

MINUTES
Bayfield County Planning / Zoning Committee Public Hearing / Meeting
1:00 PM - December 18, 2008
Board Room, County Courthouse, Washburn, WI 54891

1. **CALL TO ORDER OF PUBLIC HEARING:** *By Chairman Beeksma at 1:04 PM.*

2. **ROLL CALL:** *Beeksma, Jardine, Maki, Miller, Rondeau, all present.*

3. **AFFIDAVIT OF PUBLICATION:** *Presented by ZA Kastroosky*

4. **REVIEW OF MEETING FORMAT:** *By Chairman Beeksma*

5. **PUBLIC HEARING:**

A. STEPHEN / NANCY SANDSTROM CONDITIONAL USE REQUEST: Operate Wellness / Day Spa (in lower level of Garden House at Pinehurst Inn) on 3.5-acre parcel (#04-006-2-50-04-28-1-04-000-04000) in Lot 1 of CSM #904, Section 28, Township 50 North, Range 4 West, Town of Bayfield.

Stephen Sandstrom, owner of Pinehurst Inn, presented this request for their daughter & son-in-law to operate a business at their Inn. Previously approval was received for property on Ski Hill Road, however with the present economic situation, they would like to begin / establish their business at the Inn using existing space with the ultimate goal to build a spa in the future on a different parcel. Sandstrom said one room in the Inn has been utilized for massage therapy on occasion by guests by contracting with local therapists.

Support / Opposition: *none*

Director Kastroosky reported town approval is on file stating it is consistent w/ their land use and comprehensive plans. Regarding the standing of the current conditional use on the Ski Hill Road property, he reminded the applicant of the necessity to apply for another conditional use permit if there is a lapse of three years or more before beginning the business.

B. WILLIAM D. / ELIZABETH M. SCHNELLER REZONE REQUEST: From Commercial to Residential-1 on 1.06-acre parcel (#04-012-2-43-07-16-2-03-000-43000) in part of the SW ¼ of the NW ¼, Section 16, Township 43 North, Range 7 West, Town of Cable.

Mike Furtak reported Town approval was granted; lot 90% commercially zoned; has a small cabin on it; properties to the south have cabins on them and are zoned commercial. Original intention (by previous owner Jack Frels) was to have a construction business there; residential zoning fits the land use plan and his opinion there would be no problem doing so. Kathy Midwood arrived at 1:15; she explained the situation as Mike had, noting this extends Residential-1 zoning down one more lot from those also zoned R-1 to the north.

Support / Opposition: *none*

C. TAMARACK POINT, LLC (MIKE BURG, AGENT) REQUEST TO AMEND CONDITIONAL USE PERMIT #06-0782 and APPEALED BOARD OF ADJUSTMENT CASE #06-23B. Amendment to retain an existing cottage; convert two bunkhouses into a cottage; remove the short-term rental clause; remove the snowmobile & ATV restrictions. Property is two parcels of land consisting of land consisting of 55-acres (#s 012-1101-08 & 012-1102-07), located in S ½ of the NW ¼ of the NW ¼, and the S ½ of Gov't Lot 7, Section 12, Township 43 North, Range 8 West, Town of Cable. **Review of the Environmental Impact Analysis (EIA) (which was previously heard April 20, 2006) may also be readdressed.**

Kastroosky reviewed the file history noting this multiple use development was approved in 2006, there was an appeal to BOA; it exists today. He said the Planning / Zoning Dept. was approached w/ a request to amend the permit as well as to expand development since there have been some zoning ordinance (density) amendments. Kastroosky said he conferred with Corp Counsel Bussey and there are legal ramifications that we have to be cognizant of.

Kastrosky advised the Applicant to bring this before the Committee to see if there were enough grounds to reconsider this-- questioning if there was a mistake originally, if change of circumstance, new development, and/or additional facts were sufficient to make the case. **Kastrosky** said believed there is "enough of a request" to bring this back for Committee review. **AZA Mike Furtak** noted it should be on record that bringing this back before the Zoning Committee was on the legal recommendation of Corp. Counsel Bussey.

