

Leelanau County Construction Board of Appeals
Wizinsky Appeal – Monday, October 5 2020, 9:00 a.m.
Tentative Minutes

Meeting recorded – <https://www.leelanau.gov/meetingdetails.asp?MAId=1995>

Leelanau County Government Center, Suttons Bay, Michigan

Proceedings of this meeting are being recorded and are not the official record of the meeting – the formally approved/accepted written copy of the minutes will be the official record of the meeting. All documents from this session are also available for review at the link listed above.

The meeting was called to order by Chairman Richard Peplinski at 9:00 a.m. Today’s meeting is being held at the Leelanau County Government Center, 8527 E. Government Center Dr., Suttons Bay, Michigan.

The Pledge of Allegiance was led by Chairman Peplinski.

Roll Call: Clinton Cook
George Paolacci, *via Zoom, present at 9:03 a.m.*
Richard Peplinski
F. Jon Walter

Guests present.

Approval of Agenda:

Clerk requested that Approval of Minutes be struck from the agenda, as they were not available.

Motion by Peplinski to approve the agenda, as amended. Seconded by Cook and Walter.

Discussion – none.

Ayes – 4 (Peplinski, Walter, Cook, Paolacci)

No – 0

Motion Carried.

Public Comment:

The Clerk stated the number to call in for public comment – 231-256-8109. County Administrator Chet Janik stated by Board rule, public comment is limited to five minutes. Discussion ensued with Appellant Wizinsky; Janik noted this was the portion of the meeting devoted to public comment, and he would be allowed to speak under action items. Wizinsky continued to comment, querying if the Appeals Board members had received his appeal documents. Clerk confirmed the Appeals Board members had received Wizinsky’s packet in advance of today’s session. Janik requested and Clerk recited the number to call in for public comment. No calls received.

Action Items –

Appeal by William Wizinsky of Certificate of Occupancy for Structure located at 12063 N. Foxview Dr., Northport:

Chairman Peplinski noted today's session was to hear the appeal of William Wizinsky for the Certificate of Occupancy for a structure located at 12063 N. Foxview Dr., Northport. He then turned the meeting over to counsel Matthew Zalewski for the building safety code enforcement report. Zalewski said his purpose was to provide a bit of an overview of why we are here today. He noted the memo he had drafted that was part of the Appeals Board meeting packet (https://www.leelanau.gov/downloads/cboa_wizinsky_appeal_10052020_rev_2.pdf). Zalewski said this matter is related to a Certificate of Occupancy issued in July 2018, regarding Wizinsky's structure, that had a limited certificate of occupancy, that would not allow use of the structure as a dwelling. The decision was based on factors including Leelanau Township denied land use approval for this structure as a dwelling, and the Benzie/Leelanau District Health Department had cited the structure wasn't suitable as a dwelling, because it lacked any source of water or sanitary facilities, including a toilet.

Wizinsky interjected that people were not being "allowed" into the Zoom meeting. Janik confirmed that any public are allowed to participate via phone, and that they are able to watch the County's YouTube channel. Multiple comments from Wizinsky. Zalewski stated the procedure used for today's session is not only in full compliance with the State Open Meetings Act, but also is specifically the type of procedure authorized under the Governor's Executive Order for electronic meetings; it does not require Zoom at all, let alone that everyone be allowed (to participate) via Zoom. This type of hybrid approach is being used by a number of municipalities. The meeting is being live-streamed on YouTube, we have provided the call-in information in the published notice, the agenda, and live this morning. Wizinsky continued to interject on procedure.

Zalewski continued – the reason for the limited Certificate of Occupancy related to Leelanau Township and the Health Department's determinations. Not much had happened procedurally after that time, until Wizinsky chose to sue the County and Leelanau Township. Additionally, Leelanau Township and the Homeowner's Association was suing Wizinsky to have his structure declared a nuisance. Zalewski continued to review his memo, and provided a synopsis of the legal cases attributable to the structure located at 12063 N. Foxview Dr., Northport. He added as an update, as of last week, the Federal lawsuit has been dismissed, so both Federal lawsuits have been dismissed.

