

Hayes Township Planning Commission
March 12th, 2024
Regular Meeting
Hayes Township Hall
9195 Major Douglas Sloan Rd.
Charlevoix, MI 49720

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 with 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 consensus 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

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 Griffiths, 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 Griffiths that despite zoning laws, “freaking multi-millionaires” can do “whatever they damn well want; it's private property,” and (b) even Griffiths 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 Griffiths 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 Griffiths 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	Anne Perry
Michigan Loon Preservation Association	Bud Pope
Tip of the Mitt Watershed Council	Sandra Pritchard
Chris Boal	Susan Rankin
Ellis Boal	Jim & JoEllen Rudolph
Scott Boal	Dale Scott
Stewart and Susan Boal	Nancy Solomon
Winnie Boal	Laurie Sommers
Tim Boyko	Shelly VanWart
Jason Brabbs	Elliott Weissbluth
Stephen Brede	Mike and Maureen Whitehead
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	

COMPARISON OF “PURPOSE” SECTION OF Hayes, Bay, the \$20,000 Beckett & Raeder draft, and current PC Draft

Compiled by L. Kozma, March 6, 2024

Hayes Township Zoning Ordinance—Our current ordinance:

SECTION 6.01 PURPOSE

It is the purpose of this Article to specify the procedure and requirements for the review of special land uses, as specified in this Ordinance. Uses classified as special land uses are recognized as possessing unique characteristics (relative to location, design, size, public infrastructure needs, and other similar characteristics), which require individual review and approval standards in order to safeguard the general health, safety, and welfare of the Township.

Bay Township Zoning Ordinance:

13.1 Purpose

In addition to the uses permitted as a matter of right in each zoning district, this Ordinance allows the establishment of special land uses subject to the procedures, standards and regulations described in this Article. Applications for special use permits may be filed by any person owning property subject to an application.

Once approved, a special use becomes a permitted use on the property on which it is located, provided:

- It was approved by the Planning Commission in conformance with the provisions of this Chapter;
- It shall be deemed to effect only the lot, or portion thereof occupied by such use;

- It is built, operated and maintained in compliance with the provisions of this Ordinance, and any conditions imposed at the time of its approval; and
- It has not expired or terminated as provided in this Article.
- It is filed by the applicant with the Register of Deeds within 45 days of the special use permit being approved and includes the findings of fact – a statement of all conditions agreed upon as a condition of approval. The special land use permit will not be issued until it has been recorded with the Register of Deeds.

Approved special uses shall be valid for as long as the use continues in conformance with the terms and conditions of its approval.

The \$20,000 Beckett & Raeder draft: (purpose + General standards)

8.1 INTENT & PURPOSE

This Article provides the review procedures and standards instituted to provide an opportunity to use a lot or parcel for an activity which, under certain circumstances, might be detrimental to other permitted land uses, or which contain unique features. The procedures and standards apply to those special use permit uses which are specifically designated as such in this Ordinance.

8.2 GENERAL STANDARDS

Each application for a special use permit shall be reviewed on an individual basis for conformity and compliance with the standards of this Ordinance, including those for site plan review in Article 7, any applicable supplemental use standards, and the specific standards below:

- Will be in accordance with the general objectives, intent, and purposes of this Ordinance.
- Will be designed, constructed, operated, maintained, and managed so as to be appropriate in appearance with the existing or intended character of the general vicinity.
- Will be served adequately by essential public facilities and services such as highways, streets, police, and fire protection, of drainage structures, refuse disposal, or those persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service.
- Will not be hazardous or disturbing to existing or future neighboring uses.
- Will not create excessive additional requirements at public expense for public facilities and services.
- Will be in accordance with all required conditions of the district in which it will be located.
- Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located, and will not be detrimental to existing and/or other permitted land uses in the applicable zoning district.

Planning Commission's Current Draft (exactly the same as Bay Township's)

ARTICLE VII SPECIAL USE PERMIT SUP
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7.1 Purpose

In addition to the uses permitted as a matter of right in each zoning district, this Ordinance allows the establishment of special land uses subject to the procedures, standards and regulations described in this Article. Applications for special use permits may be filed by any person owning property subject to an application.

Once approved, a special use becomes a permitted use on the property on which it is located, provided:

- A. It was approved by the Planning Commission in conformance with the provisions of this Chapter;
- B. It shall be deemed to affect only the lot, or portion thereof occupied by such use;
- C. It is built, operated and maintained in compliance with the provisions of this Ordinance, and any conditions imposed at the time of its approval; and
- D. It has not expired or terminated as provided in this Article.
- E. It is filed by the applicant with the Register of Deeds within 45 days of the special use permit being approved and includes a statement of all conditions agreed upon as a condition of approval. The special land use permit will not be issued until it has been recorded with the Register of Deeds. The applicant must provide proof of recording with the Register of Deeds prior to the issuance of any permit.

Approved special uses shall be valid for as long as the use continues in conformance with the terms and conditions of its approval.