Mike Burg (Agent / property owner / developer - w/ John Donnelly) said his request is reasonable and appropriate; work completed has been quality; he put in a dry hydrant and road per the Town's request. He said some of the twelve conditions placed on the conditional use are very stringent, noting specifically '**Condition # 12**' RE no snowmobiles or ATVs. He said the reality of the situation is unrealistic as snowmobiles are allowed on the lake (some have come on his property). He was unsure why this was a condition, he didn't 'see it as a social or environmental problem—hardly anyone is there in winter'. Discussion followed on ATVs and where they could / could not travel in the area but Burg said it was reasonable to allow them on his property including for work-use there.

RE Condition 7 (no short-term rentals): potential buyers have questioned this; he said it's a property owner's right to rent short term. **RE Condition 6** (bunkhouses): he stated they were controversial in the beginning but because the cottages are small he wanted them to house extra guests.

RE Condition 4 (remove existing house on 'point'): He said due to the economic climate it would be in better interest to not tear down the existing house, therefore, would consider not building the bunkhouses and keep the house instead.

Kastrosky said if the house remains, it is considered a 'unit' and there will have to be a reduction—there cannot be a net gain of units; bunk houses are not units, they are accessory buildings; thirteen units are allowed, if the house remains then only twelve units may be built. He noted that only two more units could go on the west side of the road, but only with a rezone.

Burg stated he is actually requesting that one (planned) unit be eliminated and then preserve the existing residence but is not sure how to address the bunkhouse situation as he thought he could give them up in exchange. **Kastrosky** said it is "up to the Committee— the bunkhouses were granted, they were controversial because of the number of people allowed there." **Burg** said it has not been his intent to demand what is unreasonable-- he wants to work within the ordinance; no units are built yet, just roads / pads on part of the property. He said he would agree to drop one unit for the existing cottage and have the other previously discussed 'conditions' considered. **Burg** said the existing house is one of the few cabins on the lake that is not 'right on the shore' (it's set back about 60 ft.). **Kastrosky** said the cabin is probably 'non-conforming' and probably could not be added on to.

Burg said he is unsure what the law re ATVs is. **Supervisor Rondeau** stated ATVs may only be transported on trucks/trailers to ATV trails; snowmobiles have laws regarding roadways / traveling to trails, but there are none yet for ATVs. He also noted that Towns cannot create ATV access laws.

Kastrosky said Condition #12 says "no snowmobiles / ATVs allowed" but asked if that means none on the premises, or none operated on the common property. **Rondeau** noted people can drive anywhere on lake in winter. **Burg** said he was not aware that ATVs couldn't go on the road (at his property) but would like to be able to operate on the property.

Chairman Beeksma asked about short term rentals and **Burg** said others rent their homes in the Town of Cable, but the condition is 'unreasonable' to him. **Beeksma** noted the short-term rental problems recently in Namakagon & other areas and reported a permitting process is now in place. **Burg** was not aware of that.

Kastrosky clarified that Tamarack Point has enough area for 15 units; the portion zoned forestry allows only three units and that threshold was put in effect after Burg was at the original hearing.

Others Speaking in Support: none

Opposition:

Roger Dreher (Drummond, north of Tamarack Point): questioned the Committee whether they had a detailed proposal and EIA in front of them; whether they had authority to take action or make modifications when the case was heard and action taken by the Board of Adjustment. He said in no way should action be taken without a detailed proposal from the applicant.

Bob Lang (representing Cable Town Board) said the Cable public is “extremely opposed” to the development at all, however, he believes in what the ordinance allows. Lang noted that what was originally requested was “relatively reasonable” but it didn’t squelch the opposition-- the twelve conditions made up the “compromise / trade-off” and houses were to be set back 200’ instead of 75’. Lang said now the request is for the house to remain and questioned zoning ordinance changes at a ‘whim’. He noted the house in question is on a point and 75’ from the shoreline on both sides. He also said, in response to a point made that the house is not seen from the lake, that when the leaves are off the trees, the house is clearly visible.

Lang also said if the house is allowed to remain, it will be part of the PUD, not just a house any longer. He added that from the standpoint of the Town, the usage of the property is clearly a resort; short-term rentals were considered at the beginning and to not allow them by condition was to alleviate some of the public’s concerns. He said if that condition is removed, control is removed and a resort-type situation is created.

