

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF CHARLEVOIX

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LUANNE KOZMA and IRENE FOWLE,

Plaintiffs,

CASE NO. 21-0604-27CZ

v

HON. ROY C. HAYES III

HAYES TOWNSHIP, RON VAN ZEE  
Zoning Administrator, TOM DARNTON,  
Chair of the Zoning Board of Appeals, and  
KRISTIN BARANSKI, Recording Secretary  
of the Zoning Board of Appeals, all in their  
official capacities,

Defendants.

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Todd W. Millar (P48819)  
PARKER HARVEY PLC  
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**DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR SUMMARY  
DISPOSITION**

**INTRODUCTION**

Plaintiffs have filed a meandering 25-page brief in support of their Motion for Preliminary Injunction and in opposition to the Defendants' Motion for Summary Disposition. When you wade through all of the arguments and review the admissible facts, the inescapable conclusion that one reaches is that the only appealable decision made by Hayes Township was the November 19, 2019, decision by the Planning Commission as it relates to the shoreland protection strip. There was no site plan approved by the Planning Commission and, therefore, no site plan to expire pursuant to the terms of the ordinance. Furthermore, until the Laws come back to Hayes Township to obtain

a zoning permit for construction of the boathouse, there is nothing for them to appeal as it relates to that application. As a result, there is nothing to appeal to the ZBA and they cannot meet the definition of an aggrieved party because no final decision has been made by the Township authorizing the Laws to do anything on their property. Finally, it is apparent that Plaintiffs' use of a preliminary injunction, which is to preserve the status quo is misplaced as what they are asking the Court to do is change the status quo, not preserve it.

### **STATEMENT OF FACTS**

A better understanding of exactly what happened with respect to the Law project is worth taking some time to understand. Attached to this Brief as **Exhibit 1** is a Supplemental Affidavit from Ron Van Zee who is the Zoning Administrator and the Supervisor for Hayes Township. Mr. Van Zee's Affidavit establishes that on or about August 13, 2019, the Laws approached the Township and applied for a zoning permit for a boat basin. The Law home is zoned low density residential which permits single family dwellings as a use as of right. The Laws property is used for single-family dwelling. There is nothing in the Hayes Township Zoning Ordinance that regulates boat basins, or a canal dug from Lake Charlevoix to a boathouse. Therefore, there was no action taken on the permit application from August of 2019 with the exception of a subcommittee review for the shoreline protection strip. The receipt which appears to be dated September 4, 2019, for the \$100 fee states that it is for shoreline protection committee review for Law property. See **Exhibit 1** to Mr. Van Zee's Affidavit. As explained in the Affidavit, the Hayes Township Zoning Ordinance in Article 3, Subsection 14 contains waterfront regulations. More specifically, Section 3.14(8) (See **Exhibit 2**) provides for waterfront development review and creates a shoreland protection strip.

The ordinance creates a subcommittee of the Planning Commission to review the requirements of this section of the ordinance and to advise the Planning Commission on the applicant's compliance with the Hayes Township Zoning Ordinance. In this case, the subcommittee met and presented its findings to the Planning Commission at its November 19, 2019, meeting. At that meeting, the Planning Commission accepted the subcommittee's findings and issued its decision, subject to several conditions, that the proposed project met the shoreland protection provisions of the ordinance and approved the project.

On July 6, 2020, the Laws applied for a zoning permit for an attached boathouse structure to be connected to the house. According to the Affidavit of Mr. Van Zee, structures attached to the principal residence are not considered accessory structures. Therefore, since the boathouse is proposed to be attached to the house, it is deemed to be part of the house and not an accessory structure. As a result, it is a permit that can be reviewed and issued by the Zoning Administrator without site plan review or Planning Commission review. Once it was determined that the attached boathouse would meet the Zoning Ordinance requirements, Mr. Van Zee issued the July 8, 2020, "zoning permit" that is discussed extensively in other documents.

**I. The Only Official Decision Made by any Hayes Township Entity is the November 19, 2019, Approval of the Activity Within the Shoreland Protection Strip by the Planning Commission.**

On November 19, 2019, the Hayes Township Planning Commission accepted the report from the shoreland protection subcommittee as it relates to the proposed activities of the Laws in the shoreland protection strip. Attached as an exhibit to the Affidavit of Mr. Van Zee is the Planning Commission approval and minutes. The Planning Commission did not review or approve a site plan. It simply approved the proposed activity within the shoreland protection strip. To the extent that this approval was ever appealable to the ZBA, it expired no later than December 19, 2019.


