

**MINUTES
BAYFIELD COUNTY PLANNING AND ZONING COMMITTEE
PUBLIC HEARING AND PUBLIC MEETING
MAY 20, 2010**

1. **Call to Order Zoning Committee Meeting:** Director Kastrosky called the meeting to order at 4:00 pm. Kastrosky introduced and welcomed Patti Rantala the newly appointed Committee Member. After the introduction he informed the Committee and audience members there were two items on the meeting agenda that have been withdrawn; Todd and Nina Bucher's rezone and Wayne Nelson's alternative development.
2. **Roll Call:** Jardine, Maki, Miller, Rantala & Vice Chairman Rondeau – all present.

Others present were: Director Karl Kastrosky, Deb Kmetz-Office Manager, Doug Casina-AZA, Mike Furtak-AZA and LU Specialist-Travis Tulowitzky.

Director Kastrosky announced election of Chairman and Vice Chairman will take place.

A. Election of Chairman

Maki** made a motion to elect Vice Chairman **Rondeau** as Chairman; **Jardine** asked for closure of the nomination and asked that a unanimous ballot be cast on the nomination. **Motion carried.

B. Election of Vice-Chairman

Jardine** made a motion to nominate **Miller** as Vice Chairman and **Rondeau** moved to close the nomination and asked that a unanimous ballot also be cast on this nomination. **Jardine** motioned to close the nomination. **Motion carried.

3. **Adjournment of Zoning Committee Meeting:**

Jardine** made a motion to adjourn at 4:04pm, seconded by **Miller**. **Motion carried.

4. **Call to Order of Public Hearing:** Chairman Rondeau called the public hearing to order at 4:04pm.
5. **Roll Call:** Jardine, Maki, Miller, Rantala, and Rondeau – all present.

Others present were: Director-Karl Kastrosky, Deb Kmetz-Office Manager, Doug Casina-AZA, Mike Furtak-AZA and Travis Tulowitzky-LU Specialist.

6. **Affidavit of Publication:** Kastrosky showed the audience the April 29th and May 6th affidavit of publication and the certified mailing receipts.
7. **Review of Meeting Format –** Chairman Rondeau explained the procedure of the meeting. He asked everyone who wished to speak to fill out a form; and stated they will be asked to come forward and speak into the microphone.
8. **Public Hearing:**

A. Petition to Amend Ordinance (Section 13)

Kastrosky explained the amendments. **Jardine** questioned the tower height listed as 250'. He stated he was under the understanding it was unlimited. **Kastrosky** stated he was told 250' and was asked to bring the language to Committee. A discussion followed regarding a 250' limit or more. A further discussion followed regarding allowing 300' or 400' and if there is a need to exceed that height they should go to Board of Adjustment. **Kastrosky** said Committee can make the change in time for Tuesday's Board of Supervisors meeting; and he also told Committee he will not be in attendance at Tuesday's meeting.

Kastrosky reviewed each of the remaining amendments and explained why the changes were being made.

Rondeau asked if anyone would like to speak in favor of the amendments. No one spoke. He opened the floor for opposition.

Alvin Bocher, President of the Pike Lake Chain Association spoke. He had concerns with Item #3-Reconsideration for Board of Adjustment (BOA). He said he understood the cost to be \$300 instead of \$800. **Kastrosky** stated there was no fee in the fee schedule and explained the reason for a fee was because the County just spent thousands of general levy dollars on a case. He said we felt when someone is asking to exceed the rules and requests to have another hearing; the cost shouldn't be on the tax payers' it should be the applicant's responsibility. **Bocher** stated the Association would like to see a \$500 charge instead of \$800. He spoke in regards to the recent case **Kastrosky** was talking about. He stated after review of the findings of facts; it was determined the property owner did not require a variance, but the applicant had to pay Bayfield County Conservation Dept. \$300, Zoning \$800 and then had to pay another \$800 to be reheard which was a financial hardship on the family.

Kastrosky gave an account of the case stating the property owner was not present at the first meeting, the presentation was poor and the Board had to make the decision based on the facts they were given. He referenced again the tax payers should not have to subsidize an applicant; therefore the County should set a fee. A discussion followed on whether a fee should be charged if the County was at fault. **Rondeau** stated they may have the option to refund. He was told no. **Maki** felt applicants should not have to pay for County's error. **Rondeau**, **Jardine** and **Miller** agreed that if an applicant doesn't present his/her case correctly the first time a charge for being unprepared is necessary. **Bocher** rebutted stating he has read 3 yrs of BOA case history. He said this case in reference had great stress involved; the ordinance didn't call for it at the time. He felt it was clearly a case where the County was at fault. **Kastrosky** stated the property owner was given the option to ask for an interpretation; they chose not to. He felt both sides had decisions to make.

Discussion ended.

- B. Jeffrey Johnson (Barnes) – rezone property from R-2 to C** [7+-acre parcel (ID #04-004-2-45-09-30-3-03-000-01000); located in part of the SW ¼ of the SW ¼, Vol. 1025, Page 15; less 1.02 acres Hwy, Section 30, Township 45 North, Range 9 West, Town of Barnes, Bayfield County, WI]

Jeffrey Johnson explained his property is on the corner of N and Hwy 27 and he would like to go from residential to commercial. **Maki** questioned what the property would be

used for? **Johnson** said storage buildings. **Johnson** stated the DNR is across the street and across Hwy 27 is a bar.

Furtak explained the property is near the busiest intersection in Barnes. He said the Town approved the request. **Kastrofsky** noted the TBA states: “the land use plan states the whole area should all be commercial”. **Furtak** stated the DNR headquarters is located near the property; a bar is across from the property; up the road is an antique store; and several homes and small cabins are to the North. **Maki** questioned how many buildings are being requested? **Johnson** stated possibly two. **Maki** questioned if he wanted a future of six or eight? **Johnson** said no.

No one spoke in support or opposition.

