

**State of Michigan
Charlevoix County Circuit Court**

LuAnne Kozma,

Plaintiff

v

Case # 22-0805-27CZ
Hon Roy C. Hayes III
Date filed: 5-27-22



Scott and Debra Law,

Defendants

Ellis Boal (P10913)
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Amended Complaint for Injunction

1. On May 27, 2022, Kozma sued and moved for a TRO and Show-Cause Order hearing seeking to preserve the *status quo* by preventing excavation and construction of a channel, basin, and boathouse-event center which appeared imminent at Defendants' property at 10034 Anglers Cove, even during her appeal seeking to stop the project at the Hayes Township Zoning Board of Appeals ("ZBA") and potentially also this Court, as required by § 8.11 of the Township Zoning Ordinance ("ZO").¹

2. Herewith she substitutes the following which, as seen below, withdraws the

¹ Downloadable at <https://www.hayestownshipmi.gov/zoning-ordinance/>. See also MCL 125.3604(3).

request for a TRO and Show-Cause Order.

3. On May 31, on receipt of certain assurances from Defendants' counsel, Kozma withdrew the request for a TRO, and added that if in the next few days Defendants would confirm respect for the above provisions, she would withdraw the case altogether without prejudice.

4. On June 2-3 the parties' counsels had further correspondence. Kozma sought to clarify Defendants' assurances and noted she had asked the ZBA for early hearing dates in June or early July. Defendants for their part contended Kozma's claim under ZO § 8.11 and MCL 125.3604(3) had no merit and they did not explicitly continue the assurance of no imminent construction or excavation.

5. Accordingly on June 3 Kozma reinstated the request for a *status quo* TRO and Show-Cause hearing. Later in the day Defendants gave her stronger assurances, on the basis of which for the second time, she formally withdrew the request on June 6.

6. The stronger assurances still did not explicitly commit Defendants to honoring the ordinance and statute. And as the above correspondence was ongoing, on June 2 the Laws' counsel made the following threat:

Lastly, your “promise” to “continue to watch the Law property over the coming days and weeks” has already caused annoyance when a kayaker armed with a camera was seen photographing the Law residence on Saturday morning [May 28] when the hot tub was in use. This type of invasion of the Law’s reasonable expectation of privacy in and around their summer cottage must cease immediately.²

2 Amended Complaint Exhibit 8, p 1.

Undersigned counsel responded the same day, noting that the kayakers were not Kozma or himself or anyone they knew of, but:

if someone did come close to the Laws at any time from the water, even with a camera, that would be his or her right. The waters are public-trust on which the Laws have no privacy right, even when someone is in a hot tub or the Laws are having an event. Indeed their project invites media attention, on TV, radio, and print, as you no doubt have noticed.³

7. Then on June 6 – the same day as Kozma's second withdrawal – one of the Laws' noisy helicopters took off and buzzed the Shoreline, flashing a light and flying low toward and right over Kozma as she stood on the shore, before circling her property and that of her fellow family protesters, and heading off in the opposite direction toward the Charlevoix airport. A few minutes earlier, another Law helicopter had taken off and headed straight to the airport. She filmed the flights and uploaded them to youTube where the Court may view them,⁴

8. Buzzing the shoreline violated Scott Law's promise in a 10-20-19 email to the Township to “revise” the helicopter flight patterns and fly “only” over the Law property:

We do also have a helicopter and plan on using it occasionally but worked with our pilots to revise take off and landing patterns over our property only and will try to avoid early morning or late evening landings!⁵

9. On June 7-8 undersigned counsel wrote the Laws' counsel, comparing the

3 Amended Complaint Exhibit 8, p 2.

4 <https://www.youtube.com/watch?v=EWUlkqaBfGQ> and <https://www.youtube.com/watch?v=zbWYmbobylc> .

5 Amended Complaint Exhibit 8, Emails, Boal, Golski, Burger, June 7-8, 2022. p 1 (referring to attached “Exhibit 29,” email Law to Van Zee, 10-20-19, p 3.

quiet kayaker on the water holding a camera with the low, loud helicopter harassment. Counsel reminded them of the 2019 promise that Defendants made. He requested that the pilots call, and asked for a copy of the revised flight pattern and the passenger list.⁶

10. No response or call has come. The passengers might have included these Defendants.

11. Defendants' violation of their own promise to the Township in 2019 undermines the credibility of their recent assurances which – to say it again – do not explicitly promise to abide by the *status quo* provisions of the ZO and statute.

12. According to recent supplementary materials provided to EGLE and the Army Corps by the Laws for the project,⁷ excavation on the near-shore side of the current Ordinary High Water Mark (“OHWM”) would sum to 14,888 cubic yards, double the amount originally stated when they applied to EGLE and the Army Corps for permits. Assuming 12 cubic yards/average dumptruck-load, after rounding the quantity sums to 1241 truckloads.

