

MINUTES
Bayfield County Planning / Zoning Committee Public Hearing / Meeting
March 18, 2010 – 1:00 PM
Board Room, County Courthouse, Washburn, WI 54891

1. **CALL TO ORDER OF PUBLIC HEARING:** *By Vice Chairman Rondeau at 1:04 PM.*
2. **ROLL CALL:** *Jardine, Miller, and Rondeau, all present; Beeksma and Maki absent/excused.*
3. **AFFIDAVIT OF PUBLICATION:** *Read by Director Karl Kastrosky. (two affidavits for this meeting, one included all items on the agenda excluding Barb Anich (Item G) which was a special and second notice).*
4. **REVIEW OF MEETING FORMAT:** *By Vice Chairman Rondeau. Speakers were restricted to three minutes and notified there may not be a rebuttal period, therefore, they should use their three minutes to present what they wanted; those in support would be heard first followed by opposition.*

Introduction of members... County Board: Shawn Miller, Bucky Jardine, Brett Rondeau. Department: Director Karl Kastrosky; Assistant Zoning Administrators Doug Casina, Mike Furtak; Secretary Marilyn Jaeger; Attorney Andrew Smith, counsel to Zoning Committee.

*At this time **Director Kastrosky** announced that if anyone was present for the Telemark issue, they were welcome to stay, however it would be a long hearing/meeting and Telemark was not actually on the agenda-- there would only be a very brief presentation at the end of the meeting.*

5. PUBLIC HEARING:

Writ of Certiorari (Case No. 09CV52) found the County proceeded on an incorrect theory of law in regards to the CFS, LLC district map amendment; therefore, the County's decision of approval has been reversed. The matter has been remanded back to the Bayfield County Planning and Zoning Department and the Bayfield County Board of Supervisors.

- A. **CFS, LLC (aka: SHADOW WOOD LANDING): PETITION FOR ZONING DISTRICT MAP AMENDMENT** on their 380-acre parcel(s), located in the N ½ S ½ NW SW (04-046-2-51-04-28-3-02-000-30000); S ½ S ½, NW SW (04-046-2-51-04-28-3-02-000-40000); and the SW SW (04-046-2-51-04-28-3-03-000-10000), in **Section 28, Township 51 North, Range 4 West**, and the NE NW (04-046-2-51-04-33-2-01-000-10000); NW NW (04-046-2-51-04-33-2-02-000-10000); SW NW (04-046-2-51-04-33-2-03-000-10000); SE NW (04-046-2-51-04-33-02-04-000-10000); NE SW (04-046-2-51-04-33-3-01-000-10000); NW SW (04-046-2-51-04-33-3-02-000-10000); SW SW (04-046-2-51-04-33-3-03-000-10000); SE SW (04-046-2-51-04-33-3-04-000-10000); in **Section 33, Township 51 North, Range 4 West**, Town of Russell, **from Forestry-1 (F-1) / Agricultural-1 (Ag-1) to Agricultural-1(Ag-1), Residential-Recreational Business (R-RB) and Commercial (C).** The USGS Quadrangle Map shows an intermittent stream located on the property. The WI DNR has determined the stream(s) on the property to be non-navigable.

***Director Kastrosky** presented a brief history / overview for the reason CFS, LLC issue is being heard again: it was remanded back to the County / Zoning Committee by Judge Anderson due to a navigability issue for which Judge Anderson did not render a decision. Kastrosky presented a letter (as an exhibit) from John Spangberg, WDNR Water Management Specialist, which was also included in the Committee packets, alleging the stream in question is non-navigable, which Kastrosky said was the Zoning Department's opinion all along.*

Annalisa Cariveau, President / CEO of CFS, LLC said since last being heard, the navigability issue has been resolved and the County has developed a comprehensive land use plan. Cariveau read seven (7) key findings of fact [also in Committee packets], which had been presented to the Town (Russell) leading up to the Town meeting / approval this week. She noted the only thing being considered at this meeting is the rezone request, believed they have followed all requirements for that request. She reported over 100 people signed a petition of support which was presented to the Town. [It was noted later in the meeting that the petition is in support of the Town Board officials, not approval of the re-zone request per se.]

Speaking in Support: (**Vice Chairman Rondeau** reminded the Committee / audience this agenda Item was for a rezone only.)

- **Bob Handland** (Bayfield Township) believes venture will positively impact the area especially needs for airport.
- **Eric Maki** (President, Midwest Forest Products) submitted / read letter of support from Midwest Forest Products.
- **Frank Graves** (Bayfield Township) supports for economic reasons / potential for job creation.

