

AGENDA
HAYES TOWNSHIP BOARD OF TRUSTEES
SPECIAL MEETING

July 30, 2025 7:00 pm

Hayes Township Hall

9195 Major Douglas Sloan Road

Charlevoix, Michigan 49720

[https://us02web.zoom.us/j/88001640434?
pwd=QkdkY3AzN1dmKzZpajZQNEkwMkZ5dz09](https://us02web.zoom.us/j/88001640434?pwd=QkdkY3AzN1dmKzZpajZQNEkwMkZ5dz09)

+1 312 626 6799 US (Chicago)

Meeting ID: 880 0164 0434

Passcode: 251468

1. Call to Order
2. Review and Approval of Agenda
3. Public Comment
4. Discussion of current litigation (Kim Fary, Pat Fary, Darcy Phelps, Catherine Phelps, JoEllen Rudolph, Jim Rudolph, Mike Taylor, Summer LaVanway, Carol Umlor, Shelly Vanwart, Kevin Willis v Hayes Township (BOT may go into closed session))
5. Board of Trustees Comment

ADJOURN MEETING

Public Comment at Meetings of the Hayes Township Board of Trustees

The Hayes Township Board of Trustees values public input and offers two opportunities for the public to comment at its meetings, once near the beginning and once near the end. This affords the Board of Trustees the opportunity to hear your views and remarks. If you speak, you should not expect to engage the Board of Trustee members or any staff in discussion or debate.

Board of Trustee members will not respond to comments made during the Public Comment unless it becomes necessary to ask a clarifying questions, correct a factual error, or to provide specific factual information.

Questions about Township matters are best directed to individual Board members or Township staff (Planner, Zoning Administrator, or Assessor) between meetings. Contact information is available on the township website at: hayestownshipmi.gov.

The availability of public comment is recognized by the Michigan Open Meetings Act. The Act provides that rules may be adopted for orderly comment from the public. To that end, the following rules have been established by the Board of Trustees:

1. A person wishing to speak will indicate on the sign in sheet that they would like to be called on at Public Comment. All persons in attendance in person will be called on first. Zoom attendees can indicate they would like to speak by raising their hand icon.
2. The person will begin by stating their name, spelling it out if requested.
3. The person addresses the Chairperson, or other person chairing the meeting, on behalf of the entire Board of Trustees. Public comment is NOT to be addressed to individual Board of Trustee members, to any township staff present, or to other members of the audience.
4. There is a three (3) minute time allotment for each speaker. The time limit may be extended by the Chairperson or majority of the Board of Trustee members present. A speaker may speak only once at each Public Comment. There is no provision for another audience member to 'donate' their three (3) minutes to another speaker.
5. A speaker will be out of order if the speaker disrupts the meeting, speaks longer than the allotted time, uses vulgarities or makes a personal attack on a Board of Trustee member or Township employee that is unrelated to the performance of that person's duties.
6. If a speaker is called out of order, that speaker will not be able to speak again at the same meeting except by special leave of the Board of Trustees
7. The Chairperson, or other person chairing the meeting, will have the discretion to permit members to speak at times other than the times reserved for Public Comment.

From: Todd Millar

Sent: Monday, June 30, 2025 10:40 AM

To: Ron Vanzee - Zoning <zoning@hayestownshipmi.gov>

Cc: Kristin Baranski (clerkhayestownshipmi@gmail.com) <clerkhayestownshipmi@gmail.com>

Subject: Timeliness of appeal to ZBA

Ron,

You have asked me for my legal opinion on the timeliness of the appeal to the ZBA of your approval of the Pickleball Storage LLC zoning permit.

My understanding of the facts are that you issued a zoning permit to Pickleball Storage LLC on April 30, 2025. The deadline to file a claim of appeal to the ZBA, as established by the ZBA in its rules of procedure, is May 30, 2025. The ZBA rules of procedure, in section 3.1 provide:

Any appeal, variance, or interpretation request shall be filed in writing on an application form provided by the Zoning Administrator and shall be accompanied by the payment of a fee, establish from time to time by the Township Board. Such notice shall be filed with the Zoning Administrator not more than 30 days from the date of the decision being appealed.