13. Counsel has found only two Michigan appellate cases concerning the stay provisions of MCL 125.3604(3), both of them unpublished. Neither is exactly on point, though *Pamela B Johnson Trust* refers to the stay provision as an “automatic stay.”⁸

6 Amended Complaint Exhibit 8, pp 1-2.

7 Complaint Exhibit 5, obtained on May 23, 2022, by FOIA to EGLE, pages 2 and 10.

8 Complaint Exhibit 3, *Simon v City Of Norton Shores*, COA Case # 287119 (9-29-09); Complaint Exhibit 4, *Pamela B Johnson Trust v Anderson*, COA Cases ## 315397, 316024 (8-19-14).

14. The test for injunctive relief considers the following factors:

(1) whether the applicant has demonstrated that irreparable harm will occur without the issuance of an injunction, (2) whether the applicant is likely to prevail on the merits, (3) whether the harm to the applicant absent an injunction outweighs the harm an injunction would cause to the adverse party, and (4) whether the public interest will be harmed if a preliminary injunction is issued.⁹

For Kozma the answer is “yes” for the first three factors and “no” for the last:

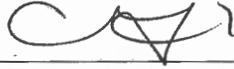
- If the ZBA in the end upholds her, reversing 1241 truckloads of nearshore material and planting and re-growing native vegetation – and doing it all in one season – would be impossible.
- Under the ZO, her right to a pre-ZBA stay plus a stay during Circuit Court review, is absolute regardless whether the ZBA or Court ultimately goes for or against her.
- Having waited nearly three years since first applying for a Township permit, the Laws would suffer no harm in waiting a few more months for the ZBA and Court to finish their work.
- The public interest would be served, not harmed, by preserving the *status quo* while the ZBA and Court do their jobs.

15. Wherefore Kozma asks the Court to;

- a. order Defendants to forbear from proceeding with preliminary activities, clearing, and excavation for building a channel, basin, and boathouse at 10034 Anglers Cove until the matter is resolved at the ZBA and if necessary in this Court, and
- b. order such other relief as the Court considers equitable.

⁹ *Slis v State*, 332 Mich App 312, 337 (2020).

Respectfully submitted,



Ellis Boal (P10913)
Attorney for Plaintiff
9330 Woods Road
Charlevoix, MI 49720
231-547-2626
ellisboal@voyager.net

Dated: June 13, 2022

Certificate of Service

Ellis Boal certifies that on June 13, 2022, he emailed a copy of the above pleading to the above Counsel.



Ellis Boal



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

Exhibit 8

Emails, Boal, Golski, Burger

June 7-8, 2022

Subject: Re: ceasing/desisting

From: Ellis Boal <ellisboal@voyager.net>

Date: 6/8/2022, 9:15 AM

To: Harry K Golski <hgolski@cvxlaw.com>, dburger@zotecpartners.com

CC: LuAnne Kozma <luannekozma@gmail.com>, zoning@hayestownshipmi.gov, Roy Griffitts <rwgriffitts3@gmail.com>

My question about the 2019 email will be resolved when we see a copy of the revised take-off pattern for the pilots, and we hear from them about June 6. The passenger lists will also be helpful.

Ellis

On 6/7/2022 10:10 PM, Ellis Boal wrote:

So Scott lied to the Township's Ron Van Zee on October 20, 2019, didn't he? He wrote:

"We do also have a helicopter and plan on using it occasionally but worked with our pilots to revise take off and landing patterns over our property only and will try to avoid early morning or late evening landings!"

See attachment. Ron believed him:

"I would like to thank you for your service to the community. As we discussed Saturday, often times people are afraid of change and of things they do not understand. Thank you ... mostly for your willingness to share...."

Did Scott also lie to you when he promised the Laws "do not intend to begin any excavation or construction on the boathouse/basin/channel in the near term," and when they "actually do apply" for a Permit that LuAnne "will have an opportunity to be heard" before "proceed[ing] with work on the boathouse/basin/channel"?

Ellis

On 6/7/2022 5:02 PM, Ellis Boal wrote:

Harry, Dean,

On June 2 Harry asserted:

"Lastly, your 'promise' to 'continue to watch the Law property over the coming days and weeks' has already caused annoyance when a kayaker armed with a camera was seen photographing the Law residence on Saturday morning [May 28] when the hot tub was in use. This type of invasion of the Law's reasonable expectation of privacy in and around their summer cottage must cease immediately."

I responded:

"But if someone did come close to the Laws at any time from the water, even with a camera, that would be his or her right. The waters are public-trust on which the Laws have no privacy right, even when someone is in a hot tub or the Laws are having an event. Indeed their project invites media attention, on TV, radio, and print, as you no doubt have noticed."

The Laws do not know what living on a public lake means.

