

**State of Michigan
Charlevoix County Circuit Court**

LuAnne Kozma,

Plaintiff

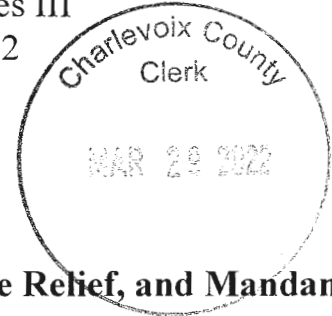
v

Case No. 22-0728-27CZ

Hon. Roy C. Hayes III

Date filed: 3-29-22

Hayes Township Board of Trustees,
Defendant



**Verified Complaint for a Declaratory Judgment, Injunctive Relief, and Mandamus
and for an
Order to Show Cause Why a Preliminary Injunction Should Not Be Granted**

I. Introduction

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in the office of the
Charlevoix County Clerk

1. Plaintiff LuAnne Kozma seeks
 - (a) a declaration¹ that a member of a Township's Zoning Board of Appeals ("ZBA") and Planning Commission ("PC") lost both positions automatically when the Township Supervisor employed him as Deputy Supervisor.
 - (b) an order and mandate that the Township to schedule a public hearing under the Michigan Zoning Enabling Act (MZEA)² to consider the removal of certain members of the ZBA prior to it convening hearings involving Kozma, and
 - (c) an order and mandate that the Township populate a full 5-member ZBA, one of whom is a PC member, plus an alternate, prior to Kozma's hearings.
2. The Court has jurisdiction.³
3. Kozma's ZBA hearings are now tentatively scheduled for April 20 and 27,

1 MCR Rule 2.605.
2 MCL 125.3604(9).
3 MCL 600.601(1).

2022.

4. Unless otherwise indicated, all dates below are in the period September 2021 to the present.

5. Previously Kozma sued the Township twice in this Court concerning scheduling ZBA hearings about the underlying matter, a channel, basin, and boathouse for which property owners Scott and Debra Law have sought permits on Lake Charlevoix in Hayes Township. The Township issued an approval in 2019 and a permit in 2020, with no public announcement. Kozma learned of them only by chance in the summer of 2021. By then the approval and permit had both expired, but in September 2021 the Township Zoning Administrator (“ZA”) and PC chair insisted they had not expired. Later that month she filed Appeals and Interpretation Requests (joined by Irene Fowle and Elisabeth Hicklen) with the ZA for the ZBA.

II. Previous suits, interpretation requests, appeals, ZBA scheduling

6. Kozma's first suit⁴ sought an order that the ZA transmit the Appeals and Requests to the ZBA, which the MZEA required him to do “immediately” on the date of his receipt, September 27.⁵ He transmitted them – 16 days late – only after being served with the suit, whereupon Kozma dismissed it unilaterally.

7. Kozma's second suit⁶ was occasioned both by ZBA Chair Tom Darnton's

4 Case # 21-0570-27-CZ.

5 MCL 125.3604(2).

6 Case # 21-0604-27-CZ.

refusal to timely schedule a hearing on the matters as required by ZBA rules,⁷ and also by his unilateral decision – without concurrence of a ZBA majority⁸ – refusing to entertain the Appeals. The suit sought to compel the ZBA to schedule a hearing promptly. The Court declined at a hearing on December 10, citing a lack of irreparable harm. However in briefing on November 12 and December 3, the Township admitted the permit and approval had both expired, mooting the “Appeal” parts but not the “Interpretation” parts of the September 27 papers.

8. On December 20 Kozma filed new ZBA Appeals, of determinations the ZA had made in an affidavit in the second suit.

9. Though months untimely, the ZBA finally scheduled the Interpretation hearing for January 26. It set an Appeal hearing for February 2. Public notices⁹ went to near-neighbors and the newspaper.¹⁰

III. ZBA hearings

10. The Township Zoning Ordinance (“ZO”)¹¹ requires that the ZBA consist of five regular members plus alternates.¹² One regular member must be a member of the PC.¹³

11. On January 11 the ZBA elected its officers and the Township Attorney

7 Exhibit 1, ZBA Rules, § 3.3.

8 MCL 125.3603(2).

9 MCL 125.3604(5), 3103(2).

10 Exhibit 2, notices in the Petoskey News-Review, January 11, 2022.

11 Downloadable at <https://www.hayestownshipmi.gov/zoning-ordinance/> .

12 ZO § 8.01, 801(4).

13 MCL 125.3601(4); ZO § 8.01(1).

conducted a training session.

