

ZBA case submitted by Kozma, Fowle and Hicklen

Exhibit 45

Letter from LTBB and Ron Van Zee email to LTBB

ZBA case submitted by Kozma

Exhibit RR

Letter from LTBB and Ron Van Zee email to LTBB



LuAnne Kozma <luannekozma@gmail.com>

FW: Hayes Township Permit 20-07-01 Appeal and Zoning Ordinance Comments

Spencer McCormack <SMccormack@lrbodawa-nsn.gov>
To: LuAnne Kozma <luannekozma@gmail.com>

Thu, May 12, 2022 at 2:53 PM

Hello LuAnne,

See the email to Hayes Township officials as well as the attached comments.

*Spencer McCormack***Great Lakes Policy Specialist****Environmental Services Program, Natural Resources Department****Little Traverse Bay Bands of Odawa Indians****7500 Odawa Circle****Harbor Springs, MI 49740****(231) 242-1577**

From: Spencer McCormack <>
Sent: Thursday, March 24, 2022 9:15 AM
To: zoning@hayestownshipmi.gov
Cc: clerk@hayestownshipmi.gov; trustee2@hayestownshipmi.gov; hayestrustee5@gmail.com; omiemedia@gmail.com; rwgriffitts3@gmail.com; greenladerex@gmail.com; steve@bulmandock.com; Caroline E. Moellering <CMoellering@LTBBODAWA-NSN.GOV>
Subject: Hayes Township Permit 20-07-01 Appeal and Zoning Ordinance Comments

Good Morning,

My name is Spencer McCormack and I am the Great Lakes Policy Specialist with the Little Traverse Bay Bands of

Odawa Indians (LTBB). Due to the lack of quorum at the February 2nd, 2022 public hearing and subsequent early dismissal, LTBB was not able to provide important comments regarding the appeal of permit 20-07-01 for [10034 Anglers Cove, Charlevoix, MI 49720](#) and the interpretation of the Hayes Township Zoning Ordinance, specifically the Ordinary High-Water Mark after inland dredging. Please accept these comments regarding those important topics. If there are any questions, please feel free to contact me by email at smccormack@ltbbodawa-nsn.gov or by phone at 231-242-1577. Thank you very much for your time.

Miigwech,

Spencer McCormack

Great Lakes Policy Specialist

Little Traverse Bay Bands of Odawa Indians

Harbor Springs, MI 49740

(231) 242-1577



Hayes Township Permit 20-07-01 Appeal and OHWM Comments (LTBB).pdf

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Little Traverse Bay Bands of Odawa Indians
Natural Resource Department
7500 Odawa Circle
Harbor Springs, MI 49740
Phone: (231)242-1670
Fax: (231)242-1690



March 24th, 2022

Hayes Township Zoning Board of Appeals
Hayes Township Hall
9195 Major Douglas Sloan Road
Charlevoix, MI 49720
231-547-6971

Re: February 2nd, 2022 Public Hearing

To Whom it May Concern:

On behalf of The Little Traverse Bay Bands of Odawa Indians (LTBB), please accept these comments regarding the public hearing that was intended to be held on February 2nd, 2022 regarding the appeal of permit 20-07-01 for 10034 Anglers Cove Charlevoix, MI 49720 as well as the continued interpretation of Hayes Township Zoning Ordinance (ZO). LTBB appreciates the opportunity to provide feedback on these important topics.

LTBB's traditional way of life and rights to hunt, fish and gather in the Ceded Territory were reserved in the 1836 Treaty of Washington and reaffirmed by Federal Court in the case of *United States v. Michigan* (WD MI Case 2: 73 CV 26). LTBB is party to the 2000 Great Lakes and 2007 Inland Consent Decrees entered in that case.