By comparison, please review the following videos of two Law helicopters of yesterday which LuAnne uploaded to YouTube today.

The first pilot knew what to do, fly directly toward the Charlevoix Airport.

<https://www.youtube.com/watch?v=zbWYmbobylc> . So far that video has 30 views.

A few minutes later, the second pilot flew noisily over the Fowle/Borus property, and then over LuAnne with her camera on the shore, flashing a light as it approached. There was little to no precipitation and no significant wind to divert his or her flightpath. It flew at an elevation appearing to us to be less than 500 feet. It circled around our property and then back over Fowle/Borus, and then the Laws', before proceeding on to the airport, where it should have headed in the first place. <https://www.youtube.com/watch?v=EWUlkqaBfGQ> . So far the video has 455 views.

The most likely reason for the noise and low approach, we believe, was for the passengers to see us, and harass the people along the shore complaining about the channel-basin-boathouse and the intensified helicopter traffic which the project is bound to produce.

I sent the videos to Matt Wyman, the Charlevoix Airport Manager, asking if he could identify the pilots, aircraft, and passenger list, and asking him to ask the pilots to call me.

So here is our own cease-and-desist order: Stay up and away from our property and the property of all neighbors along the shore. Better yet: Get rid of the helicopters and go back and forth to town the way ordinary people do, on bikes or in cars, without disturbing our peace or the shoreland wildlife.

Ellis

Exhibit 29
Email, Law to Van Zee
10-20-19



Hayes supervisor <supervisorhayestownshipmi@gmail.com>

Re:

Ron Vanzee <Supervisor@hayestownshipmi.gov>
To: "T. Scott Law" <slaw545@icloud.com>

Mon, Oct 21, 2019 at 10:09 AM

Scott and Debbie,

It was a pleasure to meet both of you. After hearing your plans and understanding better, not only what you are doing in other places, but also what your intentions are for this property, I would like to thank you for your service to the community.

As we discussed Saturday, often times people are afraid of change and of things they do not understand. Thank you for your letter explaining your long term goals, your hesitation for allowing people on your property during construction, your admission that maybe there had been misunderstandings on both sides, acknowledging concerns from neighbors but mostly for your willingness to share, such an absolutely beautiful place, eventually with so much of the community.

Again, thank you for the tour and your clarification on so many issues. I appreciate you prompt reply and I will make sure the public is informed.

Ron VanZee

On Sun, Oct 20, 2019 at 7:33 PM T. Scott Law <slaw545@icloud.com> wrote:

Ron,

It was a pleasure to meet you with Bob Drost at our property in Charlevoix. During our meeting we discussed many topics and I greatly appreciate your perspective and hope that you gained a better understanding of our plans for the property and some of the "why" behind our desire to improve, use and preserve the beauty of this unique property. In our desire for privacy, we do agree that we have not been as transparent as we could have been with our neighbors about our plans and want to reiterate that we have simply been developing and learning the property ourselves before we felt comfortable to communicate any plans.

I am a trained pilot and one of the first lessons a pilot learns in emergencies is to Aviate-Navigate-Communicate. What this means is first fly the plane, get your arms around how to get wind over the wings so the plane can fly or glide, second Navigate, which means find a place to land safely or pick the best options available for a safe crash, and finally communicate so emergency help can hopefully meet you there or be available to help you as soon as possible. I tell this story because I think its applicable in this particular circumstance as we bought the first property and have been flying the plane, maybe navigating construction very rapidly and can start to communicate better, which is my intent of this email!

When we purchased the original property, which had a beautiful home not done, 50 acres, a barn, and two shooting ranges pointing back towards our neighbors houses! We were assured from the previous owner and local realtor that he used the ranges all the time and shooting was not a problem. Imagine our surprise that the first time we shot skeet (no rifles or tanaride) and we got a letter from our neighbors whom we have never met asking us to stop shooting all together. We had never shot in our lives and part of the appeal was that we had this property to begin a new hobby and activity. We also asked about putting in a helicopter pad on the 50 acres before we bought the property and were told in no uncertain terms that this would be fine. Again the local realtor said this is "Michigan" and why people buy these properties, there are several people on the lake that have helicopters and helipads, it's a beautiful way to enjoy Michigan.

In 2018, over Labor Day weekend, we had a family reunion as my parents and family are getting older and we wanted to get together with everyone. Our property was the perfect place to host the Reunion and allow everyone to enjoy our property (still original 50 acres). Most of our family would never be able to experience Michigan if we didn't host the event. We rented and paid for over 20 rooms at hotels in Petosky. We rented over 30 rooms in Petosky for the reunion in 2019. We locally rented a tent, and all the extras needed to prepare and serve for meals. We hired local caterers and Bartenders to furnish meals. In 2018, we also put up an inflatable screen to show a video on Saturday night, that was produced from the thousands of pictures of our family members in various stages of life. The video was less than two hours long. Unbeknownst to me, one of our neighbors was swimming at night and noticed the screen. He proceeded to come to our house asked to speak to someone in charge. My brother whom answered the door proceeded to get an ear full after he asked the gentlemen "whats the issue?". The neighbor assumed it was me and he proceeded to tell my brother how having a party with a tent and big screen violated the integrity of the lake and he was filing a complaint because he was a lawyer. I never met the man, never talked to him and no other contact regarding the screen complaint occurred until 10 months later, I received a letter depicting our neighbor's version of events.

