

MINUTES
Bayfield County Planning / Zoning Committee Public Hearing / Meeting
June 18, 2009 – 4:00 PM
Board Room, County Courthouse, Washburn, WI 54891

1. **CALL TO ORDER OF PUBLIC HEARING:** *By Chairman Beeksma at 4:02 pm.*

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

3. **AFFIDAVIT OF PUBLICATION:** *Read by Director Karl Kastrosky.*

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

5. **PUBLIC HEARING:**

A. MCKINNEY REVOCABLE TRUST-JON MCKINNEY, TRUSTEE AND SPEARS & CARLSON-JOHN CARLSON, AGENT (CABLE) – REZONE REQUEST: I TO C: (2.85-acre parcel (ID #04-012-2-43-07-18-2-00-116-10800), described as the Westerly 102 feet, located in Lot 4, Block 15, Assessor's Plat No. 2, Section 18, Township 43 North, Range 7 West, Town of Cable)

John Carlson, agent spoke on behalf of the McKinney's. He stated they are requesting the rezone from Industrial to Commercial along Hwy 63 which includes the existing building to allow professional offices. He noted the Zoning and Sheriff Offices are already there as well as Coldwell Banker due to the fact that the Chequamegon Telephone building was sold and the existing offices had to move out in May.

No one came forward to speak in support or opposition.

Director Karl Kastrosky reviewed the file and stated the town board recommendation stated it matches the surrounding use and land use plan.

Karl said the Planning Commission would like to see the small triangular piece be included with this request, but stated that can not be approved without another public hearing.

He noted a letter of support was sent by William Collins and Jennifer Williams.

Member Jardine questioned how they should handle the triangle piece in the business portion of the meeting. Member Rondeau questioned whether it could be handled at the next meeting without a public hearing, it was stated it can not be discussed nor acted on because it was not part of this request, it would require its own petition and public hearing.

6. **ADJOURNMENT OF PUBLIC HEARING:** *Motion by Jardine 4:13 pm; Rondeau 2nd. Motion carried.*

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

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

9. **MINUTES OF PREVIOUS MEETING(S):** *No minutes available*

10. **BUSINESS:**

A. MCKINNEY REVOCABLE TRUST-JON MCKINNEY, TRUSTEE AND SPEARS & CARLSON-JOHN CARLSON, AGENT (CABLE) – REZONE REQUEST: I TO C: (2.85-acre parcel (ID #04-012-2-43-07-18-2-00-116-10800), described as the Westerly 102 feet, located in Lot 4, Block 15, Assessor's Plat No. 2, Section 18, Township 43 North, Range 7 West, Town of Cable)

Member Rondeau spoke stating more than likely nothing Industrial will come to the location, there is no sewer or water out that far. He felt the County was fortunate to not only get a medical clinic in the Town of Cable, but to be able to relocate offices into this existing unoccupied building.

Rondeau moved to **approve** the rezone from Industrial to Commercial, 2nd by Jardine; no further discussion. **Motion carried** 3 yes / 0 no.

Agenda Review and Alteration

B. MARK AND KELLY ILLICK (EILEEN) – HOMEBASED BUSINESS (coffee shop/bakery) : (34.8-acre parcel (ID #04-020-2-47-05-13-2-01-000), described as the Northeast Quarter of the Northwest Quarter, Section 13, Township 47 North, Range 5 West, Town of Eileen)

Kelly Illick spoke on behalf of the application. She stated they opened the bed and breakfast called Second Wind in 2005. They have been operating since and then got an idea to open up a little coffee house to give the Inn more expose. She stated they jumped through the hoops with the Health Dept, but failed to talk with the Zoning Office.

Director Karl Kastrosky stated a B&B can only serve breakfast, so in order to serve more; a special use permit needs to be obtained to allow a type of restaurant in an agricultural zone. He stated they were not apprised by the health dept that a land use permit was required.