On May 29, someone delivered to the township drop box a Zoning Variance Application with the word variance crossed out and appeal written in. The appeal was not on the proper appeal form as dictated by the ZBA rules of procedure. This form appears to have been emailed to the ZBA by Mr. Scheel on the same date. In addition to being on the wrong form, the appeal is allegedly being brought by Mr. Scheel as agent for a number of residents, not on behalf of himself. There is no indication in the supplied materials that Mr. Scheel has authority to act on behalf of anyone but himself. Finally, the application is not signed by anyone. On June 23, the township received a letter from Kim Fary that included the proper appeal form signed by Mr. Scheel and a document signed by 13 people authorizing Mr. Scheel to act as their agent for purposes of the appeal. In my opinion, the document filed on May 29 was incomplete and invalid. Filing the wrong incomplete form does not save your place in line when it comes to a limitations period. Furthermore, the proper form that was filed on June 23 is untimely as it falls outside of the limitations period. As such the ZBA lacks jurisdiction to hear this appeal. This conclusion is reached by reviewing similar cases that deal with the jurisdiction of the circuit court in appeals from the ZBA.

The Michigan Zoning Enabling Act (the "Act") and MCR 7.122 govern appeals from a zoning board of appeals to the circuit court. MCR 7.122(B) provides that "[a]n appeal under this rule must be filed by the statute applicable to the appeal." Importantly, the Act requires that an

appeal from a zoning board of appeals' decision be filed within "[t]wenty-one days after the zoning board of appeals approves the minutes of its decision." MCL 125.3606(3). "The time limit for filing an appeal in the

Mich App 388, 393, 952 NW2d 603 (2019); MCR 7.104(A). "Subject-matter jurisdiction may not be conferred on a court by the actions of the parties." *Id* at 395; *Smith v Smith*,

218 Mich App 727, 733; 555 NW2d 271 (1996). Importantly, "[u]nambiguous statutory language must be enforced as written." *Id*; MCR 7.104(A).

In *Quality Market v Detroit Board of Zoning Appeals*, 331 Mich App 388, 952 NW2d 603 (2019) ("*Quality Market*"), the court of appeals was tasked with determining whether the circuit court's decision reversing the zoning board of appeals' decision was proper. The aggrieved

property owner in *Quality Market* operated a convenience store and sought a zoning variance in order to be permitted to sell liquor near a school and residentially zoned area. *Id* at 390. The zoning board of appeals held a meeting on February 20, 2018 and ultimately denied the property owner's request. *Id* at 391. The zoning board "issued a written decision and order reflecting this denial on March 15, 2018" which included various time constraints that the aggrieved property owner must follow, as well as the statutes that governed. *Id* at 392. The meeting minutes were approved on February 27, 2018. *Id*. The aggrieved property owner filed its claim of appeal on April 6, 2018. The zoning board of appeals "moved to dismiss on the basis that the appeal was untimely under MCL 125.3606(3)." *Id*.

The *Quality Market* court relied on MCL 125.3606(3), MCR 7.104(A)(1), and MCR 7.122(B) and determined that the aggrieved property owner's claim of appeal was untimely, and the circuit court's decision was improper because the circuit court lacked jurisdiction to hear the

case. *Quality Market*, 331 Mich App at 393-395. The *Quality Market* court disagreed with arguments raised by the aggrieved property owner that the doctrine of estoppel should apply to the zoning board of appeals' written decision containing allegedly misleading information about

deadlines, since (a) the written decision made by the zoning board of appeals contained the applicable specific statutes that applied to the appeal, and (b) the court lacked jurisdiction. *Id* at 394-395.

I see no reason that the same logic would not apply to appeals to the ZBA. The Zoning Enabling Act, MCLA 125.3603(1) and 125.3604(2), specifically authorizes the ZBA to adopt rules governing procedure, including deadlines for filing appeals:

The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals.

An appeal under this section shall be taken within such time as prescribed by the zoning board of appeals by general rule,

by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal

specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the

zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

In this case, the applicants failed to follow the rules adopted by the ZBA and file a completed application for appeal by the deadline. Therefore, it is my opinion that the ZBA lacks jurisdiction to hear this appeal, and the appeal should be rejected as untimely.

Please let me know if you have any questions.

Todd

Todd W. Millar

Attorney

DIRECT 231.486.4519 EMAIL tmillar@parkerharvey.com

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**State of Michigan
Charlevoix County Circuit Court**

Kim Fary, Pat Fary, Darcy Phelps,
Catherine Phelps, JoEllen Rudolph, Jim
Rudolph, Mike Taylor, Summer
LaVanway, Carol Umlor, Shelly VanWart,
Kevin Willis,

Plaintiffs

v

Case # 25-0946-28C2

Hon. Roy C. Hayes III

Date filed: _____

Hayes Township,

Defendant

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

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



Complaint for Mandamus or Superintending Control

I. Introduction and jurisdiction

1. The Court has jurisdiction for Mandamus under MCL 600.605 and MCR 3.305,¹ and for Superintending Control under MCL 600.615 and MCR 3.302.²

“Superintending control and mandamus are closely related actions.”³

2. Though the gravamen of this suit concerns inaction of Defendant Township's Zoning Board of Appeals (“ZBA”) and its Chairperson, neither the ZBA

¹ *Citizens for Higgins Lake Legal Levels v Roscommon County Board of Commissioners*, 341 Mich App 161 (2022).

