

**Hayes Township Charlevoix County Michigan
Zoning Board of Appeals
Interpretation Request and Appeal**

LuAnne Kozma, Irene Fowle, Elisabeth Hicklen. Requesters-Appellants

Property owners Scott & Debra Law

Interpretation requests and appeals

Tax code ## 15-007-132-005-25, 15-007-133-005-30

PC basin-landscape approval, 11-19-19

PC Consensus decision 9-14-21

ZA boathouse permit # 20-07-01, 7-8-20

ZA renewal of permit, 9-13-21

Affidavit of LuAnne Kozma

The neighborhood

1. I am one of the requesters-appellants in this proceeding. I live year-round at 9330 Woods Road, and I am part owner of property next door at 9300 Woods Road.
2. Here is a parcel map of the properties involved in this appeal:



3. As seen, adjacent to the west of us are family members, the Fowles/Boruses. All our properties are within ¼-mile east of the property at 10034 Anglers Cove, owned by Scott and Debra Law, at issue in this request/appeal. One property – Kelly Preston Trust, not an appellant/requester in this case – lies between the Fowles/Boruses and the Laws.

4. “Anglers Cove” is not just the name of a street. As can be seen from the parcel map, it is an actual shallow cove on the north shore of Lake Charlevoix. The shore properties to the east of my husband and me are outside the cove around the point. Residents there do not look on the Laws' property as we do.

5. To the west of the Laws the adjacent parcel owner – LaBelle, not an appellant/requester in this matter – is at the end of the cove but the next one to the west (Gilbert) is mostly around the next point, out of the cove.

6. Accordingly there are five owners fully in the cove, of which three are involved in this matter, two of them being appellants/requesters, and one being the Laws.

Noise / Quiet

7. All the parcels in the cove are zoned as R-1 low-density residential districts, required by Ordinance to be “relatively quiet.” Township R-1 districts, most of which line the lakeshore, are the only ones to have a “quiet” restriction. Districts on the inland side of Boyne City Road are not quiet R-1's.

8. Reviewing Exhibit 29, the email of 10-20-19 from Scott Law to Ron Van Zee, when Van Zee was about to become Zoning Administrator (“ZA”), Law noted his helicopter, and the family reunions he and his wife had hosted over Labor Day weekend in 2018 and 2019. They hired bartenders and caterers for the scores of people attending. He described future plans for the 400+ acres, which did not include a boathouse. His plans did include a “dining facility for guest and events [and] a winery facility,” for people including “local organizations.” Three times he highlighted the need for “privacy.” He recounted that later he received a letter from a neighbor depicting the neighbor's version of the 2018 reunion.

9. I recall the 2018 reunion as I saw it from our dock on the shore. The Laws had set up a large jumbotron screen on their lawn, canted in a way to face directly toward our property and be heard by us, disturbing a quiet swim my husband Ellis Boal and I hoped to have that evening. Later Ellis, the neighbor to whom Law referred, wrote him on 6-20-19. The letter included a photo of the jumbotron screen taken the morning after the reunion. It noted Ellis's visit to the Laws' house the day after and his offer to Law that we “would consider the matter settled if it [the screen] were simply not repeated in the future.”

10. However disturbance was repeated in the future.

11. At the 2019 reunion, in the evening I heard loud music coming through the woods over the Fowle/Borus property to our house, again disturbing our quiet

enjoyment. We called the sheriff's office but it issued no citation or report. Unaware at the time of basin-boathouse plans, Ellis wrote Law again on 12-21-19, inviting him to stop by sometime to discuss noise issues. Law did not respond.

12. This past summer on June 19 the Laws again disturbed the neighborhood, as described in Ellis's attached letter of that date to Zoning Administrator Van Zee. This time it was a party with a live band, which we could hear through the woods. From the shore, our sound level meter registered 65-70 decibels. Later the Laws set off loud fireworks. From our house they registered over 100 decibels several times, reverberating through. I could hear cheering crowds on their lawn. The fireworks barge, which I could see from our living room, was anchored off the Fowle/Borus property creating a potential hazard there instead of at the Laws'. (Some 25 years ago there was a fireworks disaster in the City of Charlevoix, in which a person was killed and others wounded.) After the fireworks loud music resumed. Ellis emailed Van Zee about this while it was happening, with follow-up emails on June 20 and July 2, all attached. The emails also noted frequent take-offs and landings of the Laws' helicopter. Helicopters by nature are loud, louder (other than fireworks) than anything ever heard in this neighborhood.

