

# News-Review

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CHARLEVOIX

## Judge dismisses waterfront development lawsuit against Hayes Township



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The Petoskey News-Review

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**Editor's Note:** The online version of this story has been updated to say Tip of the Mitt Watershed Council is not involved in the lawsuit.

CHARLEVOIX — For now, the legal battle surrounding a proposed Lake Charlevoix waterfront development is over.

Last week, 33rd Circuit Court Judge Roy C. Hayes III made the decision to dismiss the lawsuit against Hayes Township officials alleging lack of due process and conflict of interest surrounding the construction of a boathouse and private marina on a residential property owned by Scott and Debra Law off the coastline at 10034 Anglers Cove.

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With support from Tip of the Mitt Watershed Council and other environmental groups concerned with watershed protection, plaintiff (and neighbor) LuAnne Kozma and her husband and legal representation Ellis Boal — whose family has owned a cottage on the lake since 1912 — have been actively trying to stop the shoreline project. The project had received a since-expired conditional approval from the township in 2019.

However, the recent lawsuit before Judge Hayes wasn't about environmental impact. It was about township administration — or the alleged lack thereof. Tip of the Mitt and other outside groups are not involved in the lawsuit.

An improper position on the zoning board of appeals from a previous township employee (ex-deputy supervisor Roy Griffiths), a lack of membership on the zoning board of appeals and the improper noticing of public hearings were included in the plaintiff's lawsuit.

Hayes dismissed each of Kozma and Boal's allegations against the township across the board, stating they were "moot" points that had already been remedied by the township and not the jurisdiction of the court to intervene upon.

"I don't find the lawsuit to have a proper basis at this time," said Hayes during his dismissal of the case.

"I don't think this lawsuit should have been brought," he added, agreeing with the assessment from Hayes Township's attorney Todd Millar that the suit was "devoid of arguable legal merit."

Despite this, Judge Hayes stopped short of determining the plaintiff's lawsuit to be frivolous, which could result in sanctions. Stating, "There were legitimate complaints the plaintiff had with Mr. Griffiths' service on the ZBA ... and while some of those might have been overblown or unfounded, it's probably a half step too far for today's purposes for me to say this entire lawsuit was frivolous."

During the hearing, Millar said, "The absurdity of their positions in this case, your honor, are highlighted by their argument that appears to be that I have to give all my legal advice and council to my client (Hayes Township) in a public meeting and only when a full board is present."

Millar did admit there was an error in the public noticing of the April zoning board of appeals meetings (it was announced for Feb. 20 instead of April 20), but it was corrected in the next newspaper cycle.

Boal said the township provided false information to the public by publishing the statement that "any member of the public could stop by the township hall to review of the copy of the papers during normal business hours."

"The township doesn't have normal business hours," said Boal. "You can only go there if you make an appointment. You cannot just stop by. That is an untruthful statement in a public notice in the newspaper."

Judge Hayes also noted there was no action taken for him to make a determination on regarding the Law's proposed development.

“The court doesn’t have oversight or review the actions of other governmental entities until there is a final appealable decision in which the court has specific jurisdiction and standing to consider the issues,” he said.

“I have serious concerns about whether the plaintiff in this case would have standing as an aggrieved party to complain about the township’s actions or inaction — whatever the result may be in regards to the Law property. But because the development itself is not properly before the court, there is no final action by the township that would even be appealable. The township has not taken any final appealable action regarding the Law property,” Hayes said.

“The claims are dismissed with prejudice ... if the township wants to pursue sanctions we can have a brief evidentiary hearing on that topic and I’ll make a final determination at that point,” Hayes concluded.

At the end of the hearing, Boal expressed his desire for the township’s ZBA meeting to be scheduled sooner than later, preferably this summer and to not be postponed.

Judge Hayes interrupted Boal's comments saying, “That is not an issue that’s before the court and not a proper use of the court’s time.”

The originally scheduled April ZBA meetings calling for a reinterpretation of the zoning ordinance regarding the Lake Charlevoix shoreline development had been canceled due to the pending litigation from the plaintiffs.

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