

Hayes Township Planning Commission
April 16th, 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: Mark Snyder, Matt Cunningham, Roy Griffiths (Chair), Marilyn Morehead and, Rex Greenslade.

Excused: CT Martin, and Derek Burnett

Also, present: April Hilton (Deputy Clerk/Recording Secretary), Ron VanZee (Zoning Administrator)

Audience: Kevin Willis, LuAnne Kozma, and Ellis Boal.

PLEDGE OF ALLEGIANCE:

REVIEW AGENDA:

Ms. Morehead made a motion, supported by Mr. Greenslade, to adjourn the meeting no later than 9:00 pm.

Yeas: Matt Cunningham, Roy Griffiths, Mark Snyder, Rex Greenslade and Marilyn Morehead.

Mr. Snyder made a motion, supported by Ms. Morehead, to approve the agenda as amended.

Yeas: Matt Cunningham, Roy Griffiths, Mark Snyder, Rex Greenslade, and Marilyn Morehead.

DECLARATIONS OF CONFLICTS OF INTERESTS:

Rex Greenslade declared a conflict of interest with New Business item Review Shoreline Landscape Plan 08045 Mulberry Lane.

APPROVAL OF MINUTES MARCH 12TH, 2024 REGULAR MEETING

Ms. Morehead made a motion, supported by Mr. Cunningham, to approve the March 12TH, 2024, regular meeting minutes as amended.

Yeas: Matt Cunningham, Mark Snyder, Roy Griffiths, Rex Greenslade and Marilyn Morehead.

Nays: none **Motion Carries**

PUBLIC COMMENTS:

Public comments opened at 7:04 pm.

Comments included:

- Comments Attached.
- Stated they received a letter from the Laws Lawyer and have finalized their Lawsuit with them.

Public comments closed at 7:08 pm

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REPORT OF TOWNSHIP BOARD REPRESENTATIVE TO THE PLANNING COMMISSION:

Next meeting May 13th, 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:

ASSESSOR PRESENTATION VIA ZOOM:

Alisa presented the Assessor report including a brief explanation of the difference between Zoning Classification of a property and Assessing Classification of a property.

REVIEW SHORELINE LANDSCAPE PLAN 08045 MULBERRY LANE:

Ms. Morehead made a motion, supported by Mr. Cunningham, to approve the removal of the following items from the Site Plan Review.

5.03.3 items K, M, N, O, P

5.03.4 items B, D, E, F,

503.5 items A (4,5,6,7,8,9,10,11)

Yeas: Mark Snyder, Roy Griffiths, Marilyn Morehead, and Matt Cunningham.

Nays: none **Motion Carries**

Mr. Cunningham made a motion, supported by Ms. Morehead to approve the Shoreland Landscape Plan for 08045 Mulberry Ln.

Yeas: Mark Snyder, Roy Griffiths, Marilyn Morehead, and Matt Cunningham.

Nays: none **Motion Carries**

REVIEW OF ZONING ORDINANCE EDITS ARTICLE X: ZONING BOARD OF APPEALS:

- Planning Commission will seek legal council for Section 10.03 Jurisdiction language and definition to make it consistent.
- Strike "Shoreland Landscaping Plans" from Section 10.03 Item #1.

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- Planning Commission will seek the Townships Lawyer's guidance for terminology for "substantial" in Section 10.07 item #3.

Old Business:

SET/CONFIRM PUBLIC HEARING DATES:

MS. Morehead made a motion, supported by Mr. Snyder to set a public hearing date for May 6th, 2024, for an SUP permit on US 31 North.

Yeas: Mark Snyder, Roy Griffiths, Rex Greenslade, Marilyn Morehead, and Matt Cunningham.

Nays: none **Motion Carries**

SET/CONFIRM DATE OF NEXT PC MEETING –MAY 21st, 2024.

Next Planning Commission regular meeting will take place on May 21st, 2024, at 7:00 pm.