Speaking in Opposition:

- **Tessa Levens** (Russell) worked on planning committee, appointed to their planning commission; believes this Item violates the Town's comp plan especially the 'commercial portion'; said "CFS didn't at any time request a portion or 380-acre parcel be commercial". Believes there are violations of their comp plan.
- **Nancy Trapp** (Russell) Quoted Statute 66.1001 re actions regarding zoning have to be consistent with the comprehensive plan that is now in State statutes since January. Believes Town isn't familiar w/ this statute and that this [rezone request] is in opposition; asked for this to go back to the Town or for denial.
- **Russell Klinger:** (Russell) adjacent property owner; strongly opposed; said project doesn't take local residents into consideration; he was never once contacted by CFS; property is zoned forestry; is very sensitive wetland area and believes area should not be developed. (Klinger presented a note of opposition from **Leo Coombs** adjacent property owner [who was present but unable to speak].
- **Dave Martinson:** (Russell) presented copies of three citations issued to CFS by WI DNR and letter of reprimand from Army Corps of Engineers. He took issue w/ Kastrosky's comments that the Dept. determined the navigability of the stream; if that was the case he asked to know the date because he said he was the one who placed a phone call which got the DNR to examine the stream, noting when he called Karl Kastrosky about the stream, his words were, 'what stream?'. Martinson said there is a letter which can be obtained from the DNR that explains a site visit by Kastrosky, Doug Casina, and a DNR officer but they got lost / couldn't find the property at first; asked for another site visit / determination date if there was one. Martinson noted the suit filed was based on the failure of the Zoning Dept. to recognize / apply shoreland zoning rules to the intermittent stream, which should have been presumed to be navigable.
- **Tom Frizzell** (Bayfield Township approx 1 mi. from site): Said this cannot be looked at as just a rezoning issue because without a rezone there is no plan; asked Committee to bear with people when they talked about the 'plan' because they are part of it. Noted the City/Town of Bayfield have long histories as tourist destinations; green community with

quiet sports, believes CFS plans would change that and asked for consideration of those facts when considering the rezone. Frizzell said Zoning should have informed the Zoning Committee of the intermittent stream, called the DNR to assess the status of the intermittent stream if they knew about it; the Zoning Committee should have been asking questions of the Zoning staff re issues related to the maps, spot zoning, authority of Town board, and what evidence brought them to their findings. He said none of these things were done, and when it moved to the County Board, they should have been asking the same questions.

- **Ted Gephart** (also representing Marie, Gina, and Ali Gephart) (lives/works in Bayfield county): Opposed, does not fit their lives / landscape; asked the Committee to listen to residents.
- **Rick Dale** (Highland Valley Farm, Bayfield township, close to project) leading blueberry producer w/ long tenure / involvement in county / community, heavily invested here, believes that should be taken into consideration; didn't choose to live by an airport; believes properties will be devalued which will affect their business; customers return to their business because of the pristine setting, etc., which are the same qualities they looked at over 36 years ago when they moved here. Concerned for future of family and community if this development goes forward. Stated Judge Anderson in his recent decision said those who believe they will be adversely affected by the zoning change do have standings in the courts.
- **Roxanne Frizzell** (Town of Bayfield) stated according to her determination this is the largest 'spot zoning' in county history; questioned how this goes with the 2/17/10 County Board plan for the recently created agriculture enterprise zone. Believes it will change the character of the countryside and the working farms in the area; three fruit farms on one mile stretch of Valley Road.
- **Max Karl** (Town of Bayfield) opposed to commercial zone in area which should continue as forestry or ag; fearful of losing pristine water / air quality; doesn't believe this protects the area.
- **Ann Bowker** (Russell) has been very involved in planning commission; concerned about CFS citations; opposed to "huge spot zoning"; desires commercial be taken out if they have to rezone. Noted the petition of 100 signatures quoted by Annalisa Cariveau was read at the town meeting however it only states approval of the Town Board, it does not say they [signers] were in agreement of Shadow Wood.
- **Tom Galazen** (Bayfield township less than mile from proposed project; also land owner in Russell close to proposal) concerned about costs for road / bridge improvements; speed limits; user conflicts w/ ATVs etc. (which he said already exists to some extent with them going onto farmers fields). Additional concerns: water runoff problems, noise; diminishing wild character of land when a "small city is being thrust into the woods"; eventual costs water / sewer extension; increased dissension, ill feelings, conflict in community. Asked for this to be tabled or a 'no vote'.
- **Frances Johnson** (Russell) opposed to airport / subsequent noise; requested that the Committee take into account that the law is a tool to serve the people, and their duty is to serve their neighbors of today, not those who may move in, and not those with vested interests; asked they seek answers.

