

MINUTES
WOOD COUNTY BOARD OF ADJUSTMENT
THURSDAY, MAY 28, 2020
WOOD COUNTY COURTHOUSE, ROOM #114, WISCONSIN RAPIDS WI

Members Present: Trent Miner, Lance Pliml, Robert Ashbeck, William Winch and Mark Holbrook (via WebEx).

Staff Present: Jeff Brewbaker, Jason Grueneberg and Kim Keech.

Others Present (In Person): Peter Kastenholz (Corporation Counsel), Attorney Brian Formella (Anderson O'Brien Law Firm-for John Mitchell), John Mitchell (applicant), Dist. #15 Co Board Supervisor William Clendenning

Others Present (via WebEx): Michelle Staff (Wisconsin DNR), Dist. #11 Co Board Supervisor Kenneth Curry, Adam DeKleyn (Planning & Zoning), Victoria Wilson (Planning & Zoning), Camryn Brewbaker (Town of Grand Rapids Resident), Jeff Gellerman (Town of Grand Rapids Resident) and Steve Kreuser (Emergency Management).

1. **Open Public Hearing.** Chairman Trent Miner opened the Public Hearing at 9:00 a.m.
2. **Introductions.** The Board members and staff were introduced.
3. **Read Notice of Hearing.** Wood Co Code Administrator Jeff Brewbaker read the notice of the public hearing which was published as a Class II notice in The Daily Tribune on Wednesday, May 13, 2020 and Wednesday, May 20, 2020.
4. **Read Statement of Authority.** Chairman Trent Miner read the Statement of Authority.

Wood Co Corporation Counsel Attorney Peter Kastenholz asked on behalf of Wood County to have the case dismissed as on untimely. Peter Kastenholz shared that just as you read the 30-day Statement of Authority Appeal Decision of this Board matters that come before this board have to be petitioned for appeals and variances within a 30-day time period and that wasn't done in this case. Attachment #5 in the packet, dated June 25, 2018 is in regards to the denial of a Shoreland Permit which was 18 months ago that the application was denied. Mr. Mitchell was issued a separate order from the Planning & Zoning Office on December 2, 2019 which is Exhibit B that a Floodplain Permit was needed. Mr. Mitchell is appealing Wood County December 2, 2019 determination and he would have had 30 days to do so. The Administrative Appeal for Mr. Mitchell is dated February 12, 2020 which is over 60 days after the order was issued. Wisconsin Statutes 56.694(4) states "appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment". Wood County Board of Supervisors set the 30-day time period. There is case law from 1992 State versus Walworth County Board of Adjustment that went to Court of Appeals. Court of Appeals said there was a 30-day time period for interested parties to appeal the decision and the appeal wasn't made within the 30-day time period therefore the case was tossed.

Wood County Board of Adjustment can make a decision like a court to dismiss the case based on the appeal being untimely. Mr. Mitchell would then have 30 days to appeal that decision with Circuit Court which can then be referred back to Wood County Board of Adjustment.

Attorney Brian Formella commented that this is unfounded, tricky, underhanded and unwritten. Attorney Formella expressed that the Board of Adjustment has zero in the rules to dismiss the case and that Peter Kastenholz procedural doesn't have a basis to dismiss the case. Attorney Brian Formella stated that they are appealing the erroneous holding in an email dated January 15, 2020 attached as Exhibit A, that an Order #OR-19-084 will not be rescinded as requested.

Attorney Brian Formella corrected the Wisconsin Statutes correct numeration which was incorrectly cited earlier. Peter Kastenholz shared the correct Wisconsin Statutes as 59.694(4) stating "Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the building inspector or other administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board of adjustment, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board of adjustment all the papers constituting the record upon which the action appealed from was taken."

Peter Kastenholz commented that the Board of Adjustment oversees both the Shoreland Ordinance and Floodplain Ordinance. The Wood County Floodplain Ordinance states "Board of Adjustment. Appeals to the Board of Adjustment may be taken by any person aggrieved or by an officer or department of the municipality affected by any decision of the Code Administrator or other administrative officer. Such appeal shall be taken within thirty (30) days unless otherwise provided by the rules of the Board, by filing with the Code Administrator and with the Board of Adjustment a notice of appeal specifying reasons for the appeal. The Code Administrator shall transmit to the Board all the records regarding the matter appealed." Wood County Shoreland Ordinance has similar language. The January 15, 2020 is an email explaining procedural questions which Jeff Brewbaker did.

Lance Pliml asked Attorney Brian Formella notwithstanding the incorrect numeration of the Statute would you agree that the Statute reads that way forgetting the argument what the interpretation is but the Statute reads that way? Attorney Formella responded by saying the Statute says what the Statute says.

Peter Kastenholz clarified that your authority cannot exceed what the Statutes say and neither can County Board as well. Lance Pliml added that there is still a procedural opportunity from Attorney Brian Formella representing Mr. Mitchell for a court to see whether or not the decision was correct by this board. Peter Kastenholz asks to approve the motion and dismiss the case based on not timely filed.

Attorney Formella commented that the other thing that Mr. Brewbaker stated in his January 15, 2020 email was he decided on behalf of the county "we will not be retracting Order #19-084 and expect that the illegally place structure will be removed" that is a decision fairly appealed. Lance Pliml shared that is a statement fact of a previously asked question.

Motion by Lance Pliml to dismiss Wood County Board of Adjustment Administrative Appeal based on untimely filing and let the process continue. Second by Mark Holbrook.

Roll Call Vote: William Winch – Yes, Robert Ashbeck – Yes, Lance Pliml – Yes, Mark Holbrook – Yes and Trent Miner – Yes

Motion carried unanimously.

Motion by Lance Pliml to refund the Board of Adjustment Public Hearing-Administrative Appeal fee in the amount of \$500. Second by Trent Miner.

Roll Call Vote: William Winch – Yes, Robert Ashbeck – Yes, Mark Holbrook – No, Lance Pliml – Yes and Trent Miner – Yes

Motion carried 4-1. Mark Holbrook feels that too much time has been taken by Wood County time for an appeal that should have never happened.

- 5. Receive Public Testimony and Evidence. N/A**
- 6. Determine if site visit is necessary to clarify the request. If so, adjourn the hearing to the site.
N/A**
- 7. Return to Courthouse and reconvene to Public Hearing. N/A**
- 8. Close Hearing and Go into Open Session for Deliberations. N/A**
- 9. Make Determination Regarding Administrative Appeal and Complete Decision Form. N/A**
- 10. Adjourn.**

<i>Motion by Lance Pliml to adjourn at 9:40 a.m. Second by William Winch. Motion carried unanimously.</i>

Minutes by Kim Keech, Wood County Planning & Zoning Office