LEELANAU COUNTY DEPARTMENT OF BUILDING SAFETY
8527 E. Government Center Dr., Suite 109 • Suttons Bay, Michigan 49682
Phone (231) 256-9806 FAX (231) 256-8333
e-mail: buildingsafety@co.leelanau.mi.us • website: www.leelanau.gov

Date: September 25, 2020

From: Paul Hunter, Building Official

To: Members of the Construction Board of Appeals

Subject: Appeal by William Wizinsky of the Certificate of Occupancy issued for a residential utility structure located at 12063 N. Foxview Dr., Northport

Mr. William Wizinsky filed an application for plan examination and building permit on August 10, 1992, for a "12x14 + 6x9 Gazebo," square footage listed as "212SF" (See Attachment #1, which also includes a copy of the building plans and the land use permit issued by Leelanau Township). However, a note on the file from February, 1995, states "unable to check [final inspection] until Spring."

Mr. Wizinsky then applied on February 21, 2017, to "alter and repair" a "gazebo" listed as "480 sq ft" (see Attachment #2) with a note on page 4 of 5 stating "will restore/repair gazebo as close as possible to the original intent of the original approved plans." A permit was not issued until January 26, 2018 (see Attachment #3), at which time Mr. Wizinsky paid $299.00 and was issued a building permit (PB18-0051) that was entered into the County permitting system by then-Building Official Steve Haugen to do the following:

> *Residential utility structure, Gazebo/shed, 12 x 20, structurally support original structure design after storm*

The permit was administratively finaled and completed by Building Official Paul Hunter after an approved special inspection was completed by Charlie Sessoms on July 11, 2018. A certificate of occupancy (OC18-0219) was issued on July 11, 2018 (see Attachment #4). The certificate of occupancy contained the following words printed on the certificate:

> ***STRUCTURE MAY NOT BE USED AS A DWELLING PER LEELANAU TOWNSHIP ZONING ADMINISTRATOR CORRESPONDENCE DATED DEC 12, 2017 AND BENZIE LEELANAU HEALTH DEPARTMENT CERTIFIED LETTER DATED AUG. 13, 2015*** (see Attachment #5).

A memo from counsel (see Attachment #6) is also attached to provide a concise understanding of the ongoing litigation.

Mr. Wizinsky is appealing the stipulation printed on his certificate of occupancy. The certificate of occupancy is an approval of structures that are built and permitted under the State of Michigan building codes. This approval is for the human habitation of these structures that includes but is not limited to; pole barns, garages, tents, sheds, houses, apartments etc. The certificate certifies that the

structure was constructed according to the Michigan Building Codes.

> ***R202 DEFINITIONS: OCCUPIABLE SPACE.*** *A room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes or in which occupants are engaged at labor, and which is equipped with means of egress and light and ventilation facilities, meeting the requirements of this code.*
>
> ***R110.1. USE AND OCCUPANCY.*** *A building or structure shall not be used or occupied, and a change in the existing occupancy classification of a building or structure or portion thereof shall not be made, until a certificate of occupancy has been issued in accordance with the act.*
> ***R110.3 CERTIFICATE ISSUED.*** *After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the department of building safety, the building official shall issue a certificate of occupancy which shall contain the following:*
>
> *(a) The building permit number.*
> *(b) The address of the structure.*
> *(c) A description of that portion of the structure for which the certificate is issued.*
> *(d) A statement that the described portion of the structure has been inspected for compliance with the requirements of this code.*
> *(e) The name of the building official.*
> *(f) The edition of the code under which the permit was issued.*
> *(g) Any special stipulations and conditions of the building permit.*

Occupiable space is not to be confused with the definition of a dwelling unit as defined by Section 202 of the Michigan Building Code.

> ***R202 DEFINITIONS: DWELLING UNIT.*** *A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.*

WIZINSKY

Attachment #1

Leelanau County Inspections Department
116 E. Phillips Street
Lake Leelanau, MI 49653

Phone: (616)256-9806 Fax: (616)256-9431

ENCLOSE CHECK MADE TO: Leelanau County Inspections

RECEIVED AUG 10 1992 LEELANAU COUNTY INSPECTIONS DEPARTMENT

APPLICATION FOR PLAN EXAMINATION AND BUILDING PERMIT

PERMIT NUMBER: _____ ADDRESS

Property No. _____ Setbacks F_____ LS_____ RS_____ R_____

Use Group _____ Type of Construction _____ Zoning District _____

IMPORTANT — Applicant to Complete All Items in Sections I, II, III and IV

I. LOCATION OF BUILDING

At (Location) FOXVIEW DR (NO.) LOT #11 (STREET) THE SHORES

Between NORTH OF PETERSON DR (CROSS STREET) and _____ (CROSS STREET)

Subdivision THE SHORES Lot 11 Block _____ Lot Size _____

II. TYPE AND COST OF BUILDING - *All Applicants Complete Parts A-E*

A. TYPE OF IMPROVEMENT

- ☑ New Building
- ☐ Addition *(If residential, enter number of new housing units added.)*
- ☐ Alteration
- ☐ Repair, replacement
- ☐ Wrecking *(If multi-family residential, enter number of units in building.)*
- ☐ Moving (relocation)
- ☐ Foundation only
- ☐ Other — *Specify* .....

B. OWNERSHIP

- ☒ Private *(Individual, corporation, nonprofit institution, etc.)*
- ☐ Public *(Federal, State, or local government)*

D. PROPOSED USE — For "Wrecking" Most Recent Use

Residential

- ☐ One family
- ☐ Two or more family — *Enter number of units* .....
- ☐ Transient hotel, motel, or dormitory — *Enter number of units* .....
- ☐ Garage
- ☐ Carport
- ☑ Other — *Specify* ... GAZEBO 12 x 14 + 6 x 8

Nonresidential

- ☐ Amusement, recreational
- ☐ Church, other religious
- ☐ Industrial
- ☐ Parking garage
- ☐ Service station, repair garage
- ☐ Hospital, institutional
- ☐ Office, bank, professional
- ☐ Public utility
- ☐ School, library, other educational
- ☐ Stores, merchantile
- ☐ Tanks, towers
- ☐ Signage Permit Required
- ☐ Other — *Specify* ...

E. LOCATION

Located within 500 feet of a lake or stream

☒ Yes ☐ No

C. COST

	(Omit Cents)
Cost of improvement	$ 1200
a. Electrical	0
b. Plumbing	0
c. Heating, air conditioning	0
d. Other (elevator, etc.)	0
TOTAL COST OF IMPROVEMENT	$ 1200

Nonresident — Describe in detail proposed use of buildings, e.g., food processing plant, machine shop, laundry building at hospital, elementary school, secondary school, college, parochial school, parking garage for department store, rental office building, office building at industrial plant. If use of existing building is being changed, enter proposed use. $35.00 ck# 3086

THE BUILDING IS NON-PERMANENT, NO FOUNDATION, SCREENED, COVERED PORCH DETACHED.

RECEIVED AUG 10 1992 LEELANAU COUNTY INSPECTIONS DEPARTMENT

III. SELECTED CHARACTERISTICS OF BUILDING — *For new buildings and additions, complete Parts F-N; for wrecking complete only Part L; for all others skip to IV.*

F. PRINCIPLE TYPE OF FRAME

- ☐ Masonry (wall bearing)
- ☑ Wood frame
- ☐ Structural steel
- ☐ Reinforced concrete
- ☐ Pole
- ☐ Other_____

G. PRINCIPLE TYPE OF HEATING FUEL

- ☐ Gas ☐ Coal
- ☐ Oil ☐ Other
- ☐ Electricity NONE

H. HEATING TYPE

- ☐ Forced Air ☐ Other
- ☐ Water NON

I. TYPE OF SEWAGE DISPOSAL

- ☐ Public or private company
- ☐ Private (septic tank, etc.)

J. TYPE OF WATER SUPPLY

- ☐ Public or private company
- ☐ Private (well, cistern)

K. TYPE OF MECHANICAL

Will there be central air conditioning? ☐ Yes ☐ No

Will there be an elevator? ☐ Yes ☐ No

L. DIMENSIONS

Number of stories	
Total square feet of floor area, all floors, based on exterior dimensions	212SF
Total land area, sq. ft.	75,000SF

M. NO. OF OFF-STREET PARKING SPACES

Enclosed	
Outdoors	0

N. RESIDENTIAL BUILDINGS ONLY

Number of bedrooms	0
Number of bathrooms — Partial	0
Number of bathrooms — Full	0

IV. IDENTIFICATION

A. OWNER OR LESSEE

NAME	TELEPHONE NO.
WILLIAM G WIZINSKY	313-398-5398
ADDRESS 12750 SARATOGA	**CITY** OAK PARK
STATE MI	**ZIP CODE** 48237

B. ARCHITECT OR ENGINEER

NAME	TELEPHONE NO.
WILLIAM G WIZINSKY	313-398-5398
ADDRESS 12750 SARATOGA	**CITY** OAK PARK
STATE MI	**ZIP CODE** 48237
LICENSE NO.	**EXPIRATION DATE** OCT 93

C. CONTRACTOR

NAME	TELEPHONE NO.
WILLIAM G WIZINSKY	313-398-5398
ADDRESS 12750 SARATOGA	**CITY** OAK PARK
STATE MI	**ZIP CODE** 48237
BUILDERS LICENSE NO.	**EXPIRATION DATE** APRIL 93
FEDERAL EMPLOYER I.D. NUMBER OR REASON FOR EXEMPTION	362-74-1184
WORKERS COMP INSURANCE CARRIER OR REASON FOR EXEMPTION	
MESC EMPLOYER NUMBER OR REASON FOR EXEMPTION	

V. APPLICANT INFORMATION:

Applicant is responsible for the payment of all fees and charges applicable to this application and must provide the following information.

NAME	TELEPHONE NO.
WILLIAM G WIZINSKY	313-398-5398
ADDRESS 12750 SARATOGA	**CITY** OAK PARK
STATE MI	**ZIP CODE** 48237
FEDERAL I.D. NO./SOCIAL SECURITY NO. 362-74-1184	

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent, and we agree to conform to all applicable laws of the State of Michigan. All information submitted on this application is accurate to the best of my knowledge.

Section 23a of the State Construction Code Act of 1972, Act No. 230 of the Public Acts of 1972, being Section 125.1523a of the Michigan Compiled Laws, prohibits a person from conspiring to circumvent the licensing requirements of this state relating to persons who are to perform work on a residential building or a residential structure. Violators of Section 23a are subject to civil fines.

SIGNATURE OF APPLICANT	APPLICATION DATE
William G Wizinsky	8/10/92

DO NOT WRITE BELOW THIS LINE

OTHER PERMITS/APPROVALS REQUIRED

	REQUIRED	NOT REQUIRED	APPROVED	DATE OBTAINED	NUMBER
ZONING					
SOIL EROSION					
DRIVEWAY					
WATER SUPPLY					
SEPTIC SYSTEM					
ENERGY					
SIGN					
FIRE DEPT.					
OTHER					

VALIDATION

Building Permit Number _____

Building Permit Issued _____ 19____

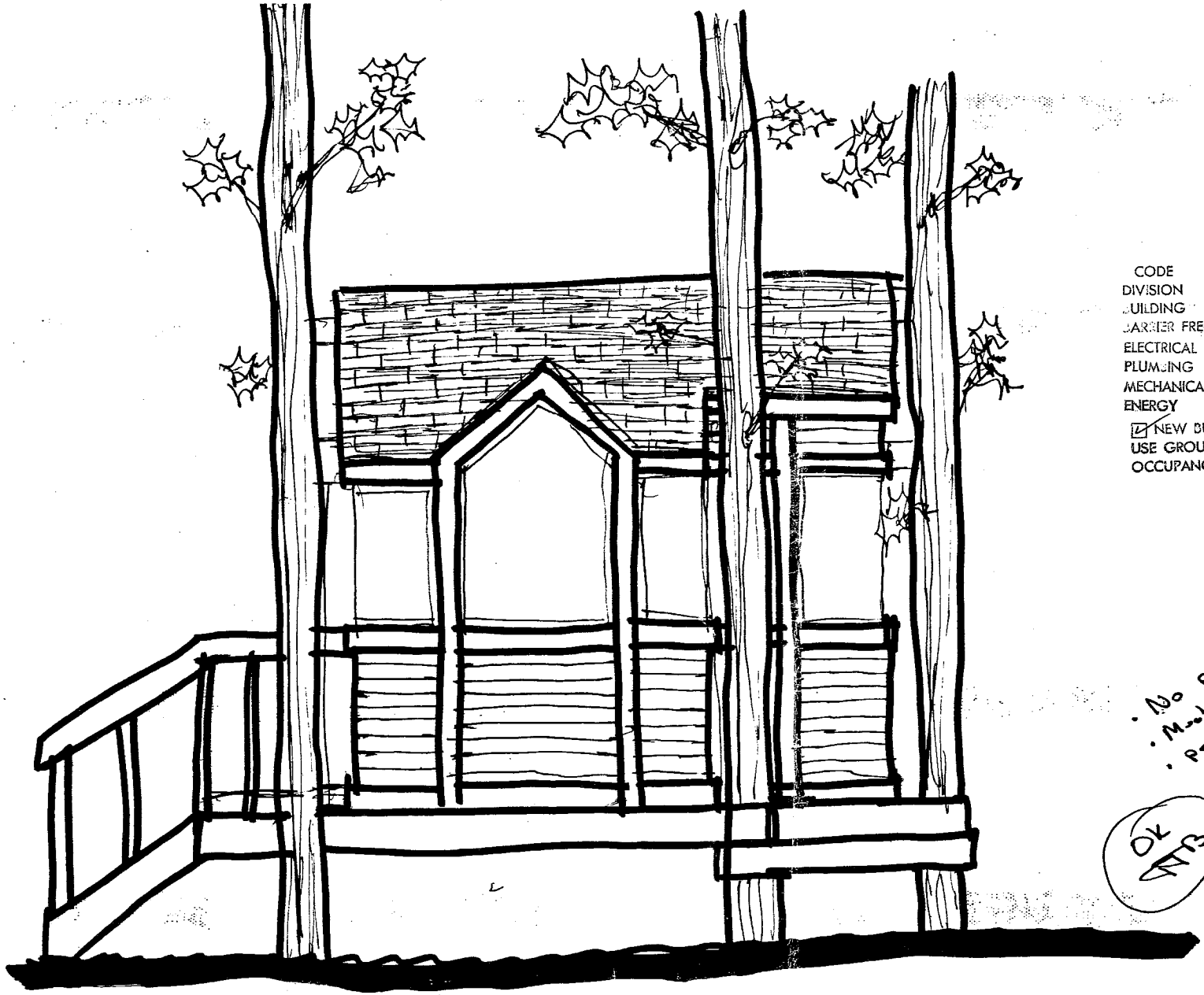
Building Permit Fee $ _____

Certificate of Occupancy _____

Approved by:

_____

_____
TITLE



WEST ELEVATION 1/2"=1'-0"

LEELANAU COUNTY BUILDING DEPT.
COUNTY COURTHOUSE
LELAND, MICH. 49654

CODE DIVISION	APPROVED	APPROVED AS ADMENDED	DISAPPROVED RESUBMIT
BUILDING	☐	☑	☐
BARRIER FREE	☐	☐	☐
ELECTRICAL	☐	☐	☐
PLUMBING	☐	☐	☐
MECHANICAL	☐	☐	☐
ENERGY	☐	☐	☐

R.P.D.