PUBLIC COMMENT:

Public Comment Opened at 8:03

Comments Included:

- Stated they believe the ZBA can rule on an appeal from a landowner and a
- Stated they support the previous comment. Stated their opinion of enforcement.
- Asked for clarification on how many houses were being approved for the Mulberry Lane Parcel. Mr. Griffiths answered the Site Plan was for one house.

Public Comment Closed at 8:07

PLANNING COMMISSION COMMENT:

- Ms. Morehead stated when building on Vacant land that has never been disturbed the Zoning Ordinance should state the Natural state of the land is sufficient for the Shoreland Restoration Plan.
- Mr. Griffiths stated he supports the previous statement and when the construction is outside the shoreline protection strip and the shoreline is being keep natural that is sufficient for the Shoreland Restoration Plan.
- Mr. Griffiths stated he appreciated the public input, however, would like everyone to understand there is a reason the Planning Commission will be following the guidance given from the Township Attorney.
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ADJOURNMENT: Mr. Martin made a motion, supported by Mr. Snyder, to adjourn the meeting at 8:09 pm.

Yeas: Mark Snyder, Roy Griffitts, Rex Greenslade, Marilyn Morehead, and Matt Cunningham.

Nays: none **Motion Carries**

Respectfully Submitted by:

April Hilton

Deputy Clerk/Recording Secretary

Fwd: A win at the Court of Appeals

1 message

Lu. 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, snyderhpt@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.

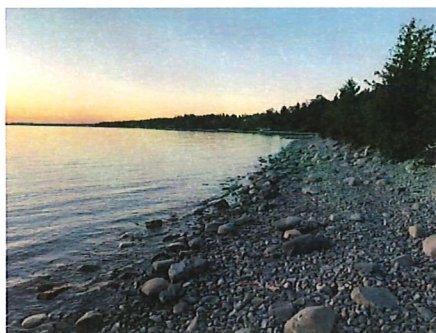
LuAnne Kozma
President, Protect Lake Charlevoix Shoreland

----- 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.

P.O. Box 456, Charlevoix MI 49720



2 attachments

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

Kozma comments for PC meeting tonight, April 16, 2024

2 messages

Lu Kozma <luannekozma@gmail.com> Tue, Apr 16, 2024 at 4:27 PM
To: Roy Griffiths <rwgriffitts3@gmail.com>, Derek Burnett <Burnett.pc@outlook.com>, Matt Cunningham <trustee2@hayestownshipmi.gov>, Marilyn Morehead <morehead.m@gmail.com>, Doug Kuebler <hayestrustee5@gmail.com>, ctmagnetics@aol.com, snyderhpt@outlook.com, Rex Greenslade <greensladerex@gmail.com>
Cc: kristin baranski <clerk@hayestownshipmi.gov>, kristin baranski <deputyclerkhayes@gmail.com>

Planning Commissioners:

Attached are comments and offered suggestions to add to tonight's meeting agenda and minutes, for the Zoning Ordinance-- Article X discussion.

If the public could be notified of agendas sooner than the weekend before a meeting, we would have more time to prepare comments or make plans to even attend a meeting. If such advance notice is not possible, then the PC and the clerk will have to contend with public comments the day of the meeting, which is after all, what the meeting is for. For all practical purposes, what exactly are our options as members of the public?-- but study the agenda and packet all weekend long, write comments, and/or say comments at the meeting itself.

Thank you for welcoming public input and our well-intentioned suggestions for the ordinance.

Thank you,
LuAnne Kozma
9330 Woods Road
Charlevoix MI 49720

 Kozma comments to PC April 16, 2024.pdf
36K

Lu Kozma <luannekozma@gmail.com> Tue, Apr 16, 2024 at 5:24 PM
To: Roy Griffiths <rwgriffitts3@gmail.com>, Derek Burnett <Burnett.pc@outlook.com>, Matt Cunningham <trustee2@hayestownshipmi.gov>, Marilyn Morehead <morehead.m@gmail.com>, Doug Kuebler <hayestrustee5@gmail.com>, ctmagnetics@aol.com, snyderhpt@outlook.com, Rex Greenslade <greensladerex@gmail.com>
Cc: kristin baranski <clerk@hayestownshipmi.gov>, kristin baranski <deputyclerkhayes@gmail.com>

Commissioners:

I have an additional suggestion, which is from the MZEA as well, that I do not see in the zoning ordinance, that could be added:

MCL 125.2601(13): "A member of the zoning board of appeals who is also a member of the zoning commission, the planning commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property."

