

**MINUTES 'SPECIAL' MEETING
BAYFIELD COUNTY PLANNING / ZONING COMMITTEE
BAYFIELD COUNTY BOARD OF ADJUSTMENT
BAYFIELD COUNTY LAND & WATER CONSERVATION DEPT.**

July 15, 2010 - 4:30 PM

Board Room, County Courthouse – Washburn, WI

1. **CALL TO ORDER OF PUBLIC HEARING:** *By County Board Chairman Wm. Kacvinsky at 4:36 PM.*
2. **INTRODUCTION OF COMMITTEES and/or BOARD MEMBERS:** *Introductions were made; the following were present / representing the following groups.*

- Administration – Mark Abeles-Allison
- Board of Adjustment – Tony Johantik, Phil Lupa, Randy Matis, Lee Wiesner
- Board of Supervisors - John Bennett, Jim Crandall
- Land Conservation – Marco Bichanich, Wm. Bussey, Kenneth Jardine, Butch Lobermeier, Patricia Rantala, Pete Tetzner
- Zoning Committee – Kenenth Jardine, Harold Maki, Shawn Miller, Patricia Rantala, Brett Rondeau
- Zoning Dept. – Doug Casina, Mike Furtak, Marilyn Jaeger, Karl Kastrosky, Deb Kmetz, Travis Tulowitzky

3. **REVIEW OF MEETING FORMAT:** *Chairman Kacvinsky stated that public comment would be called allowed later but would be limited to three minutes per person. **Mark Abeles-Allison** presented some reasons this meeting was called: to discuss disagreements between staff, interpretation of policies, enforcement roles, responsibilities, modifications/clarifications of differences. He noted that elected officials are to provide guidance how to implement county statutes with the goal being voluntary compliance.*

4. **BUSINESS:**

A. **Understanding issues & implementing solutions to what is & what is not a violation.**

***Zoning Director Kastrosky** presented photos showing complexity of some issues the Dept. deals with on a daily basis RE shoreland buffer zones. He noted that decisions must be made such as whether our standards were met, if there are violations, if a tree stump remains was it living, diseased, dying? He said both the Dept. and citizens face questions in the area of violations and standards.*

***Bill Bussey** commented that a problem exists in 'definitions' (i.e. what exactly does 'no disturbance in the buffer' mean—raking, removing branches?). He said we can try to make things more concise but can never eliminate 'gray areas'. Bussey also spoke about the difficulty at times proving a case, such as discovering a stump in the buffer – without witnesses there is no evidence of who actually cut the tree.*

***Harold Maki** asked if tree removal is becoming a problem. **Kastrosky** answered that we are seeing more potential shoreline violations than ever before / there is more sensitivity to it. In Feb. 2012 the new NR115 comes into effective (can't cut anything in buffer w/o a permit and must mitigate what is taken out). He said we have two years "to figure it out". There is growing concern about things done in the buffer... part of our mission is to help us understand. **Maki** said he believes it is "getting ridiculous". **Butch Lobermeier** said the amount of cutting/disturbance in the buffer is rampant on the lakes; many obvious violations are present,*

some of which some are “big problems”; numerous trees are being cut / burned which are considered buffer disturbances.

B. Clarification of roles, responsibilities & enforcement authority.

1. Roles / responsibilities:

- a. **Planning & Zoning**: **Kastrosky** said the Planning / Zoning Dept. deals with land uses in the County, planning, ordinances for building, sanitary systems, gravel pits; is responsible for violations, shoreland / buffers; mitigation for non-conforming structures. Also responsible for enforcing / implementing conditions placed by the Board of Adjustment, Zoning Committee and have Corp. Counsel helping with the process. The Dept. looks for voluntary compliance, but uses enforcement if necessary.
- b. **Board of Adjustment**: Five-member Quasi judicial board w/ two alternative members, who deal with variances / special exceptions, interpretations; they are a safety valve for the zoning committee and interact w/ the public where the zoning dept. cannot.
- c. **Land / Water Conservation**: **Lobermeier** said the land and water plan is a guide; they work w/ individuals / municipalities, help w/ mitigations; help fix what is broke.