☑ NEW BUILDING ☐ ADDITION ☐ ALTERATION

USE GROUP U CONSTRUCTION TYPE 5-B

OCCUPANCY LOAD _____ NO. OF STORIES 1

- No permanent foundation
- Must obtain all required permits before construction

OK MTB

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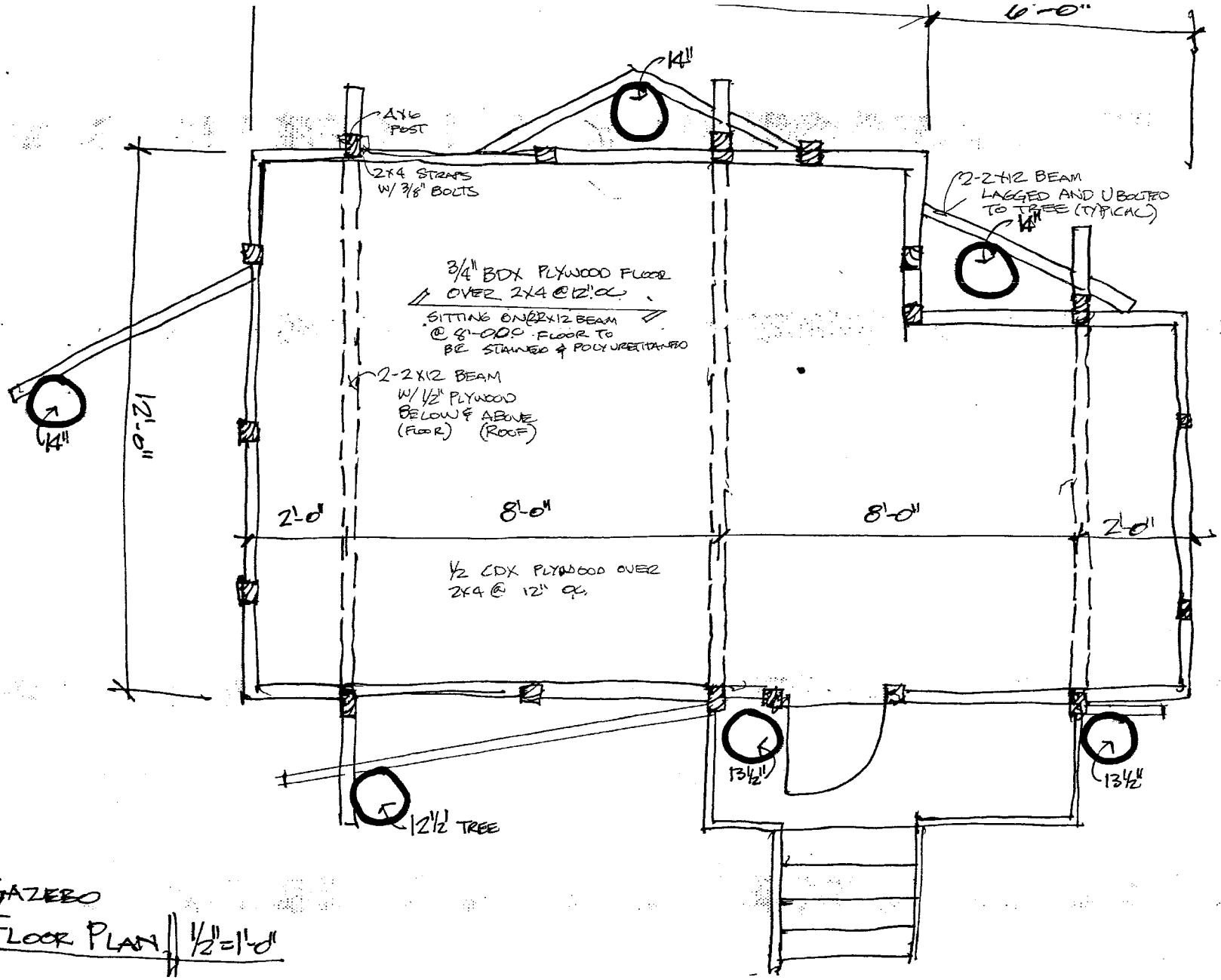
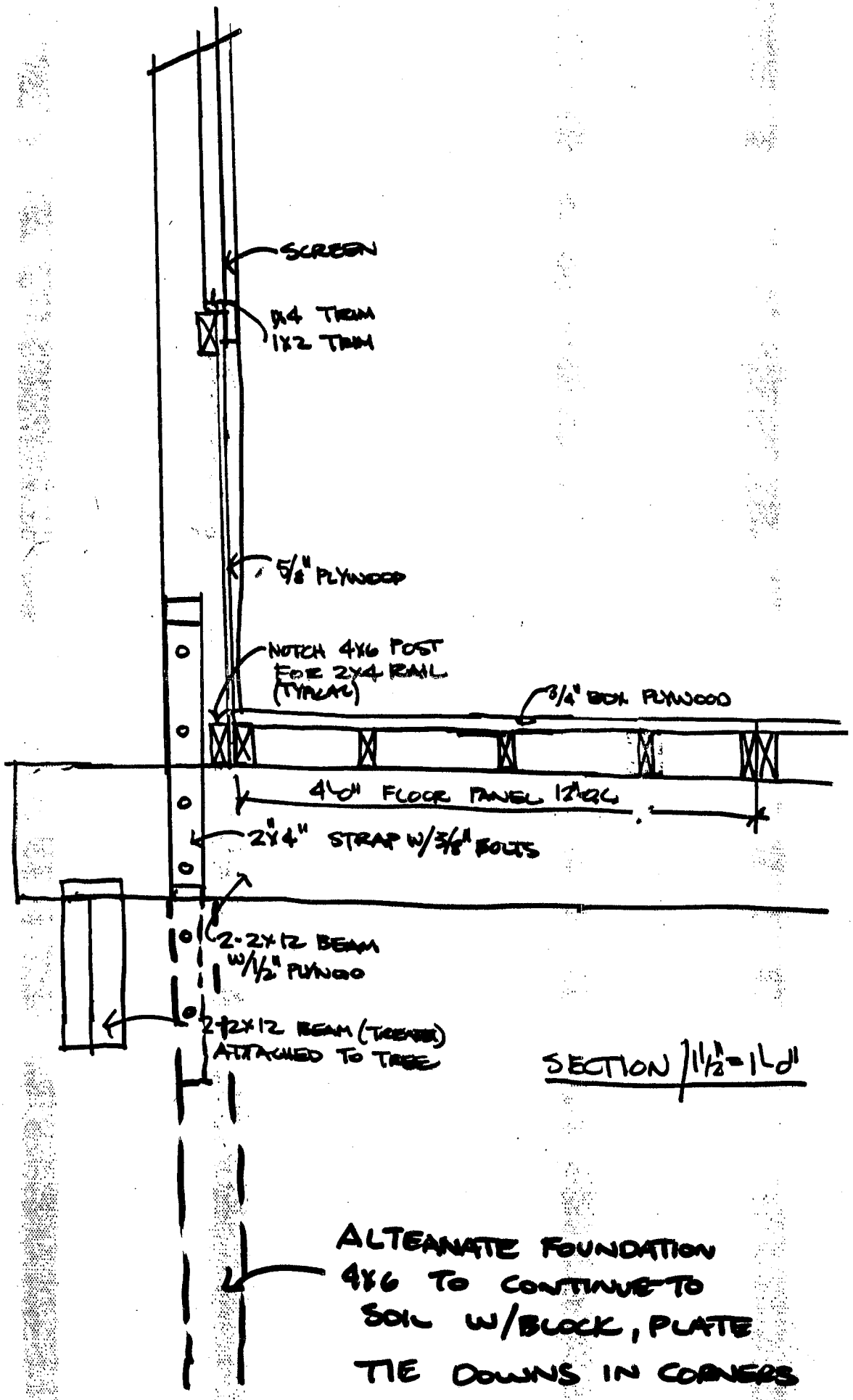
LEELANAU COUNTY
INSPECTIONS DEPARTMENT

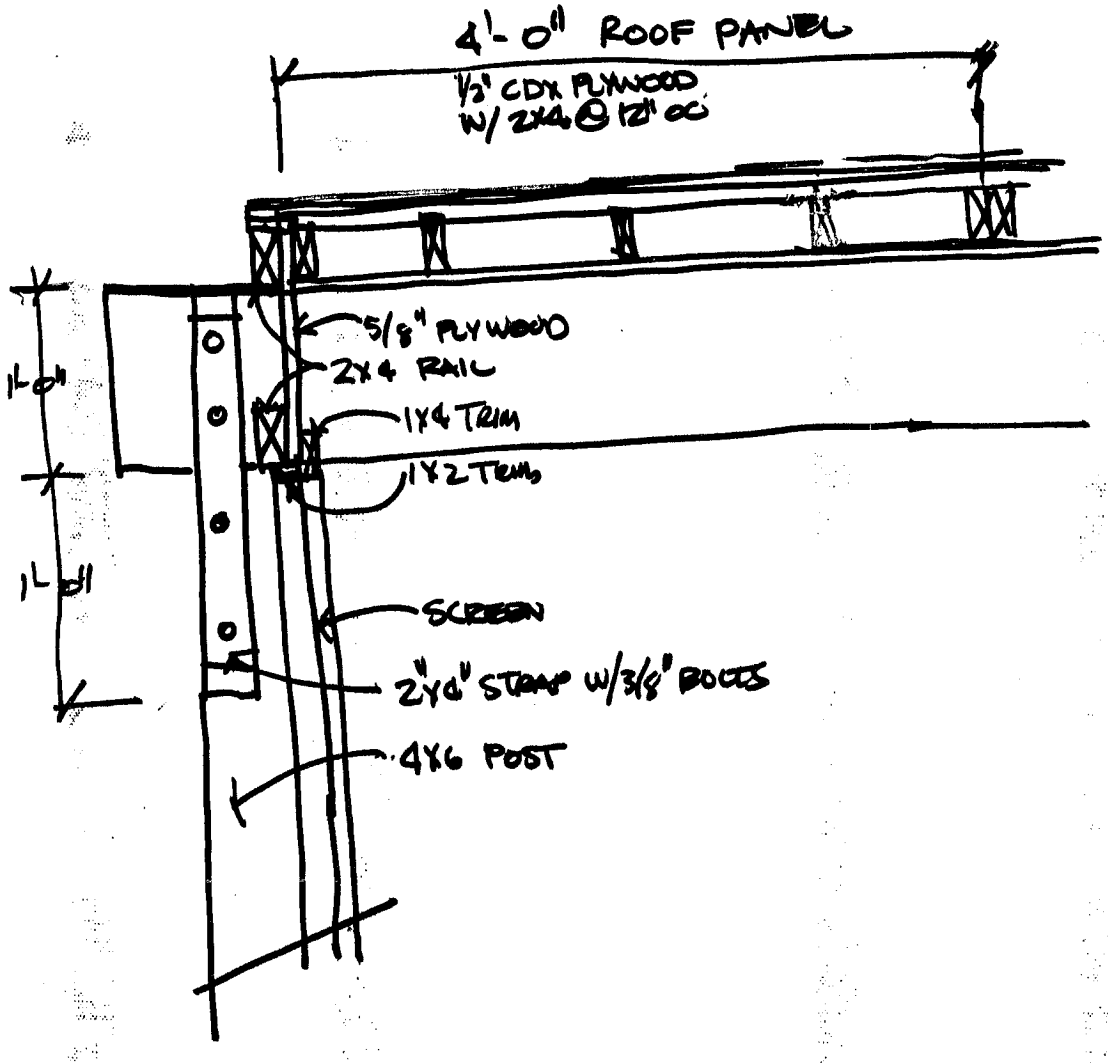
NORTH ELEVATION // 1/2"=1'0"



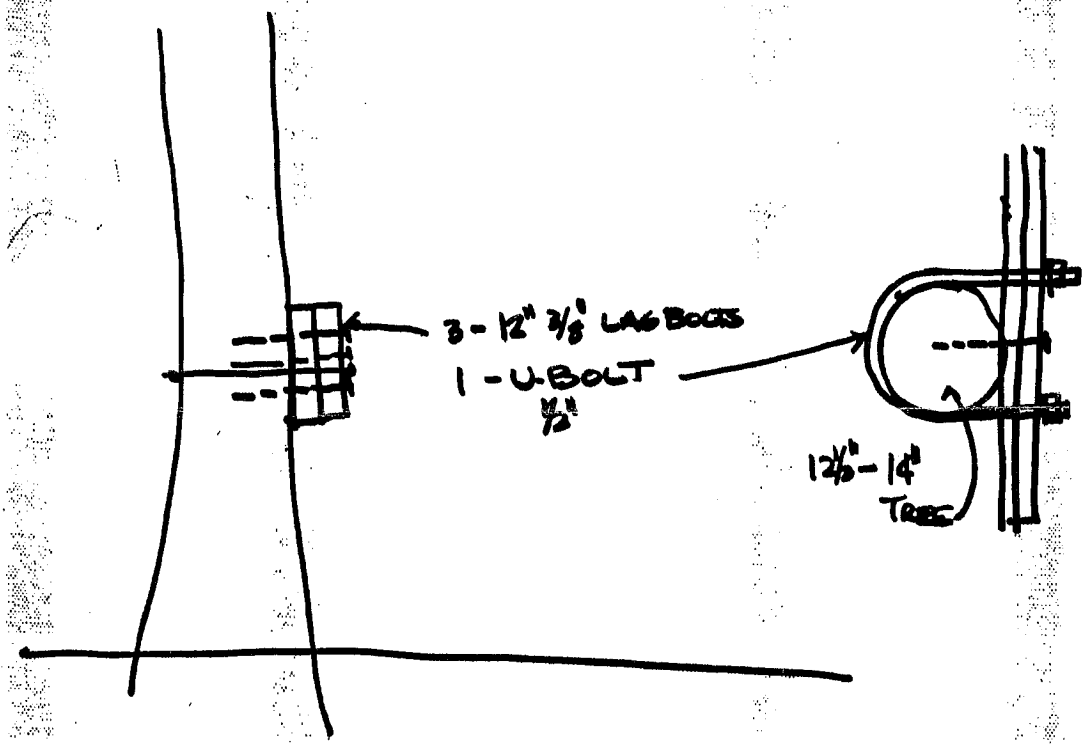
GAZEBO

FLOOR PLAN || 1/2" = 1'-0"


SCREEN
1x4 TRIM
1x2 TRIM
5/8" PLYWOOD
NOTCH 4x6 POST FOR 2x4 RAIL (TYPICAL)
3/4" BDX PLYWOOD
4'-0" FLOOR PANEL 12" o.c.
2"x4" STRAP w/3/8" BOLTS
2-2x12 BEAM w/1/2" PLYWOOD
2-2x12 BEAM (TYPICAL) ATTACHED TO TREE
SECTION 1 1 1/2" = 1'-0"
ALTERNATE FOUNDATION 4x6 TO CONTINUE TO SOIL W/BLOCK, PLATE TIE DOWNS IN CORNERS

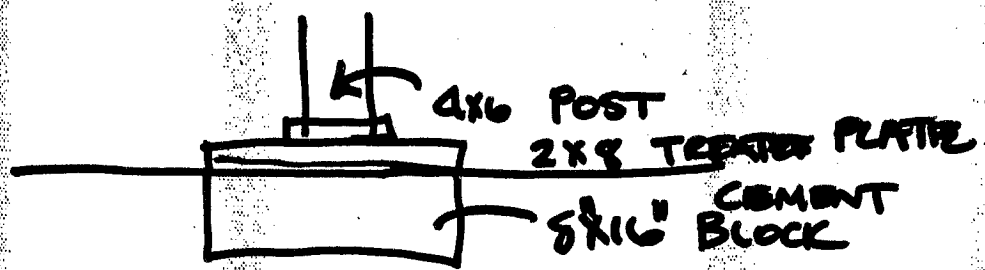


SECTION 1½"=1'0"



TREE CONNECTION - NO SCALE

ALTINATE FOUNDATION NO SCALE



LEELANAU TOWNSHIP
LAND USE PERMIT

Permit No: Date: 8-10-92
Page No: Fee: $30
Parcel No:45-008-800-010-00 Location:THE SHORES SUBDIV.
****

Owner:
BILL WIZINSKY
12750 SARATOGA
OAK PARK, MI 48237

Contractor:
THE ALLIANCE GROUP
ADDRESS: SAME AS OWNER
****

Type of Construction: WOOD FRAME, NO PLUMBING, NO ELEC, NO MECH.

San. Permit No: NONE NEEDED Est. Cost:$1200
Material: WOOD FRAME Width: 12' Bldg. Height: 14'
Foundation: NONE Length: 20' Stories: 1

Total Land Use Area: 240

Baths: 0 Bedrooms: 0 Total Rooms: 1
****

Zoning District: R1B Required Setbacks:FRONT 30', SIDES 10', AND REAR 100'

Proposed Set-Backs: Front: 450 Rear: 35' (NO FOUNDATION)
Side: 45' Side: 93'

Site Diagram Attached? YES
Flood Zone A? NO Environmentally Sen. Area? YES
Remarks: PERMIT WILL BE NUMBERED WHEN Z.A. RETURNS. STRUCTURE IS CLASSIFIED AS "NON-PERMENANT" BY OWNER.
****

With the granting of the permit for the above it is agreed that such work will conform with the State Building Codes, Zoning and other Ordinances of Leelanau Township and that said township shall not be liable for any damage resulting therefrom. NOTE: Under no conditions does the granting of a Land Use Permit suggest that this township can provide adequate emergency protection to the permitted structure or building in the location permitted.

SIGNED: William G Wizinsky 8/10/92

Approved By Helen D Leigh, Zoning Administrator

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FEB 21 2017

LEELANAU COUNTY CONSTRUCTION CODE

#2

Attachment #2

LEELANAU COUNTY CONSTRUCTON CODE AUTHORITY

8527 E. Government Center Drive Suite 109
Suttons Bay, MI 49682
Phone (231) 256-9806 Fax (231) 256-8333
www.leelanau.cc

PB18-0057

APPLICATION FOR BUILDING PERMIT

AUTHORITY: P. A. 230 OF 1972, AS AMENDED COMPLIANCE: MANDATORY TO OBTAIN PERMIT PENALTY: PERMIT CANNOT BE ISSUED	THE DEPARTMENT WILL NOT DISCRIMINATE AGAINST ANY INDIVIDUAL OR GROUP BECAUSE OF RACE, SEX, RELIGION, AGE, NATIONAL ORIGIN, COLOR, MARITAL STATUS, DISABILITIES, OR POLITICAL BELIEFS.