- **Mark Wendling** (Russell) said good jobs are promised but large developers such as CFS don't use local businesses, instead bids come from national markets from large cities; large contractors have their own skilled / unskilled labor which they import and they don't use local material suppliers; also opposed because taxes will increase due to infrastructure.
- **Chuck Campbell** (City of Washburn; member of Trout Unlimited) said Bayfield County has had a good track record, strong land conservation, etc. but his concern is the negative impact on the watershed / fishery; Pikes Creek is one of the remaining quality streams in the area; is concerned development will over time reduce the quality of this fishery and impact the investments made on Pikes Creek; asked that this threat to the watershed not be approved; requested additional protections and special incentives be put in place to encourage private landowner / water quality protection in these headwater areas.
- **Jesica Fairbanks** (Bayview Township) believes this goes against community developed strategic plan / State statutes fearing it sets precedence, placing priority on short-term financially-based, corporate-focused projects.
- **Sam Atkins** (Russell) concerned about 'largest wetland in Russell'; said the plan for the area cannot be ignored in focusing on the rezone; conflicts w/ Town's comprehensive plan.
- **Gene Lemmenes** (Clover Township, groundwater consultant within WI) is concerned with contaminates (de-icers, anti-icers, etc.), pavement/impervious surfaces; said there will be great amounts of surface water runoff carrying pollutants; asked Committee to stop this / vote against it.
- **Kathy Wendling** (Russell, about 1.5 mi. from proposal): Noted the resolution signed by Russell this week states the CFS parcel was clear cut by the previous owner therefore development will have a minimal impact on the resources, therefore it meets the goals of the comp plan. Believes that is in error. Wendling stated the majority of logging took place after CFS purchased the property (June 2007) and was not clear cut when they purchased it. Asked the Committee to table this issue; said it is the biggest rezone in Bayfield County-- twice size of Miller Hill Mall or the Metrodome in a forested district; asked them to consider that it doesn't meet the comp plan.
- **Darienne McNamara** (City of Washburn) referred to county comp plan and past survey (majority agreed lakes, rivers, streams, natural resources should be protected, rural character maintained); is strongly in support of comp plan / vision of the county not just a few; asked for no vote.
- **Steph Winter** (Russell) doesn't believe Town / Zoning Committee is listening to will of the people; asked Committee to carefully consider this.

Vice Chairman Rondeau asked if Committee wanted rebuttal at that time; consensus was 'no'.

Director Kastrosky presented the File Report and history but first noted that items which were handed in at the meeting would become part of the record, including which speakers came forward at the meeting. He reported the original Town of Russell notice of tabling received on 08/14/2008 and the copy signed on March 9, 2010 by the Russell Town Board, including recommendation of approval document/letter which was dated March 16, 2010 and read by Kastrosky. Also Resolution #01-2010 with a unanimous approval vote; letter of concern for Town of Bayfield impact, and desire for dialog between Town of Russell / Bayfield from Chairman Thomas J. Gordon of the Town of Bayfield.

Also in file: Letter of support/appreciation for Town of Russell officials with 104 signatures / names. Letters of opposition from Cathy Smith and Paul DelMain; Steph Winter. Support letters: Frank Graves; Hans Dahl; Miroslava Nelson; Wayne Nelson; Robert Salvias; Ronald Line.

[Additional opposition letters were presented at the meeting from: Kristy Jensch; Beverly Jensch; David [?-last name not clear.]

At 2:20 PM **Vice Chairman Rondeau** called for a short break; hearing reconvened at 2:44 PM.

Director Kastrosky then requested that the Town of Russell future land use plan be placed in the record [presented at time of the break] as well as the letter of navigability determination from John Spangberg (DNR) to become part of the record.

- B. BAYFIELD COUNTY FORESTRY: RECLAMATION PLAN - Non-Metallic Mine** (i.e. gravel pit) on 40-acre parcel (ID# 04-006-2-51-05-24-2-01-000-10000), described as NE ¼ of NW ¼, Section 24, Township 51 North, Range 5 West, Town of Bayfield.

Forestry Administrator Jason Bodine asked if he could refer to Items B through E (reclamation plans and conditional use requests) at one time as the same comments would apply to all. The Committee agreed but pointed out each Item would be decided individually and there may be differing questions.

Bodine said this location is an 11-acre area, south of existing Sand River pit, better known as the staging area for the Apostle Islands dog sled race; gravel deposit crosses two 40s in a long narrow area; approximately eight acres would be disturbed; estimation is approximately 50,000 tons of material on this site; mining would be scheduled 1/3 at a time and reclaiming 1/3 at time as they proceed. They have agreements with Towns of Bayfield and Russell for use of materials; material mined on county forest land is for municipal use only / municipal projects only. Will meet or exceed all BMPs for water quality, erosion control, stormwater runoff. Willing to work to minimize noise and dust; there is approx. a ten year window for this; mining and crushing will be only about a two four week mining / crushing time and the rest of the time just storage of the materials. Topsoil will be reclaimed on site at each stage.

Speaking in Support: None

Opposition:

- **Jeff Blyth**, adjacent property owner across road: opposed to both the [Rec.] plan and permit; said Forest Dept. is required to have an Environmental Impact Statement [EIS] for the site; that the Reclamation Plan doesn't adequately cover reforestation / restoration of the wetlands on the property. Several streams are on the property; stream protection / preservation are not mentioned in the Rec Plan. Believes request(s) are in error as three parcels are involved but two permits are applied for, therefore he said the Rec Plan is not correct. Believes not enough information has been presented or cover erosion control of the streams that are protected under State law.
- **Rex Zemke**, adjoining property owner stated he is not in support or opposition per se but does not have enough information yet; received a copy of the Rec Plan 'just yesterday' and hadn't had enough time to review it; believes the county would want all property owners informed of this request; asked that this be tabled so others could also be notified.

