

MINUTES
Bayfield County Planning / Zoning Committee - Public Hearing / Meeting
May 18, 2006
Board Room, County Courthouse, Washburn, WI 54891

1. **CALL TO ORDER OF PUBLIC HEARING:** *By Chairman Beeksma at 1:01 PM.*
2. **ROLL CALL:** *Beeksma, Jardine, and Rondeau, present; Maki, and Miller, absent.*
3. **AFFIDAVIT OF PUBLICATION:** *Read by ZA Kastrosky*

4. PUBLIC HEARING:

A. BRICKYARD CREEK III. LLC. CONDITIONAL USE REQUEST: establish a Planned Unit Development (PUD)-alternative development consisting of 15 residential condo units with garages on an 11.25-acre parcel (ID# 046-1086-03, 046-1086-04, & 046-1086-05) described as Gov't Lot 4, Section 31, Township 51 N. Range 3 W, Town of Russell.

[An Environmental Impact Analysis (EIA) is included with the conditional use permit; however, it will require separate review and decision.]

Robert Davidson addressed the Committee on behalf of this request, seeking approval for 1) condo overlay, 2) EIA, 3) alternative development, and 4) county plat of five lots. He said Brickyard creek III would be the same concept as Brickyard Creek II. Mr. Davidson gave an overview and history of Brickyard Creek I and II.

Davidson stated they are asking for approval of five lots in a county plat, however, doesn't expect approval today as Lot 5 does not meet the 150' frontage requirements. He explained a boundary problem and some past history on a portion called 'school property', which he said is "relatively complex". Davidson said two to three years ago, at his request, the Bureau of Land Management attempted to find the school property in question and after "exhaustive research came up with a 2.25 acre landlocked piece and it is yet to be seen what will happen with it." He added that title to that property is currently with the US Government and they have to issue a patent to somebody.

Mr. Davidson said in 1912 the US Govt. issued a patent to a gentleman for the entirety of Lot 4, however the patent excepted a certain portion and since 1900 the determination of the precise location has not been determined. He added that about 10 to 15 years ago Nelson Surveying marked and noted the location and everyone assumed it was correct until recently. Two to three years ago at their [Davidson's] request and that of the Bureau of Indian Affairs, the Bureau of Land Management spent two to three years seeking the exact location of the school property; archives of Wisconsin, South Dakota, Alexandria VA, and Washington DC were researched and a location they think is correct was noted [and marked on Davidson's map in 'purple'].

If the chief surveyor in Washington DC signs off, then it will be published in the Federal Register, sent to governmental units in the area, published in the County Journal and the Press, and if no objections, then the survey is reported to the Register of Deeds. Davidson added that he's not certain what will happen but now the title to the property is with the US Govt.

Davidson then presented some facts of the positive impact he felt Brickyard Creek has had in the area (real estate taxes, economic impact, etc.)

Speaking in Support: *None*

Opposition:

Patricia DePerry, Tribal Chairwoman, Red Cliff Band of Chippewa Indians stated the Tribe has had a good working relationship with the County through the years and has seldom been on opposite sides of issues and is hopeful that can continue. She added the Tribe has jurisdiction under the law for continuing to assert jurisdiction over all lands within the reservation border when it comes to nonmember conduct which threatens the health and safety of their membership and integrity of their own property use.

She added that the basis for the action they have filed against Brickyard Creek in their courts and various tribal and federal courts will decide those issues. Her plea regards facts involved in two of the Brickyard III applications before

the Committee. She believes request should be denied the proposed alternative development and request for high density residential development in environmentally-sensitive and culturally significant area, stating "this request is not a good idea".

Ms. DePerry said the county ordinance provides the guidepost in Sec. 13.141 with concerns the same as the tribal government has about this proposed development: impact on the infrastructure and environment, safe disposal of human waste, increased traffic, demands on police and fire protection, as well as welfare of the community as a whole. She added the location is within their community and that their municipal sewage system abuts the western edge of the proposed development which is preferable to their proposed holding tanks. Another concern is that Brickyard Creek III proposes no less than 20 residences on about 20 acres – 15 within the expandable condominium and another five on lakeshore lots.

