

STATE OF MICHIGAN
IN THE 33RD CIRCUIT COURT FOR THE COUNTY OF CHARLEVOIX

SCOTT LAW and DEBRA LAW,

Appellants,

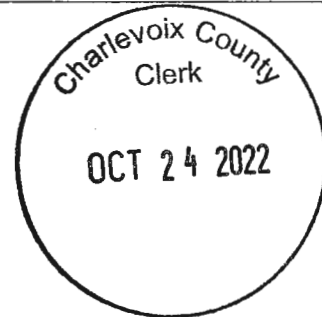
CC Case No. 22-0975-27-AA
Hon. Roy C. Hayes III

v.

HAYES TOWNSHIP ZONING
BOARD OF APPEALS,

Appellee.

JENNIFER J. SCHAFFER (P49438)
Attorney for Appellants
J. Schafer Law Firm, PC
4402 Mountain View Trail
Boyne Falls, MI 49713
(231) 330-1414
jennifer@jschaferlawfirm.com



CLAIM OF APPEAL

SCOTT LAW and DEBRA LAW, by and through counsel, JENNIFER J. SCHAFFER, J. Schafer Law Firm, PC, pursuant to MCR 7.122, hereby claim an appeal of the interpretation decisions of the Hayes Township Zoning Board of Appeals (ZBA), made on August 22 and 29, 2022, and approved in the minutes of the ZBA on October 3, 2022, and state the following in support:

1. On a Request for Interpretation by Hayes Township resident LuAnne Kozma (Kozma), the ZBA rendered interpretations of the Hayes Township Zoning Ordinance, Sections 2.02 and 3.14(2), regarding the Ordinary High Water Mark (OHWM) and Shoreland Protection Strip (SPS), respectively, on August 22 and 29, 2022. The minutes of the ZBA, as approved on

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

October 3, 2022, are attached hereto as **Exhibit A**. A certified copy of the ZBA record for the August 22 and 29, 2022, meeting has been requested. **Exhibit B**.

2. Kozma's Request for Interpretation identified the specific property involved as Hayes Township Parcel 15-007-132-005-25, owned by Appellants Scott and Debra Law.

3. Appellants are "aggrieved parties" pursuant to MCL 125.3607(1) and *Saugatuck Dunes Coastal Alliance v Saugatuck Township*, Mich Supr Ct Op No 160358/9 (July 22, 2022).

4. The ZBA made the following interpretation regarding the SPS: "[T]he Hayes Township Zoning Ordinance Waterfront Regulations Section 3.14 Subsections (1) thru (4) and (8) protect, and prohibit any excavation of, the Shoreland Protection Strip for an artificial boat basin or channel." ZBA Minutes, 8-22-2022.

5. The ZBA made the following interpretation regarding the OHWM: "[T]he Ordinary High-Water Mark [is at an] established elevation level in the ordinance and will remain with the natural shoreline." ZBA Minutes, 8-29-2022.

6. Contrary to MCL 125.3606(1), the ZBA's interpretations of the SPS and OHWM:
- a. Fail to comply with the constitution and laws of the state;
 - b. Were not based upon proper procedure;
 - c. Were not supported by competent, material, and substantial evidence on the record; and/or
 - d. Do not represent the reasonable exercise of discretion granted by law to the ZBA.

7. Specifically, the ZBA's interpretations:
- a. Conflict with and/or render nugatory other provisions of the Hayes Township Zoning Ordinance;

- b. Ignore the plain language of the Ordinance as written;
- c. Constitute legislation, rather than interpretation, which is within the exclusive jurisdiction of the Planning Commission, not the ZBA;
- d. Are arbitrary and capricious, lacking the support of competent, material, and substantial evidence on the record; and/or
- e. Represent an abuse of discretion by the ZBA.

WHEREFORE, Appellants Scott Law and Debra Law respectfully request that this Honorable Court REVERSE the interpretations of the Hayes Township Zoning Board of Appeals, and enter such further orders as the Court determines just and equitable.

Dated: October 24, 2022



JENNIFER J. SCHAFER (P49438)
Attorney for Appellants
J. Schafer Law Firm, PC
4402 Mountain View Trail
Boyne Falls, MI 49713
(231) 330-1414
jennifer@jschaferlawfirm.com