12. On January 23 counsel wrote the ZBA, flagging recusal issues for the upcoming hearings.¹⁴ On January 24 and 25 regular ZBA member Frank Shepherd (elected ZBA Vice-Chair on January 11) recused, and then resigned the ZBA itself, to be effected by March 1.¹⁵

13. A second regular member, Bob Jess, declined to appear on January 26, due to a conflicting meeting. The ZBA convened that day at 6:00 pm with three regular ZBA members plus the alternate.

14. One member of the ZBA panel was Roy Griffiths. The others were Doug Kuebler, Bruce Deckinga (an alternate), and Darnton as chair.

15. Kozma, representing Fowle, Hicklen and herself, presented a 40-minute argument and slide show with 38 exhibits, documenting their position. The Township's amplification equipment being spotty, with permission she used her own amplification. Undersigned counsel also presented briefly. Colloquy and public comment ensued, after which the ZBA began public deliberations. The hearing adjourned without decision at 9:00 pm, to be continued on February 2.

16. Kozma recorded the January 26 hearing with permission¹⁶ and saved the recording to an mp3 file.¹⁷ Directly after the adjournment her mics picked up improper¹⁸

14 Exhibit 3, letter Boal to ZBA, without attachments, January 23, 2022.

15 Exhibit 4, Shepherd recusal and resignation letters, January 25, 2022.

16 MCL 15.263(1).

17 22-01-26_hearingRecording.mp3 .

18 Exhibit 1, ZBA Rules, § 2.5.

ex parte colloquy of two ZBA members and the ZA about the issues, in which one of the ZBA members, Griffiths, impugned the Requesters' arguments. He added regarding the proposed boathouse:

They [build] that big building because they're freaking multi-millionaires and they can afford to build a big building. . . . They can do whatever they damn well want. It's private property.¹⁹

17. The other ZBA member was Deckinga. Requesters provided a copy of the .mp3 recording to the ZBA Secretary on January 31 and she placed it in the ZBA record.

18. On February 1, Kozma and undersigned counsel wrote the ZBA objecting among other things to Griffiths's and Deckinga's *ex parte* conversations.²⁰

19. Also on February 1, Kozma and counsel wrote the ZBA²¹ objecting to Griffiths being a ZBA member, due to simultaneously being the Township's employed Deputy Supervisor, in violation of the MZEA²² and the ZO.²³

20. At a meeting of the Board of Trustees (“the Board”) on February 8, 2021, the Supervisor had asked Griffiths to be his Deputy; Griffiths accepted. He took an oath of office and served with pay at the Supervisor's pleasure.²⁴ As of that date Griffiths could not and did not sit legally on the ZBA; in effect he resigned from the ZBA that

19 Starting at 3:04:15 of the .mp3 file.

20 Exhibit 5, Letter, Kozma, Boal to ZBA, 2-1-22; in particular see pages 2-3 and items ## 12-14.

21 Exhibit 6, Letter Kozma, Boal to ZBA, 2-1-22,

22 MCL 125.3601(6).

23 § 8.01(3); cf Exhibit 1, ZBA Rules, § 4.4 (requiring resignation if offices are incompatible).

24 MCL 41.61(2).

day. The Board was obligated to fill the vacancy within a month²⁵ but defaulted, leaving the ZBA with only four regular members and no obligatory PC member.

21. On February 11, 2019, the Board had appointed Griffiths for a 3-year term²⁶ on the ZBA. Even had the Supervisor not hired him as Deputy, by this last February 11 his 3-year term would have expired and the Board has not sought to re-appoint him.

22. Also previously, the Board had appointed him for a 3-year term²⁷ on the PC on March 11, 2019. Under the Michigan Planning Enabling Act (“MPEA”) a Township employee likewise cannot sit on the PC.²⁸ Accordingly as of the day the Supervisor hired him Griffiths could not and did not sit legally on the ZBA by virtue of his position on the PC²⁹; in effect he also resigned from the PC that day. Moreover, even had the Supervisor not hired him as Deputy, by this last March 11 his 3-year PC term would have expired and the Board had not sought to re-appoint him. Thus on both bases, the Township has denied Kozma's right to have a PC member sitting on the ZBA.

