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[Un]Natural Selection - a special season of Points North

The Price of a Permit

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Lake Charlevoix meets Lake Michigan via Round Lake.

On Lake Charlevoix, a landowner is seeking permits to build a controversial boathouse. But conflicts arise where public waters meet private property.

[Un]Natural Selection - a special sea

The Price of a Permit

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Music: Blue Dot Sessions, Podington Bear, Santah

Transcript

DAN WANSCHURA, HOST: From Interlochen Public Radio, this is Points North: A

show about the land, water and inhabitants of the Upper Great Lakes. I'm Dan Wanschura.

Michigan is home to more than 11,000 inland lakes. Now all that water is a public resource. But where it meets private property things can get tricky. Reporter Patrick Shea has been following one example of this conundrum on Lake Charlevoix. Patrick, before we dive in, give us some context here.

PATRICK SHEA, BYLINE: Yeah, sure thing, Dan. So, this is a story about a zoning ordinance.

WANSCHURA: Oh boy. I can't wait. This sounds riveting.

SHEA: Right. I know it's not exactly attention-grabbing. But the underlying theme is that sometimes rules seem to bend for folks with deep enough pockets.

RON VAN ZEE: "People with a lot of money have more ability to accomplish things than people without money. Is it right? Probably not."

WANSCHURA: This is starting to get a little more interesting, Patrick. Tell me more.

SHEA: So in this case, those people with money are in Hayes Township—like you said, on Lake Charlevoix. That township has a lot of rules about what you can and can't do along the shoreline.

WANSCHURA: Right and the project causing a stir right now, it's a boathouse, right?

SHEA: Yeah it is, but it's a lot more than just a garage for a boat or something. First off, the design shows an event center and dining area, with seating for at least 300 people. I don't know about you, but that's not what comes to mind when I think of a boathouse.

WANSCHURA: Yeah I mean, when I think of a boathouse, it's of this little shack-like building where you store some life preservers, maybe a few oars. It's pretty small

SHEA: Yeah, just like a roof over a boat.

WANSCHURA: So, who's trying to build this thing?

SHEA: It's this guy named Scott Law. He runs a software company based in Indiana called Zotec Partners.

He didn't get back to me when I tried to talk with him.

But the part of his project that really applies to this story is an artificial channel, connecting the boathouse directly to Lake Charlevoix. We're talking big machinery, digging out a chunk of the lakeshore. The zoning ordinance says you're supposed to do that. You have to leave a 50-foot buffer of vegetation along the water's edge. It's called a "shoreland protection strip."

But it turns out, when multi-millionaires want to excavate the lake shore, it's kind of hard to stop them.

WANSCHURA: Alright I am into this story— I don't care if it is about a zoning ordinance or not, Patrick. Let's get into it. Today's story: The Price Of A Permit.

On a soggy April afternoon, LuAnne Kozma is standing by the shore of Lake Charlevoix. She lives here, in Hayes Township.

LUANNE KOZMA: So this is an example of what a shoreline protection strip really should be. It's totally native vegetation, very little incursion.

SHEA: She's facing away from the lake, pointing uphill towards a small but dense forest of spruce, cedar and birch that separates her house from the water's edge.

KOZMA: We're gonna go this way.

SHEA: And as she trudges through the melting snow, she starts pointing out zoning violations left and right.

KOZMA: These boat hoists along the shore, those really should be taken out.

SHEA: Next, she motions towards a paved boat ramp.

KOZMA: It makes a turn. But it shouldn't be paved either, it really should be taken out.

SHEA: Finally, she points out two stacks of small stones - they look like they were just picked up from the shore and set down in a straight line.

KOZMA: This is kind of a little revetment of some kind, so they shouldn't have done that.

SHEA: Recently, LuAnne's become an expert on these rules and regulations. But she didn't just pick up the zoning ordinance for some light reading. She's spent the past eight months fighting that proposed boathouse, which would be just a few properties down from hers.