13. The Laws' habit of hosting loud events disturbs this quiet district. Construction of a very large boathouse/dining building with a 4500-square-foot event area, a kitchen, two refrigerators, six toilets, 22 tall viewing windows, a fireplace and

masonry chimney over the water, and a staircase circling an elevator, cannot but generate even more crowds and noise, including more helicopter traffic, in this quiet neighborhood. Noise spreading to our property is one of the reasons that I bring this appeal.

14. The Laws own over 400 acres according to Scott Law's above email. Thus unlike almost every other Hayes Township R-1 resident, only the few near neighbors in the cove will have their quiet enjoyment of property damaged by the disturbance.

15. The parcels where I live are protected in perpetuity by a recorded conservation easement held by the Little Traverse Conservancy recorded in 1990. It states in part:

WHEREAS, the property possesses natural, scenic, open space, and/or recreational values (collectively, 'conservation values') of great importance to Grantor, the people of Charlevoix County, Hayes Township, and the people of the State of Michigan.

WHEREAS, the Property is located in an area with a resort-based economy that is under considerable development pressure and maintaining the scenic and natural beauty of the area is an important planning goal of local governments and area residents;

WHEREAS, the Property contains frontage on Lake Charlevoix and is clearly visible from said public waterway, therefore preservation of the Property's natural values would contribute to the scenic enjoyment of the general public;

WHEREAS, in particular, the Property is located adjacent to Lake Charlevoix and is a relatively intact ecosystem with wetlands as defined by Michigan Department of Natural Resources and, as such, contributes to the water quality of Lake Charlevoix while providing important habitat for a variety of birds, terrestrial mammals and plants and,

WHEREAS, preservation of wetland areas ... is in furtherance of, and will serve the public purposes of clearly delineated federal, state and local conservation policy including, without limitation, the Michigan Shoreland Protection and Management Act of 1970 (MCL 281.632 et. seq.), the Goemaere-Anderson Wetland Protection Act of 1979 (MCL 281.701 et. seq.), and the Federal Water Pollution Control Act of 1972, Section 404, 33 U.S.C. 466 et. seq. (as amended).

The protections the conservation easement provides add considerably to my quiet enjoyment of the property, because my quiet enjoyment includes the absence of detriments.

The Laws have proposed an intense development and non-residential use of their waterfront, exactly the "considerable development pressure" on the whole area referred to in our property's easement.

If the Laws are allowed to construct and use a commercial-sized, non-residential building designed for large events and open this facility to organizations to also use it for large gatherings, many of the benefits our land conservation easement provides would be lost. It shall prevent and interfere with my own beneficial use and quiet enjoyment of our property, and also interfere with the ecosystem of living organisms our conservation easement protects. I would no longer be able to enjoy peaceful swims, relax on the shore, or enjoy the peacefulness of my home during large noisy events.

The Law's proposed excavations, dredging, and large gatherings right over the waters of Lake Charlevoix, would also impact the water quality of Lake Charlevoix, and disfigure the natural shoreline of the shallow cove here, thereby lessening or possibly even negating the positive impacts my properties provide to the overall health and

quality of the Lake. I wrote of these concerns and impacts to the Army Corps this summer.

The value of the conservation easement was estimated by an appraiser at \$113,000 in 1990 dollars. Future value would be lessened in any sale of my property to a subsequent owner if the easement's impact on the land and purpose are destroyed by a neighbor's incompatible, highly developed non-residential use in this quiet R-1 low density residential zone, and contrastingly severely disfigured, unnatural shoreline rendering my own property essentially no longer quiet or scenic.

A similar private easement guaranteeing the protection of a 100-foot shoreland protection strip on my other property (at 9300 Woods Road)'s 210 feet of natural shoreline would also be similarly impacted by the Laws' proposed high-intensity development and disfigurement of the lake.