23. The reason a Deputy employee may not sit on a ZBA and PC is because otherwise the Supervisor could, at his “pleasure,” tell the Deputy how to argue and which way to vote on favored issues.³⁰

25 MCL 125.3601(10).

26 MCL 125.3601(10).

27 MCL 125.3815(2).

28 MCL 125.3815(5).

29 MCL 125.3601(4).

30 Cf MCL 15.181(b)(i) and (ii) (public offices are incompatible if one is subordinate to or supervises the other); *Pitoniak v Borman's Inc*, 104 Mich App 718, 723 (1981) (“A basic tenet of the constitutional right to due process is the availability of a hearing before an unbiased and impartial decisionmaker.”); *Crampton v State*,

24. The Deputy had a second conflict per the PC bylaws. The ZA – who in Hayes Township is Supervisor Ron Van Zee – is supposed to work for the PC (with the consultant) “coordinating and supporting [the PC's] functions.”³¹ But in the year February 2021 to February 2022, the Deputy supervised his boss.

25. A third conflict is inherent in the ZBA's statutory authority over the Zoning Administrator's past and future decisions. With the dual roles of both Griffiths and Van Zee, Griffiths through his votes on the ZBA, has statutory authority over his boss Van Zee.

26. In the year after his hire, the Board allowed Griffiths illegally to attend and receive Board-approved pay for two ZBA meetings, on January 11 and 26, 2022.

27. In the same year the Board allowed him illegally to attend, chair, and receive Board-approved pay for 12 PC meetings,³² in which the PC conducted substantial work. The work included three hearings,³³ detailed discussions of a planned re-write of the entire 121-page ZO; and receipt of paid planning consultant Shawn Winter's 194-page draft of a new ZO “*Hayes ZO Draft v1.pdf*” which Griffiths kept to himself and his boss the ZA, without distributing to other PC members.³⁴ If as the chair he signed the three hearing decisions, the signatures were invalid.

395 Mich 347, 351 (1975) (“experience teaches” that the mere “probability” of bias is sufficient to disqualify a decisionmaker).

31 Exhibit 7, PC Bylaws, § 5.2.

32 Dates: 2-16-21, 4-20-21, 5-18-21, 8-17-21, 8-31-21, 9-14-21, 9-21-21, 10-26-21, 11-16-21, 11-23-21, 12-21-21, 1-18-22.

33 Dates: 10-26-21, 11-23-21, 12-21-21 .

34 Exhibit 8, Winter-Griffitts-Baranski email exchange, February 23-24. 2021.

28. Griffitts was well familiar with the prohibitions of the MZEA and MPEA, having re-read the statutes, as he stated in an email exchange in August-September 2018.³⁵ He was also familiar with the ZO; in August 2020 he and planning consultant Winter had a detailed email exchange covering three dozen separate ZO amendment issues; two of them were in article 8, the very ZO article which prohibits him as an employee from sitting on the ZBA.³⁶ On January 11, 2022, he and other ZBA members were trained on ZBA procedures by the Township Attorney, one of the printed training materials being a copy of ZO article 8. At the ZBA hearing of January 26, Griffitts stated he had read the ZO “many many times.”³⁷

29. Immediately on receipt of the February 1 objection to Griffitts being an employee sitting on the ZBA, he resigned as Deputy Supervisor, claimed he would “continue . . . to serve” on the PC, and did not acknowledge being off the ZBA.³⁸

30. The ZBA re-convened on February 2. Kozma had prepared a second detailed presentation. Again she made a recording and had her own amplification with permission.³⁹ Griffitts attended but only in the back of the room; he purported to recuse himself. Jess did not appear due to illness. This left two regular ZBA members (Darnton and Kuebler) plus the alternate Deckinga on the panel. An alternate cannot

35 Exhibit 9, Griffitts-Van Zee email exchange, August-September 2018.

36 Exhibit 10, Griffitts-Winter email exchange, August 2020.

37 At 2:47:30 of the *.mp3* file.

38 Exhibit 11, Griffitts resignation as Deputy, 2-1-22.

39 22-02-02_ *hearingRecording.mp3* .

