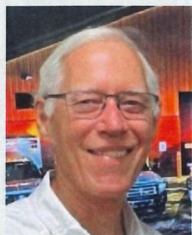


BOARD OF TRUSTEES



Ron VanZee, Supervisor
supervisor@hayestownshipmi.gov



Matt Cunningham, Trustee
Trustee2@hayestownshipmi.gov



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clerk@hayestownshipmi.gov



Doug Kuebler, Trustee
Hayestrustee5@gmail.com



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treasurer@hayestownshipmi.gov



Hayes Voice

TOWNSHIP

CONNECTING OUR COMMUNITY

#16

March 2024

From the desk of Ron VanZee, Hayes Township Supervisor

Mention the word “audit” to anyone and the chances are the reaction will be “that’s trouble”. Perhaps that’s because “audits” are generally associated with federal audits of personal income tax returns and possible alleged wrongdoings. But audits of the finances of township financials are a normal part of the State of Michigan’s public sector governance - every government entity in Michigan, be it a county, city or township is required to be audited - and Hayes Township’s recent audit (of 2022 and 2023) was nothing out of the ordinary.

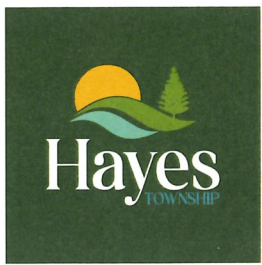
Hayes Township’s audits have been carried out every year and our recent audit reported a clean audit with no financial irregularities. All revenues are accounted for and all expenditures properly documented.

The Township’s financial picture has improved from year to year and is on an increasingly strong basis. At the end of fiscal year 2023 the assets of the Township exceeded its liabilities by \$7,250,484 and the overall net position increased by \$114,569 in the year. We are very pleased with this improvement.

The Board of Trustees has fully embraced the recommendations of the new accounting firm, Gabridge and Co, that we retained to carry out this audit. These proposals included the move to new accounting software specifically aligned with our needs as a township, as well as simplification of the multiple accounts and clarification on how to properly account for unanticipated expenses in our budget as we move through the year.

We are excited to have these new tools and procedures in place as doing so will enable the Township staff to continue to ensure that the spending of every penny of the Township’s revenues is properly approved, tracked and reported.

All the best,
Ron



VOICE VIEWS

CONNECTING OUR COMMUNITY

Hayes Township Hall
9195 Major Douglas Sloan Rd.
Charlevoix, MI 49720
(231)547-6961

For the most up to date information,
Visit:
Hayestownshipmi.gov

*The following information has been provided by Hayes Township Council and auditor.
It is the professional and legal opinion directly from them, unedited.*

Synopsis of Township Attorney Presentation at 2/12 Board Meeting

GRAVEL PIT LITIGATION UPDATE:

Petitioner, neighbors of the gravel pit operated by Rieth-Riley, asked the Charlevoix County Circuit Court to rule that mining extraction was limited to 25 years and that Rieth-Riley must immediately cease mining since mining has exceeded the 25-year limit. The Gant chart relied upon by the petitioners was referenced in the Consent Judgment as being subject to change:

11. A proposed Schedule of Mining and Restoration is attached hereto and marked Exhibit D. This Schedule is advisory only and reflects the goals of the parties in attempting to both mine and restore the subject lands, This Schedule is projected based upon past need for gravel by Plaintiff H & D, INC, in supplying various development activities in northern Michigan. Should the demand change significantly upward or downward, this Schedule may be accelerated or decelerated depending on the needs of the industry and Plaintiff H & D, INC, in particular.

As a result of concerns expressed by the public at a town-hall style meeting at the Township held on April 6, 2023, the Township Board authorized counsel to send a letter to Rieth Riley asking it to agree to reduce the potential timeframe for gravel extraction. Rieth-Riley offered to the Township and Petitioners to limit gravel extraction to 5 years. At about the same time, Petitioners filed a lawsuit with the assistance of their attorney, Mr. Boal. While the Township Board was in favor of agreeing to this time limit given the nature of the paragraph above in the consent judgment, the Petitioners would not agree. The 5-year limitation was proposed to Petitioners at mediation held in August 2023 and they refused to consider this settlement proposal.