Chairman Beeksma questioned whether the B&B and the coffee shop was all taking place in the same building. Mark Illick stated there was no real change made other than they have the coffee shop open from 9:00 am-2:00 pm.

Kelly Illick read a history of the business. She said they opened in March and the Daily Press ran an ad on the business, shortly after that Travis called and stated a permit was required. After the application was submitted she said Travis called again and told them that their septic system could not accommodate the inn and coffee shop. She outlined the current usage of the septic system and the occupancy for 2007 and 2008 being the same. They requested to have some time to research the septic issue and to try and bring the occupancy up. She stated that Mark, Travis and Carl Lippert met on the property where 3 options were given: (1) remove the coffee shop to reduce wastewater, (2) sample wastewater effluent to determine if it's high strength waste and (3) to increase the size of the septic system. Option (4) they would like to have considered is allow them time to investigate their options with a pre-treatment system that would work best for the long term use of the inn. She stated they received a letter telling them they would have to have their intents in by July 10th and completed by August 10th or they would be subjected to a \$500 a day fine.

Mark Illick asked the Committee to allow them to continue to do their business for at least a year. He stated if not, they would have to pull the pin.

AZA Mike Furtak stated if they are running that low of occupancy they should be fine. He suggested they should do the sampling and they should be free and clear. Mark stated he contacted the city about the sampling but, he got the letter regarding enforcement, so he decided not to pursue at that point. Mike explained the letter they received is a legal requirement which states the worst possible penalty that does not mean it will automatically happen.

LUS Travis Tulowitzky stated as part of the permit process the septic system is evaluated. The system is sized for 4 bedrooms. He stated Carl Lippert, Mark and he sat down to discuss the options and at that time they were all in agreement. Travis stated the goal here is to come up with some type of timeline. He said Carl and I would like to work with the Illick's to come up with some kind of solution, it's not a goal to shut the business down, but a deadline needs to be given to show progress toward an end result. He also stated Carl Lippert didn't have a problem as long as they show progress by fall and if no progress is being shown then the State would step in. Travis said July 10th was a deadline for the Illick's to come up with a response as to what action they plan to take, and August 10th was a deadline for them to take action.

Members Jardine and Rondeau questioned whether Travis could live with the 1 year. Travis stated we need some sort of action because what we have on the table is the jeopardy of a mound system failing, we do not want to issue a permit to put them in a situation where their system which cost a lot of money fails or puts them in jeopardy. He stated they would be looking at a replacement cost which would be a large sum of money. We are not looking to set Mark and Kelly up for failure with their system or the County because the permit was issued.

Further discussion took place between BOD's and wastewater load. AZA Furtak discussed once the wastewater load is determined you will know what needs to be done, until the testing is done you won't know if the system needs to be replaced; the size increased; or maybe nothing. Director Kastrosky stated he had a discussion with Mark and suggested a water meter would be a way to go. He stated the concern is the wastewater load, and we need to be cautious about it. He stated in our world and according to the State code; the numbers were put to it and it is way too small, it needs to be addressed. Mark Illick stated Blakeman Plumbing called and said he would run numbers through his computer to see what a 1,200 gallon a day extension of the existing mound would take; he didn't think it would take much more than a pre-treatment system because the existing tank could be used. Mark stated it goes back to the time constraint placed. He said we don't have the money, which means we will have to walk away. He said he would like to do the BOD test, but with the letter he received he feels there is no point, why invest more money in something I can't afford one way or the other because there was no question that we would have to put in a system. Karl stated the concern is the gallon usage and the amount of water that goes through. Travis stated the water usage that Karl is talking about versus the high strength waste that Mike was talking about would take some time and the deadlines would need to be worked. He stated he would be willing to work with those deadlines if the Illick's were willing to work with him. He stated he will need feedback from the Illick's, and they will need to make progress towards resolving the problem.