C. **BAYFIELD COUNTY FORESTRY: CONDITIONAL USE REQUEST - Open / Operate Non-Metallic Mine (i.e. gravel pit)** on 40-acre parcel (ID# 04-006-2-51-05-24-2-01-000-10000), described as NE ¼ of NW ¼, Section 24, Township 51 North, Range 5 West, Town of Bayfield.

Jason Bodine said this proposal is “the site”, the “40s” are being permitted but the site itself is located with the closest proximity to a mapped stream about 325 ft.; the closest property land owner boundary is approximately 1600 ft. He believed EIA statements are required if within 300 ft. of a navigable stream; the site itself is not disturbing any wetlands; timber types over the site are red oak, there is no disturbance of the mapped area to wetlands.

Speaking in Support: None

Opposition:

- *Jeff Blyth presented handouts to Committee; said this is not in compliance w/ State law (quoted from Statute 66.101) for an EIS due to potential navigable stream; said that determination is only for DNR or State court; is shoreland zone, soils considered wetland designations by Bayfield County mapping soil analysis; if deemed wetland would limit amount of mineable gravel in area. Blythe discussed his seven page opposition e-mail from 03/16/10; believes gravel pit will devalue property / upset scenic beauty; doesn't believe enough research has been done; believes in opposition to County comprehensive plan. Noted Sand River is a protected River; siltation or pollution would end up in Lake Superior.*

Blyth asked that the following items be placed on file: Bayfield County shoreland zone areas map; ANSRI map; wetland soils map; USGS map; and [his] objection letter. He said County officials legally cannot make navigability determination; EIA is required thus permit must be denied on that basis. Quoted from State statute 59692 / Bayfield County 13-1-20(b)(1). Believes plan and permits are going against established laws. Noted wetland map / soils survey; quoted from WI Administrative code, NR103, NR115, Clean Water Act (404), State of WI Act 6 (281.36); ASNRA law. Noted [his letter] and many conditions he believes must be placed if permit is granted. Is concerned if endangered species are present.

Blyth asked if the following questions could be answered at some point: if study of all pits has been done, why is it necessary to open another; what is status of other pits in the area; if there are 54 pits in the County why another; why this site; has the reclamation plan been issued?

*Jardine noted some of the 54 are borrow pits, some gravel pits. Jardine asked if the Department is designated to determine wetlands. **AZA Doug Casina** said they consult with the DNR on wetlands but his understanding is they have the authority to make determinations on navigability issues and had received confirmation on that from the DNR representative. Casina noted he has been on site numerous times in optimal conditions for runoff and determined that within 300' of boundaries of the pit there are no navigable reaches of any stream. **Mr. Blyth** questioned that determination; he stated he could take this to higher levels of authority.*

Director Kastrosky said there is an approved reclamation plan/checklist and code compliance which was completed by Bayfield County Land Conservation. Blythe asked if there was a rec plan 'permit'. Kastrosky then asked John Spangberg (DNR Water Management Specialist) to first give his opinion if there is a navigability issue within 300' of the proposed mining activity site.

Spangberg said there did not appear to be and reported that they looked at the stream that flows through the site from Hwy. 13 to the south from somewhere between 100' to 200'; it had a navigable condition at that time but they couldn't determine, because it was so full of muddy water and there was a bed and bank there so at that point couldn't make a determination. They went upstream navigability because it was "so full of muddy water, there was a bed and a bank there. **Blyth** stated this is only public opinion, not fact; nothing in the record in writing from the DNR.

- **Rex Zemke** repeated his statement from Item B.

Director Kastrosky conferred w/ legal counsel and said anything written is better, however, does not believe written determination is required unless the Zoning Committee desires that. **File Report:** Kastrosky said additional material received at the meeting would become part of the file; read correspondence from Town of Bayfield recommending approval including the 'second forty'; letter of concern from Barb Bartkowiak desiring more information; petition for denial from Barb Bartkowiak; same copy of petition for denial for from Dan Laskowski; seven page opposition letter from Jeff Blyth; petition for denial from Jeff Blyth / Jill Gibson Blyth; letter and same petition for denial from Rob Hartman.

- D. **BAYFIELD COUNTY FORESTRY: RECLAMATION PLAN - Non-Metallic Mine** (i.e. gravel pit) on 40-acre parcel (ID# 04-006-2-51-05-13-3-01-000-10000), described as the SE ¼ of the SW ¼, Section 13, Township 51 North, Range 5 West, Town of Bayfield. **Jason Bodine** stated there was nothing new to add to this Item.

Support: None

Opposition: **Jeff Blyth** objected to approval of this Item as well and said even if the stream is deemed non-navigable he questions it as it has been published on maps since 1965.

