitted by:
April Hilton
Deputy Clerk/Recording Secretary



Hayes supervisor <supervisorhayestownshipmi@gmail.com>

08045 Mulberry Lane Shoreland

Rex Greenslade <greensladerex@gmail.com>

Thu, Apr 11, 2024 at 2:15 PM

To: zoning@hayestownshipmi.org

Cc: Ron VanZee <supervisor@hayestownshipmi.gov>

We have no plan to install a deck on the shoreland of Susan Lake at this property.

Were we to install one in the future we would do so conforming to all regulatory and zoning requirements pertaining at the time.

Best regards,

Rex Greenslade

Sent from my iPhone



zoning hayestownshipmi <zoninghayestownshipmi@gmail.com>

RE: [Retrieved]08045 Mulberry Lane

2 messages

Noah Jansen <Noah@watershedcouncil.org>

Thu, Mar 21, 2024 at 4:54 PM

To: zoning hayestownshipmi <zoninghayestownshipmi@gmail.com>

The project seems like it will have minimal impact, but I did have a few questions/concerns. Will the deck be within the greenbelt/buffer zone? If so is that allowable under your zoning ordinance? Also, I can't say definitively without doing a wetland determination, but several pictures of the shoreline (e.g. IMG_5196 - IMG_5201) look like wetlands to me, which means they would need a permit from EGLE to build anything down there. Can you please let them know that?

P.S. I will be gone tomorrow through April 1, so I might be a little long in responding.

**Noah Jansen**

Restoration Manager

Tip of the Mitt Watershed Council

(231) 347-1181 x 1102

www.watershedcouncil.org**From:** zoning hayestownshipmi <zoninghayestownshipmi@gmail.com>**Sent:** Wednesday, March 20, 2024 12:51 PM**To:** Noah Jansen <Noah@watershedcouncil.org>**Subject:** [Retrieved]08045 Mulberry Lane

Hello,

Hayes Township Shoreland Subcommittee submitted the following report:

Yesterday, March 18, 2024 we conducted a shoreland protection strip site visit for a property located at 08045 Mulberry Lane which abuts Susan Lake. The property is to be the site of a new home construction.

The property is very deep and is a 10 acre parcel. The home location appears to be approximately 1/3 of the distance from the street to the lake with several hundred feet of fairly level fields transitioning to a slope for a couple of hundred feet then flattening out for approximately 100 ft to the water. The sloping area and the area adjacent to the water is heavily

4/11/24, 1:13 PM

Gmail - RE: [Retrieved]08045 Mulberry Lane

wooded with underbrush and ferns and grasses. It does not appear to have been disturbed for many years except for an old logging path and access route down the hill. This route curves to slow runoff and terminates at least 200' (estimated) from the water into the wooded area.

The attached pictures show the extent of the natural conditions that grow right to the water's edge and contain both mature trees (pines, cedars, birch and perhaps other species) and new growth saplings and brush. The ground is covered in heavy grasses and ferns under the trees.

It is my understanding that the owner does not plan to make changes to the waterfront except to build a less than 200 sq. ft deck and a 6 foot walkway to access it located towards one side of the property to afford the best views of the water. We asked that the owner show the proposed location on the plan that will be submitted to the zoning administrator.

Given the depth of the natural shoreline and limited plans for any waterfront activity, it is clear that this property meets not only the intent and the purpose of shoreland protection.

Next steps. Marilyn if you concur with this report please indicate that to Ron. Ron would you have these photos sent to the Tip of the Mitt staff and ask them to review them, including a site visit if they think necessary? If and when they offer their feedback and you get a final plan from the owner we can submit this to the PC for a decision.

Marilyn Concurred.

Please respond with your input.

Thank you!