Lang also said the Town is not in favor of a rezone of the west side, nor would any one be s they are already disturbed about the current situation. RE: ATVs & snowmobiles, the Town is adamant they not be allowed to operate on the property and no one wants a trail system or any such type of activity there. Regarding ATVs / Snowmobiles on trailers or pickups, Lang said he wanted to be very clear about that-- the intent of the people was no ATVs and/or snowmobiles ON THE PROPERTY, and the Developers went along with it at the time!

Lang reported much frustration of the townspeople, no one knows why this situation has even been allowed to be brought up and create ‘panic’ again. He said the Town is opposed to everything brought up in this request and he then read the decision from the Town Board disapproving the request and noted the Planning Commission’s opposition as well as the Cable Lake Assoc.

[Five minute recess was called for by the Chairman at 2:32 PM; Public Hearing reconvened at 2:37.]

Supervisor Jardine asked Kastrosky what proposal might be possible or for suggestions. Kastrosky said the question to consider is whether there is enough reason to reconsider this and noted they have authority to make or revise decisions originally placed, but they cannot supersede the BOA.

Jim Brakken (Cable; Member of Planning Commission & president of Lake Assoc.) noted copies of ten opposition e-mails which were sent to either the County &/or Town and said a Henry Harmann was not ‘noticed’ but learned of it from the Lakes Assoc. Planning Commission recommended disapproval; all four requested changes do not comply with the land use plan; they have no intention of considering a rezone of the F-1 parcels on the west side of Cable Lake. Brakken noted that at a Town meeting in 2006, the conditions were offered by one of the Board members, Mike Burg agreed to them, and the Town felt the PUD should not be created if he hadn’t agreed.

Brakken reported that Tamarack Point was promoted as a place for silent sports and would be marketed as such. He also questioned the wisdom of the Zoning Committee to consider allowing the conditions to be changed or waived. He said the house on the property does not conform to the other rules in the development and said the Planning Commission agreed that if the Committee allows the house to be retained, then one of the other houses near the lakeshore must be removed. Speaking from the Town’s viewpoint, the Town would not have approved this in the past if short-term rental was part of the plan. RE ATVs / Snowmobiles—he was not opposed to equipment being trailered or housed on the property but was opposed to use on the premises. Brakken said in over two years Burg never made contact with the Lake Assoc., except for attendance at one meeting.

Atty. Jack Carlson (on behalf of Cable Lakes Assoc.): Since 2006, Section 13-1-29 was revised and now allows MUDs. With changes, the Zoning Dept. agrees only 13 units are allowed unless the west side of the lake is rezoned. Carlson asked what the basis for reconsidering this matter—in his opinion, “nothing has changed” and the Committee should not consider this matter. He said a key provision was to remove the house; there were trade-offs for more density. Now that they have the PUD, they want to forget about the conditions. The Developers marketed this as a quiet, low-impact, silent sport development but now want to change it. As a prerequisite to granting of the permit, the agreement was to remove the house; no short-term rental was an integral part of the original approval, as were no ATVs or snowmobiles. Carlson said the circumstances at the Development did not change, just the plans because of economics or way of marketing but that is not reason to revise the conditional use permit and he noted this might be a dangerous place for the Zoning Committee to be in— to revise conditional use permits because of changes of heart, etc. which has no legal criteria to go by.

Kenneth Bro: (Mgr. of family owned Cable Lake property) said it is important for the Applicant to have advanced consultation as well as an agreement on how things will work; there must be follow-through on commitments. Bro noted the EIA is exactly the same as the last one; this issue was worked on very hard previously and should not be taken lightly.

Sybil Brakken: (Wiley Lake) Reported Jeanette Baker sent an e-mail stating opposition. She also noted the existing house on the property is on a hill and visible from her property on Wiley Lake.

Rebuttal:

Mike Burg said he has done everything by the 'book' including roads, construction, silt fencing; has total environmental concern and commitment; had sent money to join Cable Lakes Assoc. but has never been contacted by phone, mailings, e-mails; he attended only one meeting which he found out about on his own. Burg noted he does not know about the study they referred to but is willing to work w/ them. He said the existing house is grandfathered / within code. RE visibility of cabins, he said the other cabins on the lake are visible in summer and winter. RE Town ATV controversy, he reported one Board member declined voting because of conflict of interest and said Mr. Lang also has conflicts; he is willing to "lose a unit" on the lakeside. Burg also said the property is 'Residential-1', therefore residences are expected there and he was only requested what Zoning allows.

