

**GLEN ARBOR TOWNSHIP**

P.O. Box 276 Glen Arbor, MI 49636  
231-334-3539 FAX 231-334-6370

Peter Van Nort, Supervisor

John Pepler, Trustee

Bonnie Quick, Clerk

Don Lewis, Trustee

Terry J Gretzema, Treasurer

**Special Board Meeting**

FOIA Leelanau Enterprise  
Board of Appeals Cowell

February 2, 2018 Minutes  
Meeting was recorded

Township Supervisor, Peter Van Nort, called the meeting to order at 1:00 PM in the Glen Arbor Town Hall meeting room. All board members were present. The Pledge of Allegiance was recited.

**Oral Agenda**

- FOIA Request
- Roman Cowell Appeal
- Discussion of the Park upgrade
- Other Business

**Public Comment**

None

**FOIA Request**

Dick Figura – Appeal for FOIA request by Leelanau Enterprise.

The issue is whether you believe it is more important to protect the privacy of the investigation or is it more important to allow public disclosure of the information.

There has been only one Michigan Supreme court case which involves Eastern Michigan University and Herald Publishing Company, which publishes the local newspaper.

As a result the Michigan Supreme Court cited three criteria. To qualify for this exemption, and we meet all of those criteria, there was an allegation, there was an investigation, and the investigation was preliminary to a final determination, which were only recommendations to the Supervisor.

The last point is what does this Board believe is more important, preserving the integrity of the investigation and the confidentiality of it, or is it more important to give public disclosure.

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If the Board continues to deny the appeal, then the Leelanau Enterprise has the right to go to circuit court. That is the issue which is before the Board today, to approve or deny the appeal.

**Motion by Van Nort to deny the appeal. Support by Gretzema. Motion carried.**

### **Zoning Board of Appeals**

Cowell Board of Appeal – Dick Figura – Judge Power ruled in favor of Mrs. Cowell finding that Mr. Dietzel's out building did not qualify under the term "detached residential extension".

At the first hearing, a year ago, when the structure had been classified as an accessory building, Judge Power found that it was improper because the zoning ordinance did not allow accessory building, in that zone district. The term was not even mentioned, however, it had been mentioned in some other districts. After that first hearing, Judge Power said that he would hope that the Planning Commission would come back and amend the zoning ordinance. He also remanded it back to the ZBA for their consideration, if they wanted to consider the structure as a detached residential extension, which they did.

When we came before the Judge Power again, the meeting started out as to why the Township had not amended the ordinance. Judge Power was told there was a lot of concern about these other out buildings that were out there. Approximately 144 buildings are now illegal because they are no longer allowed under the zoning ordinance.

Our position was that the phrase detached residential extension, required some interpretation. It is not a defined term in the zoning ordinance and accessory use is not defined either. References were made to it, but instead of saying what it is, there were examples of what it would be, or could be.

The ZBA felt that Mr. Dietzel's building fell within that language, and that was the interpretation, if a term by the Zoning Board required interpretation. There is no interpretation allowed by the court if the ordinance is straight forward.

We maintain this was not straight forward, the ordinance was very confusing. To begin with the ordinance said that a detached residential extension is a space above a 1 story detached garage, and the court had already said that detached garages were not allowed because the ordinance did not allow accessory uses. The Judge then decided that the ordinance did need interpretation and he proceeded to interpret it.

Once a court decides that a phrase requires interpretation, then the court would come up with its own analysis and make an interpretation, except in these cases. Here we have an interpretation made by a public body primarily that was primarily charged with the zoning ordinance to make interpretation, the ZBA. When a ZBA appeal goes to circuit court, it is not up to the Judge to decide whether he or she agrees with it. All they are to do is to decide, if it was based on sufficient information, and is it a reasonable decision. We maintain that it was.

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The ZBA had that authority, in which case the Judge's duty is to uphold the ZBA decision, even though the Judge may not like it. The Judge got around that by saying that it doesn't require interpretation, and we think what he did was proceeded to interpret it. He started going through it and started to make grammatical distinctions in the ordinance. For example this section says i.e. meaning that is, instead of e.g. meaning for example. To me that was interpretation. But that is the Judge's ruling, and once the order is issued, the Township has 21 days within which to go the next step which is we have an appeal, but not by right. The appeal by right was to the ZBA.