Petitioners were taking an all or nothing approach to the case. Either they would win and the Court would end mining immediately, or they would lose and the Court would likely find that Rieth-Riley did not violate the consent judgment and allow mining to continue with no limitation. Concerned that the Court could potentially allow mining for an indefinite period, the Township Board determined it was in the best interest of the Township and its residents to get Rieth-Riley to commit to limit mining to 5-years. The Township and Rieth-Riley discussed the matter and agreed to submit a stipulated order to the court limiting the mining to 5 years and reclamation to one year thereafter. The Township wanted this order submitted to the Court before the hearings started because although Rieth-Riley was willing to agree to a 5-year limitation before the hearing, if the stipulation was not signed and submitted to the Court before the hearing, and if Rieth-Riley won and was permitted to extract gravel as long as it wanted, Rieth-Riley could change its mind and refuse to follow through on its commitment to complete mining in 5 years. Prior to signing the stipulation and submitting it to the Court, the stipulation was sent to petitioner's attorney asking him to share it with his clients and seek their approval. Several days later petitioner's attorney advised that he had discussed it with his clients and they were not willing to agree to the 5-year limitation and sign onto the stipulation.

Given the clear language in the consent judgment, the Township decided to agree to the stipulation and submit it to the court. Anyone that argues that this is failing to protect the Township and its residents does not understand the risk of losing facing the Township and its residents. As the Township anticipated, the Judge ruled that the Petitioners did not prove that Rieth-Riley was violating the consent judgment. He ruled that they were not required to complete mining within 25 years. He didn't opine on how long they could mine under the agreement but adopted the sound reasoning of the stipulated 5-years as the end date. Rather than not protecting the Petitioners, the Township action allowed them to proceed with the lawsuit without the risk of an incredibly bad outcome to them. In other words, they enjoyed the best of both worlds. Either they prevailed and the Court ordered Rieth-Riley

to shut down, or they lost, and the stipulation signed by the Township acted as a backstop and required mining to stop in 5 years. 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.

ATTORNEY FEES AND BUDGET FOR UPCOMING FISCAL YEAR:

A number of pieces of litigation inflated the legal costs incurred by the Township in recent years.

GRAVEL PIT LITIGATION

- The Township was sued as part of Petitioners' attempts to stop mining at the Green Pit.
- Through the ruling by the Court, the Twp has expended \$29,711 on this matter. This includes the town hall meeting and pre-lawsuit negotiation with Rieth-Riley. \$20,487 of this amount was spent on the lawsuit alone.
- Petitioners can appeal the Court's ruling to the Court of Appeals.
- This may not be over.

LITIGATION SPAWNED BY THE LAW PROJECT

- 4 lawsuits against the Township spawned by the Law project which was abandoned by the Laws.
- Complaint for mandamus filed by Kozma on 10/8/21.
- Voluntarily dismissed by Kozma on 10/15/21.
- Kozma filed complaint for injunctive relief on 10/29/21.
- Township filed a motion to dismiss Kozma complaint in lieu of filing an answer. Court agreed and dismissed lawsuit on 12/17/21.
- Kozma filed a new complaint on 3/29/23.
- Court dismissed Kozma lawsuit on 7/14/22 stating on the record that the lawsuit should have never been filed.
- Kozma submitted an extensive request for interpretation of the Zoning Ordinance to the ZBA that required multiple meetings to address.
- These lawsuits and the ZBA request for interpretation filed by cost the Township \$56,000 in legal fees.
- Although Kozma claims that she prevailed in front of the ZBA in her interpretations request, she continued litigation against the Township.
- Kozma appealed the ZBA ruling to the Circuit Court on 10/20/22.
- The Circuit Court dismissed her appeal on 1/2/24 ruling that Kozma lacked standing to appeal the ZBA ruling to the Circuit Court.
- Although Kozma claims that she prevailed in front of the ZBA, she is now attempting to appeal the Circuit Court ruling that she lacks standing to the Court of Appeals.
- Legal expenses are ongoing. As of the date of the Township Board meeting, the Township had spent \$12,770 in defending the appeal to the Circuit Court.