APPLICATION TO COMPLETE ALL ITEMS IN SECTIONS I, II, III, IV, V, VI, AND VII

NOTE: SEPARATE APPLICATIONS MUST BE COMPLETED FOR PLUMBING, MECHANICAL, AND ELECTRICAL WORK PERMITS

Rev (12/14)

I. PROJECT INFORMATION

Parcel Number	Township	Section
45-003-800-011-00	LEELANAU	21

Address	City	Zip Code
FOXVIEW DRIVE	LEELANAU TOWNSHIP	

Between: NORTH OF PETERSON PARK And:

II. IDENTIFICATION

A. OWNER OR LESSEE

Name	Address
WILLIAM & ANN WIZINSKY	250 PLEASANT COVE DRIVE

City	State	Zip Code	Telephone Number
NOVI, MI	MI	48377	248-219-1225

B. ARCHITECT OR ENGINEER

Name	Address
WILLIAM WIZINSKY/LOUIS BROWN	307 RIDGEMONT

City	State	Zip Code	Telephone Number
OXFORD	MI	48370	

License Number	Expiration Date
#28881	

C. CONTRACTOR ☑ Homeowner ☐ Individual ☐ DBA ☐ Corporation ☐ Trust

Name	Address
WILLIAM WIZINSKY	250 PLEASANT COVE DRIVE

City	State	Zip Code	Telephone Number
NOVI	MI	48377	248-219-1225

Builders License Number	Expiration Date	Cell Number

Federal Employer ID Number or Reason for Exemption

Workers Comp Insurance Carrier or Reason for Exemption

MESC Employer Number or Reason for Exemption

III. SELECT CHARACTERISTICS OF SITE

1. Is any part of the proposed project within 100 year floodplain? ☐ Yes ☒ No
2. Is project within 500 feet of a lake, stream, or county drain? ☑ Yes ☐ No

IV. TYPE OF JOB

STRUCTURAL

Rev (01/14)

1. ☐ New Building
2. ☐ Addition
3. ☒ Alteration
4. ☒ Repair
5. ☒ Demolition
6. ☐ Foundation Only
7. ☐ Special Inspection
8. ☐ Relocation
9. ☐ Manufacture Set Only ☐ MRC ☐ HUD

V. PROPOSED USE OF BUILDING/Plan Review Information

A. RESIDENTIAL – Buildings Regulated by Michigan Residential Code

1. ☐ One Family
2. ☐ Two or More Family Number of Units ____
3. ☐ Townhouse Number of Units ____
4. ☐ Attached Garage
5. ☐ Detached Garage
6. ☐ Post Frame Building
7. ☒ Other

B. Buildings Regulated by Michigan Building Code

8. ☐ (A-1) Assembly (Theatres, Etc.)
9. ☐ (A-2) Assembly (Restaurants, Bars, Etc.)
10. ☐ (A-3) Assembly (Churches, Lib, Etc.)
11. ☐ (A-4) Assembly (Indoor sports, Etc.)
12. ☐ (A-5) Assembly (Outdoor sports, Etc.)
13. ☐ (B) Business
14. ☐ (E) Education
15. ☐ (F-1) Factory (Moderate Hazard)
16. ☐ (F-2) Factory (Low Hazard)
17. ☐ (H-1) High hazard (Detonation)
18. ☐ (H-2) High hazard (Deflagration)
19. ☐ (H-3) High hazard (Combustion)
20. ☐ (H-4) High hazard (Health Hazard)
21. ☐ (H-5) High hazard (HPM)
22. ☐ (I-1) Institutional (Supervised)
23. ☐ (I-2) Institutional (Hospitals, Etc.)
24. ☐ (I-3) Institutional (Prisons, Etc.)
25. ☐ (I-4) Institutional (Day Care, Etc.)
26. ☐ (M) Mercantile
27. ☐ (R-1) Residential (Hotels, Motels)
28. ☐ (R-2) Residential (Multiple Family)
29. ☐ (R-3) Residential (Child & Adult Care)
30. ☐ (R-4) Residential (Assisted Living)
31. ☐ (S-1) Storage (Moderate Hazard)
32. ☐ (S-2) Storage (Low Hazard)
33. ☐ (U) Utility (Miscellaneous)

C. Alteration, repairs and additions – Provide a description of the work to be covered by building permit. As examples: 5,000 square foot alteration of interior office space, a 2500 square foot addition to storage building, replace 5 exterior windows and 2 doors, renovate basement in a residence to occupiable space, etc. If use of existing building is being changed, enter proposed use.

ALTERATION/REPAIR OF 23 YEAR OLD GAZEBO STRUCTURALLY TO ENSURE UP TO "SELLER THE INTEGRITY" OF THE GAZEBO TO MAKE IT THROUGH WINTER OR WITH ADDITION TREES FALLING ON IT. SEE PAGE 5

VI. SELECTED CHARACTERISTICS OF BUILDING

A. PRINCIPAL TYPE OF FRAME

1. ☐ Masonry, Wall Bearing
2. ☐ Wood Frame
3. ☐ Structural Steel
4. ☐ Reinforced Concrete
5. ☑ Other Post & Beam

B. PRINCIPAL TYPE OF HEATING FUEL

6. ☐ Gas 7. ☐ Oil 8. ☐ Electricity 9. ☐ Coal 10. ☐ Other ____ 11. ☑ Not Applicable

C. 12. Number of full bathrooms 0; Number of half baths 0

D. TYPE SEWAGE DISPOSAL

13. ☐ Public 14. ☐ Septic System 15. ☑ Not Applicable

E. 16. Number of Bedrooms 0

F. TYPE OF WATER SUPPLY

17. ☐ Public 18. ☐ Private Well 19. ☑ Not Applicable

G. TYPE OF MECHANICAL

20. ☐ Will there be Air Conditioning? ☐ Yes ☑ No
21. ☐ Will there be Fire Suppression? ☐ Yes ☑ No

H. Building Data

22. Number of Stories ____ 23. Use Group ____ 24. Construction Type ____ 25. Number of Occupants ____

I. DIMENSION/DATA

26. FLOOR AREA IN SQUARE FEET	Alteration			
Crawl Space				
Unfinished Basement				
Finished Basement				
Main Floor				
Second Floor				
Third Floor				
Covered Porch				
Enclosed Porch				
Deck				
Attached Garage/Accessory				
Detached Garage/Accessory				
Post Frame Building				
Other Gazebo	480 sq ft			
TOTAL AREA	480 SQ FT			

VII. APPLICANT INFORMATION

Rev (01/14)

APPLICANT IS RESPONSIBLE FOR PAYMENT OF ALL FEES AND CHARGES APPLICABLE TO THIS APPLICATION AND MUST PROVIDE THE FOLLOWING INFORMATION

Name: WILLIAM G WIZINSKY

Address	City	State	Zip Code
250 PLEASANT COVE	NOVI	MI	48377

Telephone Number	Cell Number	Fax Number
	248-219-1825	

Section 23a of the State Construction Code Act of 1972, 1972 PA 230, MCL 125.1523a, prohibits a person from conspiring to circumvent the licensing requirements of this state relating to persons who are to perform work on a residential building or residential structure. Violators of section 23a are subjected to civil fines.

EXPIRATION OF PERMIT: A PERMIT BECOMES INVALID IF THE AUTHORIZED WORK IS NOT COMMENCED WITHIN SIX MONTHS AFTER ISSUANCE OF THE PERMIT OR IF AUTHORIZED WORK IS SUSPENDED OR ABANDONED FOR A PERIOD OF SIX MONTHS AFTER THE TIME OF COMMENCING THE WORK. A PERMIT WILL BE CLOSED WHEN NO INSPECTIONS ARE REQUESTED AND CONDUCTED WITHIN SIX MONTHS OF THE DATE OF ISSUANCE, OR THE DATE OF A PREVIOUS INSPECTION. CLOSED PERMITS CANNOT BE REFUNDED OR REINSTATED.

I HEREBY CERTIFY THAT THE PROPOSED WORK IS AUTHORIZED BY THE OWNER OF RECORD AND THAT I HAVE BEEN AUTHORIZED BY THE OWNER TO MAKE THIS APPLICATION AS HIS/HER AUTHORIZED AGENT, AND WE AGREE TO CONFORM TO ALL APPLICABLE LAWS OF THE STATE OF MICHIGAN. ALL INFORMATION SUBMITTED ON THIS APPLICATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE.

Signature of Owner (Required)	Type or Print Name	Date
	WILLIAM G WIZINSKY	11/14/16
Signature of Applicant	**Type or Print Name**	**Date**
	WILLIAM G WIZINSKY	11/14/16
Printed Name	**Position within Company**	

Building Permit/Plan Review Fee Enclosed $_____ Check #_____ (Base/Processing and plan review fees are non-refundable)

Credit Card Fee will have 3% added to total if used: Permit Fee $_____ Card Fee (.03) $_____ Total Fee $_____

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FEB 21 2017
LEELANAU COUNTY
CONSTRUCTION CODE

VIII. LOCAL GOVERNMENTAL AGENCY TO COMPLETE THIS SECTION

PERMIT APPROVALS	REQUIRED	APPROVED	DATE	NUMBER	BY
A. Address	☐ Yes ☐ No				
B. Soil Erosion	☐ Yes ☐ No				
C. Health Department - Water/Sewer	☐ Yes ☐ No				
D. Land Use	☐ Yes ☐ No				
E. Driveway	☐ Yes ☐ No				
F. State Energy Code	☐ Yes ☐ No				
G. Two (2) Sets of Building Plans	☐ Yes ☐ No				
H. Fire Review	☐ Yes ☐ No				
I. Michigan Dept. Environmental Quality	☐ Yes ☐ No				
J. Other	☐ Yes ☐ No				

IX. VALIDATION – FOR DEPARTMENT USE ONLY

Use Group R-3 Base Fee _____

Type of Construction VB Number of Inspections 3

Square Feet 480

Approval Signature

CODE OFFICIAL _____ Date 1-26-2018

X. SITE OR PLOT PLAN – FOR APPLICANT USE

Rev 01/14

INDICATED DIRECTION OF NORTH WITHIN THE CIRCLE

WILL RESTORE/REPAIR GAZEBO AS CLOSE AS POSSIBLE TO THE ORIGINAL INTENT OF THE ORIGINAL APPROVED PLANS

Directions to job site:

OFFICE USE ONLY

EXPIRATION OF PERMIT: A permit becomes invalid if the authorized work is not commenced within six months after issuance of the permit OR if authorized work is suspended or abandoned for a period of six months after the time of commencing the work. A PERMIT WILL BE CLOSED WHEN NO INSPECTIONS ARE REQUESTED AND OR CONDUCTED WITHIN SIX MONTHS OF THE DATE OF ISSUANCE, OR THE DATE OF A PREVIOUS INSPECTION.

I agree this permit is only for the work described, and does not grant permission for additional or related work which requires separate permits. I understand that this permit will expire, and become null and void if work is not started within 180 days, or abandoned for a period of 180 days at any time after work has commenced. A permit will be closed when no inspections are requested and or conducted within six months of the date of issuance, or the date of a previous inspection; and, that I am responsible for assuring all required inspections are requested in conformance with the applicable code. I hereby certify that the proposed work is authorized by the owner, and that I am authorized by the owner to make this application as his authorized agent. I agree to conform to all applicable laws and codes of the State of Michigan and the ordinances of the local jurisdiction. All information on the permit application is accurate to the best of my knowledge.

Signature of applicant: _____

Printed Name: William G. Wiginsky

Email Address: wwizinsky@aol.com

Received:

By: _____

NOTICE NOTICE NOTICE NOTICE

Due to a 2006 change in the 2003 Michigan Residential Code, smoke detectors are now required to be upgraded whenever a permit is obtained. Smoke detectors are required in every bedroom, adjacent to every bedroom, and on every level of the home. MRC 313.2.1.

Article V Section 501: The Leelanau County Zoning Ordinance requires address posting of all properties. Final inspections will not be approved without the address being posted on the property. Please notify responsible persons in charge.

Leelanau County Residential Building Permit No: PB18-0051

Construction Code Authority | 8527 Government Center Drive, Suite 109 | Suttons Bay, MI 49682

Phone: (231) 256-9806 | Fax: (231) 256-8333 | DATE: 01/26/2018

N FOXVIEW DR — Site Location

Township: LEELANAU TOWNSHIP

Parcel Number: 008-800-011-00

WIZINSKY WILLIAM G & ANN M — Owner

250 PLEASANT COVE DR

NOVI MI 48377

WIZINSKY WILLIAM G & ANN M
250 PLEASANT COVE DR
NOVI MI 48377

Ph# (248) 219 1225 Contractor/Applicant

Issued: 01/26/18 Expiration Date: 07/25/2018

Total Square Feet: 480

Construction Value: 4,800.00

Category: Res. Utility Structure

Building Code In Effect: 2015 MI RESIDENTIAL

Work Description: Residential utillity structure, Gazebo/shed, 12 x 20, structurally support original structure design after storm

Attachment #3

Stipulations:

Permit Item	Work Type	Fee Basis	Item Total
Base Fee Residential	Bldg Base Fee Residential	1.00	50.00
Const Res All Other	Construction	4,800.00	174.00
Residential Plan Review	Plan Review	1.00	75.00

Fee Total: $299.00

Amount Paid: $299.00

Balance Due: **$0.00**

I agree this permit is only for the work described, and does not grant permission for additional or related work which requires separate permits. I understand that this permit will expire, and become null and void if work is not started within 180 days, or abandoned for a period of 180 days at any time after work has commenced. A permit will be closed when no inspections are requested and or conducted within six months of the date of issuance, or the date of a previous inspection; and, that I am responsible for assuring all required inspections are requested in conformance with the applicable code. I hereby certify that the proposed work is authorized by the owner, and that I am authorized by the owner to make this application as his authorized agent. I agree to conform to all applicable laws of the State of Michigan and the local jurisdiction. All information on the permit application is accurate to the best of my knowledge

Payment of permit fee constitutes acceptance of the above terms.

Please call (231) 256-9806 to schedule your inspections.

Check #
Receipt # 00049738
Permit # PB18-0051
Payment Validation

Attachment #4

Leelanau County Construction Code Authority
8527 Government Center Dr. Suite 109
Suttons Bay, MI 49682
Phone: (231) 256-9806 FAX: (231) 256-8333

Certificate of Occupancy

008-800-011-00

Applicants name and address:

WIZINSKY WILLIAM G & ANN M
250 PLEASANT COVE DR
NOVI MI 48377

Owners name and address:

WIZINSKY WILLIAM G & ANN M
12063 N FOXVIEW DR
NORTHPORT, MI 49670

This is to certify that this building or structure has been inspected and constructed in accordance with the building permit and found to be in compliance with the permit, the code, and other applicable laws and ordinances.

Issued for:	Res. Utility Structure
Site address:	12063 N FOXVIEW DR
Building code in effect:	2015 MI RESIDENTIAL
Building permit number:	PB18-0051
Construction Type:	VB
Use and occupancy classification:	R-3
Occupant Load:	0
Automatic sprinkler system:	N

Special stipulations and conditions:

STRUCTURE MAY NOT BE USED AS A DWELLING PER LEELANAU TOWNSHIP ZONING ADMINISTRATOR CORRESPONDENCE DATED DEC 12, 2017 AND BENZIE LEELANAU HEALTH DEPARTMENT CERTIFIED LETTER DATED AUG. 13, 2015

Paul Hunter
Building Official

07/11/2018
Date

Certificate Number: OC18-0219

Benzie-Leelanau District Health Department

BENZIE OFFICE
6051 Frankfort Highway
Suite 100
Benzonia, Michigan 49616
Phone (231) 882-4409
Fax (231) 882-2204

LEELANAU OFFICE
7401 E. Duck Lake Road
Suite 100
Lake Leelanau, Michigan 49653
Phone (231) 256-0201
Fax (231) 256-0225

Website: www.bldhd.org

008-800-011-00

RECEIVED

AUG 17 2015

LEELANAU COUNTY
CONSTRUCTION CODE

E15-0084

Certified

August 13, 2015

Prop ID# 45-008-800-011-00

William G. and Ann M. Wizinsky
250 Pleasant Cove Dr.
Novi, MI 48377

Dear William and Ann Wizinsky,

This correspondence is initiated based on an inquiry from a representative of the Shores Homeowners Association regarding your occupancy of the parcel and construction occurring on your Foxview Drive property noted above.

The Benzie-Leelanau District Health Department (BLDHD), in its Leelanau County Environmental Health Regulations, has jurisdiction on sewage and water issues. The following is quoted from sections of the BLDHD Environmental Health Regulations.

Section 1.230 DWELLING
The term "dwelling" shall mean any building, structure, tent, shelter, trailer, or vehicle or portion of thereof, which is occupied, will be occupied, or was heretofore occupied in whole or part as home, residence, living or sleeping, or other gathering place designed or used by one or more human beings either permanently or transiently, or occupied in whole or in part as a business wherein one or more human beings is engaged in commercial or industrial activities on either a permanent or temporary basis.

Section 1.290 PREMISE.
"Premise" shall mean any tract of land, or portion thereof, or combination of tracts of land under single or common ownership, operation or control, on which is located a dwelling, structure, water well or septic tank, drains, drainfield, underground tank or pipes or similar appurtenances containing sewage or other contaminants or combination thereof.

Section 2.200
It shall be unlawful for any reason to occupy, or permit to be occupied, any premises which are not equipped with adequate facilities for the disposal in a sanitary manner.

And finally,

Section 3.100
Immediately upon the effective date of the Code and its regulations or any amendment thereto, no person, firm, society, corporation, or his/her agent or contractor shall construct, occupy or inhabit, offer for rent or lease, with or without compensation in whole or in part, any habitable building or dwelling unless the same is equipped with a safe adequate water supply approved by a health officer in accordance with the provisions of this Code and its regulations. Further, no water supply or alteration of existing water supply shall be in stalled or made unless the same is approved by a health officer in accordance with the provisions of this Code and its regulations.

The BLDHD has no record of any approved sewage disposal or water supply systems on the subject property and therefore does not approve the use of a dwelling on the parcel. Based on these facts you are hereby required to immediately vacate this dwelling and not reoccupy the property until such time as you have an approved septic system and water supply. You shall be required to contact me within ten days of receipt of this correspondence and verify your compliance with the contents of this letter.

This required vacation of the dwelling in no way waives your responsibility to comply with any and all local or state requirements that may demand your compliance.

If any of the facts stated in this correspondence is not accurate or you wish to contact me regarding this vacation order, please contact me at (231) 256-0214 or at my email address of wcrawford@bldhd.org

Sincerely,

William A. Crawford
BLDHD, Sanitarian

cc: Joseph T. Hubbell, Pros. Attorney
Steve Haugen, Leelanau County, Construction Code Office
Steve Patmore, Leelanau Township Zoning Admin.
Todd Hoogland, The Shores Home Owners Association

Zone Admin

From:	Zone Admin
Sent:	Tuesday, December 12, 2017 1:47 PM
To:	wwizinsky@aol.com
Subject:	Land Use Permit - Lot 11 - The Shores Subdivision

Mr. Wizinsky,

Per our numerous conversations over the past several months, I can not issue a Land Use Permit for what you applied for.

I had a difficult time figuring out what work you were actually applying for. Your Application as submitted did not include any verbiage in the proposed work section. Through numerous conversations, I concluded that the proposed work in the application included re-approval of the original structure and an addition that was added without a permit in 2015.