DePerry also stated that this application, regarding Section 13.163 of preservation of open space in developments, would "turn this concept on its head and permit high density development under the guise of open space preservation". She said the proposal violates the 20-acre minimum area requirement and added that no effort was made to determine the Tribe's views on this by the Developer, the Town of Russell or by Bayfield County, therefore, as a result she appeared to voice opposition because of the high density residential development on a lake parcel in an environmentally sensitive area, and inadequate provision of human waste. Ms. Deperry said there is no good reason not to tie into the conventional sewage system.

Other concerns presented were the 100' lakeshore setback under tribal law which should be preserved regardless of the use proposed, to safeguard the Tribe's historic trade and fishing grounds and concern for a precedence being set for future development and cumulative negative impact on aquatic life and aesthetic beauty on Buffalo Bay.

Tribal Chairwoman DePerry invited dialog on issues such as this, hoping for cooperative inter-governmental agreements prior to disputes pitting governments against one another. She said in past experience, cooperation and input from the County Board was sought and respected regarding matters arising within the reservation's boundaries, however, that seems to have faded over time and suggested formulating a process for dialog again and that the Tribe stands willing to discuss this at the County's convenience.

DePerry requested the Committee deny the Brickyard Creek III application, they should be directed to work with the Red Cliff Zoning Dept. to obtain all permits required by the Red Cliff Band. She then presented copies for the record received from Superintendent [?] of the Agency Office of the Bureau of Indian Affairs, dated May 17, 2006, which had also been sent to Bayfield County.

Other Opposition: None

Rebuttal:

Bob Davidson: One concern is that Ms. DePerry said this is a jurisdictional issue. He believes there is a different venue for that and that determination is not for the County Board. He is concerned with complying with zoning and county ordinances and unless there has been "some drastic changes, this is almost identical to past requests".

Davidson felt there has been a good relationship in the past and added that there may be some miscommunication or lack of communication, but he has tried to communicate with the Tribe. He presented dates of letters, phone calls and emails dating back to 2004, said he met with Ray DePerry, and Jeff Benton. At one time he said he gave them copies of everything he had up to that point and has requested meetings. Davidson also said when this was at the Town meeting, Jeff Benton was present but said nothing about this, therefore he assumed they didn't have a problem. If there is a problem, he does want to solve it. He also stated that no one approached him about hooking up to the sewer, however is willing to discuss it and see if they can come to an agreement.

Davidson's final points were: 1) Jurisdiction is not for this Committee; 2) Contacts with the Tribe have been attempted; 3) Issue of high density and open space: many accolades have been received as regarding the balance with nature with his past developments and good track record.

Opposition:

Dave Ujke, Tribal Attorney, questioned Davidson re the parcel size, ingress and egress within the Tribal parcel. Davidson answered that the US Govt. holds title, ownership is yet to be determined, therefore provision for ingress / egress has not been made. Ujke said the 20-acre minimum is not being met in this proposal and that holding tanks

are not a good idea, especially on Lake Superior. He read pertinent language from the letter presented by Tribal Chairwoman DePerry (3rd paragraph, 1st page) regarding US entitlement to easement across property currently owned by Brickyard Creek III LLC and not reflected on the plat. He urged denial of this request.

Rebuttal:

Bob Davidson stated that Mr. Ujke was incorrect regarding the 20-acre minimum and explained the situation that if qualifications for alternative development are met, then one is taken out of the 20-acres and the county zoning ordinance will apply.