- E. **BAYFIELD COUNTY FORESTRY: CONDITIONAL USE REQUEST - Open / Operate Non-Metallic Mine (i.e. gravel pit)** on 40-acre parcel (ID# 04-006-2-51-05-13-3-01-000-10000), described as the SE ¼ of the SW ¼, Section 13, Township 51 North, Range 5 West, Town of Bayfield. **Jason Bodine** had nothing new on this Item. In support: none **In Opposition:** **Jeff Blyth** stated all 40 acres are subject to EIA even though. **KLK:** file report same.

Support: None

Opposition: **Jeff Blyth** said in his opinion the permit is for all 40 acres, therefore, all acres are subject to an EIA.

File Report: **Kastrosky** noted file report was the same on this Item.

- F. **BAYFIELD COUNTY HIGHWAY: PETITION FOR ZONING DISTRICT MAP AMENDMENT** (in a shoreland-wetland zone) **from R-1 to F-1**. Property is described as three parcels: **(1)** a calculated 4.619-acre parcel (ID# 04-034-2-43-06-02-3-05-003-30000), located in part of Gov't Lot 3; **(2)** a calculated 8.447-acre parcel (ID# 04-034-2-43-06-02-3-05-004-10000), located in part of Gov't Lot 4; and **(3)** a calculated 0.483-acre parcel (ID# 04-034-2-43-06-02-3-05-004-20000), located in part of Gov't Lot 4, all in Section 2, Township 43 North, Range 6 West, Town of Namakagon.

Hwy. Commissioner Thomas Toepfer noted 15-acre piece, abandoned pit, accumulating debris, potential for injury there w/ evidence of four wheelers / snowmobiles using the site; apparently has 85,000 tons of good material with plans to use for County D and M; Town of Namakagon has expressed interest; would utilize material and then leave the site in much nicer condition than it now is; very minimal timber there, no runoff or impact to lake.

Support: None

Opposition: None

File Report: *Kastrosky said this is a Lake Namakagon shoreland area, therefore, there could be extra DNR requirements, etc.; listed file items but no input from the Town yet; letter of concern from Jean & Barb Fortman who didn't disapprove of the mining extraction but don't like the end land use result of possibly being a residential subdivision. He noted there was Town level discussion of possibility of a park, however, didn't believe there has been a final decision on future plans.*

- G. BARBARA K. ANICH CONDITIONAL USE REQUEST: Construct / Operate Three-Unit Short-Term Rental Accommodation** on 1.72 +/- acre parcel (ID #s. 04-024-2-47-08-02-1 00-212-44000 & 45000), described as Lot 1 & 2 of CSM # 801, Section 02, Township 47 North, Range 08 West, Town of Iron River.

Barb Anich stated she wants to rent units for 30 days or less. Property was a pre-existing resort (Tall Timbers) for about fifty years (they have owned for 22 of those years), new septics have been installed; basically wants to rent to help pay property taxes.

Support / Opposition: None

File Report: *Kastrosky reported the only correspondence was Town Board 'approval', however, the Town did not answer whether they reviewed the request for compatibility with their Comprehensive and/or Land Use Plan.*

5. **ADJOURNMENT OF PUBLIC HEARING:** *Motion by **Jardine / Miller** at 3:27 PM; carried. [A break was called for at this time.]*
7. **CALL TO ORDER OF ZONING COMMITTEE MEETING:** *By Vice Chairman Rondeau at 3:37 PM.*
8. **ROLL CALL:** *Jardine, Miller, and Rondeau, all present; Beeksma and Maki absent/excused.*
9. **MINUTES OF PREVIOUS MEETING(S):** *Jardine / Miller moved to **approve** the February 18, 2010 minutes as as prepared; carried. 3 yes / 0 no.*
10. **BUSINESS:**

- A. **CFS, LLC (aka: SHADOW WOOD LANDING): PETITION FOR ZONING DISTRICT MAP AMENDMENT** on their 380-acre parcel(s), located in the N ½ S ½ NW SW (04-046-2-51-04-28-3-02-000-30000); S ½ S ½, NW SW (04-046-2-51-04-28-3-02-000-40000); and the SW SW (04-046-2-51-04-28-3-03-000-10000), in **Section 28, Township 51 North, Range 4 West**, and the NE NW (04-046-2-51-04-33-2-01-000-10000); NW NW (04-046-2-51-04-33-2-02-000-10000); SW NW (04-046-2-51-04-33-2-03-000-10000); SE NW (04-046-2-51-04-33-02-04-000-10000); NE SW (04-046-2-51-04-33-3-01-000-10000); NW SW (04-046-2-51-04-33-3-02-000-10000); SW SW (04-046-2-51-04-33-3-03-000-10000); SE SW (04-046-2-51-04-33-3-04-000-10000); in **Section 33, Township 51 North, Range 4 West**, Town of Russell, **from Forestry-1 (F-1) / Agricultural-1 (Ag-1) to Agricultural-1(Ag-1), Residential-Recreational Business (R-RB) and Commercial (C).** The USGS Quadrangle Map shows an intermittent stream located on the property. The WI DNR has determined the stream(s) on the property to be non-navigable.