Basic Facts:

- A Land Use Permit was issued in 1992 for a 12' by 20' wood frame structure, 14' height, 1 story. There was a rear setback requirement of 100' on the permit. This permit was signed by William Wizinsky.
- This Land Use Permit was not for a dwelling.
- There was a discrepancy on the permit between the "required" 100' rear setback and a "proposed" 35' setback.
- A structure was built thereafter which appears to be higher than the 14' height, had stairs leading up to an upper level, and is significantly closer to the rear property line than 100'.
- The structure that was built was not in compliance with the Land Use Permit issued by Leelanau Township in 1992 due to exceeding the building height listed on the permit.
- There is no evidence in township files that there was enforcement action taken on the height or setback issues.

- In 2015, as admitted in your application, an addition was constructed onto the older structure without any permits or approval.
- The Applicant's position is that the approximate 8'-6" by 8'-6" addition was necessary in 2015 to reinforce the existing structure. According to the Applicant, there were dead trees leaning on the existing structure.
- There is now exterior siding covering the lower level of the structure, in effect making it a two story structure.
- The Applicant, in numerous correspondence, states that the structure is a tiny house and discusses residing inside the structure in the past.

Determinations:

- Although the old 1992 structure was not constructed in accordance with the Land Use Permit, I do not believe that the township can or should take enforcement action 25 years after a zoning violation.
- My determination is that another Land Use Permit is not necessary for the existing 12' x 20' one-story structure permitted in 1992.
- The current rear setback for all structures on this lot is 100'. The original existing 12' x 20' structure is a non-conforming structure. There was a discrepancy on the setbacks listed on the permit, so the original structure location is protected. However, according to Section 10.5.B of the Leelanau Township Zoning Ordinance (LTZO), any additions to this structure must meet current setback requirements (100' rear), unless a variance is granted.

- The addition constructed in 2015 is a violation of the zoning ordinance in that no Land Use Permit was issued.
- I do not agree that the 8'-6" by 8'-6" addition constructed in 2015 falls under Section 10.5.B of the LTZO. If the structure was in danger of falling, why not simply remove the dead trees? It is not reasonable to consider an addition of this magnitude (over 72 square feet) to be a "repair".
- Since the 2015 addition does not meet current setback requirements, I can not approve a Land Use Permit Application, unless a variance is granted by the ZBA.
- I would consider approving an application to re-construct the original steps identical to those constructed in 1992. A Land Use Permit would need to be applied for.
- The existing structure can not be used as a dwelling if the Land Use Permit did not specifically allow it.

Conclusions:

1. I can not approve the Land Use Permit Application as submitted.
2. The 2015 addition does not conform to the zoning ordinance and must be removed unless a variance or appeal is granted.
3. You have the right to request a variance of the setback requirement from the Leelanau Township ZBA.
4. You have the right to appeal my determinations to the Leelanau Township ZBA.
5. If #2 and/or #3 above are not applied for, and the 2015 addition is not removed, I will recommend to the Leelanau Township Board that enforcement action be taken to remove the addition.
6. The structure may not be used as a dwelling.

On December 6, 2017 I received your certified letter containing explanations and options that I need to consider. I have also received numerous other documents from you in the past week.
I will be reviewing these documents and responding to those that relate to the zoning ordinance.

Steve Patmore

Steve Patmore.
Zoning Administrator
Leelanau Township
PO Box 338
Northport MI 49670
Phone: 231-386-5138 x 4
Fax: 231-386-7909
EMAIL ADDRESS: ltzone@leelanautwp.org

Attachment #6

MATTHEW J. ZALEWSKI
mzalewski@rsjalaw.com

27555 Executive Drive, Suite 250
Farmington Hills, Michigan 48331
P 248.489.4100 | F 248.489.1726
rsjalaw.com

ROSATI | SCHULTZ
JOPPICH | AMTSBUECHLER

M E M O R A N D U M

TO: Members of the Leelanau County Construction Board of Appeals

VIA: Chet Janik, County Administrator
Paul Hunter, Building Official

FROM: Matthew J. Zalewski, Attorney for Leelanau County

DATE: September 24, 2020

RE: Appeal by William Wizinsky of the Certificate of Occupancy issued for a residential utility structure located at 12063 N. Foxview Dr. Northport

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This memo is intended to inform the Board about the procedural posture of Mr. Wizinsky's appeal in light of an ongoing history of litigation between Mr. Wizinsky, the County, Leelanau Township, and the Shores Homeowners Association (HOA). I have been serving as the County's litigation defense counsel in two federal court cases that Mr. Wizinsky has filed against the County, and have been asked by the County to provide assistance and advice regarding the Board of Appeals' consideration of this matter. I will be available at the Board's meeting to discuss the content of this memo and any questions that you may have related to the litigation or other legal issues involved in this matter.

A. The 2018 Certificate of Occupancy Decision

As explained in Building Official Hunter's memo to this Board, this appeal arises from a decision of the Building Official to issue a restricted Certificate of Occupancy for the structure on Mr. Wizinsky's property, which prohibits the use of his structure as a dwelling. That restriction was based, in part, on a December 2017 decision of the Leelanau County Zoning Administrator to deny a land use permit for the structure, and prohibiting its use as a dwelling. It also was based on an August 2015 determination of the Benzie-Leelanau District Health Department that the structure cannot be used as a dwelling because it did not have any approved sewage disposal or water supply systems. At the time, Mr. Wizinsky did not file an appeal of the Township Zoning Administrator's land use permit decision, and also did not file an appeal to this Board regarding the County Building Official's certificate of occupancy decision.

B. The Township and HOA Lawsuit, Settlement Agreement, and Leelanau County Circuit Court Order

Since the time of the 2018 Certificate of Occupancy decision, three lawsuits have been initiated related to the structure on Mr. Wizinsky's property.

On October 5, 2018 the Township and Shores Homeowners Association (HOA) sued Mr. and Mrs. Wizinsky in the Leelanau County Circuit Court. (*The Shores Home Owners Association v. William G. Wizinsky et. al,* Case No. 18-10192-CZ.) Among other claims, the lawsuit asked the Court to declare the structure to be a nuisance, and to order it to be removed. The County had no role in this lawsuit, but the case resulted in a few significant outcomes.

First, the Wizinskys, Township, and HOA entered a Settlement Agreement. (Attachment #1.) The Settlement Agreement came out of a mediation between the parties and their counsel that was held on March 14, 2019. It was approved by the Leelanau Township Board on March 21, 2019. Several items the Agreement are especially relevant to this matter, as follows:

1. "Defendants shall list the property for sale within 30 days of the date of this agreement."

3. "If the property is not sold by September 30, 2021, then the pocket judgment may be entered and the structure will be removed and the property returned to its natural state by October 30, 2021."

5. "Defendants may dwell on the property for no more than 18 nights per year starting the Friday of Memorial Day and ending on the [*sic*] October 31. Steve Patmore will be notified 3 days prior to any nights' stay."

6. "Removal of the structure must be a condition of the purchase agreement if not removed earlier and occur within 30 days of closing."

14. "If the structure is not removed in compliance with an order of the court, the Homeowners Association or Township may enter the property and remove the structure. Upon doing so, the removing entity will be entitled to put a lien on the property for the cost of removal."

After the Settlement Agreement was entered, Mr. Wizinsky, the Township, and HOA had several disputes. Mr. Wizinsky claimed that the Settlement Agreement was not valid, basically claiming that he signed it under duress. The Township and HOA argued that Mr. Wizinsky was not following the terms of the Settlement Agreement, and filed a motion asking the Court to enforce the Settlement Agreement. On October 22, 2019, Leelanau County Circuit Court Judge Kevin Elsenheimer issued a Decision and Order Granting the Township and HOA's motion. (Attachment #2.) The Decision and Order concluded that the Wizinskys had breached the Settlement Agreement, and ordered as follows:

> [T]he Defendants [the Wizinskys] shall remove the Structure located on the Property, shall remove any and all non-natural objects from the Property, and shall otherwise return the Property to its natural state within 90 days from entry of this Decision and Order. If the Defendants fail to cause the Removal, as defined by the Parties, the Plaintiffs [the Township and HOA] may enter the Property and remove the Structure. Upon doing so, the removing entity will be entitled to put a lien on the Property for the cost of the removal and record the lien with the

Leelanau County Register of Deeds. The Court retains jurisdiction to enforce the remaining terms of the Settlement Agreement.

Mr. Wizinsky later filed several motions asking the Court to reconsider its October 22 Order, and also to set aside the Settlement Agreement. The Court denied all of these motions through an order issued March 19, 2020. (Attachment #3.) This means that the Settlement Agreement and the Court's October 22, 2019 Order remain valid.

Mr. Wizinsky has filed an appeal with the Michigan Court of Appeals. He is asking the Court of Appeals to reverse the Circuit Court's orders enforcing the Settlement Agreement. That appeal is currently being briefed, and it will be some time before any decision is issued.

C. Federal Court Litigation against the County

Mr. Wizinsky has filed two federal lawsuits against the County in the United States District Court for the Western District of Michigan. The first, *Wizinsky v. Leelanau Township and Leelanau County* (Case No. 19-cv-191), was filed on March 12, 2019. The Court dismissed that case on May 12, 2020 as duplicative of Mr. Wizinsky's second federal lawsuit. (Attachment #4.)

Mr. Wizinsky filed his second federal lawsuit against the County on October 25, 2019. (*Wizinsky v. Leelanau County et. al.,* Case No. 19-cv-894). That lawsuit also named the Township and HOA as Defendants. The Complaint alleges a wide variety of claims, including allegations of due process violations, a taking of his property, violation of the Fair Housing Act, and racketeering. He has also asked the federal court to review the Leelanau County Circuit Court's decisions, and order that the Settlement Agreement be vacated.

The County, Township, and HOA all filed motions to dismiss this second lawsuit. On August 20, 2020, Magistrate Judge Sally Berens issued a 29-page Report and Recommendation to grant all of the motions to dismiss the case. (Attachment #5.)

The Report makes several key recommended findings supporting the dismissal of the claims against the County, as follows:

1) Issues relating to the 2018 Certificate of Occupancy determination are moot because of the Settlement Agreement and Leelanau County Circuit Court Orders. Since that Settlement Agreement prevents the Leelanau Township Zoning Board of Appeals from reviewing the Land Use Permit denial, Mr. Wizinsky "has essentially tied the County's hands as to the scope of the Certificate of Occupancy." (Attachment #5, p. 17-19.)

2) "Although the County issued the Certificate of Occupancy, it was bound to recognize the Township's denial of a Land Use Permit for Plaintiff to use the gazebo as a dwelling." (Attachment #5, p. 19 footnote 7.)

3) The Complaint should be dismissed because it is an improper attempt to challenge the state court Settlement Agreement and Orders (also known as a "collateral attack"). (Attachment #5, p. 15.)

4) The substantive due process claim does not state any claims related to actions taken by the County. (Attachment #5, p. 10-20.)

5) Mr. Wizinsky failed to state any facts supporting his claim of racial animus, and therefore does not state a Fair Housing Act claim. (Attachment #5, p. 21-22)

6) Mr. Wizinsky "made what appear to be false allegations about the [Michigan Department of Civil Rights] investigator's findings regarding his discrimination complaint, and asserted (again, apparently) baseless claims of racism and discrimination by not only the County, but also the HOA and the Township." (Attachment #5, p. 27.)

7) Mr. Wizinsky "falsely alleged that the County was somehow involved with the state-court case." (Attachment #5, p. 28.)

It is important to note that this is not a final decision, as a Magistrate Judge's Report is only a recommendation. The primary judge in the case, the Hon. Janet T. Neff, must decide whether to accept the Report. Mr. Wizinsky had the opportunity to object to the Report, which he did on September 1, 2020. The County filed a response on September 15, 2020 supporting the Report. There is no way of predicting when a final decision will be issued.

D. Why this Appeal is Being Heard Now

Oftentimes when a person attempts to appeal a zoning or building code-related decision this long after the decision has been made, there is a specific time limit in an ordinance, statute, code regulation, or a Board's rules of procedure that make it clear whether or not the time for appeal has expired. However, it is actually not unusual that no time limit is written down. That is what has happened in this case. In these situations, case law provides that an appeal should be brought in a "reasonable time."

While it is the County's position that Mr. Wizinsky has not appealed within a "reasonable time," and that the issues regarding his 2018 Certificate of Occupancy denial are moot for the reasons stated in Magistrate Judge Berens' Report and Recommendation, the County is presenting this appeal for the Board's consideration to err on the side of providing Mr. Wizinsky the opportunity to present his case.

It should also be noted that Mr. Wizinsky is also seeking an appeal of the Township Zoning Administrator's Land Use Permit decision before the Township Zoning Board of Appeals.

E. Guidance for the Board's Review of this Appeal

While this appeal is obviously part of a much bigger set of issues related to pending lawsuits, this Board should stay focused on its narrow task of evaluating whether the 2018 Certificate of Occupancy is proper, and whether Mr. Wizinsky is entitled to any relief based on the circumstances as they existed in July 2018 and in light of developments since that time. This Board should not base its decision on any concerns about what any specific decision it might make regarding this appeal would mean for the County's litigation positions.

ATTACHMENT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

THE SHORES HOMEOWNERS ASSOCIATION and LEELANAU TOWNSHIP,

Plaintiffs,

Case No. 18-10192-CZ

v

Hon. Kevin Elsenheimer

WILLIAM G. WIZINSKY and ANN M. WIZINSKY,

Defendants.

Karrie A. Zeits (P60559)
Jeffrey L. Jocks (67648)
SONDEE, RACINE & DOREN, PLC
Attorneys for Plaintiff The Shores Home Owners Association
310 W. Front, Suite 3 00
Traverse City, MI 49684
(231)947-0400

Theodore Seth Koches (P71761)
BAUCKHAM, SPARKS, THALL, SEEBER, & KAUFMAN, PC
Attorneys for Leelanau Township
458 W South Street
Kalamazoo, MI 49007
(269)382-4500

Eric Stempien (P58703)
STEMPIEN LAW FIRM, PLLC
Attorneys for Defendants
29829 Greenfield Road, #102
Southfield, MI 48076
(248) 569-9270

SETTLEMENT AGREEMENT, MARCH 14, 2019

The parties agree to settle this matter pursuant to the following terms:

1. Defendants shall list the property for sale within 30 days of the date of this agreement.
2. The parties agree not to pursue an alleged violation of the Homeowners Association Rules or the Township Ordinances for any condition or activity existing or occurring on the property as of the date of this settlement.
3. If the property is not sold by September 30, 2021, then the pocket judgment may be entered and the structure will be removed and the property returned to its natural state by October 30, 2021. Any non-natural objects, i.e. lawn chairs,

bricks, cinder blocks, construction materials water bottles, beach chairs, umbrellas, will be removed from the property.

4. The Homeowners Association, Board or members will not intentionally interfere in any way with the sale.
5. Defendants may dwell on the property for no more than 18 nights per year starting the Friday of Memorial Day and ending on the October 31. Steve Patmore will be notified 3 days prior to any nights' stay.
6. Removal of the structure must be a condition of the purchase agreement if not removed earlier and occur within 30 days of closing. If removal is a condition of the purchase agreement, Defendants will give the Homeowners Association a copy of the signed purchase agreement.
7. There will be no more construction or expansion of any structure on the property except for cosmetic interior improvements (such as painting and cabinet repair) and that the holes covered by the tarps may be repaired and the tarps removed and counter may be installed.
8. There will be no removal of any trees without prior approval of the Shores Homeowners Association.
9. Defendant shall withdraw and dismiss any investigation into alleged discrimination by plaintiffs within 30 days of the date of this agreement. Defendants will agree not to file any new claims or seek any new investigations for anything occurring prior to the date of this settlement. Defendants will sign an acknowledgment that the issues of discrimination have been resolved by the parties and requesting that any investigations or actions be closed within 30 days of the date of this agreement.
10. The terms of this agreement shall be set forth in a pocket judgement that may be entered by the plaintiffs if defendant breaches any provision of this agreement. It may also be entered on September 30, 2021, if the property is not sold.
11. If the defendants breach this agreement and the pocket judgment gets entered as a result, the structure must be removed within 90 days of entry of the pocket judgment.
12. Defendants shall not violate the Homeowner Association rules or Township ordinances. If alleged to be in violation, defendants shall be given written notice of the alleged violation and 60 days to cure before it shall be deemed to be a violation of this agreement.
13. Defendants agree to no short term rentals on the property.
14. If the structure is not removed in compliance with an order of the court, the Homeowners Association or Township may enter the property and remove the structure. Upon doing so, the removing entity will be entitled to put a lien on the property for the cost of removal.
15. The parties agree to sign a mutual release.
16. The Leelanau Township Board representative agrees to take this settlement offer back to the Township and seek the board approval. If not approved by the Township, then this agreement is null and void.
17. Upon approval by the Township Board, and the parties agreement on the terms of the pocket judgment, the parties will dismiss the case with prejudice and without costs save for the possibility of the filing of the pocket judgment.

Karrie A. Zeits (P60559)
Attorney for Plaintiff The Shores HOA

Todd Hoogland, President of The Shores HOA

Theodore Seth Koches (P71761)
Attorney for Leelanau Township

Galen Leighton
Leelanau Township

Eric Stempien (P58703)
Attorney for Defendants William G. Wizinsky and Ann M. Wizinsky

William G Wizinsky

Ann M Wizinsky

ATTACHMENT 2

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

THE SHORE HOME OWNERS ASSOCIATION and LEELANAU TOWNSHIP,

Plaintiffs,

v

File No. 2018010192CZ
HON. KEVIN A. ELSENHEIMER

WILLIAM G. WIZINSKY and ANN M. WIZINSKY,

Defendants.
_____/

Karrie A. Zeits (P60559)
Jeffrey L. Jocks (P67648)
Attorney for Plaintiff The Shores

Theodore Seth Knoches (P71761)
Attorney for Plaintiff Leelanau Twp.

