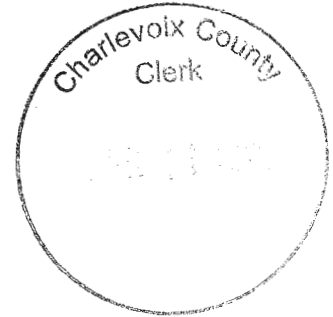


State of Michigan
Charlevoix County Circuit Court



LuAnne Kozma,

Plaintiff

v

Case # 22-0728-27CZ
Hon. Roy C. Hayes III
Date filed: 3-29-22

Hayes Township Board of Trustees,
Defendant

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

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

Todd W. Millar (P48819)
tmillar@parkerharvey.com
Guy D. Silvasi (P77099)
gsilvasi@parkerharvey.com
Parker Harvey PLC
901 S Garfield Avenue, Suite 200
Traverse City, MI 49686
231-929-4878
For Defendant

**Amended and Supplemented Verified Complaint
and
Ex Parte Motion for Mandamus and Order to Show Cause**

52. Kozma re-asserts the 51 paragraphs and 15 exhibits of her initial Complaint filed March 29, 2022. She may amend the Complaint as a matter of right, since she served Defendant Board member Township Clerk, as the Clerk acknowledged, on April 4, 2022.¹ The above Counsel appeared for the Board members on April 6 but have not

¹ Clerk's acknowledgment of service of summons on 4-4-22, attached.

answered the Complaint.²

VII. Supplemental claim: failure of notice of ZBA hearings

53. The Circuit Court has jurisdiction of a mandamus action against Defendant Township Board officials including the Clerk.³ Per MCR 3.305(C), on an *ex parte* motion (which can be in the Amended and Supplemented Complaint) and showing of necessity for immediate action, the Court may issue an order to show cause.

54. Plaintiff so moves. Though the Rule states it is not necessary to give notice to opposing counsel, as a courtesy Kozma will do so anyway later today at their above email addresses.

55. On April 4, ZBA Chair Tom Darnton notified Kozma through Township Counsel that hearings on her Interpretation Requests and Appeals would take place on April 20 and 27; and that the ZBA process would start “all over again” with “new members”; and that this will be “frustrating in that it will lead to duplicate efforts.”⁴

56. Previously, as seen in the Complaint,⁵ the Township had scheduled the dates of April 20 and 27, but only “tentatively.”

57. There was a partial ZBA hearing on January 26 covering only the Interpretation Requests. Kozma made a detailed presentation with slides on behalf of herself and co-Requesters Irene Fowle and Elisabeth Hicklen. By her count 20 members

2 MCR 2.118(A)(1).

3 MCR 3.305(A)(2).

4 Exhibit 16, letter Todd Millar to Ellis Boal, 4-4-22, attached.

5 Complaint ¶¶ 3, 41, 46, 51(b).

of the public also appeared in person, on Zoom, or in writing, presenting a variety of facts and arguments in support. Only one person (counsel for the Law family) spoke against. ZBA deliberations then started but there was as yet no decision when the hearing adjourned to February 2.

58. For February 2 Kozma had prepared a second detailed presentation in support of her Appeals hearing, which was expected to start after the Interpretation Requests would be decided. But the January 26 hearing did not continue. Chair Darnton only called a ZBA *meeting* to order, and then adjourned it in 3½ minutes for lack of a quorum. One reason for the speedy adjournment, as Darnton stated during the 3½ minutes, was that ZBA member Roy Griffitts, as a Township employee

cannot sit on the ZBA. So Roy will not be able to participate in these deliberations, which means we are going to have to not just adjourn the meeting but adjourn long enough so that the Township can put some more people on the ZBA.⁶

59. Proper notices of hearings on January 26 and February 2 had previously been mailed to near-neighbors, and public notices had been published in the Petoskey News-Review on January 11.⁷

60. Due to Griffitts's improper seating Defendant now admits the January 26 hearing is void⁸ – as are the statements of Kozma's 20 supporters – and the hearing on February 2 never occurred.

6 Plaintiff's tape recording, starting at 2:39.

7 Complaint ¶ 9, complaint exhibit 2, attached.

8 Complaint ¶¶ 29-30; exhibit 16, letter Todd Millar to Ellis Boal, 4-4-22, attached.

61. The ZBA passed no motion specifying hearing dates on April 20, April 27, or any other date.

62. The Township Zoning Ordinance (“ZO”)⁹ says:

The notices for all public hearings before the Zoning Board of Appeals concerning appeals, interpretations, and variances shall comply with all of the following applicable provisions.¹⁰

It adds:

[T]he Zoning Board of Appeals may adjourn from time to time a duly called public hearing by passing a motion specifying the time, date, and place of the continued public hearing.¹¹

63. Starting “all over again” means that new required¹² 15-day notices of the hearings of April 20 and 27 should have gone out to the public by newspaper publication, and to near neighbors of the Law property by mail.