LTBB would like to acknowledge the overlapping jurisdiction of Hayes Township with the homelands of LTBB. Tribal citizens have been utilizing these waterways and forests for millennia and retain hunting, fishing and gathering rights throughout Hayes Township as well as the entirety of the 1836 Ceded Territory by way of the 1836 Treaty of Washington. However, these practices are not just ways of gathering food, they are at times ceremonial and spiritual in nature. We do not see natural resources, culture and spirituality as being separate but as one and the same. Therefore, the integrity of our surrounding natural resources is not just a physical characteristic but affects the integrity of our spiritual relationship and overall well-being. The permitting authority delegated to Hayes Township has the power to affect the ability and extent of our tribal citizens to exercise treaty rights and maintain a quality physical and spiritual relationship with our environment.

On January 26th, 2022, the LTBB Great Lakes Policy Specialist was in attendance for the Hayes Township Zoning Board of Appeals (ZBA) public hearing regarding the interpretation of the ZO. One of the topics of interest for this public hearing was the interpretation of the Ordinary High-Water Mark (OHWM) and the placement of the OHWM after inland dredging occurs. The interpretation of the OHWM bears significance due to potential permitting of structures on or near the OHWM according to the ZO. The placement of structures waterward of the OHWM can potentially obstruct tribal citizens from being able to harvest treaty resources, particularly if treaty resources such as fish are drawn underneath the waterward structure for cover. The

removal of shoreline may have environmental implications that negatively affect riparian habitat and water quality which in turn can negatively affect treaty resources as well.

Following a presentation at the January 26th public hearing by a Hayes Township citizen providing an interpretation of the placement of the OHWM after inland dredging, the ZBA agreed with the citizen that the OHWM would move inland subsequent to dredging of the shoreline. However, just before the meeting was adjourned, the ZBA seemed hesitant to remain committed to their earlier determination that the OHWM would move inland with dredging. On February 2nd, 2022, the ZBA was scheduled to hold an additional public hearing including continued discussion regarding the ZO and the OHWM but also to address the appeal of permit 20-07-01 for 10034 Anglers Cove, Charlevoix, MI 49720. The February 2nd public hearing did not take place due to a lack of quorum. LTBB was not able to provide comment regarding the OHWM and the appealed permit 20-07-01 at the February 2nd public hearing but would like to at this time.

Hayes Township Zoning Ordinance, Article II defines the Ordinary High-Water Mark as,

The line between upland and bottomland that persists through successive changes in water levels, below which the presence and action of the water is so common or recurrent that the character of the land is marked distinctly from the upland and is apparent in the soil itself, the configuration of the surface of the soil, and the vegetation.

This definition of the OHWM is word for word verbatim with the State of Michigan's (SOM) definition for OHWM and can be found at Part 301 Inland Lakes and Streams of the Natural Resources Environmental Protection Act (NREPA) (PA 451 of 1994) and MCL 324.30101. Part 301 of the NREPA are the applicable rules for Lake Charlevoix and that is confirmed by EGLE permit WRP026483. Part 325 of the NREPA are applicable to the Great Lakes and that may be where some misinterpretation may be stemming from as Part 325 states the OHWM would remain in its original location subsequent to man's alteration. It is LTBB's understanding that rule applies to filling of bottomlands, waterward of the OHWM in Great Lakes waters. The United States Army Corps of Engineers (USACE) defines the OHWM under 33 CFR 328.3 (c)(7) as,

...the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

In the event of the removal of shoreline and inland dredging, water would move inland and create bottomlands over which were previously uplands. There would be an easily identifiable difference between the aquatic and terrestrial habitats due to the changes in soil composition, vegetation and the existence of water vs upland. Furthermore, a new "mark," "impression" or clear physical change due to the consistent presence of water would be found in relative proximity to the water's edge within the new basin. According to definitions provided by USACE and SOM, the OHWM would follow inland with dredging. Pragmatically, there cannot be public waters, like the newly created public waters proposed for permit 20-07-01, without a corresponding OHWM. If the OHWM were to "remain in its original location" after dredging the shoreline, it would not meet the definition of an OHWM provided by USACE, SOM and the ZO.

That erroneous interpretation of the OHWM would put it directly in the water, absent of corresponding shoreline or upland.