- C. Richard Stack & Nathan Holden (Barnes) – rezone property from F-1 to R-1** [2-acre parcel (ID #04-004-2-45-09-36-4-02-000-20000); located in part of the NW ¼ of the SE ¼, Vol. 1018, Page 167, Section 36, Township 45 North, Range 9 West, Town of Barnes, Bayfield County]

Nathan Holden spoke as the current owner and explained the previous owner was Stack. He stated there is an existing home on the lot; the lot was parceled out before zoning took effect and the lot is now too small for the current setbacks. He would like to remove the existing home and build a new structure. **Maki** asked how much land was there. **Holden** stated 1.9 acres. **Furtak** said going to R-1 would be reducing the required setback of 75’ to 10’. He stated the existing house is non-conforming and by rezoning it the existing slab, well and newly updated septic can be utilized and the owner would not have to ask for a special exception. He stated there is a 3 car garage and 10 trees on the property which means there probably will not be any forestry practices. The historical use of the property has been residential and is compatible with the land use plan.

No one spoke in support or opposition

- D. Derek Brevak (Washburn) – reclamation plan** [40-acre parcel (ID# 04-050-2-49-05-35-3-04-000-10000; described as the SE ¼ of the SW ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Derek Brevak explained he was asking for a conditional use permit for another 10 yrs to continue with his sand and gravel pit. **Rondeau** stated the reclamation plan is what should be discussed at this time. **Kastrofsky** questioned if the reclamation plan previously submitted had been updated and approved by Land Conservation which would include both 40’s? **Brevak** said yes. **Tulowitzky** said the pit was permitted in 2000. The reclamation plan has not been changed since the original that’s been on file since 2004. **Maki** questioned how close the pit can be from a property line? **Tulowitzky** said there is no setback—except a 3-1 slope has to be established when it’s no longer a pit.

Wayne Nelson stated he was in favor. No one spoke in opposition.

- E. Derek Brevak (Washburn) – continue operation of gravel pit** [40-acre parcel (ID# 04-050-2-49-05-35-3-04-000-10000; described as the SE ¼ of the SW ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Derek Brevak asked for another 10 yrs on his existing sand and gravel pit. **Kastrosky** asked if there will be material left to do this again in 10 yrs. **Brevak** said he didn't know because 13 yrs ago when they did test holes they found 30,000 yards of gravel; but as time went on and the removal of sand occurred more rock became exposed. **Brevak** stated the reason he is asking for another 10 yrs is because Hwy 13 and C projects may be coming up for bid and he wants to take another stab at it. **Maki** asked if they can approve longer than 10 yrs. **Kastrosky** said he didn't see any duration on the application. **Tulowitzky** stated 10 yrs was asked for on the original application. **Kastrosky** and Brevak discussed changing the duration would constitute going back to the Town because the Town's recommendation was for 10 yrs.

No one spoke in favor or opposition.

Kastrosky stated the Town Board and Planning Commission approved. He said there will be a limit on noise operation and daylight hours. **Brevak** stated the noise problem is when a crusher is brought in. He's had a crusher twice in the last 10 yrs; they crushed for a week at a time but not on Sunday's. He stated he has a gentleman's agreement with Potters Farm. He agreed if they have a spiritual retreat he won't operate on that weekend or whatever, but he also expressed to them and the Town Board that if a crushing outfit is scheduled they are on a deadline and they go from one pit to the other because of the short season. **Jardine** questioned operating on Sunday's? **Brevak** stated there is no operation on Sunday's.

Kastrosky stated there is a letter of concern in the file from Steve and Lynette Secora. **Brevak** said their property is part of Potters farm. He stated from what he understands this guy has part of the pow wow's on his property and they go from 6:00 am to dark all weekend or as much as 4 or 5 day weekend. **Brevak** stated he feels this is a contradiction. In addition he stated this guy asked him if he could purchase 5 more acres of property which would make him even closer to the pit than he is now, so if it's such a detriment why would he want to be closer. **Maki** stated that quite a bit of noise has to come from the Secora event. Brevak stated yes and not only have the adjacent property owners heard it.

Kastrosky stated the Plan Commission said it is compatible with their comprehensive plan.

Tulowitzky explained that the pit is 7 acres in size and is in the middle of 80 acres, it is not near property lines.

- F. Derek Brevak (Washburn) – reclamation plan** [40-acre parcel (ID# 04-050-2-49-05-35-4-03-000-10000); described as the SW ¼ of the SE ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Rondeau asked if this was the same deal. Brevak said same deal.

No one came forward in support or opposition.

- G. Derek Brevak (Washburn) – continue operation of gravel pit** [40-acre parcel (ID# 04-050-2-49-05-35-4-03-000-10000); described as the SW ¼ of the SE ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Rondeau asked if there was anything new on this one. **Brevak** stated it is one of the 40's listed.

No one came forward in support or opposition.

Jardine questioned if there were a couple of letters of disapproval? **Kastrosky** stated just the one that was previously discussed.

9. Adjournment of Public Hearing:

Miller made a motion to adjourn, Maki seconded. Motion carried. Adjourned at 4:56 pm.

10. Call to Order of Planning and Zoning Committee Meeting: Kastrosky called the meeting to order at 4:56pm.

11. Roll Call: Jardine, Maki, Vice Chairman Miller, Rantala, and Rondeau –all present.

Others present were: Director Karl **Kastrosky**, Deb Kmetz, Office Manager, Doug Casina, AZA, Mike **Furtak**, AZA and LU Specialist Travis **Tulowitzky**.

12. Minutes of Previous Meeting(s): **Rondeau** stated the minutes are for April 15th. **Jardine** motioned to approve and **Maki** seconded. **Miller** mentioned the Review of Meeting Format needs to be corrected; it stated Chairman Jardine instead of Beeksma. **Motion carried.**

13. Business:

A. Petition to Amend Ordinance (Section 13)

Kastrosky talked about the 2 issues of concern; reconsideration fee and tower height.