Mark Illick questioned whether they could set a new deadline date of August 10, 2010. Members Rondeau, Jardine and LUS Travis discussed water usage and how long it would take to monitor. Travis stated a sample would need to be taken once a month through out the summer into the fall.

Karl questioned the Illick's in regards to not holding the County liable if the system failed and there would be no recourse against the County. Mark Illick stated they would not hold the County liable anyway. Travis cautioned the Committee not to set a deadline date because the State is involved in this and we are acting on behalf of the State. He stated Carl Lippert may disagree with the deadline and go over the top of the County. He again stressed a deadline would have to be worked out with the County, the State and the Illick's. Karl stated we do not want to have a legal issue with the State; we all want to be on the same page. Mark Illick stated he talked to Pat Shandorf, yesterday and she encouraged him to go for at least a year. Travis stated again that Carl Lippert recommended to him that it be by fall so we all need to get on the same page. Mark told the Committee that Carl Lippert was not there when he spoke with Pat and she did say she didn't want to speak for Carl. Travis spoke again stating the Committee can only act on the coffee shop/bakery part of it, the sanitation issue is the State and he can not issue the permit until the sanitation is addressed.

*Rondeau made a motion to approve the special use permit for the bakery and coffee shop contingent that they meet all the requirements the County Zoning and State has set forth for the waste load and meet the requirements for monitoring. **Motion was withdrawn.***

*Member Rondeau moved to **approve** the special use permit for the bakery and coffee shop with the acknowledgment that the Zoning Dept's ongoing issues with the daily water usage and loading of the sewage system will be taken under advisement or monitoring and if the system fails because of the extra usage, the homeowner holds the County harmless, 2nd by Jardine. **Further discussion:** Karl stated the issue is getting a permit, we know there is an ongoing problem. If the system fails because of the usage, it's not our problem. If we can't get a solution we will bring this back to Committee in October and talk about it some more. Mark stated if he gets the BOD test done this week, then October doesn't matter. Karl stated maybe. Rondeau stated this will be an internal issue with the Dept basically with Travis. **Motion carried** 3 yes / 0 no.*

C. DISCUSSION AND POSSIBLE ACTION TO ADDRESS COMMITTEE RE: NON-METALLIC MINING, FARMING & AGRICULTURAL PRACTICES (WAYNE NELSON)

Wayne Nelson spoke stating he was here to get a clear understanding of agricultural practices. He stated he came to the Committee a year and a half ago for a non-metallic mining site. The idea is he has 80 acres and Mark Fumusa has 40-acres and they want to slowly turn this into agricultural. The properties have just surface rock on them, and what they wanted to do like all other farmers do is-- clean it up. Wayne stated he was asked to remove the stumps and rocks, take the rock over to the crushing site just like Randy from C&W does. He was under the assumption that everything would be fine as discussed 2 yrs ago. I was doing as everyone else does; he gave examples of Rabideau and Jimmy Erickson to name a few. He stated everyone picks them off and sells them. Farmers do that, so they can farm.

Wayne stated he received a cease and desist order. He wants to make sure he is compliance and if he needs to go back with Mark and put his property on the non-metallic mine site, he will, but they do not want a mine site, they want agricultural. He stated he doesn't want to keep the gravel pit for ever; it was part of the process. He stated he was pretty much done taking off the rock and seeding the 5-acre parcel when the letter came. He questioned the Committee on which way to proceed, he stated he didn't want to get a non-metallic site for 68 acres of property because under the normal rules of farming he thought the rocks were exempt. He questioned whether everyone under the township was in non-compliance (like Rabideau, Jimmy Erickson, and Bayfield Apple Co.) basically anyone that takes the rocks off would be required to obtain a non-metallic mining site. He stated he felt he was being picked on.