Additionally, LTBB has been able to confirm that a newly located OHWM would be the interpretation by USACE and SOM as USACE and Environment, Great Lakes, and Energy have concurred. It does not make sense for the ZO to adopt the exact definition of OHWM as the SOM but to interpret and enforce the OHWM differently. LTBB contends that Hayes Township adopted the same definition of the OHWM as SOM with the intention of interpreting the OHWM in precisely the same manner as SOM. Hayes Township ZO section 3.14 includes "Setback Area Regulations" that prohibit the placement of structures within 100 feet of the OHWM on Lake Charlevoix. Section 9.01 of the ZO also states, "the Zoning Administrator shall under no circumstances...vary the terms of this Ordinance in carrying out the duties of the Zoning Administrator."

Based on the regulatory interpretations of the placement of the OHWM and the ZO, permit 20-07-01 for 10034 Anglers Cove, Charlevoix, MI 49720 should not have been issued. It is LTBB's understanding that the permit is now expired and the ZBA have confirmed this at the January 26th, 2022 public hearing. However, LTBB urges the Hayes Township Zoning Administrator to reevaluate the permitting of this project, should the applicant reapply, and to deny any such permit. It is LTBB's interpretation that many of the stipulations found in the ZO were put in place to preserve the natural quality of the environment. Northern Michigan is only going to get "richer" and setting the correct precedent and enforcing environmentally sound laws and rules are the only way to preserve the ecological integrity as well as the sense of high-quality environment that coincides with natural, relatively undisturbed habitat. Furthermore, allowing one resident to pursue a project like the applicant at 10034 Anglers Cove would not be the end of projects of that character. Other residents would certainly follow suit and assuredly, Lake Charlevoix's environmental integrity would continuously be compromised along with the integrity of treaty reserved resources.

LTBB appreciates the opportunity to provide comment on these important topics and looks forward to working with Hayes Township in the future.

Sincerely,

Douglas Craven
Natural Resources Department, Director
Little Traverse Bay Bands of Odawa Indians



LuAnne Kozma <luannekozma@gmail.com>

FW: Hayes Township Permit 20-07-01 Appeal and Zoning Ordinance Comments

Spencer McCormack <SMccormack@lrbodawa-nsn.gov>
To: LuAnne Kozma <luannekozma@gmail.com>

Thu, May 12, 2022 at 2:54 PM

Here is the reply from Ron VanZee.

Spencer

From: zoning hayestownshipmi <zoninghayestownshipmi@gmail.com>
Sent: Monday, March 28, 2022 11:18 AM
To: Spencer McCormack <SMccormack@LTBBODAWA-NSN.GOV>
Subject: [EXTERNAL] Re: Hayes Township Permit 20-07-01 Appeal and Zoning Ordinance Comments

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Spencer,

First, as Zoning Administrator for Hayes Township I need to clarify false information about zoning permit 20-07-01. The application and permit were for an attached (to the house) structure that met all zoning ordinance requirements including more than 100' setback from Lake Charlevoix. If an application meets all zoning ordinance requirements, I am required by law to issue that permit. The application for the boat basin had not been approved and had been considered inactive in our files.

Hayes Township cannot grant authority to dredge or excavate the shoreline of Lake Charlevoix. In fact, our ordinance prohibits excavation of the 50' greenbelt area.

Our Shoreland Review Committee and our Planning Commission did approve a greenbelt plan appropriate for the structure that was permitted. They went even farther knowing the property owners would probably consider a boat basin at some point since they had made application to EGLE and Army Corps and the Planning Commission conditioned the permit with denser native plantings than is required in our ordinance. Again, Hayes Township does not have the authority to permit dredging or excavation of the shoreline.

Hayes Township also does not control Ordinary High Water Mark. We depend on other agencies and of course case history to make determinations and set requirements in our zoning ordinance. We are currently in the process of rewriting our ordinance to hopefully provide clearer language for many aspects of that ordinance.

I hope this clarifies some of your concerns. If you have further questions, always feel free to contact me.

Sincerely,

Ron VanZee

Hayes Township Zoning Administrator

[Quoted text hidden]