Rondeau stated Item #8 should say Planning and Zoning Dept. **Kastrosky** stated that could be changed at the County Board meeting. He stated if they thought the tower language was too rough or needed more time they can wait until Tuesday and make the decision.

Jardine stated he would compromise and go to 300'. **Miller** questioned allowing 400' because permits are required from other entities as well? **Kastrosky** questioned if he understood the Committee as recommending a change from 250' to 400' if the applicant can demonstrate the need with the criteria as listed? Committee answered yes. A discussion followed regarding the fee for reconsideration. It was decided the tax payers should not have to pay for reconsideration if the Board of Adjustment will allow a case to be reheard. **Kmetz** noted that not only is a legal fee involved, but a Class 2 legal notice, mail notification to adjacent property owners, the cost of the court reporter, and mileage and per diems for board members.

Maki motioned to accept the petition to Title 13 as presented with the changes discussed [i.e. 400' height, \$800 reconsideration fee w/clause & name change]. Miller seconded. No further discussion. Motion carried.

B. Jeffrey Johnson (Barnes) – rezone property from R-2 to C [7+-acre parcel (ID #04-004-2-45-09-30-3-03-000-01000); located in part of the SW ¼ of the SW ¼, Vol. 1025,

Page 15; less 1.02 acres Hwy, Section 30, Township 45 North, Range 9 West, Town of Barnes, Bayfield County]

Jardine motioned to approve the rezone from R-2 to Commercial, *Rantala* seconded. *Kastrosky* explained the motion should state it's compatible with the Town land use plan. The discussion was accepted and so moved. No further discussion. **Motion carried.**

- C. Richard Stack & Nathan Holden (Barnes) – rezone property from F-1 to R-1** [2-acre parcel (ID #04-004-2-45-09-36-4-02-000-20000); located in part of the NW ¼ of the SE ¼, Vol. 1018, Page 167, Section 36, Township 45 North, Range 9 West, Town of Barnes, Bayfield County]

Miller motioned to approve with compatibility. *Maki* seconded. No further discussion. **Motion carried.**

- D. Derek Brevak (Washburn) – reclamation plan** [40-acre parcel (ID# 04-050-2-49-05-35-3-04-000-10000; described as the SE ¼ of the SW ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Maki motioned to approve. *Jardine* seconded. No further discussion. **Motion carried.**

- E. Derek Brevak (Washburn) – continue operation of gravel pit** [40-acre parcel (ID# 04-050-2-49-05-35-3-04-000-10000; described as the SE ¼ of the SW ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Miller approved with town conditions: 10 yr duration, daylight hours, and no activities on Sunday and it's compatible with comprehensive plan, *Rantala* seconded. No further discussion. **Motion carried.**

- F. Derek Brevak (Washburn) – reclamation plan** [40-acre parcel (ID# 04-050-2-49-05-35-4-03-000-10000); described as the SW ¼ of the SE ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Jardine motioned approval. *Maki* seconded. No further discussion. **Motion carried.**

- G. Derek Brevak (Washburn) – continue operation of gravel pit** [40-acre parcel (ID# 04-050-2-49-05-35-4-03-000-10000); described as the SW ¼ of the SE ¼, Vol. 625, Page 200, Section 35, Township 49 North, Range 5 West, Town of Washburn, Bayfield County, WI]

Rantala motioned to continue to allow Mr. Brevak to continue the operation of his gravel pit based on the same conditions [10 yr duration, daylight hours, and no activities on Sunday and it's compatible with comprehensive plan]. *Miller* seconded. No further discussion. **Motion carried.**

[Rondeau made note that the next two items were withdrawn]

- H. Todd Bucher (Delta) – rezone F-1 to R-RB (tabled 4/15/10)** [8-acre parcel (ID #04-016-2-46-07-17-4-02-000-20000), located in part of the NW ¼ of the SE ¼, Section 17, Township 46 North, Range 7 West, lying North and West of the River in the Town of Delta, Bayfield County, WI]

Withdrawn

- I. **Wayne Nelson & Robert Nelson (Russell) – alternative development (9 bldg sites)** [60-acre parcels (ID# 04-046-2-51-04-22-1-02-000-10000 & 04-046-2-51-04-22-1-03-000-20000), located in NW ¼ of the NE ¼ & part of the SW ¼ of the NE ¼, Section 22, Township 51 N, Range 4 W, Town of Russell, Bayfield County, WI]

Withdrawn

- J. **Mark Furmusa (Russell) – alternative development (4 bldg sites)** [34.84-acre parcel (ID# 04-046-2-51-04-22-1-03-000-31000), located in part of the SW ¼ of the NE ¼ and the SE ¼ of the NE ¼, Section 22, Township 51, Range 4 W, Town of Russell, Bayfield County, WI]

Wayne Nelson representing the applicant spoke. He stated its pretty straight forward; they have been working with the Town of Russell for the past 2 years on this plan. He stated the Planning Commission and the Town Board approved it. It's basic and on property that was logged off. They already have a special use permit for agricultural. **Maki** questioned how big the sites are? **Nelson** said 35 acres; 4 bldg sites with 50% open space which is larger than it needs to be and some of the lots are 12 acres in size. **Maki** questioned if this green space has to be recorded? **Kastrosky** stated yes the preliminary is in your packets showing buildable area, and buildable core area of the lots. **Kastrosky** talked about additional plan requirements and where it is shown on the map. He questioned Nelson on the use of the open space because it wasn't described? **Nelson** said the intent is to use the open space as agricultural and agricultural related activities.

Maki questioned the required 20-acre minimum lot size? **Kastrosky** said the Towns overlay is 20-acres, if you chose to go below that they have to ask for an alternative development and that is what is being proposed. They are asking for four 10-acre parcels and to have 4 homes on 40-acres because they are setting aside approximately 45% of the area to be open and never developed.