Atty. Smith stated he could not give legal advice in open session, however, the Committee needed to address a number of questions; in particular to make an independent decision whether petition for rezoning is consistent with the Town of Russell land use plan, whether the petition to rezone does not contradict objectives, policies and goals of the Plan. He noted they are obliged to look at the parcel, the nature / character of it as well as surrounding parcels, to see if the rezone

impacts public health, safety, welfare, and morals of Russell Township as well as broader Bayfield County. Included also is consideration of convenience, general prosperity, economic development, the navigability component. He noted it is wise to consider the Town of Bayfield in this; obligation to look at the Bayfield County comprehensive plan, comments made as they regard the petition for rezoning. Comments were made re increased traffic, user conflict, noise, impacts on local businesses which are part of Committee's consideration / deliberation. Consideration should also be given to the adopted Town of Russell resolution, whether consistent with their land use plan, which he said is a good place to start in determining this decision, but the ending point is Bayfield County's land use plan. He reminded them of the spot zoning concern; spot zoning isn't 'per se illegal' but has to have some reasons behind it.

Vice Chairman Rondeau asked Director Kastrosky to 'tie this together' for them. **Kastrosky** reported on the time frame of the Town of Russell land use plan and how each region of the county has a unique set of circumstances / unique plan. He said the Town approved their official map and have applied it in this case; there is no 'county map' for their Town. The first phase is the Town plan, second is the County plan—an 'umbrella over the towns'; if they are not compatible then it needs to be worked on. He referred to several pages in Bayfield County's plan (narrative on pages 74, 75, 76, 105, 126, 127). In this situation, he did not see any definite conflict between the two plans. The town could have said plan was inconsistent, was silent on it, was not compatible, or they could have changed their plan but they did not. It is up to The Zoning Committee as the governing board, to decide if the Town applied their comprehensive plan as part of the County plan and recommend denial or approval to the County Board.

Kastrosky referred to the letter from the Bayfield Town Chairman [Tom Gordon] said the proposal and the planning process has been ongoing for 1-1/2 years and there should be discussion between the Towns of Bayfield and Russell on plans / boundaries; they have had ample time. If there is inconsistency with plans on boundaries, that is a big issue but he didn't see that raised here and noted the letter said they want to talk about it; he again reminded the Committee they have had 1-1/2 years. He wasn't aware if the Town of Russell did not agree to 'talk', but if so should be in writing. He also reminded the Committee the Committee had documentation in the form of a resolution and letter with reasoning for approval for consideration before them; the Town retained legal counsel and counsel is in agreement that they have applied their plan correctly.

Kastrosky also said the Comprehensive Planning law that was referred to earlier, states if you make land use decisions they have to be compatible with a comprehensive plan or else they can be challenged in court. He does not believe the planning law applies to a land use plan, therefore, technically the first time this was heard the Town of Russell had a land use plan, not a comprehensive plan. The planning law did not apply until January 1, 2010; after that date, the Town, and County needs to hold them accountable to that law. Kastrosky reminded the Committee they were the ultimate authority in deciding if the Town applied their plan as part of the county plan or if there is conflict or error; and then to recommend approval or denial to the Full Board.

Supervisor Jardine said they considered this case before minus lack of a written DNR statement; the DNR has determined the stream to be not navigable. In reviewing the Town's plan and keeping with rural areas, they pointed out 35% of the commercial area and R-RB [Residential-Recreational Business] has to be open space, and 45% of Ag., therefore they did look at the rural character of that area and rezoning of it. If this is approved, they still have to follow supervision of the Town Board with regulations and guidelines for that area. The parcels' rural-moderate-residential' under the 2010 comp plan; development shall be clustered to allow the maximum open space and utilize light imprint standards as to comply w/ maximum density requirements of the comp plan. Jardine said they have definitely looked at this and said if this passes, this should adopt that plan for

allowance. He said the plans state they have to look at stormwater runoff, catch basins, erosion, etc. and stated he has no problem with the request.

Rondeau noted this is just the rezone request and the Town and Planning Commission still has their say as each of the future requests for this plan come before them; this does not give them the right to proceed and build everything they are 'far from that'. **Jardine** said again they were only looking at the rezone and there will be an EIA [Environmental Impact Assessment] to consider in the future as well. **Jardine** asked for **Kastrovsky's** reaction / input.

Kastrovsky said that he was only there to present facts but did say he wanted to apologize for the technical and procedural error; from 'day one' he believed the stream was intermittent, they didn't disallow it, it was in Tim King's report who is an excellent wetland delineator who called it intermittent. He added that procedurally it should have been noted, that was hindsight, and apologized for the error but said deliberation today is not the navigability issue, that was a procedural issue, this is about the technical issues. The stream was deemed non-navigable / is not a shoreland zone and added the real issue is whether this merits a rezone, were procedures followed in reviewing the comp plan.