2. Enforcement Authority (Handouts):

- a. **Planning & Zoning**: **Kastrosky** noted items in hand-outs; said the Dept. has legal authority to enforce violations; the Zoning Committee has been very trusting of opinions of the Dept. so ongoing violations are able to be dealt with more rapidly than waiting for monthly Committee meetings. **Supervisor Jardine** suggested the Zoning Committee chair be informed but the Dept. has authority/ability to take appropriate action.
- b. **Board of Adjustment**: Is “hearing” there may be lack of enforcement; is very interested that enforcement is followed through on.
- c. **Land / Water Conservation**: Dept. does not “do enforcement”, however, is in support of it.

Phil Lupa (Board of Adjustment) noted there are controversial cases where conditions are placed enabling the variance to be approved. **Lee Wiesner** (Board of Adjustment) said approving variances with conditions is important in protecting our lakes.

Bill Bussey (Land Conservation Committee) said there are two approaches in advancing goals of zoning & land conservation: 1) a voluntary / cooperative basis where more is accomplished by working together than forcing; 2) regulatory basis, which zoning does. He said it is important to keep those roles separate—there is a difference between working w/ willing land owners-- land conservation does that with owners who want to participate; then zoning exclusively does the enforcement. He said it's helpful to have land conservation prepare mitigation plans, however, frustration exists with them, and with the BOA, if conditions are placed but not enforced. He noted that falls on Zoning doing the best they can with limited staff, trying to achieve compliance and sometimes they have to make an example out of somebody to help to discourage other landowners from violating.

C. Procedures and policies

1. Database for violations and mitigation requirements by the Planning and Zoning Dept and/or Board of Adjustment:

***Kastrosky** said in years past we had no active land conservation dept.; later there was a four-county dept. which gave little or no assistance and no educational materials to help citizenry with restoration, etc. Next Jason Fischbach was on the scene and established a file box of cases. Now there are 210 entries in the database but we don't have good mechanism to know who is to mitigate, and for review, and to see if mitigation is taking place so they are not being done on timely basis. He said the "next thought is to work collectively to track violations, monitor them with help of a database.*

***Lobermeier** said there is a "huge hole in the system—there is no enforcement because information cannot be accessed by everyone; no follow-through is the real problem, even when it's known". He noted Washburn County has a good tracking system w/ a staff person working on enforcement, follow-up status, etc. He added that landowners pay to have mitigation done and it then goes to Zoning for follow-up but with no tracking it is only followed if someone drives by and observes it. He also said we need "political will" to have a tracking system. **Supervisor Miller** asked about what that meant and he replied "to put it into practice and have the Zoning Dept. do it."*

2. Review of process for enforcement of mitigations, etc. [see above]

3. Failure to comply with enforcement action(s); mitigation requirements; or conditions placed by Planning and Zoning Dept and/or Board of Adjustment

***Kastrosky** said in mitigation plans, people have already agreed to do something; in other cases conditions are placed by Zoning or BOA, all are recorded by affidavit in Register of Deeds. A standard enforcement policy for conditions not complied with needs to be in place. Instead of 'chasing after-the-fact cases', perhaps there could be a performance bond which applicants would lose for noncompliance, or there could be an automatic daily forfeiture. We need to "put meaning into it"; it has to "cost them" to make sure conditions are complied with. He also said political will is important in reaching compliance; committees need to be in support.*

***Lobermeier** said "variances are the easiest to do" but was concerned about staff time and money spent, going back to things over and over. He suggested going to a surety or performance bond of \$5,000-\$10,000 where they agree to a finalization date or they lose the bond. He said that gets action and is not a penalty unless they fail.*

***Jardine** said he doesn't agree with a performance bond but does with a daily fine. **Miller** suggested a mitigation plan be complied with prior to issuance of a permit. **Kastrosky** said mitigation plans may take two years to establish. **Lobermeier** said it could be done on a case-by-case basis, but they may need their building this year but can't mitigate until the next year. Discussion followed and the belief was homeowners would have a very difficult time obtaining a performance bond but there's a possibility collection might be on the home owner's taxes.*

***Miller** questioned compliance prior to giving a variance. The answer from BOA was they do stipulate dates and make them rigid as they can but seldom can they require mitigation first. **Wiesner** noted that seasonal issues are involved and strongly recommended the Zoning Dept. be given the tools needed to enforce mitigation plans including a database. He stated an example of 'no mowing allowed' on six situations that were looked at and all were noncompliant.*

AZA Furtak spoke regarding an applicant in question who had completed part of their plan, however, **Lobermeier** disagreed saying he made an assessment and the applicant was not compliant, and still is not as of that day.