Zalewski stated the reason we are here today, is because the argument he had made in the lawsuit, is that Wizinsky never came before the Appeals Board to appeal the decision, or file an appeal with the Township Zoning Board of Appeals for the Land Use decision. Zalewski stated Wizinsky is pretty clear in his papers; it is not that uncommon to not have a timeline for appealing. (The County) decided to err on the side of (caution) and allow Wizinsky to appeal (the Certificate of Occupancy), even though significant changes have happened since July 2018. There currently is a court order for removal of the structure. Zalewski said Wizinsky had provided evidence that the Benzie/Leelanau District Health Department did approve some

alternatives for the sewer and water, but to date, he has not received land use approval from the Township. The court order still stands, saying that the structure has to be removed. There is a lot of history and arguments being made. This Board's primary focus should be on the narrow questions of the code interpretations – whether the Certificate of Occupancy should have been required at all, whether it makes any difference that it is a gazebo or a utility structure, and whether the limited use of the dwelling is appropriate. It would also be appropriate for this board to consider the timing and circumstances thereafter. Zalewski stated he is happy to answer any questions from the Appeals Board.

Ruling of Building Safety and Code Enforcement Department:

Building Official Paul Hunter then read from his memo (included with the Board Packet). He provided a timeline of events.

Invitation to Applicant to Present his Request and any Further Comments:

Wizinsky then asked to share his screen. He then provided a PowerPoint that he read from (https://www.leelanau.gov/downloads/wizinsky_pp_presentation_10052020.pdf) and provided his opinions with each panel (meeting video link listed on Page 1). Wizinsky concluded by stating he is requesting the Appeals Board restore his property rights.

Cook left the meeting at 10:31 a.m.

Board Discussion (only):

Chairman Peplinski noted County Administrator Chet Janik wanted to respond. Administrator Janik stated Wizinsky had filed a complaint with the Civil Rights Commission; the Commission had interviewed him and a few other people, and the Commission then completely dismissed all allegations against us. There was no follow up by the Commission; it was a simple dismissal of all allegations, based “without merit”, and there was no mandate for a permit.

Cook returned at 10:32 a.m.

Janik said secondly, there are different forms of government; county government is separate from township government, and is also separate from the Health Department. We have no authority to interfere with the township or the Health Department. Much of what Wizinsky pointed out are issues with the township; (the County) is completely separate and has no authority. Can we have dialogue with them? Absolutely. Janik also denied there are any violations of the Open Meetings Act; yes, we had discussions with Patmore, which are perfectly legal. (County Prosecuting Attorney) Joe Hubbell never ordered Hunter or anyone else to issue permits; Hubbell's involvement was very casual, and based on the fact that Wizinsky had threatened (to file) a lawsuit.

Janik continued – as to the allegations of racial discrimination, when he was interviewed by the Civil Rights Commission, Janik said he stated under oath, that they had no knowledge that Wizinsky had a family, including a wife, a daughter, (or for that matter) one that is Black. This was only brought to our attention by Wizinsky. Once again, this is a completely inaccurate

statement by (Wizinsky) and the case was dismissed, with no follow up by the Commission. When we met with Township officials and the Health Department, no one in the room knew Wizinsky was married or that he had a daughter, much less that (the daughter) was Black. That was a complete surprise to us, and were only notified of that by Wizinsky. In terms of the lawsuit, which our attorney had pointed out was dismissed, we never sued Wizinsky; we never entered into the lawsuit. Much of his allegations which he stated during his presentation are with the Homeowners Association and the Township. We are not involved with those, we are not part of the lawsuits, and did not enter into those negotiations. We were sued by Wizinsky; we never sued him. We were never part of any dialogue with the Township or the Health Department. Hubbell was only involved (as the County Prosecutor) because legal action was taken with a threat against the County.

Janik concluded, saying the Civil Rights Commission completely dismissed Wizinsky's case (against the County) without cause, without merit, and never ordered us to issue any documentation. There was absolutely no follow up from them, other than the fact that they dismissed the case against the County.

Discussion ensued, with Wizinsky continuing to comment on the lawsuits.

Janik stated this is the time for the Appeals Board discussion; the four of you are to have dialogue, with only the Appeals Board members to comment.