This could be added to the Jurisdiction section as subsection 8. Although it's not necessary to mirror every single sentence of the MZEA, since this particular section of the statute was violated by our ZBA, I think it needs special mention in the Zoning Ordinance.

Thank you,
LuAnne Kozma
9330 Woods Road
Charlevoix MI 49720

[Quoted text hidden]

April 16, 2024

TO: Hayes Township Planning Commissioners

FROM: LuAnne Kozma, 9330 Woods Road, Charlevoix MI 49720

RE: Comments on ZBA section of Draft ZO

In the past 3 years, I have followed the history of the Hayes Township ZBA, the history of the Michigan Zoning Enabling Act (MZEA) and have filed three ZBA appeals/interpretation requests in the Township. I have witnessed our Hayes ZBA and Zoning Administrator violating some of provisions of this Article.

I have the following suggestions for edits to the ZBA article of the Zoning Ordinance:

Preamble Section:

8.01 (now 10.01): Keep the phrase “public safety secured, and substantial justice done” as in the original. No need to reference the objects or purposes of the ordinance. This is out of MCL 125.3604(7). But this language in the MZEA only applies to the granting of variances, not for appeals or interpretation requests, so another suggestion is just to remove the phrase “and in such a way....” And insert that language later in the Article in subsection on variances.

10.02 Meetings Section

Add these sentences at the end of this section, to make it clear that no decision can be made by any single ZBA member alone, such as the Chair: “The ZBA Chair and the Township attorney acting for the ZBA shall not make decisions on the substance of an applicant’s ZBA request or appeal. Requests for an attorney’s written opinion must be decided as a matter of business conducted by the ZBA at a public meeting and passed by majority vote.”

10.03 JURISDICTION Section

SUGGESTION 1: Remove “**and shoreland landscaping plans**” from the exceptions. The MZEA does not allow giving the Planning Commission variance-granting powers like this.

SUGGESTION 2: Subsection 2. “The ZBA may hear appeals...” is incorrect. It SHALL hear appeals. There should be a sentence that mirrors the MZEA from MCL 125.3603(1): “The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals is required to pass matters referred to the zoning

board of appeals. .. It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance."

SUGGESTION 3:

There is no need to define the word "aggrieved" in the ordinance.

SUGGESTION 4: Subsection 4 needs this added, which is a mandatory "shall" in the MZEA:

"If the ZBA receives a written request seeking an interpretation of the zoning ordinance, or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request." MCL 125.3604(5)

10.04 Exercising Power Section.

You've put the word "modify" in with "reverse or affirm" wholly or partly, but wholly or partly only follow "reverse or affirm" in the MZEA. Instead, use the wording of the MZEA at MCL 125.3604(6): "The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit."

Also, I do not see in MZEA the statement "to that end shall have all the powers of the official or body from whom the appeal is taken" and should be removed.

VARIANCES Section:

Subsection 4: Keep the word "**substantial**" both times it appears, (substantial justice is the phrase), and this is again found in MCL 125.3604(7) in determining variances.

10.09 EXPIRATION OF ZBA APPROVALS section

Remove "within two years." It is contradictory, when it says "no order... shall be valid for longer than 1 year" "unless substantial construction has occurred within 2 years." Once the 1 year mark passes, the person doesn't get another year to construct. The approval expires at the end of that year, unless substantial construction occurs during that year.

10.11 STAY Section

Given the Court of Appeals decision in *Kozma v Law*, that I gave you earlier this month, you could clarify this to include the word "construction" here:

"... stays all proceedings of the action appealed from, including the effectiveness of any zoning permit issued *and any construction*..."

Thank you.