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 IMG_5192.jpeg

 IMG_5193.jpeg

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 IMG_5195.jpeg

 IMG_5196.jpeg

 IMG_5197.jpeg

 IMG_5198.jpeg

 IMG_5199.jpeg

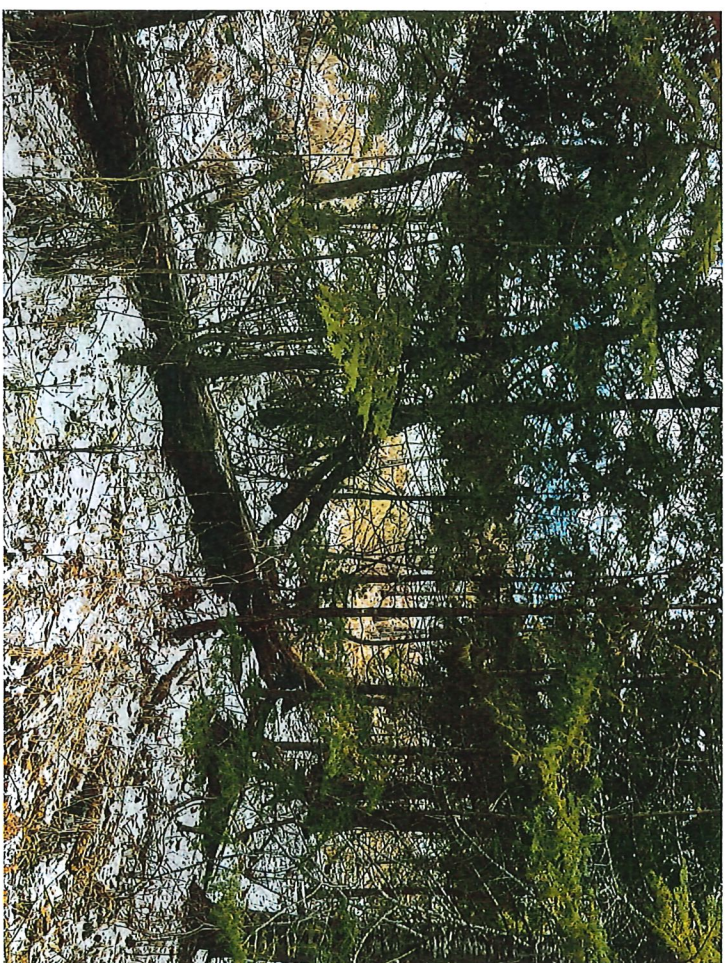
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IMG_5193.jpg



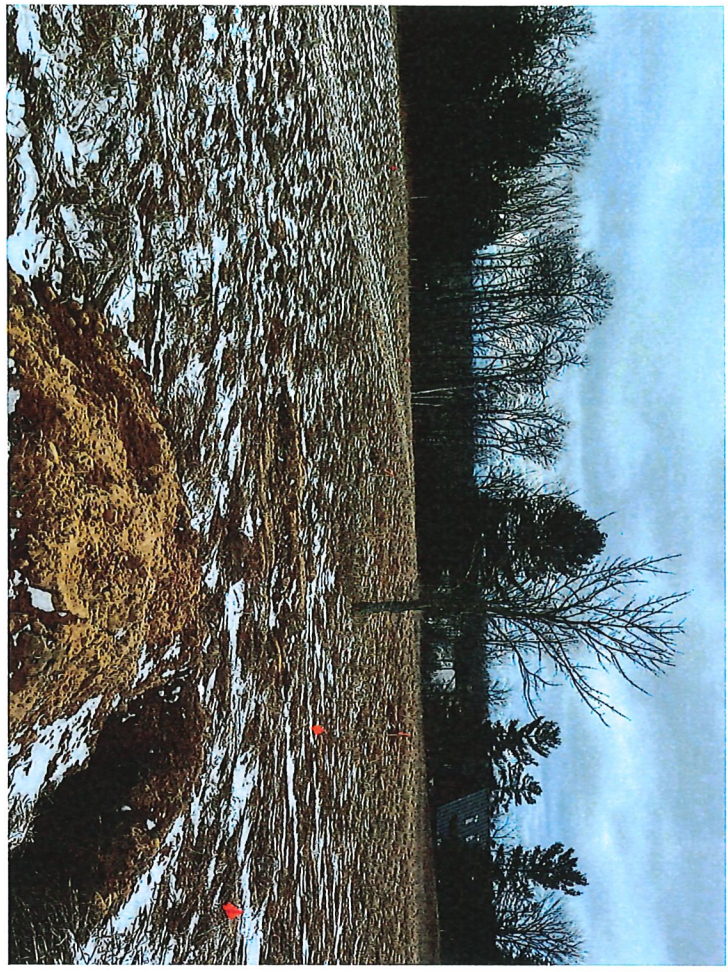
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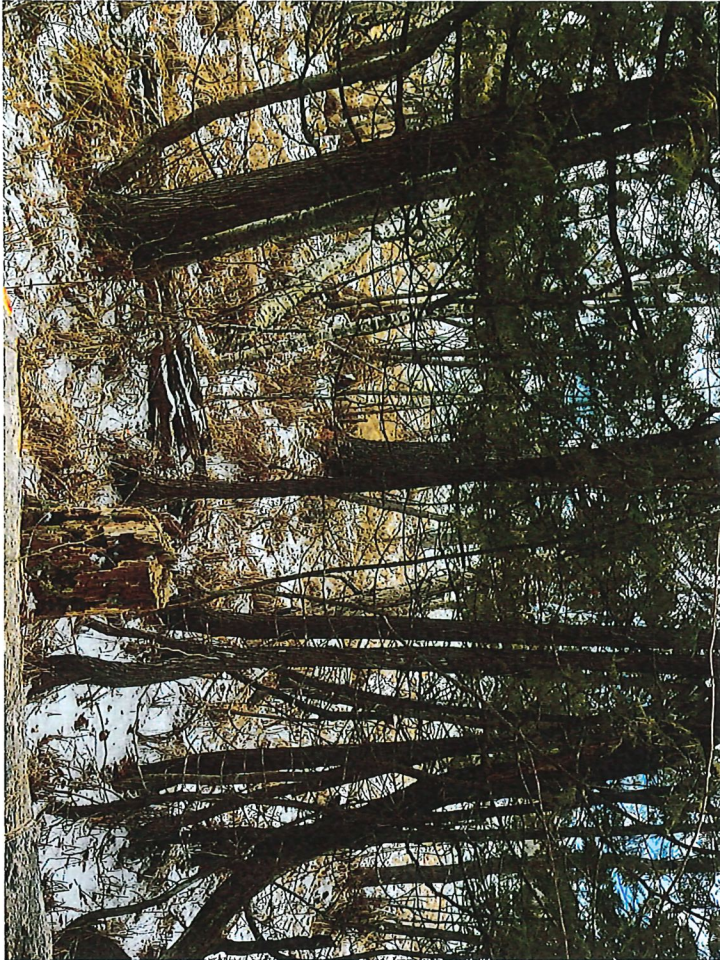
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4/11/24, 1:14 PM