Kastrosky noted opposition-correspondence in the file from the Town of Cable; Charles Bro; Richard Minkley; Dale Kent; Jeannie Olds Kent; Jim Brakken; Nancy Riffe Baker / Thos. Baker; Peter Racher; Marietta Schwend; Anne Boguslavsky; Henry Harmon.

D. PETITION TO AMEND ORDINANCE TITLE 13 – TOWN OF BAYFIELD (Signage): Petition by David L. Good, Clerk-Town of Bayfield, on behalf of the Town of Bayfield Board of Supervisors, requesting amendments to the Bayfield County Zoning Ordinance, including the following:

1. Amendment of Sec. 13-1-62 by adding the following permissible uses "or SB*" under all zoning districts for the "Signs – Town of Bayfield (See Town Overlay District 13-1-64)".
2. Amendment of Sec. 13-1-64 (c) (2) by adding the following additional Class, Type, Number and Maximum Size: B, Multi-tenant Off Premise, 1 sign at 16 sq. ft per sign*** and B, Agri-business directional Off Premise, 2 signs at 4 per sign****."

Add the following definition for Multi-tenant Off Premise "**** Developments containing multi-businesses (commercial or industrial parks) or parcels with a structure designed for multi-business tenants shall be permitted to erect one (1) multi tenant sign not to exceed 14 feet in height and include a maximum of one (1) panel for each business with an area not to exceed 16 square feet. Each panel included in the multi tenant sign shall count as one 50 square foot on premise or off premise sign depending on sign location. Multi-tenant signs shall be limited to one per development or multi-tenant parcel. A multi-tenant sign may be located on a multi-tenant parcel or at the first common road intersection serving a multi-tenant business parcel or multi-business development site."

Add the following definition for Agri-business "***** Agri-business signs shall be located at road intersections or points of common road entry to agricultural areas. The first sign placed will be required to obtain a Class B permit designating the location as an "agricultural sign mall". Only businesses engaged in agricultural production and sales or the sale of processed agricultural products shall be allowed a sign at an "agricultural sign mall" location."

3. (3) Off Premise Signs add "Multi-tenant signs, if off-premise, described in section 2 are exempt from the distance requirement."

Director Kastrosky said there were two gentlemen in the audience regarding this issue who had to leave for another meeting. **Steve Sandstrom** (from Town of Bayfield) was present and stated he is in complete support both as a citizen and business owner.

6. ADJOURNMENT OF PUBLIC HEARING: Motion by Miller / Rondeau- adjourned at 3:38 PM; carried.

7. CALL TO ORDER OF ZONING COMMITTEE MEETING: By Chairman Beeksma at 3:38 PM.

8. ROLL CALL: Beeksma, Jardine, Maki, Miller, Rondeau, all present.

9. MINUTES OF PREVIOUS MEETING(S): Motion by Rondeau / Jardine to approve the Nov. 20th minutes as prepared; carried 5 yes / 0 no.

10. BUSINESS:

A. STEPHEN / NANCY SANDSTROM CONDITIONAL USE REQUEST: Operate Wellness / Day Spa (in lower level of Garden House at Pinehurst Inn) on 3.5-acre parcel (#04-006-2-50-04-28-1-04-000-04000) in Lot 1 of CSM #904, Section 28, Township 50 North, Range 4 West, Town of Bayfield.

Motion by Maki, / Miller, to **approve**; no further discussion; carried 5 yes / 0 no.

B. WILLIAM D. / ELIZABETH M. SCHNELLER REZONE REQUEST: From Commercial to Residential-1 on 1.06-acre parcel (#04-012-2-43-07-16-2-03-000-43000) in part of the SW ¼ of the NW ¼, Section 16, Township 43 North, Range 7 West, Town of Cable.

Motion to **approve** by Rondeau / Jardine; no further discussion; carried 5 yes / 0 no.