B. PETITION BY KARL KASTROSKY, BAYFIELD COUNTY PLANNING AND ZONING ADMINISTRATOR, ON BEHALF OF THE BAYFIELD COUNTY PLANNING AND ZONING COMMITTEE, REQUESTING AMENDMENTS TO THE BAYFIELD COUNTY ZONING ORDINANCE, INCLUDING THE FOLLOWING:

1. Amendment of Sec. 13-1-21(e)(1) to increase fees for additions/alterations to residences—dwellings, additions/alterations to residential accessory buildings, gazebos, conditional use applications, and special use applications; and to establish fees for first structure on property and additional lot division review fee.
2. Amendment of Sec. 13-1-22(a)(2)a, pertaining to reduced roadway and rear yard setbacks for certain non-conforming lots, by eliminating certain restrictions pertaining to garage doorways and parking areas on such lots.
3. Amendment of Sec.13-1-40(c)(6), pertaining to reconstruction of damaged or destroyed nonconforming structures, to expressly include such structures damaged by ice, snow, mold, or infestation
4. Other technical clarifications and corrections.

Planning / Zoning Director Kastrosky addressed this item, asked if there was any audience input for or against the issue. There was none, nor any questions from the Committee; Kastrosky recommended these amendments be adopted and become part of the Zoning Ordinance.

5. ADJOURNMENT OF PUBLIC HEARING: Motion by Jardine, second by Rondeau, to adjourn the public hearing; carried 3 yes, 0 no.

6. CALL TO ORDER OF ZONING COMMITTEE MEETING: *By Chairman Beeksma.*

7. ROLL CALL: *Beeksma, Jardine, Rondeau, present; Maki and Miller, absent.*

8. MINUTES OF PREVIOUS MEETING(S): *April 20, 2006 Minutes - Motion by Rondeau, second by Jardine to approve as presented; carried 3 yes, 0 no.*

9. BUSINESS:

A. BRICKYARD CREEK III. LLC. CONDITIONAL USE REQUEST: establish a Planned Unit Development (PUD)-alternative development consisting of 15 residential condo units with garages on an 11.25-acre parcel (ID# 046-1086-03, 046-1086-04, & 046-1086-05) described as Gov't Lot 4, Section 31, Township 51 N. Range 3 W, Town of Russell.

(An Environmental Impact Analysis (EIA) is included with the conditional use permit; however, it will require separate review and decision.)

Member Jardine asked for clarification of the acreage issue. Kastrosky reported: 1) This is an alternative development, therefore this division gets extra review on behalf of the Town and County. 2) "This parcel exists today, even if it's not 20 acres, the ordinance did not prohibit existing parcels of less than 20 acres from being developed, there's a grandfathered clause in there." Kastrosky said he feels this proposal does conform to the Zoning ordinance and Russell's overlay district and they (Town of Russell) approved it. Kastrosky said we know the applicant owns the land of the proposed development.

Ms. DePerry said there is no doubt that the Red Cliff Band of Lake Superior Chippewa owns the property in question

and added that Mr. Davidson has no qualifications to speak on behalf of the US Government or the Red Cliff Band and does not have the facts. Davidson stated he is not saying who owns the property, but it is not his and not the Tribe's. DePerry begged to differ about the parcel and said she has different information.

Chairman Jim Beeksma said no matter who the owner of the property is, it has existed for a long time and Davidson owns the property around it and that is what the Committee is dealing with.

Director Kastrosky stated that regarding the Town of Russell overlay, there is a short sentence that says, "or equivalent of one half of a quarter-quarter section" because not all 40's are created equal there is some adjustment and leeway for that. He added, "I'm relatively certain that it does meet the requirements."

Kastrosky said that in EIA review, there was a question in his mind about septage. He said basically holding tanks when used properly, are one of the best ways of storing waste because everything is supposedly hauled to a treatment plant, "although in the real world that doesn't happen". He encouraged Brickyard Creek to think about municipal sewer. Jardine asked about holding tanks and Kastrosky replied they are in compliance with the State and County and added he doesn't know if the treatment plant is maxed out or has the capacity to add this but recommends it if able.

Atty. Ujke said the sanitary treatment system is new, completed within a few years and has "plenty of capacity". He went on record stating the developer would be encouraged to hook up. He then asked for the Committee to refrain from revisiting the boundary of the school property and access in and out of the parcel, and to refrain from taking action until those issues are settled.

Kastrosky said, as a procedural issue, the EIA is up for approval or disapproval as well as the conditional use permit. Chairman Beeksma asked if the EIA would change because sewer is available. Kastrosky suggested it could be a condition or option of the permit.