IMG_5203.jpeg



Fwd: A win at the Court of Appeals

1 message

LuAnne Kozma <luannekozma@gmail.com>

Mon, Apr 1, 2024 at 5:19 PM

To: Ron Van Zee <supervisor@hayestownshipmi.gov>, kristin baranski <clerk@hayestownshipmi.gov>, Doug Kuebler <hayestrustee5@gmail.com>, "Treasurer W. Robbin Kraft" <treasurer@hayestownshipmi.gov>, Matt Cunningham <trustee2@hayestownshipmi.gov>
Cc: Marilyn Morehead <morehead.m@gmail.com>, Derek Burnett <Burnett.pc@outlook.com>, Rex Greenslade <greensladerex@gmail.com>, Roy Griffiths <rwgriffitts3@gmail.com>, ctmagnetics@aol.com, snyderhnp@outlook.com, Rod Slocum <rodslocum@gmail.com>, Janice Whipple <jwhipple65@gmail.com>, Bruce Deckinga <bdeckinga@gmail.com>

April 1, 2024

To: Hayes Township Board of Trustees, Planning Commission, and Zoning Board of Appeals

I am forwarding a message from the organization Protect Lake Charlevoix Shoreland about the Michigan Court of Appeals decision in my favor in my case against Scott and Debra Law. In that case, I tried to obtain an injunction to prevent the Laws from excavating the shore while my township ZBA appeal case (filed December 2021) was pending.

Please note the Court indicates my ZBA appeal was valid. The ZBA erroneously dismissed that case on August 15, 2022 at the urging of Scott and Debra Law in a letter that was purposely withheld from me during the ZBA hearing.

Also, a correction from Ellis Boal's previous note to the Township is highlighted in yellow below: The point of LuAnne Kozma's ZBA appeal of Ron Van Zee's determination that he filed as a sworn statement in the court, was that the Zoning Ordinance prohibits excavation of the Shoreland Protection Strip--not that a permit was required for it.

Attached is the Court of Appeals decision, with some key passages highlighted in yellow. Also attached is the decision without highlighting.

Please keep this correspondence and attached decision with the township's ZBA records for future reference.

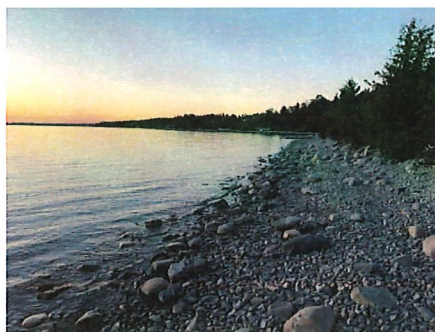
LuAnne Kozma
President, Protect Lake Charlevoix Shoreland

----- Forwarded message -----

From: **Protect Lake Charlevoix Shoreland** <info@protectlakecharlevoixshoreland.org>

Date: Sat, Mar 30, 2024 at 5:46 PM

Subject: A win at the Court of Appeals

[View this in your browser.](#)[View this in your browser.](#)**Celebrating a win at the Michigan Court of Appeals!**

- The Michigan Court of Appeals ruled on March 14 in favor of LuAnne Kozma in her case against Scott and

Debra Law to prevent them from excavating the shore, vacating a \$6,040 sanction leveled against LuAnne, to have been paid by her to the Laws. The Court stated:

“The trial court abused its discretion when it awarded costs and attorney fees because it committed legal and factual errors.”