16. Were the boathouse to catch on fire from the kitchen or fireplace, gravity would pull charred or toxic debris down into Lake Charlevoix waters, where currents and waves could carry it out the channel and over to the property of ourselves and our neighbors.

No notice to neighbors

17. Our appeals/requests note there was no notice to residents about permits or approvals of the Law project in the agendas and minutes of the Planning Commission (“PC”), the reports of the ZA, or on the Township website. There was also no notice to

adjacent and nearby neighbors. Nor was there a public hearing.

18. To specify, I sent FOIA requests to the Township on the dates of August 1, 6, 19, 19, 19, September 6, 10, 16 and 22, and October 1 and 7, for which I received in total over 500 pages, and paid a total of \$551. The first request, on August 1 began:

I am writing requesting information about residents Scott and Debra Law's plans for a boathouse, artificial boat basin and artificial channel that cuts into Lake Charlevoix shoreline and the 50 foot shoreline protection zone.

...

I request, under the Freedom of Information Act, an electronic copy of *all documents in possession of Hayes Township for this project*, including....
[emphasis added]

Looking through the materials received, the Township sent no notice of the project to any neighbor of the Laws, not even those who are adjacent. Cove residents including myself had no chance to be notified of and object to the project.

19 I learned of it only by chance in late July, when it was mentioned to me verbally by a county employee, in passing, while we were discussing another issue.

Township process

20. I filed this appeal at the hall and paid the \$700 fee in person on September 27. It had a cover letter addressed to the ZBA, cc'd to the Laws. Nine days passed in which the Township told us nothing about processing it. On October 6 I called Tom Darnton the ZBA chair to inquire about procedures. He said the ZBA had not been sent the letter or underlying documents.

21. I visited the hall to show ZA Van Zee a copy of MCL 125.3604(2) – which says the ZA was to “immediately” transmit the papers – and ask why they had not been transmitted. Van Zee said the ZBA had a procedural rule which allowed him to hold the matter for up to 10 days, that he had referred the matter to the Township attorney, and he might not send out our letter at all.

22. There was and is no such procedural rule. ZBA rules are not posted on the Township website. Neither does the Ordinance says anything about allowing him 10 days. I asked Van Zee for a copy of the ZBA rules. Neither he nor the Township Clerk could find current signed rules anywhere in the hall.

23. A week later on October 13 Darnton signed procedural rules. The only 10-day rule in it refers to the period within which Van Zee is to contact ZBA officials to set up a hearing date. I received a copy only when I FOIA'd them.

LuAnne Kozma
LuAnne Kozma

Subscribed and sworn to before me, this

16th day of ~~October~~, 2021.

November

Lok

[Signature]
Notary public, Charlevoix County
Michigan

My commission expires: 2-28-2027



**Hayes Township Charlevoix County Michigan
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Interpretation Request and Appeal**

LuAnne Kozma and Irene Fowle, Requesters-Appellants

Scott & Debra Law, Property Owners
10034 Anglers Cove, Charlevoix, MI, 49720
Near Lawvoix Lane
PIN 15-007-132-005-25
PC approval of shoreland basin-boat plan, November 19, 2019
ZA permit # 20-07-01 for boathouse and covered walkway, July 8, 2020

Affidavit of Irene Fowle

1. I am one of the requesters-appellants in this proceeding.
2. I live at 42 Ridgemoor Drive, Clayton, MO, 63105.
3. I am a part owner of property on Lake Charlevoix in Hayes Township at 9370 Woods Road, Charlevoix, MI, 49720. The property, which we call “Fowles' Roost,” came to me through the family of my deceased husband Frank Fowle. His father had bought it from the Crump family in about 1950 and deeded it to Frank's mother who left it to the children.
4. Various of Frank's cousins and courtesy cousins own lakeshore property stretching some $\frac{3}{4}$ -mile to the east of us, having originally been purchased in pieces by their grandparents beginning in about 1912. Old family films, some from the 1920s-30s and others from the 1950s-60s, many of which portray summer life on the shore, have been digitized and are viewable at <http://winnetka-charlevoix.org>.
5. Other co-owners with me are my nephew Ernest (“Bud”) Borus and my

daughter Rachel Dixon, who is married to Jesse Dixon (mentioned in the appeal).