enable a quorum. After announcing that fact, the Chair adjourned immediately.⁴⁰

31. After adjournment Kozma spoke to the departing crowd. Attempting to stop her while the mic continued to record, Griffiths told her “Stop you with a buffalo dart.” A transcript of the exchange is attached.⁴¹

32. A dart gun or tranquillizer gun is a non-lethal air gun used to reduce irritability or agitation in animals. It shoots a dart tipped with a hypodermic needle and filled with a dose of tranquilizer solution.⁴²

33. Griffiths unlawfully claimed and received payment for the January 26 ZBA hearing. On March 19, counsel emailed the Township Clerk and Supervisor, with a cc to Griffiths and the ZBA chair, inquiring about the payment and the amount,⁴³ and has received no answer.

IV. Removal charges filed.

34. On February 14 at a Board meeting, the Supervisor confirmed that Griffiths had not resigned from the ZBA, in effect confirming he supposedly remained a ZBA member. Whereupon undersigned counsel presented written charges⁴⁴ calling for a public hearing to consider removal of ZBA members. The particulars included:

40 MCL 125.3601(12).

41 Exhibit 12, transcript, Darnton, Kozma, Griffiths exchange, 2-2-22.

42 https://en.wikipedia.org/wiki/Tranquillizer_gun

43 Exhibit 13, Boal-Baranski email, 3-19-22.

44 Exhibit 14, request for public hearing to consider ZBA removals, 2-14-22.

Griffitts: *Ex parte* conversations, bias, incompetence, and destruction of ZBA hearings due to participating illegally while an employee. Public notice of the January 26 hearing, and extensive preparation for it were a waste of everyone's time and expense.

Darnton: Refusing as Chair to schedule a timely⁴⁵ ZBA hearing and decision on the September 27 Interpretation Requests, and unilateral decision without a required⁴⁶ concurring ZBA majority refusing to entertain the Requesters' Appeals.

Deckinga: *Ex parte* conversation with Griffitts, and failure to be trained by a qualified instructor.

35. These charges are factual and specific. An additional charge will be Griffitts's unlawful claim and receipt of payment for ZBA and PC attendance. An additional charge will be the recorded "buffalo dart" threat on February 2.

36. While ZBA members are appointed for 3-year terms,⁴⁷ under MCL 125.3601(9):

A member of the zoning board of appeals may be removed by the [Board] for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.

37. On February 14, the Board took no action on the public hearing request. Instead they promoted Deckinga from alternate to regular ZBA member, though in accepting Deckinga admitted his only training prior to January 26 had been in a 2-day period where he studied papers and watched unnamed videos at the Township, with no qualified instructor present to answer questions. The Board also appointed Rod Slocum

45 Exhibit 1, ZBA Rules, § 3.3.

46 MCL 125.3603(2); ZO § 8.02.

47 MCL 125.3601(10).

to replace Deckinga as the alternate.

38. Per ZBA Rules, every ZBA member must undergo four hours per year of training in planning and zoning. Training is by:

one or more of the following organizations: Michigan Association of Planning, Michigan State University Extension, Michigan Townships Association, and Michigan Municipal League, continuing education programs of Michigan State University, University of Michigan, Northern Michigan University, Central Michigan University, or Wayne State University.⁴⁸

39. On March 15, the Board appointed Janice Vedder Whipple as a ZBA alternate.

40. Also on March 15, the public hearing request was put formally on the Board agenda. But no Board member moved to hold a public hearing, nor did any state a reason why holding a hearing was a good or bad idea. No discussion was had at all, save for a mention that the Board had received a confidential letter from the Attorney on the subject. The agenda item concluded swiftly. The Board's failure to act amounted to a decision disposing of the call for a public hearing.⁴⁹

41. Also on March 15, hearings on the Requests and Appeals were tentatively scheduled for April 20 and 27, without the Board first having held the public hearing and then made removal decisions.

42. After the March 15 meeting, undersigned counsel wrote the Supervisor asking that the confidential Attorney letter be released, a public matter being involved,

48 Exhibit 1, ZBA Rules, § 2.7.

49 MCL 15.262(d).

there being no litigation pending, and no potential litigation having been mentioned at the meeting.⁵⁰ No response has come.