Eric Stempien (P58703)
Attorney for Defendants

DECISION AND ORDER GRANTING PLAINTIFFS' MOTION FOR ENTRY OF ORDER

The Shores Home Owners Association (hereinafter the "Association") is a non-profit corporation formed for the purposes of administering and maintaining two platted subdivisions, The Shores and The Shores No. 2, which are located in Leelanau Township, Leelanau County, Michigan. Leelanau Township (hereinafter the "Township"), a Michigan township located in Leelanau County, regulates the development and use of real property by means of the Leelanau Township Zoning Ordinance.[1] William and Ann Wizinsky (hereinafter the "Defendants") own real property, known as Lot 11, located within The Shores subdivision (hereinafter the "Property.")

---

[1] The Shores Home Owners Association and Leelanau Township, shall collectively be referred to as "Plaintiffs."

In the mid-1990's, the Defendants received approval to construct a 240 square foot, one-story, non-permanent structure on the Property.[2] According to Plaintiffs, the original structure, as build by Defendants, did not comply with the land use permit granted by the Township. Moreover, Plaintiffs claim that in 2015, Defendants began remodeling, reconstructing, altering and expanding the original structure in violation of the Association's Protective Restrictions and Restrictive Covenants. Ultimately, on July 11, 2018, the Defendants received a Certificate of Occupancy with the stipulation that the Structure may not be used as a dwelling.[3] Plaintiffs contend that since the Certificate of Occupancy was granted, the Defendants have utilized the Structure as a dwelling.

The Plaintiffs filed a complaint on October 5, 2018, alleging Nuisance Per Se (Count I), Enforcement of Restrictive Covenants – Injunction to Abate Violations (Count II), Recovery of Costs and Damages for Enforcement of Restrictions (Count III), and Libel (Count IV).[4] On March 14, 2019, the Plaintiffs and Defendants (hereinafter the "Parties") entered into a Settlement Agreement. The Settlement Agreement states, in part, as follows:

> (¶5) Defendants may dwell on the property for no more than 18 nights per year starting the Friday of Memorial Day and ending on the [sic] October 31. Steve Patmore will be notified 3 days prior to any nights' stay.
> (¶8) There will be no removal of any trees without prior approval of the Shores Homeowners Association.
> (¶9) Defendant shall withdraw and dismiss any investigation into alleged discrimination by plaintiffs within 30 days of the date of this agreement. Defendants will agree not to file any new claims or seek any new investigations for anything occurring prior to the date of this settlement. Defendants will sign an acknowledgment that the issues of discrimination have been resolved by the parties and requesting that any investigations or actions be closed within 30 days of the date of this agreement.
> (¶10) The terms of this agreement shall be set forth in pocket judgment that may be entered by the plaintiffs if defendant breaches any provision of this agreement. It may also be entered on September 30, 2021, if the property is not sold.
> (¶15) The parties agree to sign a mutual release.

The pocket agreement defined "Removal," stating:

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[2] The approved structure did not include a foundation, sewer or water.
[3] The exact language states the "structure may not be used as a dwelling per Leelanau Township Zoning Administration administrator correspondence dated Dec 12, 2017 and Benzie Leelanau Health Department certified letter dated Aug 13, 2015."
[4] An Amended Complaint was filed on November 21, 2018, alleging the same four counts.

> If the Defendants breach the [Settlement] Agreement, the structure located on the property...will be removed and the property returned to its natural state within 90 days from the entry of [the] order, and any non-natural objects, i.e. lawn chairs, bricks, cinder blocks, construction materials water bottles, beach chairs, umbrellas, will be removed from the property (the "Removal").

The Court retained jurisdiction to enforce the pocket judgment, pursuant to the Stipulation and Order of Dismissal entered on June 4, 2019.

On September 4, 2019, the Association and Township filed a Motion for Entry of Order requesting that the Court enter the pocket judgment discussed in the Settlement Agreement. According to the Plaintiffs, Defendants breached the terms of the Settlement Agreement by: (1) removing trees without proper permission; (2) emailing various entities alleging discrimination, occurring prior to the Settlement Agreement, by the Plaintiffs; (3) failing to execute the mutual release and (4) Defendant dwelled on the property without prior notice to Steven Patmore. The Court heard arguments by the parties on October 7, 2019, took the matter under advisement and now issues this written decision and order.

As noted above, under ¶9 of the Settlement Agreement, Defendant is prohibited from filing any new claims or seeking any new investigations pertaining to discrimination.[5] The Plaintiffs have provided documentary evidence that on August 3, 8, 9, 10, 23, 27 and 28, 2019, Defendants emailed multiple individuals and entities claiming that the Plaintiffs have racially discriminated against Defendants' family prior to and beyond March 14, 2019. Furthermore, on August 9, 2019, Defendants sent an email to the Record Eagle referencing a "racist agenda" and asking the newspaper to investigate. This evidence clearly demonstrates that Defendants have breached the terms of the Settlement Agreement, therefore, Plaintiffs are entitled to an entry of judgment.

This matter, having come before the Court upon motion and stipulation of the Parties, and the Court having fully reviewed the motion and stipulated facts and agreements and otherwise being fully advised HEREBY ORDERS that the Defendants shall remove the Structure located on the Property, shall remove any and all non-natural objects from the Property, and shall otherwise return the Property to its natural state within 90 days from entry of this Decision and

[5] Paragraph 9 of the Settlement Agreement reads as follows: Defendant shall withdraw and dismiss any investigation into alleged discrimination by plaintiffs within 30 days of the date of this agreement. Defendants will agree not to file any new claims or seek any new investigations for anything occurring prior to the date of this settlement. Defendants will sign an acknowledgment that the issues of discrimination have been resolved by the parties and requesting that any investigations or actions be closed within 30 days of the date of this agreement.

Order. If the Defendants fail to cause the Removal, as defined by the Parties, the Plaintiffs may enter the Property and remove the Structure. Upon doing so, the removing entity will be entitled to put a lien on the Property for the cost of the removal and record the lien with the Leelanau County Register of Deeds. The Court retains jurisdiction to enforce the remaining terms of the Settlement Agreement.

IT IS SO ORDERED.

10/22/2019
12:52PM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge

ATTACHMENT 3

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

THE SHORE HOME OWNERS ASSOCIATION and LEELANAU TOWNSHIP,

Plaintiffs,

v

File No. 2018010192CZ
HON. KEVIN A. ELSENHEIMER

WILLIAM G. WIZINSKY and ANN M. WIZINSKY,

Defendants.
/

Karrie A. Zeits (P60559)
Jeffrey L. Jocks (P67648)
Attorney for Plaintiff The Shores

Theodore Seth Knoches (P71761)
Attorney for Plaintiff Leelanau Twp.

Defendants Acting in Pro Per

DECISION AND ORDER REGARDING JANUARY 6, 2020 MOTION HEARINGS

The Shores Home Owners Association (hereinafter the "Association") is a non-profit corporation formed for the purposes of administering and maintaining two platted subdivisions, The Shores and The Shores No. 2, which are located in Leelanau Township, Leelanau County, Michigan. Leelanau Township (hereinafter the "Township"), a Michigan township located in Leelanau County, regulates the development and use of real property by means of the Leelanau Township Zoning Ordinance.[1] William and Ann Wizinsky (hereinafter the "Defendants") own the real property, known as Lot 11, located within The Shores subdivision.

In the mid-1990's, the Defendants received approval to construct a 240 square foot, one-story, non-permanent structure on Lot 11.[2] According to Plaintiffs, the original structure, as build by Defendants, did not comply with the land use permit granted by the Township. Moreover, Plaintiffs claim that in 2015, Defendants began remodeling, reconstructing, altering and expanding the original structure in violation of the Association's Protective Restrictions and Restrictive

[1] The Shores Home Owners Association and Leelanau Township, shall collectively be referred to as "Plaintiffs."
[2] The approved structure did not include a foundation, sewer or water.

Covenants. Ultimately, on July 11, 2018, the Defendants received a Certificate of Occupancy with the stipulation that the structure may not be used as a dwelling.[3] Plaintiffs contend that since the Certificate of Occupancy was granted, the Defendants have utilized the structure as a dwelling.

The Plaintiffs filed a complaint on October 5, 2018, alleging Nuisance Per Se (Count I), Enforcement of Restrictive Covenants – Injunction to Abate Violations (Count II), Recovery of Costs and Damages for Enforcement of Restrictions (Count III), and Libel (Count IV).[4] On March 14, 2019, the Plaintiffs and Defendants (hereinafter the "Parties") entered into a Settlement Agreement and "pocket judgment."[5] The Court retained jurisdiction to enforce the pocket judgment, pursuant to the Stipulation and Order of Dismissal entered on June 4, 2019.

On September 4, 2019, the Association and Township filed a Motion for Entry of Order requesting that the Court enter the pocket judgment discussed in the Settlement Agreement. Subsequently, on October 21, 2019, the Court issued a Decision and Order Granting Plaintiffs' Motion for Entry of Order and executed an Order Granting Motion to Enforce Settlement Agreement on December 6, 2019. On December 9, 2019, Defendants filed: (1) an Objection to Entry of Order Enforcing Settlement Agreement and (2) a Motion for Injunctive Relief for Plaintiff's Violation of Article 9, § 18 of the Michigan Constitution, Motion to Nullify Contract No Meeting of the Minds or Based on Fraud in the Inducement and Motion to Set Aside the Settlement Agreement Based on Duress and Fraud. Finally, on December 27, 2019, the Plaintiffs filed a Motion for Costs and Attorney Fees Pursuant to MCR 2.625(A)(2). The Court heard

[3] The exact language states the "structure may not be used as a dwelling per Leelanau Township Zoning Administration administrator correspondence dated Dec 12, 2017 and Benzie Leelanau Health Department certified letter dated Aug 13, 2015."

[4] An Amended Complaint was filed on November 21, 2018, alleging the same four counts.

[5] The Settlement Agreement states, in part, as follows: (¶5) Defendants may dwell on the property for no more than 18 nights per year starting the Friday of Memorial Day and ending on the [sic] October 31. Steve Patmore will be notified 3 days prior to any nights' stay; (¶8) There will be no removal of any trees without prior approval of the Shores Homeowners Association; (¶9) Defendant shall withdraw and dismiss any investigation into alleged discrimination by plaintiffs within 30 days of the date of this agreement. Defendants will agree not to file any new claims or seek any new investigations for anything occurring prior to the date of this settlement. Defendants will sign an acknowledgment that the issues of discrimination have been resolved by the parties and requesting that any investigations or actions be closed within 30 days of the date of this agreement; (¶10) The terms of this agreement shall be set forth in pocket judgment that may be entered by the plaintiffs if defendant breaches any provision of this agreement. It may also be entered on September 30, 2021, if the property is not sold; and (¶15) The parties agree to sign a mutual release. The pocket agreement defined "Removal," stating: "If the Defendants breach the [Settlement] Agreement, the structure located on the property…will be removed and the property returned to its natural state within 90 days from the entry of [the] order, and any non-natural objects, i.e. lawn chairs, bricks, cinder blocks, construction materials water bottles, beach chairs, umbrellas, will be removed from the property (the 'Removal')."

arguments by the parties on the above referenced matters on January 6, 2020, and took the matters under advisement. Having reviewed the arguments presented by the parties, the Court now issues this written decision and order for the reasons stated herein.

With regard to the Defendants' Objection to Entry of Order Enforcing Settlement Agreement, the service issues raised by the Defendants are meritless. Eric Stempien and the Stempien Law Firm represented the Defendants from approximately November 6, 2018, through September 18, 2019. On September 18, 2019, Nicholas Klaus and Klaus Law PLLC filed a limited appearance to represent the Defendants on the Plaintiffs' Motion for Entry of Order. Attorney Klaus did not file a Motion for Attorney Withdrawal until December 6, 2019.[6] Therefore, Klaus was counsel of record and properly served with the Plaintiffs' Motion to Enforce Settlement Agreement. Furthermore, Defendants' Objection is more appropriately considered a motion for reconsideration as it requests the Court to reexamine its prior enforcement of the settlement agreement. The standard for reviewing motions for reconsideration is codified at MCR 2.119(F), entitled Motions for Rehearing and Reconsideration, and reads in pertinent part, as follows:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

The Court finds that the Defendants' Objection presents the same issues previously ruled on by the Court, either expressly or by reasonable implication. The Court does not find that a palpable error has been demonstrated and that a different disposition must result from the correction of an error.[7] Thus, the Defendants' Objection to Entry of Order Enforcing Settlement Agreement is denied.

The Defendants also filed a Motion for Injunctive Relief for Plaintiff's Violation of Article 9, § 18 of the Michigan Constitution, Motion to Nullify Contract No Meeting of the Minds or Based on Fraud in the Inducement and Motion to Set Aside the Settlement Agreement Based on Duress and Fraud as a singular pleading. Under the Michigan Court Rules, MCR 3.310(H) states that an injunction may be granted before or in connection with a final judgment on a motion after

[6] Defendants filed a Notice to the Court on December 2, 2019, indicating that going forward they would be representing themselves pro per.
[7] MCR 2.119(F)(3).

an action is commenced. Pursuant to the Order Granting Motion to Enforce Settlement Agreement, entered December 6, 2019, the case has been resolved for all purposes, except as to actual enforcement. Thus, the Court lacks jurisdiction to consider the Defendants' motion for injunction. Similarly, the Court lacks jurisdiction to consider the motion to nullify the contract given entry of the Order Granting Motion to Enforce Settlement Agreement.

Additionally, Defendants assert that the Settlement Agreement must be set aside based on duress and/or fraud. For the most part, parties cannot disavow a written, signed agreement.[8] The Court notes that, once parties reach a settlement agreement, it should not be set aside merely because one party has a change of heart.[9] It is a well-settled principle of law that courts are bound by settlements reached through negotiations and agreement by parties, in the absence of fraud, duress, mutual mistake or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which they were engaged.[10] In order to rescind a contract on the basis of fraudulent inducement, the claiming party must show that: (1) the opposing party made a material misrepresentation; (2) the representation was false; (3) when the opposing party made the representation, it knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the representation was made with the intention that it would be acted upon; (5) the claiming party acted in reliance upon it and (6) suffered damages.[11] To succeed on a claim of duress, the party must establish that he or she was illegally compelled or coerced to act by fear of serious injury to his or her person, reputation or fortune.[12]

In this case, the Settlement Agreement and pocket judgment were reached after mediation facilitated by Attorney Todd Millar and negotiation by the parties. All parties, including the Defendants, were properly represented by legal counsel and willingly agreed to the settlement terms. Defendants ~~have failed~~ to demonstrate both the required elements for fr~~audulent~~ inducement and duress. Nor have the Defendants asserted, much less demonstrated, mutual mistake or severe stress preventing them from understanding the terms of the Settlement Agreement. Absent a showing of fraud, duress, mutual mistake or severe stress, the Court is bound by to enforce the

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[8] *Gojcaj v Moser*, 140 Mich App 828, 835; 366 NW2d 54 (1985).
[9] *Vittiglio v Vittiglio*, 297 Mich App 391, 399; 824 NW2d 591 (2012).
[10] *Id.* at 400.
[11] *Bank of America NA v Fidelity Nat'l Trust Ins. Co.*, 316 Mich App 480; 892 NW2d 467 (2016).
[12] *Farm Credit Servs of Mich Heartland, PCA v Weldon*, 232 Mich App 662, 681; 591 NW2d 438 (1999).

Settlement Agreement/Pocket Judgment negotiated by the parties on March 14, 2019. Therefore, Defendants' sole recourse at this juncture is to file an appeal with the Court of Appeals.

Michigan statute MCL § 600.2591 states that if a court finds that a civil action or defense to a civil action was frivolous, the court shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney. Frivolous means that: (1) the party's primary purpose in initiating the action or asserting the defense was to harass, embarrass or injure the prevailing party; (2) the party had no reasonable basis to believe the facts underlying that party's legal position were in fact true; or (3) the party's legal position was devoid of arguable legal merit.[13] With regard to the Plaintiffs' Motion for Costs and Attorney Fees Pursuant to MCR 2.625(A)(2), the Court will not award any fines or costs pertaining to the Defendants' Objection to Entry of Order Enforcing Settlement Agreement because the objection was treated as a Motion for Reconsideration by the Court. As for Defendants' Motion for Injunctive Relief for Plaintiff's Violation of Article 9, § 18 of the Michigan Constitution, Motion to Nullify Contract No Meeting of the Minds or Based on Fraud in the Inducement and Motion to Set Aside the Settlement Agreement Based on Duress and Fraud, the Court lacked jurisdiction to hear the issues given the Order Granting Motion to Enforce Settlement Agreement entered on December 6, 2019. Given the Court's lack of jurisdiction to hear the issues, the Defendants' Motion was frivolous, pursuant to MCL § 600.2591, therefore, the Plaintiffs are awarded costs and fees for their response to the motion.

IT IS SO ORDERED.

03/19/2020
11:20AM

KEVIN A. ELSENHEIMER, CIRCUIT COURT JUDGE, P49293

HONORABLE KEVIN A. ELSENHEIMER
Circuit Court Judge

[13] MCL § 600.2951(3)(a).

ATTACHMENT 4

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM G. WIZINSKY,

Plaintiff,

v.

LEELANAU, TOWNSHIP OF, et al.,

Defendants.
_____/

Case No. 1:19-cv-191

HON. JANET T. NEFF

OPINION AND ORDER

Plaintiff initiated this action against the Township of Leelanau and Leelanau County, alleging a taking of his property without just compensation (Count I) and a violation of his substantive due process rights (Count II). Plaintiff subsequently voluntarily dismissed the Township. The County filed a dispositive motion, to which Plaintiff filed a "Counter Motion to Defendant[']s Motion to Dismiss, Motion to Join the Cases." The County also filed a motion for sanctions. The Magistrate Judge issued a Report and Recommendation (R&R), recommending that this Court deny Plaintiff's motion and "dismiss the instant case as duplicative" of another case that Plaintiff had filed against the County, 1:19-cv-894. The Magistrate Judge further recommended that if the Court dismissed this action that "it direct the Clerk to file the County's motion for sanctions (ECF No. 37) in Case No. 894." The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation. The County filed a response to the objections. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has

performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

An objecting party is required to "specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections." W.D. Mich. LCivR 72.3(b). The court's task then is to "make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*

Here, Plaintiff indicates that he "agrees with the decision to dismiss case 1:19-cv-00191 as stated" but "objects to the Motion for Sanctions to even being considered" (ECF No. 46 at PageID.1201-1202).[1] Plaintiff requests that "the County's request for sanctions not even be heard and DENIED" (*id.* at PageID.1202).

