



LuAnne Kozma &lt;luannekozma@gmail.com&gt;

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**Fwd: Kozma v Hayes Board: settlement proposal**

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**Ellis Boal** <ellisboal@voyager.net>

Wed, May 18, 2022 at 4:16 PM

To: Todd Millar &lt;tmillar@parkerharvey.com&gt;

Cc: Guy Silvasi &lt;gsilvasi@parkerharvey.com&gt;, Jennifer Stratton &lt;JStratton@parkerharvey.com&gt;, LuAnne Kozma &lt;luannekozma@gmail.com&gt;

Todd,

LuAnne drafted and approves the following:

As to Doug, it is apparent from the PC minutes of 11-19-19 (attached) that both Roy and Doug were present and voted to approve the Law plan. As you stated to the Court on April 6 (attached) on page 2, Roy "is prohibited from participating in the appeal because he participated in the decision being appealed as a Planning Commission member." Accordingly because both voted on the same matter involving the same parcel while on the PC, the same also applies to Doug. You were representing the Township on that matter, so your statement binds the Township (including Doug who is a Board member). Doug being off both cases is a term that we need agreement on now, not later.

As to Ron's statement in ¶¶ 5, 20-21 of his 11-29-21 affidavit -- that nothing in the ZO regulates a boat basin or canal, and the boathouse is "attached" to the house and therefore "is a permitted addition to the house that can be approved by the Zoning Administrator" -- and whether his statements amounted to appealable "determinations," your reply brief of December 3 (attached) used that exact word -- "given . . . his determination that it is compliant with the Zoning Ordinance" -- at page 4 in describing it. (The affidavit is attached to the reply brief.) You were representing not just the Township, but also ZBA Chair Tom and ZBA Secretary Kristin in that matter, so the statement in the brief binds all of them. We would like it understood in the settlement that all consider Ron's affidavit statements as "determinations."

As to scheduling, we should be more specific. May we suggest June 8 and 9, June 22 and 23, and June 29 and 30, all in the evenings so more of the public could attend. (June 15-16 we are out of town.) Below is our list of everyone who wrote or spoke to the ZBA or were present at one of the meetings. The case interests a lot of people, many or most of whom will want to be present in person or on Zoom. People who work would have to miss a hearing held in daytime.

As to the 15-day notices, we need your agreement to all the terms laid out in Point 5. The January 26 partial hearing was nullified and poisoned due to Roy's participation and influence and there was no quorum, therefore there is no continuation of a hearing that was not allowed to take place that day. In addition Doug was prohibited from hearing the case. We have to have it understood now that the Township will hold the interpretation public hearing anew from the very beginning, starting with the seating of a new ZBA panel from the re-populated ZBA, and following the Order of Business as specified in the ZBA Rules of Procedure so the Zoning Administrator is not given a seat at the table for rebuttal, made a party, and the introduction of the case and presentation of exhibits are properly done. There can be no tainting the procedure and no misunderstanding on this re-do. The interpretation case must be noticed as indicated on my client's application with co-requesters that the case involves a specific parcel of property, requiring full Section 103 public notice. As a reminder, the requesters notified the Laws of the case from the very start of the application process and sent them all our papers. It would also help if the Township would agree now to reinstitute its normal business hours so that people who want to see the files can do so. If appointment is the only way to review the files, then the public notice should state that. Another option we'd agree to is if the Township put the case files on the website.

As to training, we accept your representations as to the adequacy of the training everyone has had or will have prior to the first hearing. However our insistence above that the ZBA follow its Order of Business as specified in the ZBA Rules

of Procedure for both the interpretation and appeal cases is a term of this settlement with the Board. We just don't want anymore procedural surprises.

Another point about public viewing of the ZBA files, since our request we learned that the Township has been withholding some public comment letters, including an email and letter from Little Traverse Bay Band of Odawa Indians who wrote on March 24 and a response by Ron to the LTBB on March 28. They were not in the file when LuAnne made an appointment with the clerk to inspect the files for the two ZBA cases on May 12. She only learned of that letter's existence that day. Others were missing as well, and she wrote to the clerk and ZBA about it. We assume the letter and Ron's response never made it to the ZBA either. When she realized there were no public comment letters included in the file for her appeal case at all, she asked Kristin to make sure all public letters appear in both files since the public is not sure which case they are commenting on and are usually commenting on both. She agreed. The Township clerk and zoning administrator have responsibility to make sure the ZBA and the ZBA office files contain "all of the papers."

The Township should agree to forward to us and the ZBA any and all case file materials such as public comment letters that come in as soon as they are received.

If we agree, LuAnne will immediately dismiss her suit against the Township with prejudice.

Ellis

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Boal Winnie  
Boal Scott  
Borus. Bud  
Boyko Tim  
Brede Stephen  
Burger Dean  
Catt Jessica  
Conklin William & Dan  
Cook Kacey (Tip of the Mitt)  
Denzinger Greg  
Drost Bob  
Fowle William  
Fowle Frank  
Fowle Noah  
Golski Harry (counsel to the Law family)  
Graber Deborah  
Greenslade Rex  
Henne Bill  
Hicklen Lisa  
Hoadley Paul  
Hutcheson Danielle  
Hutcheson Mike  
Jess Bob (ZBA member)  
Kantola Anne  
Marks Margie  
McCormack Spencer (LTBB)  
McMahon Jim  
Meadows Guy (EGLE)  
Moore Lucy  
Moore Ayrie  
Narten Debbie  
Narten Chris  
Pakieser MaryLee  
Parsons Fred

Preston Kelly  
Shepherd Frank  
Slocum Rod  
Smith Jean  
Smith Roger  
Solomon Nancy  
Sommers Laurie  
Tripp Shirlene  
Wagner Joan  
Westhoven Arlene  
Williamson Sam  
Wright Cole  
Zipp David

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On 5/17/2022 3:49 PM, Todd Millar wrote:

Mr. Boal,

Please see my comments below regarding the Township's willingness to settle the case.