Lupa said variances are a tough process and they struggle with every case, with all conditions / mitigation plans, so whatever it takes to achieve compliance, should be evaluated and checked in the next year or two depending upon the term of conditions.

Bussey referred to “[Atty.] Jack Carlson’s June 29, 2010 letter at the bottom of page 2, noting we may want to consider the suggestion to amend Section 13-1-103 of the ordinance. “...when Zoning violations occur, the county may want to consider amending Section 13-1-103 of the ordinance. While Section 13-1-41 specifically provides noncompliance with a conditional use permit... it may be appropriate to add a provision providing that noncompliance with a mitigation plan or directive of the Zoning Committee or Board of Adjustment constitutes a violation of Chapter 1 of the Zoning Ordinance. Language to this effect could be added to existing Section 13-1-103(a).”

Bussey said if noncompliance on a variance or mitigation plan, “expressly says violation” it could be a daily forfeiture; we need deadlines with conditions and perhaps we could make people wait to build and mitigate first.

Supervisor Rantala went on record agreeing with a daily fine but not a bond.

Kastrosky said if we can get a solution to the compliance issue, with extensions, daily forfeitures in the ordinance, have board-approval, etc. that would be a step in the right direction. He then questioned “discretionary judgments” where some see it as compliance and others do not-- somebody has to figure that out. **Lobermeier** noted that in some cases the addition of a porch or other construction might ruin the mitigation / planting work, etc., yet at some point it has to get done. **Lupa** said the homeowner’s word should mean something, they promise to do complete the plan in order to get their permit, then if not a tool should be in place for them to be penalized.

Furtak stated the Zoning Dept. has, with the last ten years, put in place a non-metallic mining database. It has been working on having almost every septic system inspected or pumped in the last three years and out of 70 counties Bayfield is one of the five at this status. Regarding mitigation / conditions, he believes once the database is done, “we will be on it”. **Lupa** agreed that a database will save time and money.

D. Proposed Ordinance Changes

1. Land Disturbance Activity:

Kastrosky said there is to be no land disturbance in the buffer zone but that needs to be clarified / defined; his definition is operation of equipment in the buffer, or changing the scope of the land. **Lobermeier** said enforcement of the ordinance is under the zoning department’s authority; also that a functional 50’ wide buffer is the goal, less a 30’ wide viewing corridor.

Miller said the Land Conservation Dept. needs to live within Zoning Dept. laws. **Kastrosky** suggested that what Land Conservation feels important, they should put forth in the way of ordinance amendments. **Bussey** said amendments are presented to the Zoning Committee by Kastrosky on behalf of the Zoning Dept., with the County Board finalizing them and nothing prevents Land Conservation petitioning the Zoning Committee. **Kastrosky** stated he believes they should come from Land Conservation.

Jardine said our water is most important, it needs to be protected but noted some philosophies differ in that regard. **Wiesner** said the ordinance is about protecting the lakes. **Miller** noted many mow right down to the lakes considering it “grandfathered” and **Wieser** added that at times new owners just follow suit as they watch their neighbors. BOA member **Randy Matis** stated we need to operate on the strengths of our departments working in harmony to quickly enact positive innovation; must be on the same page to identify issues, stay on top of them and avoid conflict.

2. Legally pre-existing policy change(s) (e.g. mowing to the lake)

Kastrosky stated that the ‘grandfather clause’ still exists. He sat on the State committee and they still did not prohibit it, however, counties can be more restrictive. He said if Land Conservation feels in there is a violation they need to enforce it if the County Board wants to do it. **Supervisor Maki** said he believes the highest taxpayers around our lakes “are being harassed”. **Wiesner** noted that there is eight times more flow into lakes where there are mowed lawns and in the end we will lose our tax base if we lose the lakes.

Bussey asked if it’s a legal option to remove the grandfather clause. **Kastrosky** stated counties can be more restrictive than the State so they let the counties deal with it. He said viewing corridors have been a problem; in the new ordinance there will be no diseased, dying, harmed tree and brush removal without a permit and mitigation.

Lobermeier said a lot can get done with just a few people, we should be on the “cutting edge” which will go long way in protecting our resources. **Bussey** said it would be a huge undertaking to make landowners stop mowing and establish a buffer, and very controversial, but if we manage to get a reasonable database, with enforcement, that would be the first step before wading into the huge issue. **Miller** said the Zoning Committee should “hash this out” and bring it back to the County Board.