Miller asked if Town approved it. The answer was yes on May 11th. **Kastrosky** stated the Committee ultimately has the responsibility; the Town is only a recommendation. **Jardine** questioned if there was anything that was a hot spot or sore spot? **Kastrosky** read ordinance language #5 it talks about additional plan requirements; it states it must meet all requirements of the county ordinance in which he believes it does. It talks about a plan on how the minimum open space will be used and maintained. He stated he didn't know if talking about agricultural is a plan; he thought maybe it could be indicated on the final map that open space is for agricultural purposes. It talks about any lake, stream access which he stated doesn't apply, any wetlands. It states the Committee shall require submission of draft protection covenants. He has a list of covenants which **Nelson** told him are already recorded as a deed restriction on the open space. **Kastrosky** stated it must be compatible with the land use plan; and he stated the pink sheet does state it is compatible with land use plan.

Jardine stated he is unfamiliar with alternative developments and was wondering if there is anything the Committee can set for conditions other than what the ordinance states is required. **Kastrosky** responded by discussing the standards of the ownership of minimum open space. He explained a certified survey is required which is an expense to

the developer(s). He stated it has merit but it's more work. **Rondeau** stated the Town of Russell decided an overlay district would work; but have since found out that the overlay wasn't working for everything, so they felt the alternative development would work. **Rondeau** told Committee Members he feels this method is pretty restrictive already.

Maki spoke in regards to the Town wanting 20-acre parcels; now they find out its not working. He wanted to know if the County is in a position that whenever the Town of Russell wants a change; is Committee going to say yes or are they going to say enough is enough? **Kastrosky** explained that this overlay development is way stricter than our County ordinance, so he doesn't feel the Town has been given special treatment. **Maki** stated he feels a certain group of people were involved in this land development that resulted in the rule changes. **Kastrosky** stated this alternative development is only a relief valve; this type of development was already built into the 20-acre parcels.

Nelson gave a history. He stated he has been studying this with the Town for the past 2 yrs and this is one of first ones coming to the County. He said it's a whole lot easier to deal with the County and Zoning ordinance, which is set up pretty simple on a 4 ½ acre parcel in forestry. He stated this is a unique parcel and several people sat down with the Town for almost 2 yrs regarding the 160 acres. The Town wanted more open space and more agricultural land. This new development allows a cluster of homes on a ridge with the open space the Town wanted. He stated this type of development appears to work well, but he stills has a hard time picturing how it will work next year or even 10 yrs down the road. **Kastrosky** stated the other alternative is to allow everyone to build on 4 ½ acres with no rhyme nor reason; which would be a cookie cutter approach. **Nelson** stated this is good for the Town; it does what the farmland preservation act did; except you didn't have to buy the land to keep it agricultural. Each developer has to put in 45% of open space. The theme of this is 86-acres have to be put in open space and can never be developed; just set aside for agricultural. The Town was unanimously in favor of this; however some neighbors were complaining and don't like developers. When this project is done there will be nice home sites and a lot of open space being turned into Ag land. He stated it seems to work but the Committee will have to monitor this for a long time because it's a rare thing for this County.

Tulowitzky noted that the County's ordinance is more restrictive. **Kastrosky** stated only if the property was a forestry zone. **Tulowitzky** stated the property proposed is in a forestry zone. **Maki** stated again that the County was asked for 20-acre parcels, but now it doesn't fit certain people needs so they came up with this. **Miller** stated something is getting misunderstood because the alternative development was in the initial plan that they passed. **Kastrosky** agreed the alternative development came at the same time the 20-acres minimum came through. **Nelson** agreed he said the only thing that has happened is there was a modification to what you can do with open space.

Maki questioned who retains the open space? **Nelson** said Fumusa. He stated each individual owner has their own open space so they can farm it. **Miller** questioned; when no one wants the open space anymore the County will get it back because they don't want to pay the taxes on it anymore? **Kastrosky** stated he doesn't know how they can do that because it is part of a lot. The only way that could happen is if the open space could be divided off and still meets the minimum requirements. **Nelson** said that was solved by the certified survey requirement. **Kastrosky** said whoever owns the lot will have to give the house back also.

Jardine moved to approve, seconded by **Rantala**. Discussion followed whether the Committee would open the floor to the public? Committee agreed but with a limited time of 3 minutes.

Kathy Wendling stated she was speaking for herself and a couple of people from the Plan Commission because of the confusion of this request. She said 3 members voted for this and 2 abstained because they felt the application was not complete. There are three things missing: (1) the required open space plan; a developer can't just say they are putting it in agricultural; it needs to show a plan for each piece of open space. (2) it needs a statement on how the proposed development is consistent with the land use plan, and (3) there are mapped stream and wetlands on Lot 1; it's not clear because it's not drawn into the preliminary certified survey map. She stated it's unclear as to where the stream and wetlands are so she questioned whether Lot 1 was buildable, it's hard to tell. She questioned if the easement into the whole property goes over the wetland and the stream? She stated 3 of the Commission Members didn't care and they voted it in, that is why she is present today; because the application is not complete. She stated a rule is a rule; these are requirements of the Town's overlay.

Wendling referenced e(1), e(5), and e(5)b of the Russell Overlay language were not followed. She said this is important because last fall the overlay language was changed. The open space use to be deeded undivided to everybody who had a lot there and could share the open space and now the open space can be owned by any number of people. It can be divided up and given to each person who has a lot or one person can own it all. She stated the real issue here is; if it is divided into lots-each owner can fence it off, and each owner can do different things with it. She noted as Kastrovsky stated earlier they are not restricted they just can't build on it. She questioned how this was going to be monitored for the use and maintenance. She stated Karl told her the neighbors could watch, but she felt the neighbors wouldn't know where the open space was and what its use should be. She asked the Committee to table the item and ask for the three things the Town specifically asks for in their overlay.

Jardine questioned if anyone on the Committee or Kastrovsky was aware of the three things missing? **Kastrovsky** stated the wetland and stream would be identified on the survey map.

Wendling explained 2 of the Plan Commission Members felt things were not answered so they didn't vote, but the other three did; so it passed. She said often even the Town Members and Plan Commission Members are not fully versed in the overlay district.