SUMMARY

- Since October 2021, Boal and Kozma, through the gravel pit litigation and objections to the Law project have forced the Township to spend \$98,481 in legal expenses. Those expenses are ongoing and will continue to climb. Aside from getting a favorable interpretation in front of the ZBA, Kozma failed to prevail on any of her litigation against the Township.
- Since February 2020, all other legal matters have cost the Township \$89,000.
- Four-year average of non-gravel pit and Law related matters is \$22,250.

FEBRUARY AUDITOR'S REPORT:

Joe Verlin, Auditor from Gabridge and Co., gave a presentation at the February 12, 2023 Board Meeting.

This is what he had to say: "It was a pleasure working with the staff of the township...what matters more than anything else on this sixty-page audit report can be found on page one, second paragraph down is where we provide our opinion on the township's financial statements. We wrote 'in our opinion the financial statements present fairly, in all material respects, the financial position of the township as of June 30, 2023. The technical term, according to the American institute of certified public accounts is an unmodified opinion, I explain it as being a clean opinion on the township's response. It's the highest level of an opinion we can provide on the township's financial statements. It means that the township provided us with the QuickBooks file, with your revenues, expenditures, and liabilities on it, we worked with the county, the State of Michigan, dept of treasury, your banking institutes...at the end of the engagement we had enough evidence to be comfortable providing a clean opinion on your financial statements. It means something to get a clean opinion on your financial statements, it should always be the townships goal to have a clean opinion."

"There are some areas we believe the township can strengthen their internal control...there are opportunities for improved financial reporting through the year...Is the township better off financially June 30, 2023 than they were on June 30, 2022? The answer is yes, by \$114,569..."

"After you get through the audit report, we have a separate letter that is addressed to the board. We aren't necessarily providing any type of opinion on the township's internal controls, but we do assess the townships internal controls, in part of performing our audit. If we see controls that we think aren't properly designed...or carried out successfully or consistently during the course of the year, we put them as control findings in the back of the audit report...In the case of Hayes Township, where you have 9 bank accounts, and 4 funds... QuickBooks is not designed for those nuances of financial reporting...It's not going to show you a road fund separate from a general fund...it's not even going to give you an opportunity to pool your cash...Best practice is 3 bank accounts: checking account, savings account and tax account. I heard rumors that the township is looking into...investing into B,S,&A software...It will reduces the risk of error just because it's designed for reporting designed for the finances of townships, where QuickBooks is designed for a coffee shop that's run by a small family with one bank account, it just can't handle fund balances across multiple funds, nine bank accounts is too much for QuickBooks...to me, this is the systemic cause of the issues...the common denominator that I see across our 75 townships the ones who get that get their finances right are the ones who have made that investment in the software designed specifically with all the nuances of fund reporting."

"Not having the right software is making it difficult for the township to have correct information in it's financial records making it difficult to run reports that show that cash truly is reconciled across all your funds... it's our understanding that the township has since, subsequent to the audit report, brought all it's bank accounts fully current...which we would applaud in doing so and keeping them current, until the township is able to find a longer term solution for your financial reporting, but again, not having the right software makes it difficult to have those bank account reconciliation reports being printed in a meaningful manner from your software...your finances are healthy, you've got a healthy fund balance in your general fund, you're at 90% funded, you've got 11 months' worth of reserves, your net position is increasing."

NOTE: At our February 2024 Board of Trustee meeting, the Board approved a proposal from B, S, & A for the recommended finance software.

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