6. Buildings on our property are 300-400 feet from the shore. On the shore we have a small uncovered deck and a seasonal dock for swimming, barely visible in the attached aerial photo. Family used to moor a daysailer and a runabout, both under 20 feet, off the dock but not in recent years. There is a complex of submerged pilings, we think from the logging era, a bit to the east of us, which attract smallmouth bass, where fisher members of our family like to go for sport.

7. As seen in the photo, the property of Scott and Debra is two docks – less than 300 feet – to the west of us. As seen in the Laws' planting plan, attached, Township-approved shoreland changes would extend to the east end of their property, within 300 feet of us.

8. We do not know Scott and Debra, nor do we know beneficiaries of the Kelly Preston Trust, owner of the property between the Laws and us. Until 2018 there were never any problems among the neighbors.

9. Ours is a “relatively quiet” neighborhood, according to the Zoning Ordinance. Most of the land is unmanaged serene second-growth forest.


10. Occasionally, even today now that people have built houses along the shore, we or our guests walk the shoreline looking for Petoskey stones.

11. Beginning in 2018-19 various Fowle family members and I began to hear noises through the trees from the Laws, from helicopter traffic or parties, sometimes


with music or fireworks. Noise like that disturbs the “quiet” neighborhood and we believe should not be allowed.

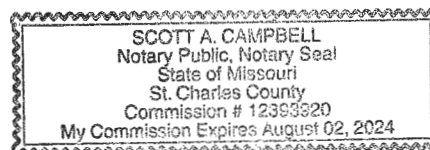
12. This summer through our next neighbor LuAnne Kozma, I learned of the Laws' plans for a basin, boathouse, and large “event area” overlooking the water. I have checked with Bill Borus and Lisa Hicklen – the two most likely family members to have received any notice – and until this summer our family at Fowles' Roost had no notice of the Laws' plans till we heard from LuAnne. Not from the township and not from the the Laws.