Rantala questioned Kastrovsky whether he was aware of the three items and if they have been taken care of? **Kastrovsky** responded by saying wetlands and streams are required to be shown on the certified survey map and if the lot is unbuildable that also must be shown on the CSM.

Rantala asked if each person who owns open space would have to sell the house with it. **Kastrovsky** said with this particular survey map and ownership; the open space has to be retained by the owner. He questioned **Nelson** asking if this was correct; otherwise it would not meet the 45% open space criteria.

Jardine questioned if he understood it right, the open space could not be sold off separately? **Miller** stated he would not approve anything like this unless the open space is attached to the owner of the property. **Kastrovsky** noted a condition could be placed

on these lots stating they cannot be further divided in the future. The Committee has the option to place conditions.

Nelson stated the three items were brought up and discussed before the 3 members voted. He noted they liked it and it was according to County Zoning requirements. He stated as **Kastrosky** talked about; the certified survey map has listed on the punch list all wetlands have to be clearly marked and it has to go through the County Surveyor. He also stated there are several pages of covenants attached. He asked **Kastrosky** to read the covenants so they know just how restrictive this land is. **Nelson** said everything was addressed at the Town and Planning Commission level, and he is not happy that this is coming to the Committee as a side shoot to confuse them or to make them think something was coming to them fast. He stated this has been talked about for 2 years and it is pretty simple and laid out as simplified as can be.

Jardine questioned open space again and whether it has to go with the 4 lots? **Nelson** said in this case where it sits on lots 1, 2, 3 & 4 it goes across all the lots and they are defined on each individual lot on the survey map, that's the way it is being presented. **Jardine** stated then they cannot be sold off separately or split off? **Nelson** stated nothing is being done at this time; but the County has a law that allows that to happen if someone came forward to do it. He stated the Committee's previous approval allows some of this open space to go to someone else. If someone wanted to buy 15 acres of open space provided they didn't change the minimum requirements of the County already, there is an ability to buy some open space and start an agricultural farm. He explained that is what the Town wanted. The flexibility was built into what was adopted by the zoning overlay. **Miller** questioned who retains ownership right now of the open space? **Nelson** stated Fumusa. **Miller** asked **Kastrosky**—if Fumusa gets tired of paying taxes on the open space will the County get it back. **Kastrosky** said if the open space is on your lot you can not give it back. He stated in this particular instance when they own the open space it goes with the lot. He told the Committee again they can put a condition stating the lots cannot be further divided; which means the open space would never come off of them. He stated the only way the open space could be divided is if someone bought all 4 lots with houses and had 1 lot of open space; but he didn't believe this could happen in this incidence because mathematically it wouldn't work. He also stated any changes to any of the lots would require a change in the certified survey map.

Rantala questioned if she understood this to mean each individual lot stays the way it is presented until someone asks for a change on the survey map. **Kastrosky** stated that was correct.

Kastrosky stated he didn't know how far the Committee wanted to go with the farming practices, it can continue to be beaten to death, whether it could be pigs, chickens, cows, apple trees or hay, and whether anyone cared because it appears to be all farming? **Tulowitzky** stated it is suppose to be part of the plan by ordinance. **Tulowitzky** questioned if anyone knows what the future land use designation is for this property? He said it is zoned forestry right now, but the proposed use is Ag and Residential. **Nelson** stated this property is already approved for agricultural purposes. **Tulowitzky** responded that was because a special use permit was approved. **Miller** questioned if the open space was going to be clear cut? **Nelson** stated it has already been clear cut and seeded, it now has food plots and sunflowers.

Miller noted as it stands now the open space can be divided and sold off anywhere.

Nelson stated this very conversation happened at the Town level and the Planning Commission. The Town said as long as the lots (not open space) are buildable and meet the County's requirement of 4 ½ acres and 300' min average width; they didn't care what anyone did with the open space. If someone wanted to sell it, lease it or outright give it to the school district, a neighbor, or a co-op fund they could; as long as it's open space they are happy; they did not want to restrict it to where you wouldn't have something that wouldn't work. In this situation it is basic and it is the first request coming before the County on this new concept. **Nelson** said this is what the Town is really pushing and it's something they really want to do; it is far more complex than the normal way of doing it.

Miller stated when divided like this he would like to see the open space stay on the tax role. **Nelson** assured him it would have to stay on the tax role. **Miller** and **Jardine** disagreed. **Jardine** noted if it goes to a school that wouldn't happen. **Nelson** stated the certified survey would have to have a parcel approved on it; it would then go to that person, that person would pay tax on it, and if they didn't—the County takes it back and sells it. He stated the good thing is it starts getting the inexpensive farmland out to promote farming and that's what the Town really wants to do. **Miller** stated the County is not in the business to divide land and then take it back to sell. **Jardine** stated this sounds like a scam to him. When someone can take a lot and have 45% in open space, then later on decide they don't want the open space; just doesn't seem right to him. **Miller** agreed and stated unless we tie the open space to each lot. **Kastrofsky** stated it is tied by the survey map now. **Miller** stated it is not tied to the lots as far as ownership. **Kastrofsky** stated you cannot stop paying taxes on the open space. You can't just say you are only paying half of your taxes. **Miller** stated it can still be sold off and divided. **Kastrofsky** agreed but stated the open space is attached to each one of the lots they have in front of them. He noted if Committee feels this issue is important enough a condition should be placed on this application that states; the lots cannot be further divided in the future. With that condition the open space cannot be sold off. He added that Mr. Nelson may not like it; but it is the decision of the Committee.

Miller asked Nelson why he was in objection to the condition. **Nelson** stated his objection would be if they capped it, it wouldn't allow for larger farms, they would keep getting smaller and smaller. People are up here looking for 10, 15, 20-acres so they can actually farm, they're not looking for 5 acre parcels. He stated this overlay district allows larger farms to happen.