Kastrosky reported he has tried to work with the Tribe on all matters but hasn't had any recently except for the Town of Russell overlay issue. According to procedure, he said, the Tribe as well as townships are always notified as required. He added that he and Jeff Benton had several attempts at connecting and leaving messages but they never actually connected. Davidson suggested if this is approved, that they try to work something out regarding hooking up to the sewer system but at this point he has no information on costs, etc.

Motion by Rondeau, second by Jardine, to **approve with a strong recommendation that the Developer & Tribe set up meeting(s) to discuss sewer issues.** Discussion: Kastrosky recommended the Planning & Zoning Dept. also be involved in the discussion. Rondeau **amended** his motion to include the Planning & Zoning Dept. meet along with the Developer and Tribe. Motion carried, 3 yes, 0 no.

B. PETITION BY KARL KASTROSKY, BAYFIELD COUNTY PLANNING AND ZONING ADMINISTRATOR, ON BEHALF OF THE BAYFIELD COUNTY PLANNING AND ZONING COMMITTEE, REQUESTING AMENDMENTS TO THE BAYFIELD COUNTY ZONING ORDINANCE, INCLUDING THE FOLLOWING:

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3. Amendment of Sec.13-1-40(c)(6), pertaining to reconstruction of damaged or destroyed nonconforming structures, to expressly include such structures damaged by ice, snow, mold, or infestation
4. Other technical clarifications and corrections.

Motion by Rondeau, second by Jardine to adopt the amendments as presented and make them part of the Bayfield County Planning and Zoning ordinance; motion carried, 3 yes, 0 no.

Agenda Review and Alteration

C. DISCUSSION AND POSSIBLE ACTION REGARDING TAMARACK POINT'S EIA (Cable) (tabled 4/20/06)

Director Kastrosky said the applicant requested they be removed from the Agenda and be heard in June, however they may not be heard then due to confusion and matters still unsettled.

B. HARLAND CHAMBERS SPECIAL USE REQUEST – DOG KENNEL (12-39 dogs; 17 dogs exist at this time) (Lincoln)

Atty. Mike Hines represented Harland (Dean) Chambers.

- ◆ *Read a letter from Roger Johnson in support; as well as an email from Barbara Robertson written to the Johnson's in opposition.*
- ◆ *Presented a support petition with 24 signatures.*
- ◆ *Reported that persons not on the agenda for the Town of Lincoln were not allowed to speak, including himself as representative of Mr. Chambers.*
- ◆ *Reported the Town approved a total of 12 dogs and assumed it was because they thought the ordinance allowed for 12 without a special use permit, however, it is actually 11 or less.*
- ◆ *Chambers did not realize he needed a special use permit but applied when he learned of it.*
- ◆ *Running sled dogs is his hobby, he needs 16 for the Ididerod plus 4 extras in case of illness or injury. The main complaints have been noise and pollution and one regarding a dog that was loose was not actually Chamber's dog. The barking that occurs is usually when they are fed and Chambers complies with the quiet time of 10 PM through 7 AM, feeding his dogs at 8 AM and/or 7:30 PM.*
- ◆ *Waste is composted and spread on his garden.*
- ◆ *Chambers is willing to leave phone numbers if he is out of town if the dogs are barking or need attention.*
- ◆ *Urged approval, stating the ordinance does not say citizens cannot have sled dogs.*

Discussion followed about the nearness of neighbors; Mike Furtak addressed the issue, pointing them out on the plot plan.

Others in Support:

Tom (?) [signature unclear on sign-in sheet] of the Town of Lincoln spoke in support, stating the Lincoln meetings are usually opened at the end for citizens to speak, was unsure why the one regarding this issue was not. Kastrosky added that he and Mike Furtak were at a past Town of Lincoln meeting when they weren't allowed to speak either.

AZA Furtak noted was on the property twice and the dogs were neither loose nor barked yet he was there because of complaints of barking.