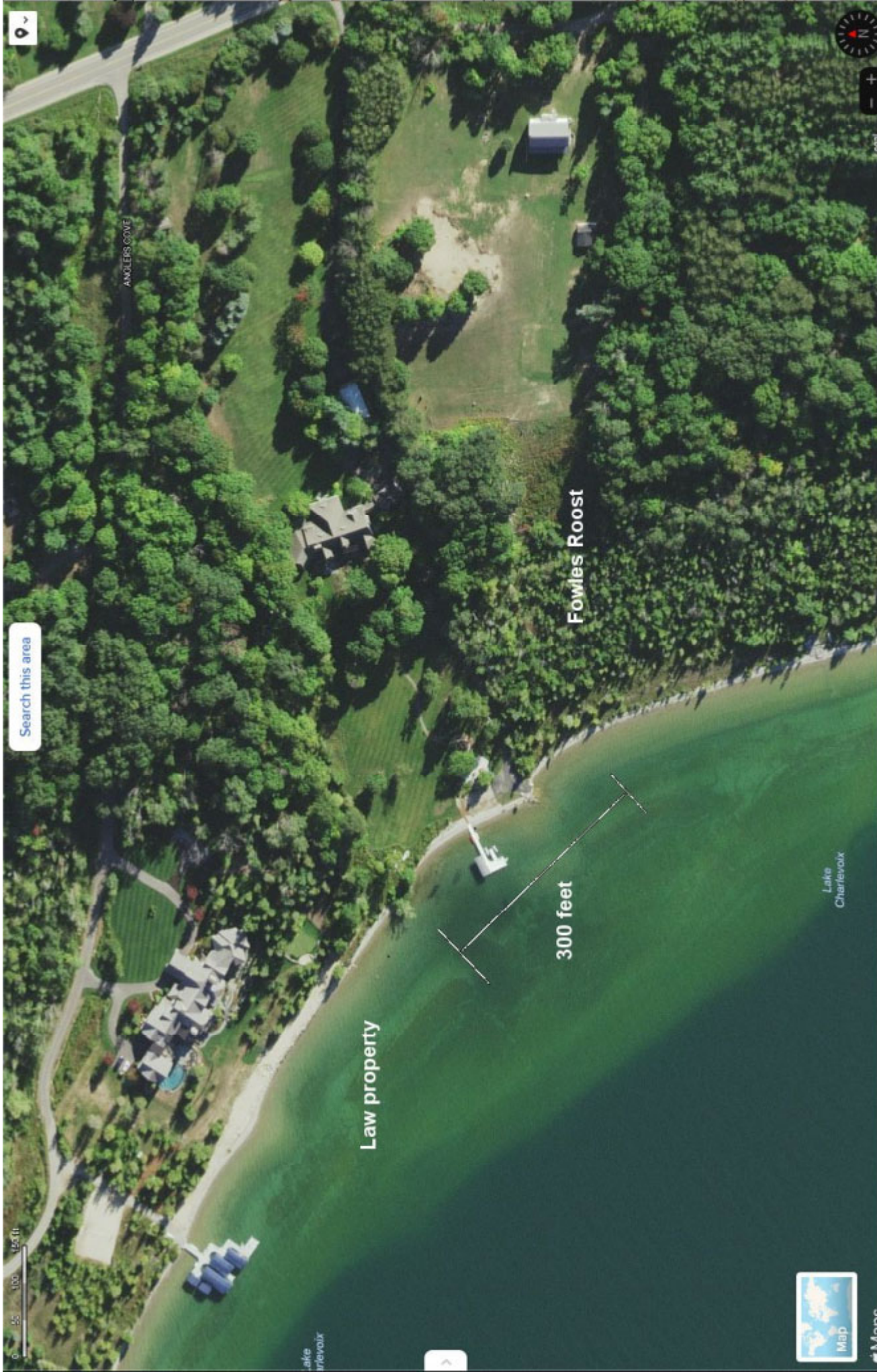
13. I expect the Laws' “events” would include more and louder parties and more helicopter traffic. Their plans do not call for added parking space on Anglers Cove, a private road. The boathouse would also prevent shoreline walks to look for stones. Immediately I knew opposing it was the right thing, and agreed to be a party to this proceeding. I didn't go to LuAnne's website or facebook page.


Irene Fowle

Subscribed and sworn to before me, this
13th day of October, 2021.