Read the decision [HERE](#).

Here's the backstory....

- The sanction had been imposed by Judge Roy Hayes of the Charlevoix County Circuit Court for LuAnne having filed a supposedly frivolous lawsuit against the Laws in 2022, about the proposed basin/boathouse/event center on their property near her in Hayes Township on the shore of Lake Charlevoix.
- Her suit sought to order them not to proceed with excavation of the shore, pending a Township Zoning Board of Appeals (ZBA) hearing.
- At various times the Laws secured approval for the project from the state and federal governments. But the Township Zoning Ordinance prohibited excavation of the Shoreland Protection Strip, LuAnne contended.
- She had earlier started a separate suit to make the Township schedule a ZBA public hearing on Interpretation requests she and two cousins had filed in September 2021. The Township had not complied with ZBA rules that hearings had to be held within 45 days. The Township ended up holding that hearing *11 months late*, due to unlawful delays and other violations.
- Attached to Township Attorney Todd Millar's brief against that case, was an affidavit signed by Supervisor and Zoning Administrator Ron Van Zee in November 2021, notarized by Treasurer Julie Collard. The affidavit "determined" that *no Township permit was needed for the*

proposed Law boat basin and channel because it was supposedly governed exclusively by the state and federal governments.

- Van Zee also determined the boathouse building met the Zoning Ordinance and the Township's brief asserted Van Zee would "likely" issue a Township permit for it again. Van Zee had previously issued a permit for the boathouse, but it expired in 2021.
- LuAnne had filed a 53-page appeal with the ZBA against the affidavit, arguing the Township indeed did have co-authority over the shoreline, that excavation was prohibited by the Zoning Ordinance, and further that the Laws had to wait on excavating or any construction till the ZBA could make a decision.
- The hearing for that ZBA appeal was scheduled for August 15, 2022. The ZBA rejected her appeal, despite that the Michigan Zoning Enabling Act allows appeals to the ZBA of "determinations," regardless whether a permit has been issued or not. The ZBA voted 4-1 on a motion by ZBA Chair Tom Darnton that Van Zee's affidavit was not an administrative decision, and ZBA therefore had no jurisdiction.
- Meanwhile in the suit on which the Appeals Court ruled on March 14, LuAnne had asked the Circuit Court to tell the Laws to hold up excavation until the ZBA could rule. On August 5, 2022, Judge Hayes rejected that suit. Further, the Laws contended the suit was not only wrong but frivolous because the Township had not granted an actual permit. They said they didn't want to wait on excavating because they wanted to have a big party in the boathouse at Christmas, rather than having to go to a restaurant.
- Judge Hayes agreed and imposed a punishment against LuAnne, as the Laws had requested. He settled the amount at \$6000 for attorney fees and \$40 for two filing

fees. Such a counter-claim is sometimes called a SLAAP suit ("Strategic Lawsuit Against Public Participation").

- The Court of Appeals has now reversed Judge Hayes and the \$6,040 sanction, holding LuAnne's suit was **not frivolous** and had "arguable legal merit." It found the **circuit court's order was "rooted in a factual error."**
- LuAnne had noted that under the state zoning law, all "proceedings in furtherance of the action appealed" are stayed if a ZBA appeal is filed.
- But the Circuit Court had reasoned the automatic-stay was "inapplicable in this case because the zoning authority had issued no permit and plaintiff [LuAnne] therefore did not have a valid appeal" to the ZBA.
- The Court of Appeals disagreed and overruled that decision: "If the automatic-stay provision did not apply to construction, the Legislature would have essentially created a right without a remedy. If a zoning administrator erroneously concluded that no permit was needed for a project, there would be no mechanism for stopping construction until after the zoning board of appeals decided the appeal... Accordingly, **enabling a zoning administrator to unilaterally allow construction on a project before an appeal was decided would subvert the purpose of the appeals process.** Therefore, **there is legal merit** to plaintiff's contention that the automatic-stay provision applies to construction while an appeal regarding a determination relating to the project is pending."
- Though the issue was not directly before it, the Court of Appeals is an implicit rejection of the Hayes Township ZBA's holding in August 2022 that it had no jurisdiction to consider Van Zee's determination.
- To our knowledge, the Laws have not reapplied to the Township for new permits since earlier township approvals issued for boat basin in 2019 and boathouse in 2020 expired, and cannot now do so after the Hayes

Township Zoning Board of Appeals decided in August 2022 that excavation of the shoreland for boat basins and canals **is prohibited** by the Zoning Ordinance.

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P.O. Box 456, Charlevoix MI 49720



2 attachments

-  Kozma v Law coaDecision highlighted.pdf
451K
-  Kozma v Law coaDecision.pdf
357K