Patrick Shea / Interlochen Public Radio

LuAnne Kozma lives near a proposed boathouse and channel on Lake Charlevoix.

SHEA: She and her husband have filed three lawsuits against the township, their main goal is to stop Scott Law's boathouse. They say it would be a clear violation of the township's rules.

ELLIS BOAL: it's not just the vegetation that's protected, it's the land itself. No excavation, no erection, no structure.

SHEA: That's Ellis Boal, LuAnne's husband, and an attorney.

Lake Charlevoix is Michigan's third largest inland lake. And to be clear, it's not as if its

shores are pristine and untouched right now. Not at all. Aerial surveys show there's been some sort of development up against the water on more than 50 percent of the shoreline. But Hayes township – a small piece of the pie – is an exception.

Scott Law's project would be *almost* unprecedented here. Almost. In 2012, a similar project was approved, at the summer home of Doug DeVos. That's the brother-in-law of Betsy DeVos, the former secretary of education. That channel stands out from the satellite view on google maps. It's huge.

RON VAN ZEE: When they excavated that channel out, I stood up there and those huge dump trucks and excavators looked like little Tonka toys down in the bottom. I mean, it was really deep and really wide, and there was a lot of water being held back.

SHEA: Ron Van Zee is the current zoning administrator for Hayes Township. He wasn't involved in permitting the DeVos' channel ten years ago.

SHEA: The DeVos' did try to minimize environmental impacts. The soil from the lake bed was used to build an island, where they planted lots of native vegetation. But still... The project was a pretty blatant violation of the township's zoning ordinance. And buckle up, because I'm gonna read part of that ordinance now.

"It is in violation of the zoning ordinance to alter or disturb the shoreland protection strip, except to remove dead trees or shrubs, remove invasive species, or for selective trimming of trees."

Notice there's nothing about easy access to luxury yachts as a reason to dig.

LuAnne, Ellis and a growing group of neighbors want to know: why was an exception made for the DeVos project? And why does it seem to be happening again, with the Law project? Ron Van Zee's answer probably won't satisfy them.

VAN ZEE: Life is unfair. I mean, it really is. People with money have more ability to accomplish things than people without money. Is it right? Probably not. But when a

developer comes into a township and says 'oh by the way we have 25 attorneys on staff.' How do you respond to that? They're not coming with a threat, but they are saying 'we want to work with you. But we also have the ability to probably squash you.'

SHEA: That kind of squashing, it's happened here before. In the late 90s, Hayes Township denied a permit for a marina on another part of the lake. But the developers sued the township. In the end, the marina was built, and the only thing accomplished in court was a slight reduction in size.

Ron says the township has limited resources. Legal fees add up; especially when there are other expenses to worry about.

VAN ZEE: It's not just the shoreline that we have to protect in a township. In fact, we're getting ready right now to break ground for a new EMS station right here.

SHEA: Right now, the closest ambulance is in the town of Charlevoix. It can take more than 20 minutes for first responders to make the trip.

VAN ZEE: That's too late for a heart attack.

SHEA: Maybe the township is spread too thin to enforce its own ordinance. Especially when that means saying "no" to a multi-millionaire.

SHEA: Now, this whole thing might just sound like a quarrel between waterfront property owners. But these kinds of projects can impact water that belongs to everyone in the state of Michigan. Jennifer McKay is the policy director with Tip of the Mitt Watershed Council. Her organization is opposed to the boathouse project.

JENNIFER MCKAY: Obviously, the creation of the channel will require dredging. And dredging can have a wide range of impacts, such as decreasing clarity, it alters the landscape where the fish live and spawn. And it basically disturbs the overall ecosystem by removing and killing critical organisms on the lake bottom that play a

very important role at the base of the aquatic food chain.

SHEA: Just one or two projects like this might not have a huge immediate effect. But Jennifer worries other landowners might follow suit.