64. Notices have not gone out for April 20 and 27. Plaintiff has not received one by mail, nor on inquiry have Fowle or Hicklen or any of the co-owners of their property. Kozma and Counsel have searched recent local newspaper notices and found none relating to April 20 and 27 in this Township. Counsel inquired of the Defendant Clerk (who is also the ZBA Clerk) on April 5 and 7 whether notices had gone out to near-neighbors and the public, and received no response.

65. Kozma, Fowle, and Hicklen have an interest in the near-neighbors and

9 Downloadable at <https://www.hayestownshipmi.gov/wp-content/uploads/2018/04/Hayes-Township-Zoning-Ordinance-April-2018.pdf>

10 ZO § 8.06 (emphasis added).

11 ZO § 8.06(3) (emphasis added).

12 MCL 125.3604(5), 3103.

public receiving notice of their ZBA hearings, because notice will ensure the 20 supporters know their statements are void unless they show up to “duplicate” them.

VIII. Supplemental conclusion

66. Counsel has researched FastCase for the terms “MCL 125.3103” (general notice provisions under the MZEA) and “MCL 125.3604(5)” (notice requirements specifically for ZBA appeals and interpretation requests), and found no precedent discussing the unusual situation here, where no 15-day notice was given at all, as opposed to a notice being given but claimed to be defective.

67. Noticing a ZBA hearing is a clear legal duty involving no discretion, a ministerial act which the Clerk knows how to do, and did know how to do for January 26 and February 2.

68. Last year the Court of Appeals published an opinion re-stating the requirements for mandamus, approving mandamus in that case because there was “nothing ambiguous” in the election statute before it:

To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.¹³

69. No legal or equitable remedy exists that might achieve the “same result” as

13 *Christenson v Secretary of State* (Case # 354037, Mich App 2021) (emphasis added).

15-day notices. "Immediate action" is necessary because it is too late to issue a 15-day notice now for both April 20 and 27, and yet the Township does plan to proceed on those days.

70. Accordingly a writ of mandamus and order may properly issue in this case. Attached to this Motion is a proposed order that Defendant Clerk produce a 15-day public notice to precede any ZBA hearing on Kozma's, Fowle's, and Hicklen's pending Interpretation Requests and Appeals, and that the hearings currently set for April 20 and 27 may not go forward without 15-day notices.

Respectfully submitted,




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



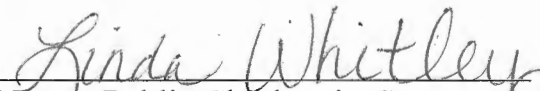
Dated: April 11, 2022

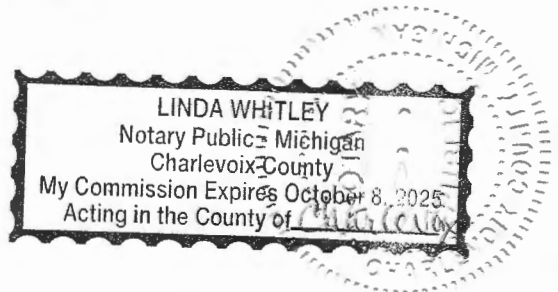
Verifications

I have read the foregoing complaint and verify all the facts stated are true. TRUE COPY
of a document on file
in the office of the
Charlevoix County Clerk



LuAnne Kozma

Subscribed and sworn to before me this
11th day of April, 2022.


Notary Public Charlevoix County
My commission expires: 10-8-25

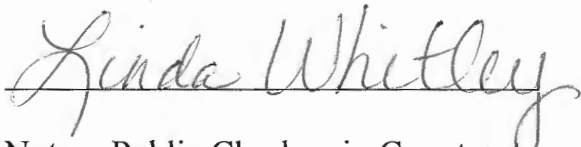


I have read the foregoing complaint and verify all the facts stated are true.



Ellis Boal

Subscribed and sworn to before me this
11th day of April, 2022.



Notary Public Charlevoix County
My commission expires: 10.8.25

LINDA WHITLEY
Notary Public - Michigan
Charlevoix County
My Commission Expires October 8, 2025
Acting in the County of Charlevoix

Charlevoix County
Clerk
APR 11 2022

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

STATE OF MICHIGAN

JUDICIAL DISTRICT
~~33rd JUDICIAL CIRCUIT~~
COUNTY PROBATE

SUMMONS

CASE NO.

22-0728-27 CZ

Court address

301 State Street Charlevoix, MI 49720

Court telephone no.

(231) 547-7243

Plaintiff's name(s), address(es), and telephone no(s).

Luanne Kozma
9330 Woods Rd
Chr 49720
231-547-2928

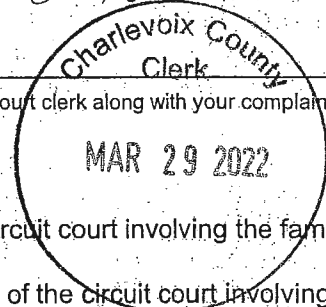
Plaintiff's attorney, bar no., address, and telephone no.