Plaintiff's objection does not supply a basis for rejecting the Report and Recommendation. Plaintiff supplies no authority upon which this Court could properly preclude a party from seeking sanctions. To the extent Plaintiff requests the motion for sanctions be denied, his request is misplaced as the Magistrate Judge did not address the merits of such in the Report and Recommendation. In short, the objections are properly denied, and this Court adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court.

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF No. 46) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 43) is APPROVED and ADOPTED as the Opinion of the Court.

[1] To the extent Plaintiff also requests that he be allowed to amend his complaint, the Court notes that Plaintiff has since filed a formal motion for such in Case No. 1:19-cv-894 (ECF No. 22).

IT IS FURTHER ORDERED that Plaintiff's "Counter Motion to Defendant[']s Motion to Dismiss, Motion to Join the Cases" (ECF No. 34) is DENIED for the reasons stated in the Report and Recommendation, and this action is DISMISSED as duplicative of Case No. 1:19-cv-894.

IT IS FURTHER ORDERED that the Clerk's Office is directed to file Defendant County's Motion for Sanctions (ECF No. 37) in Case No. 1:19-cv-894.

Dated: May 12, 2020

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge

ATTACHMENT 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM G. WIZINSKY,

Plaintiff,

v.

LEELANAU COUNTY, et al.,

Defendants.
_____/

Hon. Janet T. Neff

Case No. 1:19-cv-894

REPORT AND RECOMMENDATION

Plaintiff, William Wizinsky, proceeding pro se, filed this action against Defendants: (1) Leelanau County and Paul Hunter (collectively the "County Defendants"); (2) Shores Homeowners Association (HOA) Board Members Todd Hoogland, Norm Golm, Dick Koenig, Peter Wolcott, and Brigid Hart (collectively the "HOA Defendants"); and (3) Leelanau Township officials Steve Patmore, Doug Scrips, Denise Dunn, Deborah Vanpelt, Gary Frederickson, and Gaylen Leighton (collectively the "Township Defendants"). Plaintiff's claims arise out of Defendants' enforcement of building codes and ordinances and refusals to allow Plaintiff to use his structure—a gazebo—as a dwelling, which ultimately resulted in the Township and the HOA suing Plaintiff in state court. Plaintiff invokes federal question jurisdiction by asserting claims pursuant to 42 U.S.C. §§ 1982 and 1983, the Fair Housing Act (FHA), 42 U.S.C. §§ 3601 *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961 *et seq.* Plaintiff also invokes the Court's supplemental jurisdiction, *see* 28 U.S.C. § 1367, by alleging numerous state-law claims, most of which are based on criminal statutes.

This matter is before the Court on the following motions: (1) the County Defendants' Motion to Dismiss and/or for Judgment on the Pleadings (ECF No. 14); (2) the HOA Defendants and Township Defendants' Joint Motion for Summary Judgment (ECF No. 60); (3) Plaintiff's Motion for Summary Judgment on Counts 9 and 10 (ECF No. 16); (4) Plaintiff's Motion for Injunctive Relief and Stay and for an Order Nullifying Settlement Agreement (ECF No. 19); (5) the County Defendants' Motions for Rule 11 Sanctions (ECF Nos. 44 and 57); and (6) Plaintiff's Motion for Leave To File Previously-Filed Response (ECF No. 66). The motions are fully briefed and ready for decision.[1] Pursuant to 28 U.S.C. § 636(b)(1)(B), I recommend that the County Defendants' motion to dismiss and the HOA Defendants and Township Defendants' motion for summary judgment be **GRANTED**; Plaintiff's motions for summary judgment, injunctive relief, and leave to file be **DENIED**; and the County Defendants' motion for sanctions in the instant case be **GRANTED**.

I. BACKGROUND

A. Facts

1. Plaintiff Builds a Gazebo

Plaintiff has owned Lot 11 of the Shores Subdivision in Leelanau Township, Leelanau County, Michigan, commonly known as 12063 Foxview Drive, Northport, Michigan 49670 (the "Property"), since October 1, 1990. The Property is within the HOA. (ECF No. 1 at PageID.4–5.) In 1992, Plaintiff sought permission from the HOA, the Township and the County to construct a treehouse/gazebo on the Property. In his Building Permit application, Plaintiff described the structure as a one-story "Gazebo 12 x 14 + 6 x 8, " and stated that the structure was "non-

[1] Defendants have requested oral argument on their motions and responses to Plaintiff's motions. Because the parties' briefs adequately develop the issues, the Court concludes that oral argument is unnecessary.

permanent, no foundation, screened, covered porch [and] detached." (ECF No. 17-20 at PageID.1133.) On August 10, 1992, the township issued a Land Use Permit for the gazebo, which classified the structure as "non-permanent," with no foundation, plumbing, electrical, or mechanical and no bathrooms or bedrooms. (ECF No. 17-8 at PageID.1123.) The Land Use Permit did not authorize Plaintiff to use the structure as a dwelling. On August 12, 1992, the County issued a Building Permit for a "gazebo – 12'x 20' x 14'" with a specific use identified as "shed." (ECF No. 14-4 at PageID.764.) After Plaintiff built the gazebo, which sat off the ground on stilts, the Township classified it as Class D-10, Single-Family Detached, for property tax purposes. (ECF No. 1-2 at PageID.188.) Plaintiff has never challenged the tax classification of the gazebo.

2. Plaintiff's 2015 Expansion and the Discovery of the Nonconforming Structure

In 2015, Plaintiff added a first story to the preexisting structure and a wood stove. Plaintiff did not obtain approval from the HOA for the expansion and did not obtain any permits or approvals from the Township or the County.[2] (ECF No. 1-1 at Page ID.112.) Around that time, Plaintiff applied for approvals to repair storm damage to the gazebo. (ECF No. 1 at PageID.26.) In connection with the review of Plaintiff's application, the Township and County discovered that the existing structure did not conform to the plans that had been approved in 1992, was not permitted, and did not have a Certificate of Occupancy. (ECF No. 1-1 at PageID.112.) In addition, it was determined that there had been no final inspection of the original structure, and no Certificate of Occupancy had issued. (ECF No. 14-5.)

[2] Plaintiff subsequently obtained approval from the County for the wood stove in July 2018. (ECF No. 1-1 at PageID.140.)

While Plaintiff was seeking permission to repair the damage, Defendant Hoogland, on behalf of the HOA, requested the Benzie-Leelanau District Health Department (BLDHD) to investigate sewer and water issues pertaining to Plaintiff's occupancy of the Property. On August 13, 2015, William Crawford of the BLDHD sent a letter to Plaintiff notifying him that the BLDHD had no record that sewage disposal and water systems had been approved for the Property, and therefore, the BLDHD did not approve the use of a dwelling (the gazebo) on the Property. Because of these deficiencies, Mr. Crawford instructed Plaintiff to vacate the gazebo and not re-occupy it until approved septic and water supply systems were in place. (ECF No. 1-1 at PageID.117–18.) Mr. Crawford further notified Plaintiff that "[t]his required vacation of the dwelling in no way waives your responsibility to comply with any and all local or state requirements that demand your compliance."[3] (*Id.* at PageID.118.)

An internal County document from August 2015 indicated that Plaintiff would apply for a building permit to complete the original work "with current alterations." (ECF No. 14-5.) The County issued a June 22, 2017 Violation Notice, which referenced a meeting of the same date with County and Township zoning and building officials and indicated that Plaintiff would obtain a land use permit from the Township for the re-construction work on the gazebo. (ECF No. 14-9.) On December 12, 2017, Defendant Patmore, the Township's Zoning Administrator, notified Plaintiff that he could not approve Plaintiff' Land Use Permit Application as submitted. In his email to Plaintiff, Defendant Patmore reviewed the history of the gazebo, noting that the structure that was built in 1992 was not in compliance with the 1992 Land Use Permit for both the structure

[3] It appears that, as of January 17, 2019, the BLDHD approved Plaintiff's installation of a chemical toilet in the gazebo to satisfy the septic/sewer-related occupancy restriction dating back to 2016. (ECF No. 1-1 at PageID.122–25.) However, Mr. Crawford nonetheless noted that such approval did not "waive [Plaintiff's] responsibility to meet any association, local, state or federal requirements." (*Id.* at PageID.125.)

height and rear-setback requirement, but there was no evidence that the Township had ever taken enforcement action regarding these discrepancies. Defendant Patmore also noted that, in 2015, an addition was constructed onto the older structure (the first floor) without any permits or approval. He disagreed with Plaintiff's position that the addition was necessary to reinforce the existing structure and noted that the structure was now effectively a two-story structure. He also stated that Plaintiff had referred to the structure as "a tiny house" and admitted to "residing inside the structure in the past." (ECF No. 1-1 at PageID.112.) Defendant Patmore determined that a new permit was not required for the old 1992 portion of the structure that was not built in accordance with the 1992 Land Use Permit and that, after 25 years, the Township should not take enforcement action as to the violations relating to the original structure. Defendant Patmore found the original structure to be a protected non-conforming structure regarding the setback requirement. However, Defendant Patmore found that the 2015 addition violated the zoning ordinance because no permit was issued, and because it did not meet the current setback requirements, he could not approve Plaintiff's application unless the Zoning Board of Appeals granted a variance. (*Id.* at PageID.112.) Defendant Patmore summarized his conclusions as follows:

> 1. I can not approve the Land Use Permit Application as submitted.
>
> 2. The 2015 addition does not conform to the zoning ordinance and must be removed unless a variance or appeal is granted.
>
> 3. You have the right to request a variance of the setback requirement from the Leelanau Township ZBA.
>
> 4. You have the right to appeal my determinations to the Leelanau Township ZBA.
>
> 5. If #2 and/or #3 are not applied for, and the 2015 addition is not removed, I will recommend to the Leelanau Township Board that enforcement action be taken to remove the addition.

6. The structure may not be used as a dwelling.

(*Id.*)

On January 26, 2018, the County issued a repair Residential Building Permit for the following work: "Residential utility structure, Gazebo/shed, 12 x 20, structurally support original structure after storm." (ECF No. 14-11; *see also* ECF No. 1 at PageID.31.) In late December 2017 or early January 2018, Plaintiff had filed a complaint with the Michigan Department of Civil Rights (MDCR), claiming that the Township discriminated against Plaintiff, who is White, because his adopted daughter was African-American, by denying him a permit and the ability to repair his home. (ECF No. 1 at PageID.30–31; ECF No. 26-2 at PageID.1790.) The MDCR dismissed Plaintiff's complaint on April 30, 2018, due to "insufficient evidence to proceed." (*Id.* at PageID.1792.) Plaintiff alleges that the MDCR investigator told him that she "found significant circumstantial evidence of racism, but not enough for prosecution," and that the MDCR required the County to issue the repair Building Permit in settlement of Plaintiff's discrimination complaint. (ECF No. 1 at PageID.30–31.) However, Amy MacDonald, the MDCR employee who investigated Plaintiff's complaint, states that although she had "thorough conversations with [Plaintiff] explaining to him the meaning of direct evidence and circumstantial evidence," she never told Plaintiff that she found significant circumstantial evidence of racism but instead informed him that there was no direct or circumstantial evidence that the Township engaged in discrimination. (ECF No. 26-2 at PageID.1869–70.)

On July 11, 2018, at the end of the time for completing the work under the repair Building Permit, the County issued Plaintiff a Certificate of Occupancy for the gazebo. The Certificate of Occupancy specified the following "Special stipulations and conditions: Structure may not be used as a dwelling per Leelanau Township Zoning Administrator Correspondence dated Dec 12,

2017 and Benzie Leelanau Health Department Certified Letter dated Aug. 13, 2015." (ECF No. 1-1 at PageID.115.)

3. The HOA and the Township Sue Plaintiff in State Court

On or about October 5, 2018, the HOA and the Township, through their respective counsel, filed a complaint against Plaintiff and his wife in the Leelanau County Circuit Court, captioned *The Shores Home Owners Association and Leelanau Township v. William G. Wizinsky and Ann M. Wizinsky*, No. 18-10192-CZ. The complaint alleged four claims: (1) nuisance per se; (2) enforcement of restrictive covenants—injunction to abate violations; (3) recovery of costs and damages for enforcement of restrictions; and (4) libel. (ECF No. 26-2 at PageID.1766–88.) The case was assigned to Hon. Kevin A. Elsenheimer. The Township was a party only as to Count I, the nuisance per se claim. On March 14, 2019, the parties, represented by counsel, entered into a Settlement Agreement, pursuant to which Plaintiff and his wife agreed to list the Property for sale within 30 days and the HOA and the Township agreed not to pursue any enforcement action for existing violations of the HOA's rules or Township ordinances. (ECF No. 17-9 at PageID.1056.) Plaintiff was required to include removal of the gazebo as a condition of any sale. The Settlement Agreement provided that, if the Property was not sold by October 30, 2021, a "pocket judgment" providing for removal of the gazebo by October 30, 2021, would be entered, but if Plaintiff breached the Settlement Agreement at any time, the HOA and the Township could enter the pocket judgment. Plaintiff also agreed to "withdraw and dismiss any investigation into alleged discrimination by [the HOA and the Township]" and not to "file any new claims or seek any new investigations for anything occurring prior to the date of this settlement." (*Id.* at PageID.1057.) Finally, the parties agreed to sign a mutual release and to dismiss the case with prejudice. Judge

Elsenheimer entered a stipulated order of dismissal on June 4, 2019, in which he maintained jurisdiction to enforce the terms of the Settlement Agreement. (ECF No. 61-3.)

On September 4, 2019, the HOA and the Township filed a Motion for Entry of Order, seeking entry of the pocket judgment due to Plaintiff's breach of the Settlement Agreement, including his failure to sign a mutual release. (ECF No. 26-2 at PageID.1804–08.) On October 22, 2019, Judge Elsenheimer issued a Decision and Order granting the HOA and Township's motion and ordering Plaintiff and his wife to remove the gazebo and any other non-natural objects from the Property within 90 days. (ECF No. 26-2 at PageID.1810–13.) On December 5, 2019, Judge Elsenheimer issued an order granting the HOA and Township's Motion to Enforce the Settlement Agreement, which ordered that the mutual release attached to the order is effective and deemed executed by all parties. (ECF No. 50-1 at PageID.2642–46.)

On December 9, 2019, Plaintiff and his wife filed an objection to the order enforcing the Settlement Agreement and a motion for injunctive relief based on the HOA and the Township's alleged violation of Article 9, Section 18 of the Michigan Constitution (the basis for Plaintiff's Count 10 in the instant case) and to set aside the Settlement Agreement based on fraud in the inducement or duress. On March 19, 2020, Judge Elsenheimer entered a Decision and Order denying both motions. Regarding Plaintiff's motion to set aside the Settlement Agreement, Judge Elsenheimer stated:

> In this case, the Settlement Agreement and pocket judgment were reached after mediation facilitated by Attorney Todd Millar and negotiation by the parties. All parties, including the Defendants, were properly represented by legal counsel and willingly agreed to the settlement terms. Defendants have failed to demonstrate both the required elements for fraudulent inducement and duress. Nor have the Defendants asserted, much less demonstrated, mutual mistake or severe stress preventing them from understanding the terms of the Settlement Agreement. Absent a showing of fraud, duress, mutual mistake or severe stress, the Court is bound…to enforce the Settlement Agreement/Pocket Judgment negotiated by the parties on March 14, 2019. . . .

(ECF No. 50-1 at PageID.2639–40.) On April 1, 2020, Plaintiff filed a notice of appeal to the Michigan Court of Appeals. (ECF No. 50-1 at PageID.2649.)

B. Procedural History

On March 12, 2019—two days before the parties executed the Settlement Agreement in the state-court case—Plaintiff, through counsel, filed a two-count complaint in this Court against the Township and the County. *Wizinsky v. Township of Leelanau, et al.*, No. 1:19-cv-191 (*Wizinsky* I). In Count I, Plaintiff alleged a takings claim pursuant to 42 U.S.C. § 1983. In Count II, Plaintiff alleged a substantive due process claim pursuant to 42 U.S.C. § 1983. On April 17, 2019, Plaintiff voluntarily dismissed the Township in accordance with the Settlement Agreement. On September 9, 2019, the Court granted Plaintiff's counsel's motion to withdraw. (*Wizinsky* I, ECF No. 23.) Thereafter, the County filed a motion to dismiss. Plaintiff, having filed the instant case on October 25, 2019—three days after Judge Elsenheimer issued his order directing Plaintiff and his wife to remove the gazebo within 90 days—then moved to consolidate the two cases. (*Wizinsky* I, ECF No. 34.) On December 12, 2019, this Court issued a Report and Recommendation recommending that the Court dismiss *Wizinsky* I and allow the instant case to proceed, as Plaintiff had indicated that the claims in both cases were based on the same set of circumstances. (ECF No. 43.) On May 12, 2020, Judge Neff issued an Opinion and Order adopting the December 12, 2019 Report and Recommendation and directed the Clerk to dismiss Case No. *Wizinsky* I as duplicative of the instant case.

II. DISCUSSION

A. The HOA and Township Defendants' Motion for Summary Judgment

1. Summary Judgment Standard

Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Material facts are facts that are defined by substantive law and are necessary to apply the law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if a reasonable jury could return judgment for the non-moving party. *Id.*

The court must draw all inferences in a light most favorable to the non-moving party, but may grant summary judgment when "the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Agristor Fin. Corp. v. Van Sickle*, 967 F.2d 233, 236 (6th Cir. 1992) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)).