Travis explained our department received a compliant and he and Doug investigated. The trees were gone, stumping the land occurred, and the rocks were being taken to the permanent site next door. Travis continued his explanation: harvesting materials is considered a non-metallic mine if the property is over an acre and material is removed from the site and stated that is exactly what is happening on the Fumusa property. The determination was made that non-metallic mining was occurring. He stated if the rocks were removed and piled on the property, and did not leave the property, it would not be a non-metallic mine.

Karl stated that before they made the determination a unanimous consensus (not with Wayne probably but with the Town of Russell, Travis, Doug, and himself) was made. He stated they even consulted the person running the NR 135 program, to make sure they were not off base. The determination was made that it was a mine. He continued to explain that he was not aware of what Rabideau and others did, they were not picking on nor singling Wayne out, it is what they looked at. If other people have done it out of compliance or prior to non-metallic mining we can't comment because we didn't observe.

Wayne stated he was not invited to the meeting, but he had the Town on the property the month following the meeting, and one of them came out to the site prior to that meeting. He said they did not express that it was a mining site. He explained that the Town expressed in their minutes that they did not understand, this was clearly agricultural, they were in favor of this project and stood up unanimously and thought it was a good idea. What the Town didn't understand was the concept of why, if this was agricultural, does anyone care what farmers do with the rocks. Wayne felt a lot had to do with the property line, he showed the Committee where his mine was, where the crusher was, and where he was bringing material from and crushing it on his permitted property. He stated he is taking the rocks from Fumusa's and placing them on his because he is permitted just like others. He questioned since he was already approved for mining at his spot, it's agricultural and exempt, what is the problem. He stated he is in compliance and all of it is going to a preapproved site; the whole purpose is for restoration. He referred to the pictures he brought showing it's already restored. He stated he didn't want to go through another \$20,000 expense to do the paperwork, bonding and pay the County for disturbed acres when it's already restored. He stressed this was always the intent, and said he has rocks stored but can not move them across the line to crush them as that would be a huge expense.

A question was asked of Karl - if a neighbor was to pick the rocks on his property and have an operator of a gravel pit come in and haul them away and crush them, what would happen. Karl expressed if this was to happen maybe it would be done with a rock picker and maybe every 10-20 yrs. Karl stated that is why there is an exemption for farming the fields. He specified the rock picker in question is a different apparatus; it was several large backhoes and dump trucks. Wayne expressed once the rocks are gone, it will not be every 10-20 yrs. He feels if he is in violation so is everyone else. Karl states the difference is there was no prior agricultural practice of the property, it was forested and logged, and the point is why should it be an agricultural exemption when there was no agricultural activity what-so-ever?

Karl stated we are not blaming anybody, the activity Wayne did is different than the rock picker. Wayne expressed that Rabideau and Erickson have opened new acreage that was never farmed before. Randy Erickson hauled thousands of yards of rocks off the site. Karl said maybe, but he doesn't know, the NR 135 came into effect in 2001. AZA Furtak stated that Rabideau is probably a farmer and the majority of his income comes from farming. He questioned whether Wayne's income comes from farming practices. Wayne stated he does mining, but Mark Fumusa does a lot of farming, just not in this state.

LUS Travis questioned Wayne as to why he got a mining permit for his site if he feels he is doing the exact same activity as Fumusa. He told Wayne crushing is not considered non-metallic mining. Wayne stated

Fumusa did not want people in and out of his property, he only wants to do agricultural, as does he, but he needs to get rid of the rocks. Travis stated that was the point, the same activity is happening on both parcels. Wayne stated they are not doing the same thing, but if he had to get another permit for a mine he would, but we are asking him to put up another \$10,000 in reclamation- plus, plus, plus. Karl questioned Wayne as to where the extensive cost is coming from, there are disturb acres, the reclamation plan is similar to his own, so an extension of that should be pretty easy. He also questioned Wayne if he was done on Fumusa's. Wayne stated no- he stopped after receiving the letter. Further questions were asked as to how much more area does he have to do on the Fumusa property. Wayne stated 10-acres. Karl suggested he get a non-metallic mining permit for the 10 acre; get a reclamation plan and call it good. Wayne stated Fumusa did not want to do a non-metallic mining permit. Karl stated then the rocks have to stay where they are. Wayne said he will speak to Fumusa but he just wants to do what everyone else is doing. Karl stated: Mark Fumusa is not here to hear all of the dialogue; he only knows what you tell him, he does not have the expose of this discussion.