LUS Tulowitzky noted three points: 1) It is of great importance to get a data base for tracking / management. 2) It is a challenge to come up with ideas regarding land disturbing activities; we see the difference in two people and two departments. What constitutes land disturbance needs to be further defined. 3) We have a hard time issuing permits when there is no vegetative protection at all. New structures are not required to mitigate, however, there is a need to move towards that but puts more work load on the department.

Lupa said there are enough mitigation plans out right now, we first need to take care of them, get them into compliance, and not add to the problems that exist.

E. Public Comment – (Limited to three minutes per person)

[It is noted by the minutes-taker that only two persons (Pamela Toshner and Susan Warner) who commented during this portion of the meeting turned in the requested sheets listing their name and address, therefore, the following names / spelling of names may not be correct.]

Pamela Toshner (WDNR) said she has met with both **Kastrosky** and **Lobermeier** regarding land disturbing activities and discussed mowing, raking, and burning, etc. She agrees with **Kastrosky** that recommendations come from Land Conservation in this area. She discussed totally mowed lots and suggested that education, demonstrating, a ‘good will campaign’ be a solution, noting that some other counties are being very progressive in this area.

Jim Olson (Long Lake, Iron River) presented his observations re Lake Mendota, public landing problems noting they have buffers yet water runs next to it. He mentioned water

gardens but that they are not acceptable w/ many. He agreed we are going in the right direction.

Susan Werner (Barnes; on behalf of **Jerry Merryfield**) (Chair of Bayfield County Delegation to the WI Conservation Congress) who was unable to attend. He noted that most of our County's developed lakes have examples of mitigation / conditional use permit conditions which are not being honored; many ignore/violate the laws knowing follow-up inspections / fines are rare. His organization believes the Land & Water Conservation Dept. is on the right track, however, that the Zoning Dept.'s inspection / enforcement laws are lagging behind and below what they should be. Merryfield called for three solutions: regular inspections with immediate attention to reported violations, re-visits to mitigation and conditional use conditions; immediate / adequate enforcement to include fines.

Jim Brakken said education is required and that Bayfield County Lakes Forum stands ready to help get the message out; that creating laws but not enforcing them is worse than not creating them at all. He suggested that leads to blatant disobedience of other laws when this is not administered. Their group calls for support when we need to increase Zoning Dept. funding as inspections need to be done. Brakken suggested possibly "phasing in" buffer changes.

Shelby ?? (Barnes) said she was "appalled" that six variances were pulled and none had complied. Perhaps goals should be set and noted that in the private sector, "this would be unacceptable".

Barb (Ronstad??) encouraged emphasis on enforcement and was concerned if an actual pan will be put into place or if it will just be 'talk'. She suggested enforcement be handled first w/ those who have variances or conditional use permits; was concerned about Loon Echo Bay believing conditions were not followed specifically; stated if the Zoning Dept. "only sometimes" enforces the law, they are accused of favoritism; doesn't believe those w/ the most money should have special privileges.

Sybil Brakken (Cable Lakes Assoc.) Would like a mechanism in place, like an anonymous tip line, for violations. She noted a Wiley Lake case where there was burning 5' from the lake, she didn't hear back and the home owner said a zoning official gave out the reporter's name; she said there are examples of other violations on various lakes which were not inspected, ones with trailers on the lakeshore and looked at in 2004 by Zoning w/ no apparent action.

Mary Crook (Barnes) spoke of solutions which were worked out by Land Conservation w/ great improvements and noted ignorance is a big problem; demonstration of the beauty and benefits of compliance could be demonstrated by many County residents. Ms. Crook volunteered to organize a 'volunteer shoreline committee' to send people to property owners to demonstrate the benefits of shoreline restoration.

Carol LaBreck (Barnes) said she has voiced concerns over enforcement and violations, with letters of inquiry, but receiving no feedback and wanted to know what process there is to hear back. She said we must implement the law; there is history/ examples of violations never cited, never enforced and asked again that the violations be enforced by the County officials fulfilling their roles.

5. Adjournment 6:40PM.

Prepared by mjj on 08/16/10

Approved by KLK on 8/19/2010 cc: Committee; Full Board; County Admin., Clerk, Website; DNR k/zc/minutes/2010/#7SpecialJuly