Rantala questioned whether she understood it to mean? If she owned one of the lots, Jardine had one, Maki had one, and Miller had one and someone decided they didn't want to farm their open space they could sell it to the neighbor so they could expand their farming as long as the person selling retained the minimum the County requires which is 5 acres.

Kastrofsky stated she is correct. The main concern is the open space remains open.

Maki stated he feels the discussion regarding agricultural on this space is trivial, he said he doesn't see anyone farming on the rock pile that is there. It is simply to get it through so the land can be sold just as long as it complies with the new rules.

***Jardine** stated he was uncomfortable with the situation and made a motion to withdraw his previous motion. **Rantala** stated she was satisfied but as long as there are still questions, she will withdraw her second on the previous motion. **Rondeau** stated no*

motion on floor. **Miller** stated if the previous motion was already on the floor, seconded and opened for discussion the body owns the motion; therefore it cannot be withdrawn. Committee Members were in agreement and went on to a discussion. A discussion followed and it was decided that the property owner played by the County rules and even if the County gets the land back we will be gaining more taxes on the homes than if it was vacant land. The previous motion was to approve Mark Fumusa alternative development for 4 building sites.

Kastrosky questioned the Committee whether they were satisfied with no plan for the open space? **Rantala** stated they followed the rules; how much more should they be put through. **Maki** stated **Kastrosky** came up with a condition. **Miller** stated the condition was no further division. **Miller** stated in regards to the open space plan; if someone makes a plan and states what they are going to do, as soon as it changes hands aren't the new owners going to do what they want on it anyway. **Kastrosky** stated the plan would stay in place but the Dept would have to chase it.

Call for Vote: In favor: **Miller, Rantala and Rondeau**. Opposed: **Jardine and Maki**. Motion carried. 3 yes / 2 no.

**[Chairman Rondeau called for a break at 6:09 pm.
Meeting reconvened at 6:14]**

K. Ronald Nelson & Steven & Debra Nesheim (Russell) - alternative development (4 bldg sites) 20-acre parcel (ID# 04-046-2-51-04-22-1-01-000-11000), located in part of NE ¼ of the NE ¼, V. 1022 P. 178 less V. 1024 P. 554, and a 20-acre parcel (ID# 04-046-2-51-04-22-1-01-000-12000), located in part of the NE ¼ of the NE ¼, V. 1024 P. 554, Town of Russell, Bayfield County, WI]

Rondeau questioned if this is the same as item J? **Nelson** stated yes and he will be speaking on behalf of his brother Ronnie and noted that Steve was present. **Nelson** said the Committee has the preliminary survey in front of them with the map. He stated there is about 15 acres of actual agricultural land that has been agricultural for some time. He stated the property has been split up into 4 lots, there is a house on one of the lots already and the other three would be in the wooded area away from the agricultural, but everything else applies.

Maki questioned if any of the land has been sold? **Nelson** stated yes, his brother bought the entire 40 and split it into two 20's with the Town's plan, but the County didn't have any way of going through it until now that it is being requested to divide into 10's. He stated this development has 51% of open space. **Kastrosky** stated the open space had to be equal a few months ago and now it is not required to be equal.

Kastrosky questioned **Nelson** if the special use permit that was obtained in the past applies to this parcel? **Nelson** stated no. **Kastrosky** stated the property is zoned forestry-1 and in our ordinance agricultural practices require a special use in a forestry district. He questioned **Nelson** on what type of agricultural practices does he anticipate happening on this forestry land? **Nelson** stated it is an orchard at the present and the guy who owned it previously had cows. His brother purchased the land, it has overgrown apple trees and some hay. **Nelson** showed the Committee an aerial.

Kastrosky stated the Town approved the application and stated it applies to the comprehensive plan. **Kastrosky** stated the Committee will need to follow ordinance and

make sure the requirements are fulfilled. He asked them if they were comfortable with the plan regarding the open space being agricultural.

Rantala questioned him as to what he meant by that statement? He said I previously mentioned agricultural could mean pigs, cows, or ducks, he didn't know if they wanted to define it as such. He stated if the Dept gets a call stating there are 35 chickens; we will be able to tell them it is an agricultural practice and it meets the plan for the open space. If you are satisfied with that type of plan then the Dept won't have to count chickens we can state it complies with the plan. He noted if there are any wetlands, rivers, streams impacted it will be identified on the certified survey map. If there are any unbuildable lots they will also be identified on the map. He told Committee they may want to place a condition that states this permit will not be issued until the certified survey map has been recorded.

Miller questioned if chickens are allowed on the open space would a chicken coop be allowed to be built? **Kastrosky** stated no structures are allowed. **Nelson** stated he brought this issue up at the Town level and he said the words were specifically put in regarding no structures.

Kathy Wendling spoke and stated the Town's question on this is there are two owners and they each own 20 acres; they are not owned jointly. She stated this is a bad precedent allowing people to get together and put their property together as an alternative development. She stated that means she could go together with her neighbor when he has hunting land and that would allow her to put twice as many lots on her 40-acres because he doesn't want to do anything but hunt. She questioned if this was the right thing to do? Why do you not require each owner to submit their own alternative development separately? She also wanted the Committee to be aware that the packet came to the Town last Tuesday; it did not come to them 8 meetings in the past as previously stated. There was no open space plan as required by the overlay requirements. The Town requires the open space plan and wants to see ordinance followed. She stated she is not saying this overlay development shouldn't happen; she is saying the Town has requirements. She would like to see them followed and the Town would like to see it next time. They don't like applications coming to them without the required portions of the packet they ask for. She stated the Town meeting was an hour long and it was followed by another meeting—so this got pushed through. The open space plan was not there, the statement was not there, and the question of two owners coming together was unanswered. **Miller** questioned whether these issues were brought up with the Town? **Wendling** stated the people on the Committee were told the County would make sure the application was complete; it wouldn't come to the Town without a complete application. She stated she called Kastrosky and he stated there was no plan for the open space. She remarked if we have rules why are we not following them? She asked the Committee to table this issue and have it come back with the plan?