Ellis Bod 110913
9330 Woods Rd
Chr 49720
231-547-2626

ellisbod@voynager.net

Defendant's name(s), address(es), and telephone no(s).

Hayes Township Board
Trustees
9195 D Sloan Rd
Chr 49720
231-237-0096



Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, Court, where

it was given case number 21-0570-27-CZ and assigned to Judge Hayes

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

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

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified.

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party or **take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date March 29 2022	Expiration date* June 30 2022	Court clerk Lisa Mueller-Deputy
-----------------------------	----------------------------------	------------------------------------

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

Received Kristin B. O. Kristin Baronski April 4, 2022

Exhibit 2

Hearing Notices, Petoskey News-Review

January 11, 2022

HAYES TOWNSHIP ZONING BOARD OF APPEALS
NOTICE OF PUBLIC HEARING ON REQUEST FOR
INTERPRETATION

The Hayes Township Zoning Board of Appeals will hold a public hearing at 6:00 p.m. on January 26, 2022. Luann Kozma and Irene Fowle are seeking an interpretation of the Hayes Township Zoning Ordinance Sections 2.02, 3.14, 3.14(2), 3.14(8), 5.04, 9.01, and 9.02(5). A copy of the Request for Interpretation is on file at the Township Office and may be reviewed by stopping at the office during normal business hours. The stated purpose of the Request for Interpretation pertains to a project anticipated on property with identification no. 15-007-132- 005-25 and address of 10034 Anglers Cove, Charlevoix, Michigan 49720. The property is owned by Scott and Debra Law. The meeting will take place at the Hayes Township Hall located at 09195 Major Douglas Sloan Road, Charlevoix, Michigan 49720 as well as via ZOOM.

Meeting ID: 864 1694 0442 Passcode: 263101
[https://us02web.zoom.us/j/86416940442?](https://us02web.zoom.us/j/86416940442?pwd=ZmRNZCtvUFRnMmd0VWdFcHhMazJBZz0913126266799US(Chicago))
pwd=ZmRNZCtvUFRnMmd0VWdFcHhMazJBZz09 1 312 626
6799 US (Chicago)

The public is welcome to attend in person or via ZOOM and provide input during the public comment portion of the hearing.

Jan 11th 2022

HAYES TOWNSHIP ZONING BOARD OF APPEALS
NOTICE OF PUBLIC HEARING ON APPEAL

The Hayes Township Zoning Board of Appeals will hold a public hearing on an appeal filed by Luann Kozma on February 2, 2022, at 6:00 p.m. The public hearing will be held at the Hayes Township offices located at 09195 Major Douglas Sloan, Charlevoix, Michigan 49720 as well as via ZOOM.

Meeting ID: 885 6929 4586 Passcode: 812727
[https://us02web.zoom.us/j/88569294586?](https://us02web.zoom.us/j/88569294586?pwd=My8zRW94SHFSYkhhdHNXREM5T0xhZz0913126266799US)
pwd=My8zRW94SHFSYkhhdHNXREM5T0xhZz09 1 312 626
6799 US

The appeal is of certain alleged zoning administrator determinations as it pertains to the application for permits to construct a boathouse and channel on parcels of property nos. 15-007-132-005-25 and 15-007-133-005-30 with address 10034 Anglers Cove, Charlevoix, Michigan 49720 and is owned by Scott and Debra Law. A copy of the appeal is on file with the Township and may be reviewed by stopping by the Township during normal business hours. The public is welcome to attend in person or via ZOOM and provide input during the public comment portion of the hearing.

Jan 11th 2022

Exhibit 16

Letter, Todd Millar to Ellis Boal

April 4, 2022



April 4, 2022

Ellis Boal
9330 Woods Road
Charlevoix, MI 49720

Via Email

RE: Kozma v Hayes Township et al
Case No. 21-0604-27CZ
Our File No. 1932.08

Dear Mr. Boal:

I am advised by Tom Darnton, the Zoning Board of Appeals Chairman, that meetings have been scheduled to begin at 6:00 p.m. on April 20 and April 27 to address the request for interpretation and appeal. It is my understanding that like the previous meetings, they will adjourn at 9:00 p.m. I have also been asked to write and advise you that given the resignation of one ZBA member, determination that a member should not have participated in the first meeting involving the interpretation, and the appointment of new members to the ZBA, the ZBA is erring on the side of caution and going to start the process of addressing your request for an interpretation all over again. While this is certainly frustrating in that it will lead to duplicate efforts, it is the only way to ensure the integrity of the process and avoid any arguments from any party or person that the interpretation is tainted in any way. I am sure that you will understand the need to start the process over again.

Thank you for your attention to this matter. I look forward to seeing you on the 20th.

Very truly yours,

PARKER HARVEY PLC

Todd W. Millar

TWM:jls