Notary public, St. Charles County Missouri
My commission expires: 08/02/2024





Search this area

Fowles Roost

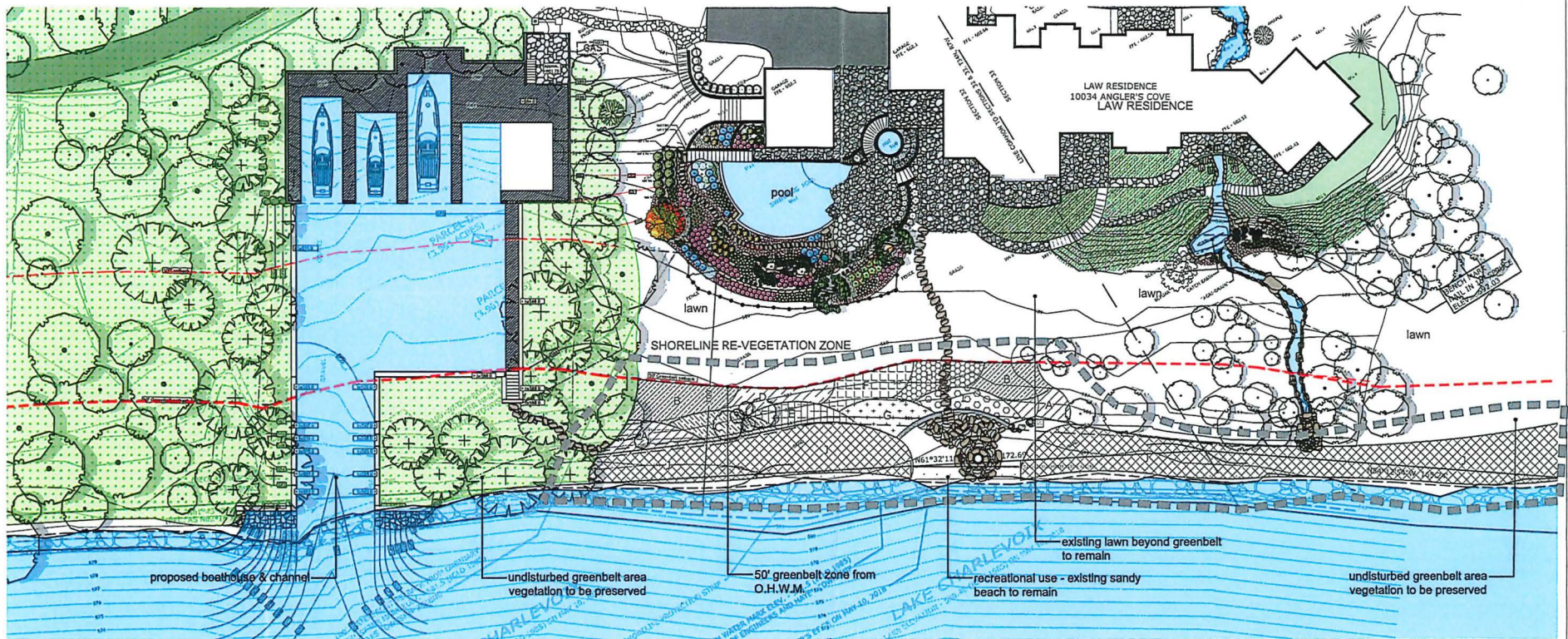
300 feet

Law property

Lake
Charlevoix

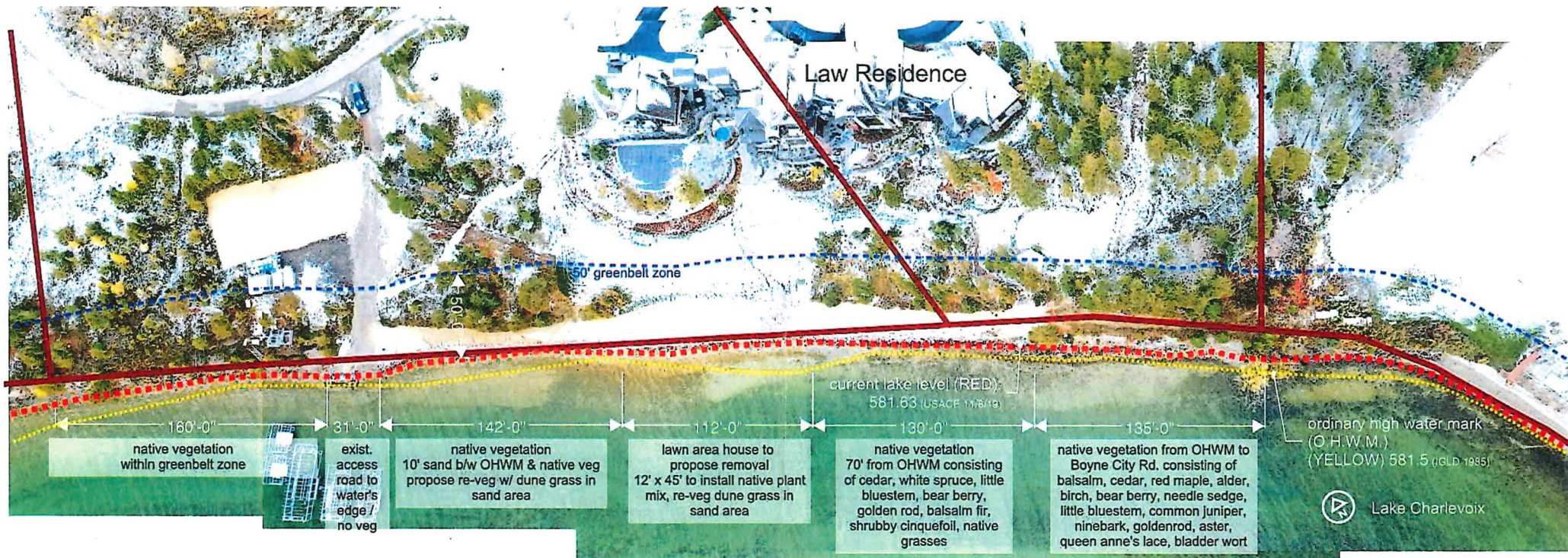


Map

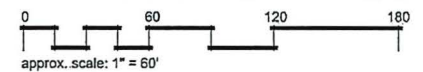


SHORELINE PLANTING SCHEDULE

KEY	Botanical Name	Common Name	Qty	Spacing
A	Archostaphylos uva-ursi	Bearberry	500 sf	24" o.c.
B	Carex eburnea	Bristleleaf Sedge	800 sf	18" o.c.
C	Schizachyrium scoparium	Little Bluestem	300 sf	36" o.c.
D	Juniperus conferta	Shore Juniper	280 sf	6' o.c.
E	Physocarpus opulifolius	Common Ninebark	250 sf	6' o.c.
F	Sporobolus heterolepis	Prairie Dropseed	350 sf	36" o.c.
G	Symphyotrichum tradescantii	Shore Aster	320 sf	24" o.c.
H	Iris versicolor	Blue Flag Iris	320 sf	30" o.c.
I	Potentilla anserina	Silkweed	300 sf	24" o.c.
J	Ammophila brevifolulata	American Dune Grass	7,030 sf	36" o.c.



Disclaimer: Drone photography provided by Drost Landscape. Date of photograph taken 11/7/19.
Parcel data provided via Charlevoix County parcel search & mapping.



Disclaimer: Drone photography provided by Drost Landscape. Date of photograph taken 11/7/19.



Law Property: Shoreline Plant Inventory
Address: 10034 Anglers Cove, Charlevoix, MI 49720
Date: 10/24/2019

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ZA permit # 20-07-01 for boathouse and covered walkway, July 8, 2020

_____/

Affidavit of Jesse Dixon

1. My wife Rachel Fowle Dixon and I live at 240 Selma Avenue, Webster Groves, MO 63119
2. Like her mother Irene Fowle, Rachel is a part owner of Fowles' Roost, the property at 9370 Woods Road, Charlevoix, MI. We go there regularly.
3. I have reviewed the Appeal/Request of this case, with particular attention to mention on page 8 of myself and the walk I took this past summer with Bud Borus (whose actual name is Ernest Borus). I affirm the truth of that statement. I recall the date was July 23.