Miller stated the Committee cannot sit at the Town meetings and tell them how to run their meetings. She stated she understood that, but the County is responsible when they receive the application to make sure the overlay is followed. **Maki** agreed and stated we are obligated to have it. **Wendling** stated if the issue doesn't get taken care of at the County level, it won't be taken care of because the Town assumes the County will make sure all the pieces are in place. These should not be pushed through.

Miller asked for Kastrosky's advice? **Kastrosky** stated as far as 2 owners or 10 he doesn't see a problem, it's by CSM. If the Committee wants to ask for a 2 lot CSM on

one and then ask for another 2 lot CSM on the other; they can do that but they wouldn't see the entire picture.

Kastrosky questioned the open space and how the open space is to be used and maintained. He stated he doesn't want to play the game of what the definition of a plan is. He questioned if the plan states for agricultural purposes; is that good enough? **Miller** stated he feels it is; he doesn't want to say they have to plant barley this year and then come back to plant corn the next.

Maki stated the Committee didn't write these rules; the Town did. These plans are required when you apply for this type of development. They were not given to us on paper or as a plan. We passed the first one already without it. He didn't feel they should be setting a precedent and passing this one. **Maki** stated rules are rules; the Town should follow them and the Committee should follow them. **Miller** stated the Town approved this, so evidently the Town felt the qualifications were met.

Kastrosky stated the Town wrote the rules not the County. He wanted the Committee to keep in mind the Town of Russell is only advisory and this Committee is the legal decision making body. **Miller** commented it all depends on how agricultural is defined. **Kastrosky** agreed and stated obviously no plan was good enough for the Town and if it's good enough for the Committee—then it is. If you want more detail you can certainly ask for more. He stated it's whatever the Committee is comfortable with. **Rondeau** stated it could be approved with the statement that the open space must be maintained as agricultural. **Maki** stated if we have rules, follow them or else get the ax. They didn't bring the plan to the Town or us. They need to follow the rules.

Kastrosky agreed then asked if the Committee requires a plan; what do they want on the plan? **Rantala** questioned if the Committee would be adding more criteria at this stage if they requested more. **Kastrosky** replied he didn't feel the Committee would be; they would just be filling in the gaps the Town missed. **Maki** stated the Town wrote the rules let them figure it out. **Miller** replied by stating the Plan Commission approved it and the Town approved it, and now we should say it's not complete.

Miller made a motion to approve the 4 building sites, Rantala seconded. [Discussion:] Rantala commented it's Ag now and if someday down the road someone says I haven't fertilized, reseeded and the hay field is in poor shape and I'm not quite sure I want to open myself up in the future to be told what to do. She stated she didn't feel the Town of Russell came up with a plan that says this is how many years we want it planted and what planted. She stated had they come up with that type of a plan she felt she may be in a different position. Kastrosky said they did not do that. Miller thought it was ridiculous to require something. Kastrosky agreed and stated how can you afford someone to farm, how can you do that? He stated at least the space is open.

Rondeau asked for a roll call vote: **Maki-No, Miller-Yes, Rantala-Yes, Jardine-yes and Rondeau-yes. Motion passed. 1 no / 4 yes**

L. Discussion and Possible Action regarding Loon Echo Bay alleged violation(s)

Kastrosky questioned whether the Committee was aware of the scathing emails being sent around stating the Dept's lack of enforcement or willingness to do anything on the Loon Echo Bay violations? He stated he was on the property with Furtak, Rondeau, and Randy Matis, Chairman of the Board of Adjustment. He recapped the alleged violations

and potential responses to them. He stated the Dept was not negligent in their responsibilities and it did not take 3 months to act. This has been ongoing. The Bony Lake project was not appreciated by some of the adjoiners from day one and they won't let it rest. He said a brief summary of the observations are indicated in the memo the Committee has along with the email trail. He said it's accurate, factual and to the point. He believes the activities planned to curtail or mitigate what minor issues have happened on the site is probably the most practical and the most productive. He stated it did go as far as the County Administrator receiving a letter asking for an apology; however it wasn't shared with him. He stated he wasn't going to send an apology unless he was instructed by the Committee because of the facts. **Maki** asked who the apology was supposed to be to. **Kastrosky** replied to one of the people he asked to leave the property on three occasions. They did not have permission to be there. He stated he received an email from a person asking to meet on the property. He said no; but the Dept will apprise them of the findings once it happens. He was not going to open sites up for the public to come in and basically intervene or have privileged information they're not to be accessible too. The property is private property and the only ones with permission were him, Mike and anyone they wanted to bring with them.

Rondeau stated he was out on the property the day it snowed, which wouldn't be any big deal. He gave an explanation: Furtak measured the viewing corridor which was to be 20'; it was probably 22' and there were still trees in the middle. In one spot about 24' they had cut out 5 clumps of tag alder bushes which he felt would grow back twice as big and twice as many in a couple of years if left untouched. He stated the viewing corridor was not clear cut and there was beaver damage. He stated the complaint about the retaining wall for the run off of the house is over 200'. There were slopes that were generated to have the surface runoff not go to the lake. **Rondeau** said his thoughts on the violations would be like getting a ticket for going 56 mph in a 55 mph zone.

Miller questioned Kastrosky as to what he wanted the Committee to do? **Kastrosky** stated he just wanted the Committee to be apprised as to the factual story. Kastrosky stated the Administrator met with 3 individuals who were looking for action. **Maki** questioned why the Administrator was involved instead of them coming to the Committee first? **Jardine** stated as a last resort, and **Rondeau** stated they must have felt the Committee or Dept wasn't doing anything. **Kastrosky** stated the Administrator has the right to listen to complaints. **Maki** feels the Administrator should give Committee business to the Committee to handle.

Rondeau thought a motion should be made to accept the conclusions the Zoning Administrator and Dept Head made in this situation.

Kastrosky stated this is not an easy job and he is looking for continue credibility from the Committee on how the Dept is run and what actions it takes when the public doesn't see it that way. He stated the Dept credibility is on the line and he respects the job the Dept does; but not everyone is going to like it. He told Committee he does not appreciate receiving letters of this nature.