Opposition:

Roman Wolff: (on behalf of his wife and Mr. & Mrs. Ralph Hanson)

- ◆ *Noise and number of dogs is unacceptable; 'it is bedlam when the dogs bark'.*
- ◆ *Most on the support petition don't live close enough to be affected by the noise.*
- ◆ *Urged acceptance of the Town's recommendation of 12 dogs.*

Barbara Robertson: (also on behalf of husband)

- ◆ *Owns surrounding property; until retirement they are here several months of the year*
- ◆ *Stated the application plot plan is false, said they had a survey done; presented a copy*
- ◆ *Has had problems with this neighbor over property lines; fenced her property to keep the dogs out.*
- ◆ *Brings horses to her property but cannot ride them on part of her own property which is near the dogs as the horses are in fear.*
- ◆ *Chambers sometimes has more than 17 dogs on property.*
- ◆ *The lake is a natural amplifier carrying the noise of barking.*
- ◆ *Said there is no composting of waste, no kennel, no buildings for the dogs.*
- ◆ *Strongly objected to the email from her read by Mr. Hines, which was a private, personal email to Mrs. Johnson, and was so-indicated in the correspondence.*
- ◆ *Stated if this is approved, she would continue to seek avenues to oppose and complain and 'would not go away'.*

Mike Furtak said the map Ms. Robertson referred to was prepared by him, not Mr. Chambers, and it was 100% accurate. The actual lot (A) the dogs are kept on, information from Bayfield County Land Records Dept., and other information relating to the property was discussed.

Ron Stauske:

- ◆ Is opposed to noise factor; concerned about lack of peace since Chambers located there,
- ◆ Presented facts about successful prosecution of Mr. Chambers by Corp. Counsel Bussey a few years ago brought about by Steve & Julie Sorenson, due to noise issues (when Chambers lived at another location a few miles away).
- ◆ Brought facts of citations and complaints obtained from Bayfield County Sheriff's Dept.
- ◆ Opposed to applicant being gone for long periods of time with no supervision of dogs.
- ◆ Also is concerned about issue of location, maintenance, control of environmental pollution, incompatible use.
- ◆ Read opposition letter from Nancy Willett, Mason, dated 5/3/06.

Chairman Beeksma asked if there was screening and Furtak answered he couldn't find the dogs the first time he went there, they were not visible until he drove into the neighbor's yard. He said fencing or screening may help some, however, with that particular location, noise will travel.

Karl Kastrosky reminded the Committee that their main function is 'land use' and compatibility of land use. Jardine then made a motion to **deny** this special use request, seconded by Rondeau; carried, 3 yes, 0 no.

C. BRICKYARD CREEK III LLC – PRELIMINARY PLAT (5 Lots) Govt Lot 4, Lots 1-4, CSM 1354, Section 31, Township 51 N, Range 3 W, Town of Russell

Bob Davidson: reviewed this request

- ◆ Between Lots 4 & 5 is the School Property which they don't own, making Lot 5 substandard, therefore the Committee cannot approve it
- ◆ Denial will allow them to go before the Board of Adjustment seeking a variance due to hardship through no fault of their own.
- ◆ Asked the Committee not to impose an access to their property to the School Property until the issue is settled as there are three ways it can be granted: 1) The Town of Russell creates a Town Road; 2) It is brought to circuit court for 'access by necessity'; 3) The two parties owning contiguous property work out an agreement.

Motion by Rondeau, second by Jardine, to **deny** this request. Motion carried, 3 yes, 0 no.

D. ARDATH & DONALEE KENNEDY SPECIAL USE REQUEST – Home-Based Business (Jewelry & Sales) on a 2.24-acre parcel (#006-1061-08-001) in Govrt. Lot 3, CSM #870, Section 27, Township 50 N, Range 4 W, Town of Bayfield.

Donalee Kennedy stated she didn't realize she needed a special use permit. She has been operating her business for six summers selling jewelry wholesale and last summer she began selling locally on site. When AZA Doug Casina was on site for another permit, she was told the business required a special use permit. The Town has verbally approved, however, it hadn't gone through their Planning Commission, but a special meeting was set for June 1, 2006.