Let me know if your client is in agreement.

Todd

**Todd W. Millar**

*Attorney*

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**From:** Ellis Boal <ellisboal@voyager.net>  
**Sent:** Thursday, May 12, 2022 2:19 PM  
**To:** Todd Millar <tmillar@parkerharvey.com>  
**Cc:** Guy Silvasi <gsilvasi@parkerharvey.com>; Jennifer Stratton <JStratton@parkerharvey.com>  
**Subject:** Kozma v Hayes Board: settlement proposal

Todd,

I write to propose settlement of our litigation so ZBA hearings can begin, a proposal which LuAnne approves.

1. The Township has now properly populated the ZBA, with one being from the PC, plus two alternates. **Agreed.** A hearing for other parties (who we do not know) is scheduled for May 25. Roy is out, though he would be welcome to speak as a citizen at any ZBA hearing. **OK.**

2. It is in everyone's interest that ZBA hearings on our matters happen soon, rather than being delayed by litigation through the summer. **The ZBA will work to get these matters on the calendar as soon as the lawsuit is dismissed.**

3. Because so few of the ZBA members and alternates have been trained, the Township should provide them a training similar to the one you gave on January 11. The trainer could be you or one of the organizations named in the ZBA Rules. (We think that if Bruce had attended on January 11 he would have known not to approach Roy after adjournment on January 26 to discuss the merits of our matters.) Please let us know when the training is so we and others can attend and observe. Training helps us too. **The Township would make several observations about this issue. First, there is nothing that says training must occur before a particular meeting. Training can be by any entity similar to those listed in the rules. Finally, it is the Townships position that citizens do not have standing to enforce a municipal body's own internal rules of procedure. Only the municipal body may do that. That being said, most of the ZBA members have already obtained their 4 hours of training for the year. According to the clerk, the following training has been completed:**

**Tom Darnton completes 6 hours of MSU training per year. Didn't complete last year due to covid but is signed up for training in early June.**

**Bruce Deckinga (3 hours MTA webinar training plus Millar training video)**

**Bob Jess (working on MTA training webinar series)**

**Doug Kuebler BOT Rep (3 hours MTA webinar training plus Millar training video)**

**Rex Greenslade PC Rep (working on MTA training webinar series)**

Janice Vedder Whipple alternate (3 hours MTA webinar training plus Millar training video)

Rod Slocum alternate (3 hours MTA webinar training plus Millar training video)

4. We would not be averse to the first hearing going a bit longer than three hours, should it appear at 9:00 pm that the ZBA is close to a decision. But if there is need for an overflow hearing, it may not conflict with the date and time of the scheduled second hearing for which a public notice has been circulated. *Baura v Thomsma*, 321 Mich 139 (1948). In other words, separate 15-day public notices should precede each hearing. **The Township does not have an issue with this. A concern is overlapping meetings that might cause some confusion. The Township is looking into a daytime meeting where the matter can be considered at one meeting, albeit a long meeting or two consecutive nights. Tom Darnton is looking into the availability of the ZBA members for each option.**

5. The notices should not state they are continuations of the hearings of January 26 and February 2. **The Township is in agreement to send out new 300' notices and publish in the paper 15 days ahead of each meeting.** They should spell the names of the parties correctly. They should show the owners and address of the subject property. They should not state untruthfully that the paperwork can be reviewed by stopping by the Hall "during normal business hours," given that since February the Hall has had no normal business hours. Per ZO § 8.06(1)(A)(4) the notices must also allow public comments to be submitted in writing to the ZBA Secretary (not the ZA) at least an hour before the start of each hearing, including by letter or email, giving her email address. **The notices will comply with the ZEA and the OMA.**

6. The notice for the appeal should not use the prejudicial word "alleged" to describe the determinations being appealed, given that several sections of ZO § 8 and article 6 of the MZEA state that "determinations " are appealable. **This is fine. Keep in mind that the first issue that the ZBA will likely address is whether or not what you are trying to appeal is in fact a "determination".**

7. As I stated to you by email of April 9 (which I can re-send if needed), we expect Doug to recuse for the same reason your brief to the Court on April 6 said on page 2, that Roy would be "prohibited from participating in the appeal" (were he still a ZBA member), because he voted previously on the PC to approve the same matter at issue. Doug also voted on that matter so he too is prohibited. Since the matters concern the same owners and property, Doug should recuse both from the appeal and the interpretation. (We expect you have already communicated this objection to your client.) **If Doug is determined to have voted on the same matter as a member of the Board or PC, then he will be disqualified per MCLA 125.3601(13).**

8. LuAnne would dismiss her lawsuit on the above basis. **The dismissal must be with prejudice.**

Ellis

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### 3 attachments



**22.04.06 Objection to Hearing on MSD\_AS FILED.PDF**  
266K



**21.12.03 Reply Brief\_AS FILED.PDF**  
4096K



**19-11-19\_pcMinutes.pdf**  
882K