Kastrosky noted the Barnes overlay approved last year is being pushed hard on the rest of the County to adopt and in doing that our actions are being discredited to say these overlays don't work because the County will not follow up. That is not true. **Furtak** has responded to every phone call, email complaint, and made several site visits.

Furtak stated the Dept will require a plan of action and have it completed. **Miller** questioned whether any violations remain? **Furtak** stated there is a small violation. **Kastrosky** noted there will be no citation issued, but they will be asked to do a planting of species and trees that beavers will not eat and he felt confident the owners would do it if asked.

*Rondeau motioned to accept the decisions of the Dept and recommendations being put forth to Loon Echo Bay. **Maki** seconded. No further discussion. **Motion carried.***

M. Citizens Concerns and Input

- **Kathy Wendling** requested the next application before the Committee in regards to an alternative development in the Town of Russell should have a formal plan attached for the use and maintenance of the open space. She asked the Committee to please not ignore the Towns overlay? **Rantala** said the Town should be addressing that issue. **Miller** stated Kastrosky should talk to the Town to make them aware of what is required. **Kastrosky** stated if it's not complete it should be sent back to the Town for completeness and tell them it will not be heard until it's complete. **Furtak** reminded the Committee the Town has the option to table if they haven't received sufficient information. **Kastrosky** agreed and stated it is a Town problem and that is where it needs to be fixed.

- **Maki** asked when is a storm water permit is needed? **Tulowitzky** stated a DNR permit is required when you disturb 1 acre or more and a permit is required from Zoning if you develop 15% or more of impervious surface within 300' of a water body.

Maki questioned what kind of timeline DNR has? He was told to contact Bruce Moore out of the Ashland office. **Maki** stated the DNR and Army Corp of Engineers are involved in most of these and it takes a lot of time and money. He asked whether there was a way to expedite any of these through our Office. He questioned why Lobermeier can't handle this issue? He was told the storm water management program is a DNR program not County, so the DNR would have to approve

- **Jardine** spoke to the Committee in regards to a training he attended at Lakewood's. He advised them that any major items should be part of the agenda and not discussed under citizens concerns.

N. Discussion and Possible Action on Comprehensive Planning

Kastrosky said we are moving along and all the plans are on the Zoning website. They should go to print next week. He stated he is not totally happy with the consultant and the response time. He also noted about \$20,000 is still owed and will be withheld until it's complete and the County's satisfied and the terms of the contract have been met.

O. Discussion and Possible Action on NR115

Kastrosky noted the State shoreland regulation has just been changed and Bayfield County was fortunate to have been involved in the writing of the rules. The language should be done by June. He stated the County applied for a \$5,000 grant to do the legal work and have the language adopted into our ordinance by Dec 2011.

Miller questioned rules regarding inland lakes. **Kastrosky** stated the new rules will affect our area and we will also lose flexibility. He gave a few examples: [1] no new additions to buildings <35'; [2] cannot add to the back of your house unless you are 75'; but you can go up in certain cases; and [3] in the first 35' of the buffer you can't cut a tree without a permit and restoration plan even if the trees are dead or dying. **Maki** said we should go on record and write a letter against these rules. **Kastrosky** stated he did and he also testified. **Maki** asked to have the DNR and Army Corp present at one of the meetings to question them on the length of time it takes to get a permit, and to ask how much longer it will take with these new rules and how they intend to enforce them. **Kastrosky** stated he would call them but not for next month's meeting because it was a big agenda. Committee agreed to have them at the following months meeting (July).

P. Discussion and Possible Action regarding Telemark issue(s)

Kastrosky noted there was talk about holding a special meeting. He gave Rantala a short history on the Telemark issue. He continued explaining there had been talk as well about setting up an oversight Committee to look over the aesthetics and development. He stated now after 5 months of preparing; the developer hasn't been able to raise the money needed so it's kind of going by the wayside...he thinks. He stated he was to have a meeting with the developer and it was cancelled, so at this point he pretty much thinks it has been put on hold. He informed the Committee that Telemark has been closed but the good news is; there may be a potential buyer that apparently can come to the table and purchase the property.

Q. Discussion and Possible Action regarding reclassification(s)

Kastrosky stated he received two requests this year for reclassifications. He noted the Committee should have copies of them. He explained he supported one and the other one he did not—with the reasons written. He stated he wasn't sure if the Committee gets involved in the personnel matters or if they make recommendations to Personnel or the Administrator, but he wanted to keep them apprised of what was going on. **Rondeau** commented that some Committee's do, but he feels every Committee will recommend them. He prefers to hear what the Dept Head has to say; and with him being on the Personnel Committee he doesn't want to feel obligated to vote for it. He stated the Administrator makes the initial recommendation in the end. Miller agreed because he is also on Personnel.

R. Other Items that may come before the Committee (Discussion Only)

Jardine commented this agenda item as well as the other one (Item M) should not be on agenda. If something is important enough to bring forward it should be an agenda item. **Rantala** noted the reason for omitting Item M. and R. from the agenda is because the public will not be advised as to what the Committee is doing.

- **Tulowitzky** stated John Spangberg from the DNR asked if the Committee would like him to come to a meeting and explain how determinations are made by the DNR versus the County in regards to wetland, navigability and high water marks. He noted Spangberg has confidence in the Dept. The Committee felt they would like him to come and speak.
- **Kastrosky** told the Committee to be prepared for next month's meeting it will be huge. He didn't believe it would be controversial but it has several items to address.

14. Monthly Report

Jardine motioned to approve, Rantala seconded. Motion carried.

15. Budget and Revenue

Kastrosky commented on how close we are to last year's totals and we are starting next year's budget.

16. Adjournment

Rondeau called adjournment at 7:09 pm.

*Prepared by dak on 6/10/10& 6/15/10
Approved by KLK on 6/14/10*

K/zc/minutes/2010/#5May