2. Release of Claims

The HOA and Township Defendants contend that all of Plaintiff's claims in this case are barred by the Mutual Release effectuated by the Settlement Agreement.[4] A release is valid under Michigan law "if it is fairly and knowingly made." *Green v. BP Prod. of N. Am., Inc.*, 169 F. App'x 951, 957 (6th Cir. 2006) (citing *Brooks v. Holmes*, 163 Mich. App. 143, 145 (1987)).

[4] The HOA and Township Defendants also argue that Plaintiff's claims are barred by the doctrine of res judicata. As the Sixth Circuit has recently observed, however, it remains unclear whether the Michigan Supreme Court would extend the "transactional" test it applies to determine whether res judicata applies "to cases in which the parties have switched sides in the second suit." *Etherton v. Serv. First Logistics, Inc.* 807 F. App'x 469, 471 (6th Cir. 2020) (noting that Michigan lower courts have reached different conclusions as to whether the transactional approach should be extended to claims that could have been raised as counterclaims in the prior action). It is possible that Plaintiff raised some of his claims in this case as defenses in the state-court litigation, but the HOA and Township Defendants have not presented any evidence or argument Plaintiff in fact raised his claims in this case as defenses. On the other hand, to the extent Plaintiff raises arguments in this case that are defenses to, or attack or undermine the validity of, the Settlement Agreement and the state-court's orders, res judicata would apply to bar such arguments.

Where the language of a release is unambiguous and unequivocal, "the scope of a release is governed by the intent of the parties as it is expressed in the release." *Gramer v. Gramer*, 207 Mich. App. 123, 125 (1994). "If the text in the release is unambiguous, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release." *Cole v. Ladbroke Racing Mich., Inc.*, 241 Mich. App. 1, 13 (2000). Extrinsic evidence may not be used to interpret unambiguous language in a release. *Shay v. Aldrich*, 487 Mich. 648, 667 (2010). A release is ambiguous only if its language is reasonably susceptible to more than one interpretation. *Cole*, 241 Mich. App. At 13.

The parties' Mutual Release provides, in pertinent part:

> The Shores Home Owners Association, the Township of Leelanau, William G. Wizinsky, and Ann M. Wizinsky (collectively referred to as the "Parties"), for the sole consideration of the mutual promises and benefits as set forth in the Settlement Agreement dated March 14, 2019, between the Parties . . . , releases [sic] and discharges [sic], and, by execution of this full and final release, does [sic] forever release and discharge each other, their employees, principals, agents, insurers, successors and assigns, for and from any and all liability, claims, demands, controversies, damages, actions and causes of actions for . . . loss and damage of any kind and nature sustained by or hereafter resulting to the undersigned, from incidents which occurred arising out of the claims and allegations as set forth in the Shores Home Owners Association and Township of Leelanau's Complaint and First Amended Complaint and William G. Wizinsky and Ann M. Wizinsky's affirmative defenses as set for [sic] in the lawsuit pending in Leelanau County Circuit Court, Michigan, Case No. 18-10192-CZ . . . .

(ECF No. 50-1.) Although the Mutual Release is not a model of grammatical correctness or draftsmanship, its language is not ambiguous. The Mutual Release, which by its terms applies to the individual HOA and Township Defendants, makes clear that the parties intended to release all claims relating to Plaintiff's use of the gazebo as a dwelling. As mentioned above, the claims in the state-court case arose out of Plaintiff's use of the gazebo (including the expansion) as a dwelling in violation of the Township's zoning ordinance and the HOA's restrictive covenants. The Mutual Release thus bars Plaintiff's claims to the extent they are based on the HOA and

Township Defendants' refusal to allow Plaintiff to use the gazebo as a dwelling or their acts that prevented him from doing so. The Mutual Release thus bars all of Plaintiff's claims, except, arguably, Plaintiff's Count 10, which alleges that the Township Defendants unlawfully spent funds on the state-court litigation in violation of the Michigan Constitution, and his RICO claim in Count 15, which alleges that Defendants violated RICO by forcing him to sign the Settlement Agreement under extreme duress. These claims, as explained below, are subject to dismissal on other grounds. Finally, Plaintiff's FHA claim is barred not only by the Mutual Release, but also by the Settlement Agreement which, like the Mutual Release, must be enforced according to its plain terms if unambiguous. *Hydrofiltros, de Mexico, S.A. de C.V. v. Rexair, Inc.*, 355 F.3d 927, 930 (6th Cir. 2004). Specifically, Plaintiff agreed "not to file new claims" regarding alleged discrimination by the HOA and the Township in precluding Plaintiff from using the gazebo as a dwelling. (ECF No. 17-9 at PageID.1057.) Plaintiff's FHA claim is improper as to the HOA and the Township.

Plaintiff argues that the state-court action was legally invalid because the HOA and the Township had no basis to file suit. He further argues that the Settlement Agreement should be set aside because it was obtained by fraudulent inducement and Plaintiff signed it under duress. (ECF No. 67 at PageID.3784–87.) However, Judge Elsenheimer already considered and rejected these arguments in denying Plaintiff's motion to set aside the Settlement Agreement, concluding that Plaintiff failed to show the required elements of fraudulent inducement or duress. As Judge Elsenheimer noted, the parties, including Plaintiff, were represented by counsel and entered into the Settlement Agreement and pocket judgment following mediation. Plaintiff cites no authority for this Court to hear issues that were already decided against Plaintiff in state court. *See Payne v. Jennings*, No. 98-6296, 1999 WL 801585, at *1 (6th Cir. Sept. 27, 1999) ("A plaintiff may not

relitigate issues in a federal court § 1983 action that were previously decided in a state court proceeding.") (citing *Donovan v. Thames*, 105 F.3d 291, 293 (6th Cir. 1997)). In short, Plaintiff offers no persuasive reason for this Court to revisit the state-court's rulings.[5]

B. County Defendants' Motion to Dismiss

1. Motion Standards[6]

The County Defendants move for dismissal pursuant to Rule 12(b)(1) for lack of subject-matter jurisdiction and Rule 12(b)(6) for failure to state a claim. A motion under Rule 12(b)(1) may be brought as either a facial attack or a factual attack. *Gentek Bldg. Prods. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007) (citing *Ohio Nat'l Life Ins. Co. v. United States*, 922 F.2d 320, 325 (6th Cir. 1990)).

> A facial attack on the subject-matter jurisdiction alleged in the complaint questions merely the sufficiency of the pleading. When reviewing a facial attack a district court takes the allegations in the complaint as true, which is a similar safeguard employed under 12(b)(6) motions to dismiss. If those allegations establish federal claims, jurisdiction exists.

Id. (citations omitted). On the other hand, when a motion presents matters outside the pleadings in an attack on jurisdiction, the district court may make factual findings to resolve the dispute. *Lovely v. United States*, 570 F.3d 778, 781–82 (6th Cir. 2009); *see also Golden v. Gorno Bros., Inc.*, 410 F.3d 879, 881 (6th Cir. 2005) ("When a Rule 12(b)(1) motion attacks the factual basis for jurisdiction, the district court must weigh the evidence and the plaintiff has the burden of

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[5] The HOA and Township Defendants also argue that the Court should dismiss this case for lack of subject matter jurisdiction, but they fail to sufficiently develop their argument. As the Court explained in its May 1, 2020 Order, Plaintiff's Section 1983, FHA and RICO claims fall within the Court's jurisdiction under 28 U.S.C. § 1331. (ECF No. 49 at PageID.2626 n.1.)

[6] Although the County Defendants bring their motion as both a motion to dismiss and a motion for judgment on the pleadings, the motion is properly treated as a motion to dismiss because they have not yet filed an answer. *See Gillespie v. City of Battle Creek*, 100 F. Supp. 3d 623, 628 (W.D. Mich. 2015) (noting that a Rule 12(b)(6) motion "must be made before pleading," while a Rule 12(c) motion is made "after the pleadings are closed"—after the defendant files an answer).

proving that the court has jurisdiction over the subject matter."). Because the County Defendants present matters outside the record, their motion constitutes a factual attack.

A Rule 12(b)(6) motion to dismiss for failure to state a claim on which relief may be granted tests the legal sufficiency of a complaint by evaluating its assertions in a light most favorable to Plaintiff to determine whether it states a valid claim for relief. *See In re NM Holdings Co., LLC*, 622 F.3d 613, 618 (6th Cir. 2010).

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a claim must be dismissed for failure to state a claim on which relief may be granted unless the "[f]actual allegations [are] enough to raise a right for relief above the speculative level on the assumption that all of the complaint's allegations are true." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). As the Supreme Court more recently held, to survive a motion to dismiss, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009). This plausibility standard "is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* If the complaint simply pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* As the Court further observed, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678-79.

When resolving a motion to dismiss pursuant to Rule 12(b)(6), the Court may consider the complaint and any attached exhibits, public records, items appearing in the record of the case, and exhibits attached to the defendant's motion to dismiss provided they are referenced in the complaint and central to the claims therein. *See Bassett v. Nat'l Collegiate Athletic Ass'n.*, 528 F.3d 426, 430 (6th Cir. 2008).

2. Collateral Attack Doctrine

The County Defendants argue that the Court should dismiss this action as an improper collateral attack on the state-court's orders and the Settlement Agreement. The Sixth Circuit has described a "collateral attack" as "a tactic whereby a party seeks to circumvent an earlier ruling of one court by filing a subsequent action in another court." *Pratt v. Ventas, Inc.*, 365 F.3d 514, 519 (6th Cir. 2004) (citing *Pratt v. Ventas, Inc.*, 273 B.R. 108, 116 (W.D. Ky. 2002)); *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 313 (1995) ("We have made clear that it is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected.") (internal quotation marks and brackets omitted).

> The judicial system's need for order and finality requires that orders of courts having jurisdiction to enter them be obeyed until reversed, even if proper grounds exist to challenge them. A challenge for error may be directed to the ordering court or a higher court, as rules provide, but it may not be made collaterally unless it is based on the original court's lack of jurisdiction. These principles are firm and long standing.

Spartan Mills v. Bank of Am. Ill., 112 F.3d 1251, 1255 (4th Cir. 1997) (citing *Celotex*, 514 U.S. at 305–07). "'[E]ven though an action has an independent purpose and contemplates some other relief, it is a collateral attack if it must in some fashion overrule a previous judgment.'" *Harbinger Capital Partners LLC v. Ergen*, 103 F. Supp. 3d 1251, 1265 (D. Colo. 2015) (quoting *Miller v. Meinhard-Commercial Corp.*, 462 F.2d 358, 360 (5th Cir. 1972)).

The collateral attack doctrine could not have applied in *Wizinsky* I because Plaintiff filed his complaint in that case just days before the parties entered into the Settlement Agreement and before Judge Elsenheimer entered the dismissal order and his post-judgment enforcement orders. However, Plaintiff filed his complaint in the instant case three days after Judge Elsenheimer entered his order directing Plaintiff and his wife to remove the gazebo from the Property within 90

days. For example, in Count 2, his substantive due process claim, Plaintiff added an allegation referring to the "fraudulent lawsuit" filed by the HOA and the Township, which forced Plaintiff to sign a "settlement agreement under duress." (ECF No. 1 at PageID.42.) Similarly, in his RICO claim, Plaintiff alleges that he was "forced to sign a settlement agreement under extreme duress where he was forced to sell his property and remove his house from the property to a new property against his will." (*Id.* at PageID.98.) Moreover, since filing his complaint in this case, Plaintiff has further demonstrated his intention to use this proceeding to attack the Settlement Agreement and the state-court action itself by filing a motion for injunctive relief to stay the removal of the gazebo and to nullify the Settlement Agreement based on fraud in the inducement and duress. (ECF No. 19.) Because Judge Elsenheimer retained jurisdiction over the Settlement Agreement, Plaintiff's attempt to use this Court to undermine the state-court action is improper.

Accordingly, this action is subject to dismissal as an improper collateral attack.

3. Count 1 – Takings Claim

In Count 1, Plaintiff alleges a claim against Defendant Hunter for taking the Property without paying just compensation, in violation of the Fifth and Fourteenth Amendments. In particular, Plaintiff alleges that Defendant Hunter took the Property by refusing to allow Plaintiff to use the gazebo as a dwelling. (ECF No. 1 at PageID.41.) The County Defendants offer several grounds for dismissal.

a. Defendant Hunter

The County Defendants argue that Defendant Hunter should be dismissed because Plaintiff's claims against him are official capacity claims that are, in fact, claims against the County. *See Foster v. Michigan*, 573 F. App'x 377, 390 (6th Cir. 2014) ("Where the entity is named as a defendant, an official-capacity claim is redundant."). Plaintiff responds that he has not named the County in Counts 1 or 2 (substantive due process claim) and has named Defendant

Hunter, individually, for committing a felony when he signed the Certificate of Occupancy. (ECF No. 33 at PageID.2071–72.) Even so, dismissal is still required because "[a] takings claim cannot be asserted against an individual defendant." *Jamison v. Angelo*, No. 4:10CV2843, 2012 WL 4434152, at *7 (N.D. Ohio Sept. 24, 2012); *see also Vicory v. Walton*, 730 F.2d 466, 467 (6th Cir. 1984) ("Plaintiff cites no case, and we can find none, that suggests that an individual may commit, and be liable in damages for, a 'taking' under the fifth amendment").

b. Standing, Ripeness and Mootness

The County Defendants also argue that the Court lacks jurisdiction over Plaintiff's takings claim for several reasons. First, they argue that Plaintiff lacks Article III standing because he cannot show a causal link between their conduct and the alleged injury. Second, they argue that Plaintiff's claim is unripe because Plaintiff failed to pursue a final decision from the County regarding the Certificate of Occupancy and a final decision from the Township regarding its denial of a Land Use Permit through available administrative appeals. Finally, they argue that the Settlement Agreement has rendered Plaintiff's takings claim moot.

Standing is "the threshold question in every federal case." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). To satisfy Article III's standing requirement, a plaintiff must have suffered some actual or threatened injury due to the alleged illegal conduct of the defendant; the injury must be "fairly traceable" to the challenged action; and there must be a substantial likelihood that the relief requested will redress or prevent the plaintiff's injury. *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982). Standing is determined at the time the complaint is filed. *Sullivan v. Benningfield*, 920 F.3d 401, 407 (6th Cir. 2019) (quoting *Cleveland Branch, N.A.A.C.P. v. City of Parma*, 263 F.3d 513, 524 (6th Cir. 2001)).

"Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *National Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807–08 (2003) (quoting *Abbott Labs. v. Gardner*, 387 U.S. 136, 148–49 (1967)); *see also Nat'l Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 280 (6th Cir. 1997) ("Ripeness separates those matters that are premature because the injury is speculative and may never occur from those that are appropriate for the court's review."). In the takings context, until recently, the law imposed two requirements before a plaintiff could pursue a takings claim in federal court. First, "the government entity charged with implementing the regulations [must have] reached a final decision regarding the application of the regulations to the property at issue." *Crosby v. Pickaway Cty. Gen. Health Dist.*, 303 F. App'x 251, 259 (6th Cir. 2008) (quoting *Williamson Cty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 186 (1985)). Second, the plaintiff must pursue state procedures for seeking just compensation. *Id.* (citing *Williamson Cty.*, 473 U.S. at 194). In *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), the Court eliminated the second requirement, allowing a plaintiff to file a claim in federal court without having to first pursue a state-court just compensation case. However, the finality requirement remains intact. *Id.* at 2169.

Finally, a case becomes moot if it is no longer live before the court decides it. *Burke v. Barnes*, 479 U.S. 361, 363 (1987). "[I]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give meaningful relief, then the case is moot and must be dismissed." *Ailor v. City of Maynardville*, 368 F.3d 587, 596 (6th Cir. 2004) (internal citations omitted). Because mootness implicates a federal court's jurisdiction under Article III's "case or

controversy" requirement, courts lack judicial power to entertain and decide moot cases. *See Los Angeles Cty. v. Davis*, 440 U.S. 625, 631 (1979).

The Court need not address standing and ripeness because Plaintiff's own actions have rendered his takings claim moot. By entering into the Settlement Agreement, Plaintiff contractually limited his rights in the Property by bargaining for limited usage as a dwelling in exchange for foregoing any other relief that might expand or increase his right to use the gazebo as a dwelling. Because the time for removal of the gazebo has been accelerated and may have already occurred, its occupancy status and whether Plaintiff is entitled to an unrestricted Certificate of Occupancy are moot issues. Moreover, by entering into the Settlement Agreement, Plaintiff effectively deprived the County of the opportunity to exercise its judgment in an appeal about whether to expand the Certificate of Occupancy. Relatedly, because the Township can no longer be asked or required to review its denial of the Land Use Permit—the reason for the County's issuance of a limited Certificate of Occupancy—Plaintiff has essentially tied the County's hands as to the scope of the Certificate of Occupancy.[7]

4. Count 2 – Substantive Due Process Claim

The County Defendants argue that Plaintiff's substantive due process claim must be dismissed because Plaintiff lacks a protected property interest in the use of the gazebo as a dwelling

[7] This point is also germane to the standing analysis. Although the County issued the Certificate of Occupancy, it was bound to recognize the Township's denial of a Land Use Permit for Plaintiff to use the gazebo as a dwelling. In that regard, Plaintiff's standing to assert a claim against the County is dubious, at best, as it was the Township's decision that caused the alleged harm. *Cf. Anderson v. Charter Twp. of Ypsilanti*, 266 F.3d 487, 498 (6th Cir. 2001) ("The defendant in this suit is the Charter Township of Ypsilanti. Anderson does not claim that the Township was in any way at fault for the state trial court's delay, nor does he argue that the Township could remedy the alleged violation. The Township, then, is not the proper defendant against whom this claim may be asserted."). Furthermore, although Plaintiff may have resolved the sewage disposal and water system issues with the BLDHD at the time the County issued the Certificate of Occupancy, Plaintiff does not allege that he notified the County of this fact.

and because the County's alleged actions do not shock the conscience. However, dismissal is required for a more basic reason.