² *Choe v Flint Charter Township*, 240 Mich App 662 (2000).

³ *Choe v Flint Charter Township*, second-to-last paragraph.

itself nor its chairperson is named as a Defendant, per MCR 7.122(C)(1)(b).

3. Plaintiffs' bottom line is to get a Court order that the ZBA Chair perform her clear ministerial duty of scheduling mandatory public ZBA hearings, wherein the ZBA will consider the issues of the two Notices of Appeal below, an act which to date silently and without explanation she has refused to do.

4. The ZBA's duty is clear in the statute: it "shall" meet to hold public hearings to hear and decide any Notice of Appeal it receives. After a Notice of Appeal is filed, setting a hearing date is solely the Chair's duty, under the Zoning Ordinance ("ZO") and statute which repeatedly use the mandatory word "shall."⁴

5. Plaintiffs do not ask the Court to resolve the merits of the two ZBA Appeals, though the issues of the Notice of Appeal procedures overlap with the Plaintiffs' Second Notice of Appeal.

II. Facts

6. All dates below are in 2025.

7. The background is an ongoing controversy about a disputed large building

⁴ MCL 125.3602(1) ("Meetings of the zoning board of appeals shall be held at the call of the chairperson. . . ."); 3603 ("The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance. . . . It shall hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance adopted under this act."); 3604(5) (after an appeal "If the zoning board of appeals receives an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request."); ZO § 8.02 ("Meetings of the Zoning Board of Appeals shall be held at the call of the Chairman. . . .")

being constructed by a Company, Pickleball Storage LLC, at 10855 Pincherry Road, in Plaintiffs' neighborhood in the Township. They allege Zoning Permit # 25-04-06, issued by the Zoning Administrator ("ZA") on April 30, violates sections of the ZO.⁵ Pertinent sections of the ZO are attached.⁶ Construction started around May 19 with land clearing and excavation, after issuance of a Building Permit on May 12,⁷ Construction is ongoing today.

8. On May 29-30 these Plaintiffs⁸ filed a Notice of Appeal with the ZBA and ZA, challenging the Zoning Permit and specifying the grounds as required by statute and ordinance.⁹

9. Plaintiffs' then-agent Jonathan Scheel served the May 29 Notice personally on the ZBA Chair Janice Vedder-Whipple that day, and on the ZA on May 30.

10. Having heard nothing from the ZBA Chair, Scheel, by emails of June 11¹⁰ and 13,¹¹ informed Vedder-Whipple that construction had started on the Zoning Permit, and reminded her of her obligation as ZBA Chair to schedule a hearing and the ZBA's obligation in the meantime under statute and the ordinance to enforce a stay of the Permit.¹²

5 The Notice of Appeal filed on May 29-30 alleges violations of ZO §§ 3.05.8, 4.03 and 5.02.4.

6 Attachment 2.

7 Attachments 5, 6.

8 Including Jim Rudolph; attachment 7.

9 Attachment 1; MCL 125.3604(2) and ZO § 8.03(5).

10 Attachment 8.

11 Attachment 9.

12 MCL 125.3604(3); ZO § 8.11.

11. On June 16, the ZA sent a letter to all Plaintiffs citing determinations he made about the application accompanying the Notice of Appeal, but not about the Notice itself.

12. Plaintiffs filed and served the second Notice on the ZBA and ZA on June 24 specifying the grounds, appealing the ZA's determinations, decisions, and actions in handling their appeal in the June 16 letter that violated ZO §§ 8.03(5) and 8.05, and ongoing violations of ZO §§ 8.03(6) (duty to transmit his files to the ZBA) and 8.11 (the stay provision).

13. It has been over 6 weeks since the ZBA Chair received the first Notice of Appeal, and over 3 weeks since she received the second Notice. Silently, she has neither agreed to nor rejected Plaintiffs' request for ZBA hearing date(s), even while construction at 10855 Pincherry has continued.