Walter said it was his understanding that as the Board of Appeals, we are to relate our comments to what affects the building code of our County. Ninety percent of what was presented was not part of the Construction Code, and does not relate to anything relative to the township or the different municipalities, as to our own building department. Chairman Peplinski concurred. Walter added, and coupled with what Zalewski said, it is not in the jurisdiction of this Board, to the matters that were related to (regarding) judges, townships – he wants to make sure we define our comments to that location, and not go “out of bounds” in our responsibilities. Peplinski affirmed – that is our responsibility – only the building. Walter referenced Hunter's statement, on the occupancy – is this occupancy... part of his concern is we have two definitions that Hunter presented, that are straight out of Building Code. It appears that this structure is being used as if it had permanent facilities for living, sleeping, eating, cooking, and sanitation; electricity, water, and an improved sanitary system. He did not see that presented in that way. Peplinski concurred, saying in 1992 when (Wizinsky) took out the permit, it was for a gazebo; and it was a screened structure. For some reason, it was decided that it be taxed as a residence – a house. How did that change? Walter stated however it is taxed is not our problem. Peplinski agreed, adding but something had been done to the original structure to identify it as a “house;” even Wizinsky was calling it a “house.” Peplinski said it isn't a gazebo anymore; Wizinsky did something to the structure without the Building Department's knowledge to have it defined as a house. Wizinsky interjected; Chairman Peplinski reminded Wizinsky this time was for Appeals Board members discussion only. Wizinsky apologized.

Walter continued; he is basing his understanding and opinions as it relates to the Building Code, and questioning that this (structure) is not to be referred to as a home. Chairman Peplinski agreed. Walter said in reference to a home: *“A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.”*

Cook said he read this three times, and he doesn't know if we are supposed to call (the structure) a home, gazebo or a shed. Janik asked and Hunter responded it is defined as a structure. Discussion. Zalewski commented there are two separate issues here. Wizinsky keeps raising the point with the idea that (the structure) is taxed as a home, and therefore should be a home. That is a bit of a misnomer; under the tax classifications, (the property) is taxed as a residential property. Even if there was a tax classification for a home, there are plenty of (inaudible) where a structure can be classified for tax purposes as one type of use, but is not certified for occupancy. The tax system and Building Code are two separate systems. Zalewski stated he has been doing land use law his entire career, over 12 years. There are plenty of situations where you have a tax assessment on a parcel where it is vacant, declare a nuisance, or about to be demolished, and that, in of itself, has no bearing on the Building Code. As he understands it, Wizinsky is challenging the fact that the structure was classified as a utility structure; and Wizinsky wants it classified as a gazebo. Zalewski said one of the questions for the Appeals Board today is whether that makes any difference. (Regarding) the occupancy, Hunter had also raised the point there is occupancy and there is dwelling use. You can occupy a structure for a variety of purposes, one of which may not be for a dwelling, if it did not meet those requirements. These are the issues today.

Cook said you could have a different classification in a different setting, and it doesn't affect our (determination.) The Building Department could call it one thing, and someone could call it something else. Zalewski clarified within the context of the Building Code, it is for you to determine what that is; however, for tax purposes, under the Tax Act, and the State Assessing Manual, it is not taxed as a house, or a utility structure; the property is assessed as residential property. What is on the property – they do their drawings as to what is on the property – the driving characteristic for the tax law is a residential assessment. It is either vacant residential, residential improved, or residential single-family, which is separate and distinct. A different classification system than the Building Code. The tax system is a higher level of generalization, which doesn't make a difference, under the Building Code, whether it is a gazebo or a utility structure.

Wizinsky read at length from the Leelanau Township Zoning Ordinance. Chairman Peplinski asked Wizinsky, then why did you call (the structure) a gazebo, and not a guest house at that point? Wizinsky responded that was what “your department” labeled it; it was a “tree house”; he built it exactly as he was told to build it. Wizinsky continued to comment. Peplinski remarked, but then you applied for a repair permit in 2017, to restore gazebo as close as possible – how did it change from 212 square feet to 480 square feet, and on the permit, you said it was to restore a gazebo, as close as possible? Wizinsky cited (Township Zoning Administrator) Steve Patmore told him not to issue a third permit. Wizinsky alleged Patmore

too his 2016 permit and “changed it” into a 2018 permit. Wizinsky said he was trying different ways to obtain a permit. The 2018 permit, he had five trees on his “house”, he was not allowed to remove them. He alleged (the homeowners association) The Shores blocked people from going on his site to remove the trees. Wizinsky provided a timeline of the issues with regard to tree removal from his property. After the trees were down, (the structure) was not repaired and then sat there for three years until he received a “permit” through the Civil Rights Commission.