Wayne felt he would have to come back to the Committee. Chairman Beeksma asked Wayne why he didn't want to get a permit and be legal. Wayne stated no one else did it for agricultural. He stated with a permit it becomes commercial, it's a liability and he didn't want the responsibility. He stated again that it was not mining-it is farming, and farming is exempt. Member Rondeau questioned if the Committee was at a point where they needed to decide if there is a difference of picking rocks and piling versus picking and hauling them away for a profit. Karl stated it goes on area of disturbance, removing top soil, stumps and removing 4 or 5 feet of rock material is much different. Travis explained top soil removal also needs a permit. AZA Furtak stated to keep in mind this is not a farm at the present time, they want to turn it into one.

Karl expressed he did not want to see any recourse taken on the property already restored. He asked Wayne how many yards came off of Fumusa's. Wayne stated over 5,000 yards. Karl told the Committee that would be 500 truck loads if the dump trucks carried 10 yds. Committee Members expressed that was in excess and a permit is required. At this point, Wayne questioned the Committee—if he understands correctly, he could still open up farmland, do farming, he just can not take anything off of the property, nothing for sale or trade until it's an approved site for a non-metallic mining site. Beeksma and Rondeau expressed that this needs to be done by ordinance.

Karl brought up a concern Wayne wanted addressed regarding conditions on his previous permit. He stated the condition was stock pile(s) would not exceed 15' in height. Wayne stated he met with the Town; they adjourned and went to the site. He told the Committee there was a problem with the minutes of the Town, so they could only officially talk about 1 of the conditions and the others would have to go back to the Town. Condition #2 stated: stock pile material is limited to 5 acres and shall not exceed 15' in height; the Town motioned to waive that to 45' in height. They didn't have a problem with it. He stated he will be going back to the town in regards to asking for 15' instead of 5 below grade' and to extend the 5 year limit.

Karl questioned if the piles that are being requested to be 45' in height were processed piles. Wayne stated the Committee should include all stock pile material because that is what the town said they would approve. Karl stated there was nothing from the town. Travis questioned Wayne about the other condition regarding going from 5' to 15' below grade, he stated if that is the case he would have to readdress his reclamation plan. Karl questioned whether the Committee could amend conditions without a public hearing. Karl addressed a person in the audience about the property. The gentleman stated he was not allowed at the Town meeting because Wayne would not allow him on the property. He stated he has a problem with the noise, conditions that were placed not being followed, and now there is controversy as to whether the process is on the mining site or the farming site. Karl recommended the requested changes to the existing conditions be held at another hearing and be done as a public notice. Jardine questioned why he was working on a Sunday as stated by the gentleman in the audience. Wayne stated he was putting in a pond as a favor. He also stated that he will be putting in some driveways at different times other than the hours indicated as a condition, because the work will not be done on property with no conditions.

No official action was taken.

D. WAYNE NELSON (RUSSELL) – ALL TYPES OF FARMING (INCLUDING LIVESTOCK) AND RELATED STRUCTURES (80-acre parcel (ID #'s 04-046-2-51-04-22-1-03-000-20000, 04-046-2-51-04-22-1-04-000-

20000, and 04-046-2-51-04-22-1-02-000-20000), described as the SW ¼ of the NE ¼, the SE ¼ of the NE ¼, and the NW ¼ of the NE ¼, Section 22, Township 51 North, Range 4 West, Town of Russell)

Wayne stated he was unaware and the Town was unaware that doing agricultural in a forestry zone was a violation. He wants a permit to do all agricultural purposes, all and anything that he can do. Karl spoke on behalf of the application, he stated Town input was received and approved because it is compliant with other farming in the area.