C. TAMARACK POINT, LLC (MIKE BURG, AGENT) AMEND CONDITIONAL USE PERMIT #06-0782 and APPEALED BOARD OF ADJUSTMENT CASE #06-23B. Amendment to retain an existing cottage; convert two bunkhouses into a cottage; remove the short-term rental clause; remove the snowmobile & ATV restrictions. Property is two parcels of land consisting of land consisting of 55–acres (#s 012-1101-08 & 012-1102-07), located in S ½ of the NW ¼ of the NW ¼, and the S ½ of Gov't Lot 7, Section 12, Township 43 North, Range 8 West, Town of Cable. **Review of the Environmental Impact Analysis (EIA) (which was previously heard April 20, 2006) may also be readdressed.**

Miller asked if they should consider this as a whole or each issue separately. *Jardine* said they had to decide to approve, deny, or table. *Kastroosky* said the first thing to determine is whether there is enough substantial change to even make a decision on amending the conditional use and if enough change, then they have to take it one step at a time. *Miller* questioned if 'economic change' is substantial enough. *Jardine* argued they have to first determine if they are going to amend or not and *Kastroosky* agreed, noting they can put it under legal advisement.

Rondeau said that over the years, there may have been cases where "one little thing on a conditional use permit changed" but this request is for substantial change on the original agreement. He wondered if the change of removing or not removing the house changes the EIA and presumed it does. He said it appears this would be opening up the whole permit again and his inclination was to "be content w/ what we've got but approach it back with the Town & Lakes Assoc. and perhaps get compromises." *Kastroosky* asked if that voided the original permit.

Motion made by Jardine / Rondeau to deny the amendment to the conditional use permit. Discussion: Kastroosky said he would like to hear "justification in that decision to any legal / standards". Miller noted there is a problem with going back to the Lakes Assoc. because they are not a 'governing group'. Rondeau corrected his statement noting he should have said Planning Commission. Kastroosky said the motion was to deny amending the conditional use and a vote for the motion is a vote to have the conditional use permit stay as it is. He added that denial meant the applicant has to come back and pay the fee again.

Miller said he would like to see Burg go back to see if he can work out any the issues. **Motion was then rescinded by Jardine / Rondeau and restated to postpone a decision, allowing this to be redefined with the Town and Planning Commission.** *Kastroosky* asked if there was a limit for how long the postponement should be. *Jardine* added to his motion that it would be postponed for **up to a year, after a year it is over and done, otherwise the conditional use permit stands as [now] permitted.** *Rondeau* seconded the motion; carried 5 yes / 0 no.

D. PETITION TO AMEND ORDINANCE TITLE 13 – TOWN OF BAYFIELD (Signage): Petition by David L. Good, Clerk-Town of Bayfield, on behalf of the Town of Bayfield Board of Supervisors, requesting amendments to the Bayfield County Zoning Ordinance, including the following:

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Add the following definition for Multi-tenant Off Premise “**** Developments containing multi-businesses (commercial or industrial parks) or parcels with a structure designed for multi-business tenants shall be permitted to erect one (1) multi tenant sign not to exceed 14 feet in height and include a maximum of one (1) panel for each business with an area not to exceed 16 square feet. Each panel included in the multi tenant sign shall count as one 50 square foot on premise or off premise sign depending on sign location. Multi-tenant signs shall be limited to one per development or multi-tenant parcel. A multi-tenant sign may be located on a multi-tenant parcel or at the first common road intersection serving a multi-tenant business parcel or multi-business development site.”

Add the following definition for Agri-business “**** Agri-business signs shall be located at road intersections or points of common road entry to agricultural areas. The first sign placed will be required to obtain a Class B permit designating the location as an “agricultural sign mall”. Only businesses engaged in agricultural production and sales or the sale of processed agricultural products shall be allowed a sign at an “agricultural sign mall” location.”

3. (3) Off Premise Signs add “Multi-tenant signs, if off-premise, described in section 2 are exempt from the distance requirement.”

Motion by **Rondeau / Miller** to **approve the amendments as proposed** for the Town of Bayfield overlay; carried 5 yes / 0 no.

Agenda Review and Alteration

E. RICK NETTLETON (NETTLETON HOLDINGS, LLC) READDRESSING THE ISSUE OF PRIVATE FISH HATCHERY FOR BAIT: [This Special Use Item was heard at the November 2008 meeting, the idea of the project was ‘embraced’ but a motion was carried to readdress the issue after the Town made recommendation & draw down well tests were completed.] Property is in the W 1/2, NE 1/4 of NW 1/4 & NW 1/4 of the NW 1/4, Section 7, Township 46N, Range 5W, (Parcel ID# 026-1013-030-000) Town of Kelly.