Kastrosky recommended approval and added he was disappointed the Town waited so long to send her request to their planning commission. Motion by Jardine, second by Rondeau, to **approve pending Town Board approval**; carried, 3 yes, 0 no.

E. JOHN & MICHELLE BLACK SPECIAL USE REQUEST – Residence in Commercial Zone on a .25-acre parcel (021-1174-06-000) in Lot 1, Block 4, Village of Pratt, Section 22, Township 45 N. Range 6 W, Town of Grand View.

Agent Dale Henke stated he & his wife are purchasing the property, the Town approval has been submitted, and that they plan to build on to the former post office, making this a residence. He said there is a mini-storage across the road, and residences on either side. Furtak reported it is served by city sewer. Motion by Rondeau, second by Jardine, to **approve**; carried, 3 yes, 0 no.

F. CARL SAVITSKY & ANN RIGGS SPECIAL USE REQUEST– Home-Based Business (Art Gallery) located on a 40-acre parcel (#008-1022-04 & -05) in the E ½ of the NE ¼ of the NE ¼, Section 20, Township 49 N, Range 4 W, Town of Bayview.

Carl Savitsky reported this gallery would compliment their B & B, the Town Board would vote once they received the paperwork and when he discussed the plans with them in April they didn't have a problem with the request. Motion to **approve, pending TBA** made by Jardine, seconded by Rondeau. Discussion: L.U.S. Travis Tulowitzky said the Town clerk emailed him and did state the Town didn't have a problem with this. Motion carried, 3 yes, 0 no.

G. MICHAEL & JOHNA LABREE SPECIAL USE REQUEST – Hobby Farm in F-1: (Four Horses) located on a 40-acre parcel (#012-1009-06) in the NW ¼ of the SE ¼ of section 4, Township 43 N, Range 7 W., Town of Cable.

Johna LaBree reported she has two horses on 40 acres and would like up to four. Rondeau spoke in favor stating he knows the family and the property and it is maintained exceptionally.

Motion by Rondeau to **approve with the condition the permit be for the current applicants only**; second by Jardine; carried, 3 yes, 0 no.

H. DISCUSSION AND POSSIBLE ACTION REGARDING TIME OF PLANNING AND ZONING MEETINGS: Motion by Jardine, second by Rondeau to keep the same time, 1:00 PM, for Planning and Zoning Committee Meetings. Motion Carried, 3 yes, 0 no.

I. DISCUSSION AND POSSIBLE ACTION ON NR115 RE-WRITE UPDATE: Karl reported an upcoming meeting reactivating the committee in June in Stevens Point as there are some new people on board.

J. CITIZENS CONCERNS AND INPUT: None

K. OTHER ITEMS THAT MAY COME BEFORE THE COMMITTEE (Discussion Only)

◆ **Frostman Gravel Pit:** Karl stated there is a problem due to a statement which was in his letter to the owner (notifying of Zoning Committee approval) regarding crushing of gravel. The minutes did not state approval was granted for crushing, nor did the audio tape, however in error he stated it in his letter. Beeksma stated people have been calling him and it appears crushing is not as much of a problem as hauling onto the site making it a transfer station and that is the objection. Karl reported that the property is now sold, he talked to Corp Counsel and 'we're on the hook' because of the letter. He suggested talking to Peterson to see if cooperation can be obtained. Beeksma told Karl he needs to address this.

◆ **Tribal Issue:** Kastrosky said he will take this issue under advisement and make certain 'we keep in touch on this'.

10. MONTHLY REPORT: Motion by Jardine, second by Rondeau to **approve**; carried.

11. ADJOURNMENT: Motion by Rondeau, second by Jardine, to adjourn at 3:58 PM; carried.

**Karl L. Kastrosky, Planning / Zoning Director
Bayfield County Planning / Zoning Dept.**

Prepared by MJJ 6/13/06
Approved by KKK 6/20/06

cc: Administrator; Clerk; Corp.Counsel; DNR; Committee; Supervisors

K/ZC/Minutes/2006/May