14. On July 9, undersigned counsel emailed¹³ the ZBA Chair, and every ZBA member and alternate, with cc's to the ZBA Secretary, the ZA, and James R. Marriott,¹⁴ informing the ZBA Chair that on receipt of a triggering Notice of Appeal – which is different from an Application and has a different due date – she had to set a hearing date, and noting further that the Township ZA had no role in the process, particularly because as the Township official whose actions the Notices challenge, he had a conflict of interest.

13 Attachment 11.

14 Organizer of Pickleball Storage. Attachment 4.

III. The Pickleball Storage litigation.

15. In separate litigation begun only against Pickleball Storage on July 1,¹⁵ these Plaintiffs are seeking a Court Declaration mandated by statute and the ZO, that the above-noted stay of Permit's effectiveness went into effect automatically when they filed their Notices to the ZBA and ZA. The Court has scheduled a hearing for July 29 at 10:30 am.¹⁶

16. Plaintiffs have filed five affidavits in the Pickleball Storage case. They are re-attached to the present Complaint. In sum the affidavits assert:

- Jonathan Scheel: He filed and on May 29-30 personally served the first Notice, saying verbally to the ZBA Chair that he represented the Plaintiffs on May 29. On May 30 he filed the Notice with the ZA at the township's drop box. He is a zoning expert, having served as the Hayes ZA and the Zoning Planner for the City of Charlevoix for a decade and a half. It is customary in the zoning community to accept claims of representation without proof unless there is suspicion to the contrary. The ZBA must hold a hearing and enforce a stay of the permit.
- Lawrence Sullivan: He has an academic planning background, for 31+ years served in various planning/zoning roles including as Charlevoix County Planning Director and expert adviser. A Notice of Appeal can be as simple as a letter on blanks which states the grounds so a stay can go into effect prior to permitted work being done which might later be overturned. Once a written Appeal is noticed the Chair is to set a meeting date and agenda. The ZA is to notify the parties of the stay in effect until a ZBA decision. It is up to the ZBA not the ZA to determine the completeness of the Notice. The ZBA has to hold a public hearing wherein it would rule on any administrative order or decision. An Application, as distinguished from a Notice, is not due till 30 days before the hearing date.

¹⁵ *Kim Fary et al v Pickleball Storage LLC*, Charlevoix Circuit Case # 25-0932-28CZ.

¹⁶ Attachment 3.

- Jim Rudolph: As a 38-year Hayes Township official including being a former Hayes ZBA member, planning commissioner, and board of trustees, after reviewing historic documents he determined that the ZO used to require that a Notice be signed, but eliminated that requirement deliberately in 2008-09.¹⁷
- Bill Henne: He was on the Hayes ZBA for 6 years, including 3 years as Chair. One of his main roles was to call ZBA meetings. Nothing in the ZO requires that a Notice of Appeal be signed.
- LuAnne Kozma, a resident, filed two Notices of Appeal under ZO § 8.03 in previous ZBA cases in 2021. In each of them she attached a “Zoning Variance Application” under ZO § 8.05, which she re-titled and modified as a “Zoning Appeal Application.” She explained the “grounds” of the Appeals were stated in an attached brief, which was the Notice. Never throughout the 11-month ZBA process did the ZA or ZBA reject her Notices or Applications, or require her to re-submit this information on a different form. The ZBA nevertheless held hearings and decided her Notices of Appeal.

17. Counsel for Pickleball Storage has filed an Appearance in that case, and is expected to file a motion in the next few days. According to correspondence she is expected not to contest the facts of the above affidavits.

IV. Claims

18. The deadline for filing Notices of Appeal “on blanks” is 30 days, so the Notices were timely.

17 Compare *Daher v Prime Healthcare Services-Garden City*, MSC Docket # 165337 (2024) (“A statute’s history—the narrative of the statutes repealed or amended by the statute under consideration—properly forms part of its context[.]” *Id.* at ____ (cleaned up). “Indeed, courts must pay particular attention to statutory amendments, because a change in statutory language is presumed to reflect either a legislative change in the meaning of the statute itself or a desire to clarify the correct interpretation of the original statute.” [emphasis added])

19. The Chair's refusal without explanation to set hearing dates continues as a present violation each day.¹⁸

20. The ZA cannot add a signature requirement for Notices of Appeal, given that the former version of the ZO did have a signature requirement, but the current version does not.¹⁹

21. There is no requirement that a Notice of Appeal must be on a Township-supplied "form,"²⁰ because "blanks" are also an acceptable format. Despite this, the appellants did use a Township form, modifying the word "variance" to "appeal" and providing all the same information as is on an "appeal form."

22. A separate requirement, found in MCL 125.3604(1), which states an appeal is simply "taken" – not applied for – was complied with by appellants. The deadline under ZO § 8.05 for the "application" is 30 days prior to the ZBA hearing date, a future date which has not yet been set.