Supervisor Miller: Referred to Statute #66.1001 and if the Town is within their comprehensive plan. **Atty. Smith** noted Statute 66.1001 and if the rezone is compatible with, or does not contradict, the Town's comprehensive plan, and Bayfield County's plan, but said there is still a separate / distinct question whether rezoning 380 acres, that benefits one property owner is spot zoning, and if so, is it permissible spot zoning. He also said the Town of Russell resolution is the starting point, but not the ending point; they have an independent obligation to determine if this is compatible with, or does not contradict the Town land use plan. **Miller** said technically spot zoning might not be desirable but it is not illegal, it is permissible.

Following discussion regarding plans of towns and the county and Russell's resolution, **Jardine** made a motion to approve with adding on the goals of their resolution number 01-2010 onto the motion, with goals one through four (1 through 4). **Jardine** repeated the motion, further stating, 'motion to approve the rezone of 380 acres of land located in Sections 28 and 33, Township 51 North, Range 4 West, in the Town of Russell from Ag-1 and F-1 to Ag-1, R-RB and C along w/ the four goals the Town provided on their resolution.' Motion was seconded by **Miller**.

Discussion: **Kastrovsky** asked **Jardine** in his findings, he was of the opinion that this request is not contradictory to the County comprehensive plan. **Jardine** answered "definitely not" but then added, he does not determine it to be so. **Atty. Smith** stated they need to address the consideration if this is spot zoning and if not the case, then what supports that. **Jardine** said he does not consider this to be spot zoning as the area around it is already Forestry and this will be Forestry, Ag and R-RB, with 35% determined open space. **Rondeau** stated that w/ a county this large, there will be some change but in this case there will be cluster development; allowance for open area. **Jardine and Rondeau** said they did not believe this was spot zoning; the committee reviewed the maps again. **Miller** said the only thing that jumped out is the portion of R-RB with Forestry and Ag around it.

Kastrovsky noted eventually the zoning districts and future land use designations will become more compatible, trying to stay w/ the rezone and the compatibility of comp plan, the plan requires, for decision making purposes and guidance, one unit per five acres and although R-RB is a zoning designation for uses, the density is still the power of the plan unless the plan is amended. He said homes built in R-RB, under cluster development, conditional use, or conservation subdivision, they must be compatible w/ the future land use plan which talks about one unit per five acres.

Kastrosky said there were some issues to also consider such as economic development, general health of community, morals and safety, convenience, proximity to highway or road infrastructure. **Miller** asked if there were plans in place for road improvement considering additional traffic. **Kastrosky** said he wasn't at the Town meeting but assumed the Town should have considered it as it is probably a high maintenance issue now and would continue to be such. **Miller** asked if it would be appropriate to ask CFS if plans are in place regarding the roads leading up to the development. **Analisa Cariveau** answered there are not as this request is to seek the rezone, there will be discussion with the Towns of Russell and Bayfield, however it is premature at this time.

Motion carried 3 yes / 0 no.

- B. BAYFIELD COUNTY FORESTRY: RECLAMATION PLAN - Non-Metallic Mine** (i.e. gravel pit) on 40-acre parcel (ID# 04-006-2-51-05-24-2-01-000-10000), described as NE ¼ of NW ¼, Section 24, Township 51 North, Range 5 West, Town of Bayfield.

Motion by **Miller / Rondeau** to **table until they have a determination or have a letter in their hands from the DNR.**

It was noted if the Rec Plan was tabled, they also would have to table the conditional use request. **Jardine** was concerned that some of the opposition presented on these Items was opinion without measurement being taken etc., therefore was concerned that the Committee had to be careful. **Rondeau** then noted there is not to be discussion on a tabled motion.

Kastrosky said if it was their intent to table, they should give reasons why and have a checklist for required information, such as a written DNR navigability determination; any other items they feel are pertinent to their decision; they need to decide if this will be brought back as a public hearing or business item, if an EIA is necessary; a timeline. **Miller** said he wanted to include that information in his motion; he felt they need the information by the April meeting as there are other aspects involved (such as bids in May). **Kastrosky** said the boundary of the permit is determined and asked **Bodine** if there are any wetlands in the determined area that would be impacted which need to be considered. **Bodine** said the site was a timber sale two years ago, it was assessed at that time, no wetlands were determined then, and there are none now.

Motion was re-stated / clarified by Vice Chairman Rondeau to table this Item for the following: written determination on navigable water, whether an EIA is necessary, and any other items that may arise, and that this is readdressed in the business portion of the April [Zoning Committee] meeting. Motion carried 3 yes / 0 no.

- C. BAYFIELD COUNTY FORESTRY: CONDITIONAL USE REQUEST - Open / Operate Non-Metallic Mine** (i.e. gravel pit) on 40-acre parcel (ID# 04-006-2-51-05-24-2-01-000-10000), described as NE ¼ of NW ¼, Section 24, Township 51 North, Range 5 West, Town of Bayfield.