SHEA: The waters of Lake Charlevoix are a public resource, owned by the state. That's why projects that include dredging need more than just a go-ahead from local governments. They also need permits from the state.

Eric Calabro is an inland lakes analyst with Michigan's environmental agency. Like Jennifer McKay, he's concerned about people developing their shoreline after seeing neighbors do the same.

ERIC CALABRO: Really, the best course forward to avoiding cumulative impacts is getting the education out there. We all have the same end goal. We all want clean water. We all want to be able to fish and take our boats out. Nobody wants to live on a pea green algae lake that they can't use. So we all have the end goal here it's just getting that education out there to reach all these individuals who may not have encountered it before.

SHEA: What if someone is presented with education and information, and they don't care. And they say 'no, I want to be able to pull my yacht up to my house.'

CALABRO: Our program is heavily collaborative with our landowners. We want to allow landowners to exercise their riparian rights, their private property rights, while of course, adhering to our statutes, avoiding and minimizing the impact.

SHEA: The state issued a permit for Scott Law to dredge a channel to his boathouse. The Army Corps of Engineers still has to weigh in. But what about the township's zoning ordinance?

CALABRO: That kind of falls outside the state's regulatory boundary. I would kick that question over to what those local governments - how those local governments are

operating, I guess.

Jennifer McKay puts it a little more bluntly.

MCKAY: I think Hayes Township could do a better job enforcing their ordinance if they wanted to.

SHEA: The township OK'd the boathouse in the past, but that permit has since expired. Eventually, the township will have to decide *again* on approving the construction.

VAN ZEE: Right now, if they started it, it would be a violation of our ordinance. And we'd have to deal with that. And we will. We will.

SHEA: You're saying you think they'd appeal that. Why do you think that is?

VAN ZEE: Because they want it. They want it. If they've gone through all of this effort with EGLE and the Army Corps, they're not gonna stop there. They're gonna continue down that road, because that's the desire. That's how they want to develop the property.

SHEA: Ron Van Zee says he plans on enforcing the ordinance But... he's not looking forward to it.

VAN ZEE: There's no one in the township that wants to make any decision on anything on this property, for fear of a lawsuit. Those aren't fun decisions at all. It's really hard on the township, and it really becomes unfair to the taxpayers - and especially all those that are already trying to protect the lake to have to pay for it again.

SHEA: Back at LuAnne and Ellis' house, signs of spring are everywhere. Inside, sap is boiling down to syrup over the fireplace.

SHEA: In a couple months, the lake will be full of boaters. LuAnne says recreation on

the water is the backbone of this community. And she sees Scott Law’s boathouse as a threat to that.

KOZMA: It’s gonna affect who wants to come up here. This township wants to preserve its rural character, preserve the beauty and athletics of the lake, the quality of the water. It’s written right here, in the ordinance.

SHEA: A few of LuAnne’s neighbors are sitting at the table, and I ask them about what Ron Van Zee said: that all the legal fees that come with enforcing an ordinance aren’t fair to the taxpayers.

One of those neighbors, Debbie Narten, had a pretty compelling response. She points out that there’s a lawsuit against the township from them, the taxpayers. They just want to see the ordinance enforced for everyone. No exceptions.

NARTEN: We could have all been on the same side. We could’ve been all working together to block this. But they chose to fight us instead. Not them, us.

SHEA: Residents are pointing fingers at the township. The township says it doesn't have the resources to enforce the rules. The state says it’s all about educating the landowners. And some landowners, well, they keep developing the shoreline.

And when decisions about the shoreline get punted around, the lake pays the price.

Tags

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Patrick Shea

Patrick Shea is an environmental reporter at Interlochen Public Radio. Before joining IPR, he worked a variety of jobs in conservation, forestry, prescribed fire and trail work. He earned a degree in natural resources from Northland College in Ashland, Wisconsin, and his interest in reporting grew as he studied environmental journalism at the University of Montana's graduate school.

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