Plaintiff alleges in this claim that his right to substantive due process was violated in two ways: (1) Defendants lacked a rational basis to tax the gazebo as a single-family home but deny Plaintiff the use of the gazebo as a dwelling; and (2) the HOA and the Township denied Plaintiff due process by filing the "fraudulent lawsuit." (ECF No. 1 at PageID.42.) The County Defendants were not involved in either of these acts. The County was not a party to the state-court action. In addition, under Michigan's General Property Tax Act, the Township, not the County, is the taxing jurisdiction responsible for administering the property tax. Mich. Comp. Laws § 211.27; *see also Gale v. Charter Twp. of Filer Bd. of Trs.*, 142 F. Supp. 3d 549, 551–52 (W.D. Mich. 2015) (veterans sued the township for failing to grant them a property tax exemption under the Dannie Lee Barnes Disabled Veteran Property Tax Relief Act); (*see* ECF No. 1-1 at PageID.104 (Leelanau Township Property Valuation Report)). Accordingly, Plaintiff's substantive due process claim fails against the County Defendants.

5. Counts 12 through 14

In Count 12, Plaintiff alleges that the County Defendants are liable for abuse of office under 25 C.F.R. § 11.448. This regulation pertains to a person acting or purporting to in an official capacity for an Indian tribe. *See Boquist v. Oregon State Senate*, 432 F. Supp. 3d 1221, 1230 (D. Or. 2020) ("This Code applies to members of Native American tribes that the Federal Government recognizes as eligible for Bureau of Indian Affairs services 'and any other individual who is an "Indian" for the purposes of 18 U.S.C. § 1152–1153.'"). As the County is not an Indian tribe this regulation is not applicable in this case.

In Count 13, Plaintiff alleges that the County Defendants violated 18 U.S.C. §§ 241 and 242 and 42 U.S.C. § 1982. Plaintiff's claim based on 18 U.S.C. §§ 241 and 242 fails because

both are criminal statutes that provide no private right of action. *United States v. Oguaju*, 76 F. App'x 579, 581 (6th Cir. 2003) (citing *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 511 (2d Cir. 1994)); *see also Weathers v. Holland Police Dep't*, No. 1:13-CV-1349, 2015 WL 357058, at *2 (W.D. Mich. Jan. 27, 2015) (stating that the "[p]laintiff's attempt to sue defendants for monetary damages under [Sections 241 and 242] is frivolous").

Plaintiff's claim pursuant to 42 U.S.C. § 1982 also fails. Section 1982 provides that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof, to inherit, purchase, lease, sell, hold, and convey real and personal property." Section 1982 provides an avenue for asserting housing discrimination claims, apart from the FHA. *Lindsay v. Yates*, 498 F.3d 434, 438 (6th Cir. 2007). The Sixth Circuit has observed that the statute "is limited to claims of discrimination involving conveyances of real and personal property." *Al-Marayati v. Univ. of Toledo*, No. 97-3161, 1998 WL 252760, at *2 (6th Cir. 1998); *see also City of Memphis v. Greene*, 451 U.S. 100, 121 (1981) (stating that Section 1982 "encompass[es] every racially motivated refusal to sell or rent") (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 421–22 (1968)). Plaintiff does not allege that the County Defendants did anything to interfere with his conveyance of an interest in the Property. The County's only act concerning the Property was its issuance of a limited Certificate of Occupancy for the gazebo. Even if the statute applied, Plaintiff still fails to state a claim. To state a claim, a plaintiff must plead facts showing racial animus. *Moniz v. Cox*, 512 F. App'x 495, 501 (6th Cir. 2013). Plaintiff offers nothing more than conclusory statements that the County Defendants acted with racial animus in issuing the limited Certificate of Occupancy. Plaintiff simply lumps the County Defendants in with the HOA and Township and alleges that they used the state-court lawsuit and the Settlement Agreement to force Plaintiff to sell the Property because of his adopted daughter's

race. (ECF No. 1 at PageID.88–92.) Plaintiff fails to allege any fact to show that the County Defendants acted with racial animus. *See Solomon Realty Co. v. Tim Donut U.S. Ltd., Inc.*, No. 2:08-CV-561, 2009 WL 5183405, at *3 (S.D. Ohio Dec. 21, 2009) (holding that the Supreme Court's broad interpretation of Section 242 did not require the court to accept the plaintiff's "conclusory allegations"). For these reasons, Plaintiff's FHA claim set forth in Count 14 (again alleging "fraudulent litigation" in which "Plaintiff and his wife signed their property rights away out of extreme duress!") also fails to state a claim against the County Defendants.

6. Count 15 – RICO Claim

Plaintiff's final claim is a RICO claim that is insufficiently pled. Apart from that shortcoming, it is simply an effort to collaterally attack the state-court action. For his injury, Plaintiff alleges that he "was forced to sign a settlement agreement under extreme duress where he was forced to sell his property and remove his house from the property to a new property against his will." (ECF No. 1 at PageID.98.) The claim fails for other reasons. First, the Sixth Circuit has held that "[c]ounties are not persons under RICO because they lack 'the capability to form the mens rea requisite to the commission of the predicate acts." *Call v. Watts*, No. 97-5406, 1998 WL 165131, at *2 (6th Cir. Apr. 2, 1998) (quoting *Smallwood v. Jefferson Cty. Gov't*, 743 F. Supp. 502, 504 (W.D. Ky. 1990)). Second, Plaintiff wholly fails to allege the existence of an enterprise. *See VanDenBroeck v. CommonPoint Mortg. Co.*, 210 F.3d 696, 699 (6th Cir. 2000). Third, Plaintiff's only factual allegation against Defendant Hunter mentions him in connection with the Settlement Agreement, but there is no evidence or allegation that he was a party to that agreement or had anything to do with the litigation. Finally, Plaintiff fails to allege a "pattern of racketeering activity because he alleges "only a single scheme targeting a single victim" over a limited time frame. *See Bachi-Reffitt v. Reffitt*, 802 F. App'x 913, 918 (6th Cir. 2020) (holding that husband's

allege scheme to conceal the true value of his interest in a company during a divorce proceeding was not indicative of long-term criminal conduct).

7. State-Law Claims

Having recommended the dismissal of all of Plaintiff's federal claims, I recommend that his state-law claims be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3). "When all federal claims are dismissed before trial, the balance of considerations usually will point to dismissing the state law claims." *Musson Theatrical, Inc. v. Fed. Exp. Corp.*, 89 F.3d 1244, 1254–55 (6th Cir. 1996). In deciding whether to exercise supplemental jurisdiction, "a federal court should consider and weigh in each case, and at every stage of the litigation, the values of judicial economy, convenience, fairness, and comity." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). Applying these considerations, the balance weighs against exercising supplemental jurisdiction, particularly because at least one of Plaintiff's claims presents an issue under the Michigan Constitution, which is best left to a state court to decide.

C. Plaintiff's Motions

Plaintiff has filed a motion for summary judgment on Counts 9 and 10 of his complaint, which allege embezzlement, in violation of a Michigan criminal statute, and improper use of public funds, in violation of Article 9, Section 18 of the Michigan Constitution. Given the foregoing recommendation to dismiss the state-law claims without prejudice, I recommend that this motion be denied without prejudice.

Plaintiff's second motion is titled "Motion for Injunctive Relief for a Stay for the Protection of Plaintiff's Home and Motion to Nullify Contract Based on Fraud in the Inducement, Duress and Fraud in the Settlement Agreement." As the title suggests, Plaintiff requests that his Court find the Settlement Agreement invalid and step in to prevent the removal of the gazebo. As discussed above, Judge Elsenheimer has already determined that the Settlement Agreement is valid and was

not the product of fraudulent inducement or duress. There is no basis for this Court to review those findings or to interfere with the state court's jurisdiction over the Settlement Agreement. As for Plaintiff's request for injunctive relief, the Anti-Injunction Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283. The Act "creates an absolute prohibition against enjoining state court proceedings, unless the injunction falls within one of three specifically defined exceptions.'" *Martingale LLC v. City of Louisville*, 361 F.3d 297, 302 (6th Cir. 2004) (quoting *Atlantic Coast Line R.R. Co. v. Bhd. Of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970)). The exceptions are: "(1) where Congress expressly authorizes, (2) where necessary in aid of the court's jurisdiction, and (3) where necessary to protect or effectuate the court's judgments." *Id.* (citing 28 U.S.C. § 2283). None of these limited exceptions apply in this case. In addition, the Act applies even though the relief Plaintiff requests is aimed at Defendants and not the state court. "It is settled that the prohibition of § 2283 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results of a completed state proceeding." *Atlantic Coast Line*, 398 U.S. at 287. Thus, the relief Plaintiff requests falls within the Act's prohibition. *See Pelfresne v. Vill. of Williams Bay*, 865 F.2d 877, 880 (7th Cir. 1989) ("Based on the foregoing it would appear that Pelfresne's suit falls squarely within the prohibition of section 2283. Although the suit is nominally directed at the victors in a concluded state-court action, it is clear that the effect of injunctive relief in this case would be to completely nullify the results of the prior state proceeding.").

Plaintiff has also filed a motion for leave to file additional exhibits to a previously filed response. (ECF No. 66.) Having reviewed the record, the Court notes that Plaintiff did file a response to the County Defendants' motion to dismiss. (ECF Nos. 32 and 33.) Plaintiff filed a

brief with fifteen exhibits attached. (ECF No. 33.) The additional exhibits Plaintiff offers would not affect the recommendations set forth herein. Accordingly, this motion should be denied.

D. County Defendants' Motions for Sanctions

The County Defendants have filed two motions for sanctions against Plaintiff pursuant to Federal Rule of Civil Procedure 11. The County filed the first motion in *Wizinsky* I, which was preserved and transferred to the docket in this case by the May 12, 2020 Order dismissing *Wizinsky* I as duplicative of this case. (*Wizinsky* I, ECF No. 48.) The County Defendants filed the second motion after Plaintiff filed the instant case. The County Defendants contend that, by continuing *Wizinsky* I after he entered the Settlement Agreement with the HOA and the Township and after the County's motion to dismiss in that case made clear that Plaintiff had no viable claim, or at least no ripe claim, Plaintiff violated Rule 11 by continuing to pursue a groundless lawsuit. Similarly, the County Defendants argue that Plaintiff violated Rule 11 by filing the instant case, not only because the Settlement Agreement mooted Plaintiff's takings-related claims, but also because Plaintiff sought to use this federal court to nullify the state court's previous orders. In addition, the County Defendants argue Plaintiff used this litigation to further his unfounded and widespread campaign accusing the County of racism against Plaintiff and his daughter. (ECF No. 44 at PageID.2473–76.) Finally, the County Defendants point out Plaintiff's admissions in his complaint regarding his intent to harm the County as part of the public boycott he has started and argue that, given these admissions, his use of the litigation is nothing more than a tool to extract political concessions from the County. (ECF No. 2476–77.)

Pursuant to Rule 11, an attorney or an unrepresented party who files a pleading or other paper with a court certifies that, among other things:

> (1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; [and]
>
> (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery[.]

Fed. R. Civ. P. 11(b)(1)– (3). Upon finding that Rule 11 has been violated, "the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation." Fed. R. Civ. P. 11(c)(1). The determination of an appropriate sanction is a matter committed to the discretion of the district court. *See Runfola & Assocs., Inc. v. Spectrum* Reporting *II, Inc.*, 88 F.3d 368, 376 (6th Cir. 1996). The range of sanctions includes

> nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

Fed. R. Civ. P. 11(c)(4). However, the sanction "must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." *Id.*

In the Sixth Circuit, the test for determining whether a party has violated Rule 11 is whether the individual's conduct was reasonable under the circumstances. *See Ridder v. City of Springfield*, 109 F.3d 288, 293 (6th Cir. 1997). The standard is an objective one. *Jackson v. Law Firm of O'Hara, Ruberg, Osborne & Taylor*, 875 F.2d 1224, 1229 (6th Cir. 1989); *see also First Bank of Marietta v. Hartford Underwriters Ins. Co.*, 307 F.3d 501, 517 (6th Cir. 2002) (noting that "the imposition of Rule 11 sanctions requires a showing of 'objectively unreasonable conduct' " (quoting *United States v. Kouri–Perez*, 187 F.3d 1, 8 (1st Cir. 1999)). "Thus, [a party's] good faith is not a defense." *Id.* The party's conduct is to be judged at the time the pleading or paper was signed rather than from hindsight. *See INVST Fin. Grp., Inc. v. Chem–Nuclear Sys., Inc.*, 815 F.2d 391, 401 (6th Cir. 1987).

Given the history of the dispute in this case, including the state-court case between the HOA and the Township, I conclude that Rule 11 sanctions are not warranted for *Wizinsky* I. Plaintiff filed that complaint, which asserted only the takings and substantive due process claims relating to Plaintiff's use of the Property, through counsel prior to the parties' execution of the Settlement Agreement and prior to Judge Elsenheimer's order directing Plaintiff and his wife to remove the gazebo from the Property. Although the County subsequently asserted valid reasons to dismiss the claims, the I cannot say that Plaintiff's complaint was objectively unreasonable at the time of filing. I am also cognizant of the Sixth Circuit's admonition that district courts "should be hesitant to determine that a party's complaint is in violation of Rule 11(b) when the suit is dismissed pursuant to Rule 12(b)(6) and there is nothing before the court, save the bare allegations of the complaint." *Tahfs v. Proctor*, 316 F.3d 584, 594 (6th Cir. 2003). The *Tahfs* court reasoned that "[a]t the pleading stage in the litigation, ordinarily there is little or no evidence before the court at all, and such facts as are alleged, must be interpreted in favor of the nonmovant." *Id.*

On the other hand, Plaintiff's pro se complaint in the instant case presents a different situation. At the time Plaintiff filed his complaint, the parties had entered into the Settlement Agreement, and Judge Elsenheimer had ordered Plaintiff to remove the gazebo. Plaintiff did not hide his intention to use this action and this Court to override Judge Elsenheimer's administration of the state-court action. Moreover, Plaintiff's complaint in this action was different in nature than his complaint in *Wizinsky* I. Here, Plaintiff made what appear to be false allegations about the MDCR investigator's findings regarding his discrimination complaint, and he asserted (again, apparently) baseless claims of racism and discrimination by not only the County, but also the HOA and the Township, in violation of the Settlement Agreement. (ECF No. 17-9, PageID.1057.) In addition, Plaintiff added several groundless claims, including a RICO claim, that falsely alleged

that the County was somehow involved with the state-court case. The Sixth Circuit has observed that, even on a Rule 12(b)(6) motion to dismiss, Rule 11 sanctions may be warranted for the assertion a groundless RICO claim:

> A civil RICO claim is an unusually potent weapon—the litigation equivalent of a thermonuclear device. For this reason, there is a strong temptation for plaintiffs to raise a RICO claim, even when the claim is obviously frivolous. To deter such conduct, courts have not hesitated to impose Rule 11 sanctions as a sanction for bringing frivolous RICO claims. A sanction under Rule 11 is appropriate where a RICO claim is filed even though no reasonable and competent attorney would believe the claim has merit.

Bachi-Reffitt, 802 F. App'x at 919 (quoting *Martinez v. Martinez*, 207 F. Supp. 2d 1303, 1308 (D.N.M. 2002), *aff'd in part, vacated in part*, 62 F. App'x 309 (10th Cir. 2003) (quotation marks and citations omitted)). For these reasons, I conclude that Plaintiff's complaint, as well as his other filings in this case, violated Rule 11(b)(1)–(3).

Plaintiff argues that the Court must reject the County Defendants' motion because, as a pro se Plaintiff, the Court must liberally construe his complaint. Plaintiff further argues that the Court must construe his complaint in a light most favorable to Plaintiff. (ECF No. 47 at PgeID.2615–16.) But these are pleading standards that do not govern Rule 11 motions. "Pro se plaintiffs are not exempt from Rule 11 sanctions simply because they are not represented by counsel." *Dietrich v. City of Gross Pointe Park*, No. 16-11049, 2017 WL 5709592, at *6 (E.D. Mich. Jan. 12, 2017); *see also Johnson v. Belvedere Gardens Condominiums Ass'n, Inc.*, No. 12-2118, 2013 WL 4056356, at *10 (W.D. Tenn. Aug. 12, 2013) ("Sanctions may be imposed on a represented plaintiff if at the time the sanctionable paper was filed, the plaintiff was a *pro se* litigant."). Accordingly, Plaintiff offers no valid justification to excuse his Rule 11 violations.

Therefore, I recommend that the Court find that Plaintiff has violated Rule 11. However, because of Plaintiff's pro se status and because I am recommending that Plaintiff's case be dismissed in its entirety, I also recommend that, in the exercise of its discretion, *see Rentz v.*

Dynasty Apparel Indus., Inc., 556 F.3d 389, 398 (6th Cir. 2009), the Court not award monetary sanctions.

III. CONCLUSION

For the foregoing reasons, I recommend the Court: (1) **grant** the County Defendants' motion to dismiss (ECF No. 14) and the HOA and Township Defendants' joint motion for summary judgment (ECF No. 60) and dismiss Plaintiff's state law claims **without prejudice** pursuant to 28 U.S.C. § 1367(c)(3); (2) **deny** Plaintiff's motion for summary judgment on Counts 9 and 10 (ECF No. 16), motion for injunctive relief (ECF No. 19), and motion for leave to file (ECF No. 66); and (3) **deny** the County Defendants' *Wizinsky* I motion for Rule 11 sanctions (ECF No. 57) but **grant** the County Defendants' motion for Rule 11 sanctions in the instant case (ECF No. 44). I further recommend that, if the Court accepts the recommendations regarding the Rule 11 motion and dismissal of the case, it not award monetary sanctions.

NOTICE

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

Dated: August 20, 2020

/s/ Sally J. Berens
SALLY J. BERENS
U.S. Magistrate Judge