In late 2018, we were presented the opportunity to purchase property owned by Bob Powers and various trusts. We negotiated in good faith with Bob and received clear title to all his property with one exception. The exception was one person having "legacy fishing only" rights to the approximate 348 acres, his house, his barn and water front property were all included in our purchase. Bob Powers property included 4 waterfront lots. While Bob may or may not have known the extent of people who used the property, everyone understood that legally transferring property to Debbie and I voided any verbal agreements with Bob and Bob Powers certainly knew of our intention to develop the property, he helped us develop a master plan of the property including location of a shooting shed further away from houses to allow for rifle target shooting and even Tanaride target shooting. We asked Bob Powers about the original complaints on our 50 acre parcel and he reiterated that he has shot for many years, deer hunted in one of 8 blinds on the property and we will have no issues, and if we do, its your property now so keep it legal but do what you want.

During the winter, we improved the trails to allow easy access and navigation to all parts of the property using a wheelchair, bicycles, ride snowmobiles, hike and 4 wheelers. One of the main goals of buying what is now over 400 acres was to allow people from our charitable foundation, our employees, family and friends the opportunity to benefit from this property and hopefully to allow families recovering from traumatic medical or health events to have opportunity to experience Michigan. Additionally we have allowed Bob and his wonderful family to remain on the property, use it like it's theirs and even have allowed several of his people who have respectfully asked to continue to use the property, do so!

We are building log cabins to accommodate our guests on the property with local contractors, lawyers and permitting fees all being paid to accomplish these facilities! Additionally we doubled the property taxes we pay on both properties because we are out of state residence and while I probably could have become a resident I thought this would benefit Hayes township the most!

During our walk of the property, we showed you the cabins we are presently constructing, as well as the extensive work we have done and are doing to build trails, taking into consideration safety, drainage and the environment at every turn! We have spent over a million dollars, hiring local contractors, landscapers, designers and property caretakers, to do the projects I have outlined in this letter. We also discussed that during construction allowing anyone to walk on the trails was an issue of safety and as you may know mud or muck from melting snow is dangerous!

We expressed our concerns allowing neighbors to use these trails without our permission due to us having liability for someone getting hurt during construction or unauthorized hunting on the property without permission resulting in someone getting shot! We have meticulously posted no trespassing signs and we all agreed that it is risky to allow anyone to be on our property during construction as you recently experienced at the park! We built the new shooting shed to point away from the driveway shared by neighbors and to designate or quarantine all such activity in plain sight so nobody would get hurt, we built up burrows of dirt to absorb any bullets and buckshot and frankly we have used it one day and only one day since we built it. We hired the manager of the local Gun Club to supervise design and construct all of the shooting areas. I am not suggesting we will not use it again, but I would like to put some perspective on how often we are actually even on the property let alone using the shooting range. When we do use it we engage the same person who runs the gun club to supervise and ensure safety, we close all gates, put up signs that shooting is in progress and closed all access roads to that section of the property! As for the status of the trails, we are concerned about people walking or bringing their own SUV's on our

property because they are not fully completed and groomed. Even when taking all forms of precautions accidents happen as during our family reunion, one of our guest rolled an ATV fortunately only property damage and no one was hurt. We are not only private people but are being cautious with allowing people, we do not know on the property?

We do also have a helicopter and plan on using it occasionally but worked with our pilots to revise take off and landing patterns over our property only and will try to avoid early morning or late evening landings!

Our future plans include zip lines, horse barn for trail riding and therapeutic activity, a dining facility for guest and events, a winery facility, fly fishing lake and possible golf holes. All private use for friends, family, charity and local organizations as we see fit!

Finally, I would like to thank you for the extra time you have had to invest in hearing complaints from neighbors of ours, our intent is to create a property and welcoming environment that will allow our family, our friends, our charities and perhaps someday our neighbors to get away from the stresses of life in a way that respects the beauty of the land and integrity of the environment but allows the them all to enjoy the pure joy of northern Michigan, I hope our failure to communicate these plans will not ruin this goal, nor will it interfere in anyone else's enjoyment of the lake, their land or their lives. Please also let me know how we can help you as you take on this challenging position and continue to represent and help the people of Hayes township! Thank you for your time and service.

T. Scott Law
CEO
Zotec Partners, LLC