*Motion by Jardine to **approve** item D, Rondeau 2nd; carried 3 yes / 0 no.*

E. MARK FUMUSA, OWNER & WAYNE NELSON, AGENT (RUSSELL) – ALL TYPES OF FARMING (INCLUDING LIVESTOCK) AND RELATED STRUCTURES (40-acre parcel (ID #'s 04-046-2-51-04-22-1-03-000-30000), described as part of the SW ¼ of the NE ¼, the SE ¼ of the NE ¼, Section 22, Township 51 North, Range 4 West, Town of Russell)

AZA Furtak questioned how many animal units are being requested? Karl stated there is no threshold. LUS Travis stated that in the past we have asked applicants that come for a hobby farm or special use permit to specifically state how many of each they are going to have. Karl stated this is not a hobby farm, this is farming. Committee Members discussed if the Town didn't have any restriction, they don't have a problem with it.

*Motion by Rondeau to **approve** the permit for all types of farming including livestock and related structures; Jardine 2nd; motion carried 3 yes / 0 no.*

F. CITIZENS' CONCERNS / INPUT:

No one spoke.

G. DISCUSSION / POSSIBLE ACTION REGARDING COASTAL GRANT APPLICATIONS

Karl stated we are applying for a grant to better manage our shoreline setback issues like we did on Lake Superior. We are hoping to redo our floodplain maps because they are inaccurate and this will allow us to contour them based on science, geology and land formations. He stated it will also allow our office to capture some revenue. Land owners will benefit from this process. Karl stated a resolution will be drawn up and presented to the Full Board and asked that they support it.

H. DISCUSSION / POSSIBLE ACTION REGARDING DEPT FUNDS

Karl spoke about the article in the Daily Press. Karl handed out copies to the Committee. He expressed to the Committee that the article states our department is down in permits and revenue by 50%. He stated that was not true; Mark got his figures out of New World. He said the New World program is slanted and/or tainted because it records information as to when it is entered into the program, not by the day, month, or quarter it's for. He reviewed the handout with the Committee showing them revenue is down 28% and expenses are also down \$8,000, which puts us at about \$20,000 or 20%. Karl explained how the article in the Daily Press and the County Journal put staff in a place that even if they go to the grocery store comments are being made about not having enough to do--this issue has upset staff. A Committee Member stated the figures were not surprising at this point, everyone knows how things are going with the economy-- it's not a big deal.

I. DISCUSSION / POSSIBLE ACTION ON COMPREHENSIVE PLANNING

Karl summarized where the process is to date. He told the Committee Members they have a draft in their packets. He asked the Committee to review it and bring issues up as they find them. He also stated internally we will be working with the Towns who are not planning, so they have something to look at or review. Committee Members stated they do not want the Town's coming in November looking for help because they have had numerous opportunities to get on board with this issue.

J. DISCUSSION / POSSIBLE ACTION ON NR 115

Karl explained there is now a draft. The resource board is going to meet in New Richmond, and many concerns have been changed and addressed. He stated he felt it would be approved.

K. OTHER ITEMS THAT MAY COME BEFORE COMMITTEE (DISCUSSION ONLY)

Discussion was brought up about changing the time of the monthly meetings; the members asked to have the issue put on next months agenda, because the ones that want the meeting at 4:00 pm are not showing up.

11. MONTHLY REPORT: *Motion by Rondeau to approve; Jardine 2nd; motion carried*

12. ADJOURNMENT: *Motion by Rondeau to adjourn 6:05 PM / Jardine 2nd; motion carried.*

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

Prepared by DAK (8/11/09)
Approved by KLK (8/17/09)

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

K/ZC/Minutes/2009/June