**II. Nothing in Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Disposition Establishes the Existence of a Timely Appealable Decision.**

As argued above, the November 19, 2019, decision by the Planning Commission is not appealable. Furthermore, the Laws do not have a valid zoning permit to build the attached boathouse. While it is likely true that if the Laws receive their permits from the Army Corps of Engineers and EGLE and come back to the Township for issuance of a zoning permit for the attached boathouse, Ron Van Zee would likely approve that given what he states in his Affidavit and his determination that is compliant with the Zoning Ordinance. At that point in time, Plaintiffs have a definitive decision that Hayes Township is permitting the Laws to do something on their property that is subject to an appeal to the ZBA. Until that zoning permit is actually issued, the Plaintiffs are not aggrieved parties and are not entitled to file an appeal with the ZBA.

**CONCLUSION**

Nothing in Plaintiffs' Brief in Opposition to Defendants' Motion for Summary Disposition changes the uncontested fact that the only decision which could have given rise to an appeal to the ZBA occurred in November of 2019 and is now untimely. No other decisions have been made by the Township which could be the basis for an appeal to the ZBA. Therefore, Defendants request summary disposition because Plaintiffs' appeal is untimely, and they cannot establish that they are an aggrieved party entitling them to an appeal to the ZBA.

Dated: December 3, 2021



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# Exhibit 1



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**AFFIDAVIT OF RONALD VAN ZEE**

STATE OF MICHIGAN            )  
  )ss.  
COUNTY OF CHARLEVOIX    )

I, Ronald Van Zee, being first duly sworn, depose and state as follows:

1. I am over the age of 18 and would testify consistently with the facts set forth herein if called upon to do so at the time of trial.
2. I am the Supervisor and Zoning Administrator for Hayes Township.
3. In August of 2019, Scott Law filled out a Zoning Permit Application for a boat basin. The application is attached as **Exhibit 1**.

4. Although the "Site Plan Required" line is checked on the application, a site plan as defined in the Zoning Ordinance was not required for this construction.

5. There is nothing in the Hayes Township Zoning ordinance that regulates a boat basin or canal.

6. The boat basin or canal is regulated by EGLE and/or the Army Corp of Engineers.

7. Hayes Township determined in August of 2019 that no Zoning Permit was required from the Township regarding the boat basin or canal.

8. No zoning permit has been issued to Mr. and Mrs. Law as a result of the August 2019 Zoning Permit Application.

9. The Zoning Permit Application did, however, involve excavation within the Shoreland Protection Strip which is regulated in Section 3.14 of the Hayes Township Zoning Ordinance. Applicable sections of Article III of the Hayes Township Zoning Ordinance are attached as **Exhibit 2**.

10. Section 3.14(3) creates a shoreland protection strip located within fifty feet of the ordinary high water mark on Lake Charlevoix.

11. Section 3.14(3) provides further regulations regarding any activity within that fifty-foot area.

12. Section 3.14(8) creates a Shoreland Protection Subcommittee that reviews plans for activity within the protection strip for compliance with the Zoning ordinance and makes recommendations to the Planning Commission.

13. The Shoreland protection Subcommittee reviewed the Law project and made its recommendations to the Planning Commission.

14. On November 19, the Planning Commission reviewed the Subcommittee's recommendations and approved the plan as being in compliance with the Zoning Ordinance subject to several conditions. A copy of the Planning Commission approval and minutes are attached as **Exhibit 3**.

15. On July 6, 2020, I received a Zoning Permit Application from the Laws for an attached boathouse. See **Exhibit 4**.

16. The "Site Plan Required" line was checked on the application by the applicant and not me. A site plan was not required for the boathouse.

17. The Law property is zoned R-1 (Low Density Residential).

18. The Law property is used for a single-family residence which is a permitted use in the R-1 district per Section 4.05 of the Hayes Township Zoning Ordinance. See **Exhibit 5**.

19. Pursuant to Section 3.05(1) of the Zoning Ordinance, Exhibit 2, a building that is structurally connected to the principal building is considered part of the principal building and not subject to regulation as an accessory structure.

20. The boathouse is to be attached to the house making it part of the house and not an accessory structure.

21. The proposed boathouse did not require Planning Commission or site plan review pursuant to Section 5.03 of the Zoning Ordinance (**Exhibit 6**) and is a permitted addition to the house that can be approved by the Zoning Administrator.

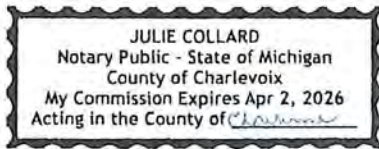
22. The July 6, 2020, application is what precipitated the July 8, 2020, "Zoning Permit" that is the subject of my prior affidavit.



Further, Affiant sayeth not.

Ronald Van Zee  
Ronald Van Zee

Subscribed and sworn to before me this 29 day of November, 2021.



Julie Collard  
\_\_\_\_\_, Notary Public  
Charlevoix County County, Michigan  
My commission expires: 4.2.26  
Acting in Charlevoix County, Michigan