Agent Terry Hogan said he went to the Town meeting, followed up w/ them, and reported that farmers are able to spread manure in the area; checked w/ drilling experts re types of area soils and gave that report and said the Town of Kelly agreed it to be reasonable use-- their main concern was for the wells and there was no opposition at the Town level. A draw down test is scheduled within a few days will be doing draw down test tomorrow or Saturday.

Travis Tulowitzky said he attended the Town’s Planning Commission meeting and they recommended approval but the Town waited to act after seeing results from the well draw down tests.

Motion by **Rondeau / Jardine** to **table** this request for TBA / well test results; motion carried- 5 yes / 0 no.

F. JAY CABLK / CARRIE LINDER SPECIAL USE REQUEST TREE SERVICE (COMPOST, FIREWOOD, PLANT STORAGE) W/ THREE FULL-TIME EMPLOYEES WORKING OFF-SITE: on a 40-acre parcel (#026-1007-03) in the SW 1/4 of the NW 1/4, Section 4, Township 46 North, Range 5 West, Town of Kelly.

Owner Jay Cablk was present. Tulowitzky said Cablk has three employees, this is a special use and not technically home-based business because most of the business is off premises.

Motion by **Jardine / Rondeau** to **approve**. **Discussion:** the Town did not act because it was not on their agenda, however will be in January. **Motion was rescinded by Jardine / Rondeau. Miller / Rondeau then moved to table this request awaiting Town Board recommendation; carried 5 yes / 0 no.**

G. CITIZENS’ CONCERNS / INPUT: N/A

H. DISCUSSION / POSSIBLE ACTION - COMPREHENSIVE PLANNING: **Kastrosky** reported on an open house Tuesday night.

I. DISCUSSION / POSSIBLE ACTION - NR-115 RE-WRITE UPDATE: **Kastrosky** reported on six counties still in opposition; a new draft will be coming; they will either agree and implement or have 72 county resolutions recommending denial.

J. DISCUSSION / POSSIBLE ACTION - RIP RAP ISSUES:

Kastrosky asked for willingness to allow the County to supersede [DNR] on rip rap issues; he said we end up doing the work / enforcement. **Mike Furtak** presented photos from Anderson Island... a situation which became an open spot on the shoreland, made park-like with grading & seeding; which actually crossed County land along the lake. He said the DNR granted by someone 'sitting in an office' and the permit had no plans issued with it.

County Conservationist **Butch Lobermeier** said in order to fix the problem the rip rap had to be removed; multiple violations occurred; DNR never even went on site. He noted how these issues cost the County much time and money and he would like to see permits with us first so people can do the work right and will clearly know when / when not rip rap can be put in. Lobermeier will propose a fee schedule to address rip rap and will work w/ Zoning on it, noting otherwise we can neither recap the money spent nor repair the ill-will involved.

Kastrosky said he would like to require a rip rap permit whether or not the DNR issues one; we could do it upfront, rather than be on the violation end of situations. **Lobermeier** proposed establishing a fee for the citizen, doing a plan, having himself or a tech on site when projects starts, following up with a report to the DNR. He also reported that another current case would have been avoided if this plan were in place.

Tulowitzky noted the Dept. is looking for the Committee's blessing if they are willing to move forward to address these rip rap issues. Motion by **Jardine / Rondeau** to move forward with the rip rap issue for the county to be involved either in support or technical ways; carried- 5 yes / 0 no.

K. OTHER ITEMS THAT MAY COME BEFORE THE COMMITTEE (Discussion Only): N/A

11. MONTHLY REPORT: Motion by **Jardine / Rondeau** to **approve** as prepared; carried 5 yes / 0 no.

12. ADJOURNMENT: Motion by **Rondeau / Jardine** at 4:43 PM; carried.

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

Prepared by MJJ on 12/29/2008
Approved by KLK on 12/29/2008

cc: Administrator; Clerk; Corp.Counsel; DNR; Committee; Supervisors; Sheree Bye 62245 Delta Lake Rd, Iron River WI 54847

K/ZC/Minutes/2008/#12December