23. As the Court of Appeals recently held:

The best evidence of the Legislature's intent is the language of the statute, and when that language is clear and unambiguous, the statute must be enforced as written.²¹

18 *Garg v Macomb County Community Mental Health Services*, 472 Mich 263 (2005).

19 Rudolph Affidavit; *Saugatuck Dunes Coastal Alliance v Department Of Environment, Great Lakes, And Energy*, COA Case # 367989 (7-9-25, published), deciding EGLE could not insert policy into the statute, stating the agency's "policy concerns can only be addressed by the legislature," at page 8.

20 Sullivan Affidavit.

21 *Saugatuck Dunes Coastal Alliance v Department Of Environment, Great Lakes, And Energy*, COA Case # 367989 (7-9-25, published).

24. Plaintiffs have done all that they can do to get the attention of the ZBA and ZBA Chair to act: They have filed two Notices of Appeal that meet all requirements in the ZO and the Michigan Zoning Enabling Act, they have repeatedly asked the Chair to hold meetings, they have filed a Second Notice of Appeal questioning administrative decisions made by the ZBA in handling the First Notice of Appeal. The Hayes Township ZBA cannot continue to ignore their clear legal duties to act upon receipt of Notices of Appeal.

25. As the Court of Appeals has observed:

“Mandamus is an extraordinary remedy....” [citation omitted] Thus, issuance of this writ is proper only if (1) the party seeking the writ “has a clear, legal right to performance of the specific duty sought,” (2) the defendant has the clear legal duty to perform the act requested, (3) “the act is ministerial,” and (4) no other remedy exists, legal or equitable, “that might achieve the same result.” [citation omitted] “Within the meaning of the rule of 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.’” [citations omitted]²²

26. There is no procedure for appealing the ZBA Chair's refusal to schedule *to the ZBA*. In substance though Plaintiffs tried to do that anyway in their above message to every ZBA member – including a cc to Pickleball Storage itself – on July 9, to which there has been no response..

V. Conclusion

27. Wherefore Plaintiffs ask the Court, because of the above-noted “shall”

22 *Citizens for Higgins Lake Legal Levels v Roscommon County Board of Commissioners, op cit.*

language in the ZO and statute, to order a writ of Mandamus or Superintending Control to the ZBA Chair to set the hearing dates for, and the ZBA to hold hearings on the Plaintiffs' two appeals to the ZBA.

Respectfully submitted,



Ellis Boal
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Dated: July 21, 2025



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

July 30, 2025

Dear Township Residents and Township Board:

In deference to the opinion of Mr. Millar directed to Mr. VanZee, dated June 30, 2025, I offer another perspective which mirrors my personal philosophy regarding the perceived problem with government... it often overlooks common sense.

Since December, 2024, it is and has been my position that all opinions of the Township attorney (except confidential matters) should be emailed to the Township Board, at the time of the attorney's response. Contrary to my recommendation, the Board voted that an attorney's opinion be provided in the reports of the Township officials and not emailed to all BOT members. This Attorney Opinion, dated June 30, 2025, was not provided by the Zoning Administrator in his Zoning Report in July.

There are, of course, competing policy considerations for strict adherence to the law, such as keeping township costs down by rejecting flawed appeals that would otherwise use township resources. The deadlines also serve the interests of citizens by allowing citizens who have obtained a permit to have certainty that their permit is valid, once the 30-day deadline has expired and the permit is no longer subject to a ZBA appeal. Permits would be devalued if the permittee could not justifiably rely on the permit once the appeal period has expired. It would raise the specter of a permittee expending significant resources on a presumably valid permit, only to then have it belatedly appealed, thereby placing the investment at risk.

But there are unique circumstances that warrant flexibility, such as in this case where it would be inequitable (not fair) to take the hard "procedural" line – the "Pickleball Appeal" was clear from my reading of the form which was served on May 29 and was signed by the Agent on behalf of the named principals. Perhaps agency law may preempt my conclusion, but the equities reflect that Notice (substance) was given to the Township outlining certain clear and articulated concerns with the issuance of a Permit to Pickleball Storage.

In this case, I do not believe that the appeal FROM an administrative zoning decision to the ZBA is jurisdictional.... although I agree that an appeal FROM the ZBA to Circuit Court is jurisdictional.

HAYES TOWNSHIP BOARD OF TRUSTEES SPECIAL MEETING

Meeting Date: July 30th, 2025

Location:

Hayes Township Hall

[illegible]