Janik clarified the Civil Rights Commission had no input; this has been proven to be false. Wizinsky referenced Exhibit 11. Chairman Peplinski reminded Wizinsky this was time for the Appeals Board discussion; you had answered Peplinski’s question.

Chairman Peplinski asked Paolacci if he had any comment. Paolacci said much of what he has heard today; it is confusing. After reading the documentation, he is not convinced that what Wizinsky is saying is correct. Wizinsky has talked about a homeowner’s association. Paolacci said he doesn’t know what kind of agreements Wizinsky had with them. He has to get the agreement through them to the County Board.

Walter said as previously discussed, the definitions of the space by the township; that is not our responsibility relative to the Construction Code laws. The basis for the township definitions are not there.

Janik thanked the Appeals Board for being present. It is quite simple; you are the Construction Board of Appeals; that is your duty. You are present to hear the appeal on the terms of occupancy. The department made a decision and then issued a statement; Wizinsky then appealed it. Your job is to either agree with the appeal or deny the appeal; it is really that simple. You have heard arguments for two hours. The discussions about the Township, the Health Department, and the Civil Rights Commission argument has nothing to do with the case. You either agree with the defendant or deny his appeal.

Paolacci noted the terms used here are confusing; there are different types of space defined in a house – you can have living space, usable space – but not all of them mean the same thing. Wizinsky continued to interject (discussion unintelligible); Chairman Peplinski asked and Paolacci responded he got his answer.

Cook remarked the note on here is nothing to do has nothing to do with what we are here to decide. Janik stated your job is to either agree with the decision made, or with Wizinsky.

Zalewski said whatever decision you make, the person making the motion needs to articulate the reasons as to what is driving the Appeals Board’s decision.

Walter said in the request, is it for a gazebo? Janik remarked the permit was issued in a certain way by Hunter; the question is do you validate that decision, or do you agree with Wizinsky that

it should be modified. Wizinsky said the gazebo is on both 1992 and 2018 permits. He is asking that the Certificate of Occupancy match the permit. Wizinsky provided his opinion at length.

Walter said it is his understanding of the original permit for the gazebo was a structure that was open, one-story above ground, and now this structure is two stories and has a (roof). He does not believe that what he saw was a gazebo as defined by the original permit. Chairman Peplinski concurred – it has changed, it is not the same structure. Wizinsky interjected again. Janik reminded Wizinsky this was for Board discussion only, unless you are recognized by the Chairman. Peplinski continued; the structure is not the same, it cannot be listed the same on the permit now. Peplinski said Wizinsky is asking us to change the wording on the permit, which cannot be changed.

Board Decision:

MOTION BY WALTER THAT THE LEELANAU COUNTY CONSTRUCTION BOARD OF APPEALS DENY THE APPEAL BY WILLIAM WIZINSKY FOR THE APPLICATION FOR OCCUPANCY, BASED ON IT BEING A GAZEBO, BE DENIED BECAUSE IT DOES NOT RELATE TO THE ORIGINAL PERMIT OF THE GAZEBO THAT WAS STRUCTURED. SECONDED BY COOK.

Discussion – Cook remarked it sure isn't like it was in 1992; this is totally different.

ROLL CALL: Walter – YES; Cook – YES; Paolacci – YES; Peplinski – YES.

AYES – 4 NO – 0

MOTION CARRIED.

Old Business:

None.

Public Comment:

Clerk Evans stated that Building Safety Administrative Secretary Amber Weber checked for any emails that may have been sent during today's meeting relative to public comment at 10:15 a.m., and no emails have been received. Evans then restated the number to call in for public comment. She further noted that according to the County's YouTube channel, 14 people were watching this meeting. No comments were received.

Adjournment:

Motion by Peplinski to adjourn. Seconded by Walter.

Ayes – 4 (Peplinski, Walter, Cook, Paolacci)

No – 0

Motion Carried.

Meeting adjourned by Chairman Peplinski at 11:48 a.m.

Laurel S. Evans
Recording Secretary Pro Tem