Now we have to file an application for leave to appeal in the court of appeals.

I have spoken with Mr. Dietzel's attorney and they intend to do that. That is up to the court to decide whether or not the court of appeals will hear the case. We file an application and file a brief with it. Mrs. Cowell's attorneys get an opportunity to file a reply brief, and then we wait for the court of appeals to decide if they are going to grant an application or grant leave. Mr. Figura stated he did not know how long it will take.

What that does is buy us time. Nothing changes in the meantime except we need to ask the court for a stay. Which means everything would stay as it is. Without a stay of the proceedings, Mrs. Cowell could make a demand on the Township to enforce the ordinance and force us to demand that Mr. Dietzel's tear down his building. We ask the court to grant the stay.

The other part, Mrs. Cowell's attorneys may agree with us, but we don't know that. I told Mr. Dietzel's attorney that I could not tell him whether the Township wanted to appeal or whether the Township was willing to seek the stay, until we had this meeting.

I am here today to ask the Township for the authority to file an application for leave to appeal and also to take steps for execution.

In the meantime, the Planning Commission had a meeting and a thorough discussion. I believe the consensus was that they were going to do two things. One was they were concerned about all the buildings that were out there, 144 since 1991.

The Planning Commission doesn't want anything to happen to make people have to tear their buildings down. The Planning Commission is looking for a solution which would validate all of the buildings that have gone up to date now. The Planning Commission would focus on developing amendments to the ordinance going forward that will address the issue more directly, including changing some of the dimensional regulations.

Right now the only dimensional requirement is a building, combined with other buildings, on the site will take up no more than 30% of the land area. There are no height restrictions or any other restrictions.

Gretzema asked if we could bypass the appeal and the stay if we move forward as a group and come up with an amendment to the zoning ordinance. Attorney Figura stated he did not think it would move quickly enough. It would take 4-5 months.

Gretzema asked if we are currently developing a new ordinance and if it is passed before we reach the time with the courts, what would be the impact. Figura stated the litigation would

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become mute at that point. At that point the parties would agree to dismiss it, or if the other party disagrees, we would file a motion to dismiss.

Gretzema also pointed out that the original intent and how our current ordinance reads, that something was lost in the transfer to the current ordinance. Gretzema asked if that can be proven. Do our old documents have any weight in this? Figura stated if that evidence exists it should have been part of the ZBA hearing.

Cypher stated in his research that in approximately 1991 is when the accessory building was removed from the ordinance. No one really knows for what reason. Even Judge Power stated that there was a mistake somewhere; something got dropped in the ordinance.

The Planning Commission realizes time is of the essence and will be working on the ordinances.

The cost for the application filed for the appeal and the stay will be \$2,000 to \$5,000. It may be less as Mr. Dietzel's attorney will be taking the lead on the case. If there is a grant to appeal there will be another \$5,000 in costs.

However the Planning Commission can move the changes right along and it can be resolved in approximately 3 months.

**Motion by Van Nort to move forward this application of appeal and a potential stay of execution on the order. Support by Pepler. Motion carried.**

**Motion to by Gretzema to have the Planning Commission expedite the changes. Support by Van Nort. Motion carried.**

### **Park Update**

Park update by Rick Schanhals – the design/build budget was reviewed. It was estimated that the project cost overrun will be approximately \$123,000.00 over budget.

Some of the additional expense included repairs that need to be done during the construction which were not anticipated. The overrun also includes moving the pavilion, change orders on some of the construction, and the purchase of new picnic tables.

The construction project is currently at 20% completion.

The proposed skating rink will not be included in the Park upgrade.

**Motion by Van Nort to not support the skating rink in the Park upgrade. Support by Pepler. Motion carried.**

### **Other Business**

Trustee Lewis expressed some concern with the recent resignation of a firefighter in the community. He is concerned with the turnover rate at the fire department; the community has

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lost 33 recruits over the last 10 years. Trustee Lewis feels all exit reports should be communicated to the Township Board.

Supervisor Van Nort has outlined a plan with Chief Dodson to address issues sited in the earlier investigation report.

There being no further business, the meeting was adjourned at 4:04 PM.

Respectfully submitted,

Lori Nash  
Glen Arbor Township Deputy Clerk

APPROVED