V. Claims

43. The Court should declare that immediately on his hire date of February 8, 2021, by virtue of the MZEA and MPEA Griffiths automatically lost his positions on the ZBA and PC, and since then the Board unlawfully approved pay for him attending and chairing meetings since then.

44. Kozma, Fowle, and Hicklen are entitled to have their Interpretation Requests and Kozma's Appeal considered by a qualified and impartial five-member ZBA, one of whom is lawfully on the PC. Such a ZBA does not exist today. The Court should order the Township to so populate it.

45. Though the Board has discretion whether to remove a ZBA member, when specific factual charges of malfeasance or misfeasance are made they have no discretion to refuse to hear from the public about removing the member.

46. The ZBA hearings tentatively scheduled for April 20 and 27 on Kozma's, Fowle's, and Hicklen's matters cannot fairly go forward until after the hearing request is honored, and the ZBA again becomes a full, unbiased, properly-trained, five-member board including a lawful PC member.

47. The Requesters will be irreparably damaged should a ZBA hearing proceed and decisions be issued, while the ZBA is itself short-handed and under a cloud of

⁵⁰ Exhibit 15, email Boal to Van Zee, 3-15-22.

potential removals.

48. Township officials have a clear legal duty to order a public hearing to consider removal of the above ZBA members.

49. The Circuit Court has jurisdiction to issue declaratory relief⁵¹ and to entertain a mandamus action against a township and township officials for an order to perform a clear legal duty.⁵²

50. The Township's 6 months of dilatory action have deprived Kozma, Fowle, and Hicklen of property without due process,⁵³ and 3 months of dilatory action have deprived Kozma of the same, flouting the ZBA requirement of 90-day deadlines for action.⁵⁴

VI. Conclusion

51. Wherefore Plaintiffs ask the Court to:

- a. accelerate this case on its docket,⁵⁵
- b. order postponement of the ZBA hearings tentatively set for April 20 and 27 in the above matters,
- c. order Griffiths off the ZBA and PC, retroactive to February 8, 2021, his date of hire as a Deputy,

51 MCR Rule 2.605.

52 Const 1963 art 6 § 13; MCL 600.605; *Grabow v Macomb Township*, 270 Mich App 222 (2006) (forwarding an application to a ZBA is a “ministerial act”); *O'Connell v Director of Elections*, 316 Mich App 91,106 (2016) (mandamus is a prerogative writ).

53 Const 1963 art 1 § 17.

54 Exhibit 1, ZBA Rules, § 3.3.

55 MCR Rule 2.605(D).

- d. order prompt convening of a public hearing to consider removal of other ZBA members, followed by Trustee decisions on each of them,
- e. order that a full ZBA including a lawful PC member to be populated and trained, and then to hold prompt hearings on the pending Interpretations and Appeals, and
- f. grant such further equitable relief as is warranted.

Respectfully submitted,



[Handwritten signature]

Ellis Boal for Plaintiff
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 Charlevoix, MI 49720
 231-547-2626
 ellisboal@voyager.net

TRUE COPY of a document on file in the office of the Charlevoix County Clerk

Dated: March 29, 2022

Verifications

I have read the foregoing complaint and verify all the facts stated are true.

[Handwritten signature: LuAnne Kozma]
 LuAnne Kozma

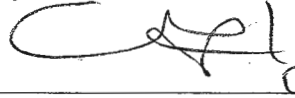
Subscribed and sworn to before me this 29th day of March, 2022.

[Handwritten signature: Tammi LaFave]

TAMMI LAFAVE
 Notary Public - Michigan
 Charlevoix County
 My Commission Expires Feb 28, 2027
 Acting in the County of Charlevoix

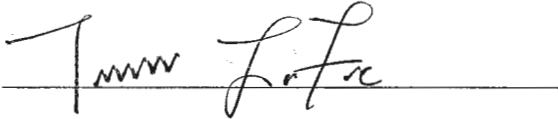
Notary Public Charlevoix County
 My commission expires: 2.28.2027

I have read the foregoing complaint and verify all the facts stated are true.



Ellis Boal

Subscribed and sworn to before me this
29th day of March, 2022.



TAMMI LAFAVE
Notary Public - Michigan
Charlevoix County
My Commission Expires Feb 28, 2027
Acting in the County of Charlevoix

Notary Public Charlevoix County
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