4. We were on the shoreline of the Law property around 10 minutes, walking from one end to the other and back. We could see a couple of dozen people at the party, which seemed to be just starting, and seemed to be set up for a much larger number of people. The guard with whom we spoke did not have a badge, but seemed to be someone on staff. She was friendly and inquired why we were there but did not ask us

to leave. She said that helicopters would be bringing people in and out, and it was a party for the company (without identifying the company).

5. That day, or perhaps the next day, helicopters arrived and departed about 10 times. Typically when a helicopter came it would be there for about 10 minutes before taking off again. Often they would fly over Fowles Roost on the way in and out.

6. Helicopters make quite a bit of noise. I don't like that and wish they wouldn't come.



Jesse Dixon

JURAT

State/Commonwealth of VIRGINIA)
)
☐ City ☒ County of Newport News)

On 01/11/2022, before me, Jonathan Edouard,
Date *Notary Name*

the foregoing instrument was subscribed and sworn (or affirmed) before me by:

Jesse Dixon
Name of Affiant(s)

☐ Personally known to me -- **OR** --

☐ Proved to me on the basis of the oath of N/A -- **OR** --
Name of Credible Witness

☒ Proved to me on the basis of satisfactory evidence: driver_license
Type of ID Presented



WITNESS my hand and official seal.

Notary Public Signature: 

Notary Name: Jonathan Edouard

Notary Commission Number: 7896724

Notary Commission Expires: 11/30/2024

Notarized online using audio-video communication

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: Affidavit Of Jesse Dixon

Document Date: 01/11/2022

Number of Pages (including notarial certificate): 3