Motion by **Miller / Jardine** to **table this Item for the following: written determination on navigable water, whether an EIA is necessary, and any other items that may arise, and that this is readdressed in the business portion of the April [Zoning Committee] meeting.** Motion carried 3 yes / 0 no.

- D. BAYFIELD COUNTY FORESTRY: RECLAMATION PLAN - Non-Metallic Mine** (i.e. gravel pit) on 40-acre parcel (ID# 04-006-2-51-05-13-3-01-000-10000), described as the SE ¼ of the SW ¼, Section 13, Township 51 North, Range 5 West, Town of Bayfield.

Motion by Miller / Jardine to table this Item for the following: written determination on navigable water, whether an EIA is necessary, and any other items that may arise, and that this is readdressed in the business portion of the April [Zoning Committee] meeting. Motion carried 3 yes / 0 no.

- E. **BAYFIELD COUNTY FORESTRY: CONDITIONAL USE REQUEST - Open / Operate Non-Metallic Mine (i.e. gravel pit)** on 40-acre parcel (ID# 04-006-2-51-05-13-3-01-000-10000), described as the SE ¼ of the SW ¼, Section 13, Township 51 North, Range 5 West, Town of Bayfield.

Motion by Miller / Jardine to table this Item for the following: written determination on navigable water, whether an EIA is necessary, and any other items that may arise, and that this is readdressed in the business portion of the April [Zoning Committee] meeting. Motion carried 3 yes / 0 no.

- F. **BAYFIELD COUNTY HIGHWAY: PETITION FOR ZONING DISTRICT MAP AMENDMENT** (in a shoreland-wetland zone) from R-1 to F-1. Property is described as three parcels: **(1)** a calculated 4.619-acre parcel (ID# 04-034-2-43-06-02-3-05-003-30000), located in part of Gov't Lot 3; **(2)** a calculated 8.447-acre parcel (ID# 04-034-2-43-06-02-3-05-004-10000), located in part of Gov't Lot 4; and **(3)** a calculated 0.483-acre parcel (ID# 04-034-2-43-06-02-3-05-004-20000), located in part of Gov't Lot 4, all in Section 2, Township 43 North, Range 6 West, Town of Namakagon.

Kastrosky suggested the Committee review the seven items in the file; that there is no negative impact; that it complies with the shoreland-wetland ordinance. AZA Furtak: reported there is a large area of wetland adjacent to the lakebed on the East side of the property off of Sugar Bay. He said because Namakagon is a flowage it is vegetated lakebed for the most part, some above the high water mark, there is wetland adjacent to navigable water; believes requirement will be a NR151 shoreland management plan for runoff / best management practices to prevent siltation of the wetland; there may be another step for an additional special DNR review as well.

Kastrosky read from Article D: Administrative Provisions [Sec. 13-3-30 (b)] noting that a wetland, or a portion thereof, in the Shoreland-Wetland District shall not be rezoned if the proposed rezoning may result in a significant adverse impact... Kastrosky read all seven items listed in the ordinance. He does not believe points listed would be impacted as far as he was aware and hadn't heard anything from the DNR or Staff in those areas. Furtak said if anything would be impacted, it is a violation and wouldn't be allowed. It was noted there was no Town Board approval on file, however the Town chairman indicated to him last week that they approved it but Mike was not aware if there were conditions.

Motion by Miller / Jardine to approve pending Town Board approval and any conditions they may have placed; carried 3 yes / 0 no.

- G. **BARBARA K. ANICH CONDITIONAL USE REQUEST: Construct / Operate Three-Unit Short-Term Rental Accommodation** on 1.72 +/- acre parcel (ID #s. 04-024-2-47-08-02-1 00-212-44000 & 45000), described as Lot 1 & 2 of CSM # 801, Section 02, Township 47 North, Range 08 West, Town of Iron River.

Jardine / Rondeau made a motion to approve. Kastrosky reminded them that the Town approved this but didn't indicate whether or not it was compatible with their land use plan. Jardine / Rondeau withdrew the motion. Miller made a motion to table and send back to the Town because they didn't note if they applied their land use plan; carried 3 yes / 0 no.

Agenda Review and Alteration

H. THEODORE POLKOSKI III: RELEASE OF PARTIAL PROPERTY RE SPECIAL USE PERMIT #06-0540 – Second Residence on Parcel (ID #04-008-2-49-04-28-2-02-000-10000), W ½ of NW ¼, of NW ¼, Section 28, Township 49 N., Range 4 W., Town of Bayview.

*No one was present to represent this Item. **Kastrosky** recapped this Item: the Zoning Committee issued a special use permit in 2006 (#06-0540) for two residences on a parcel that couldn't be divided. A mobile home was placed close to an existing residence less than required setback to do a lot division. The Town of Bayview asked for a condition that the parcel would not be split, but that implied that the entire 40 acre parcel not be split, however, that was not what the intention was. Atty. Carlson's office brought this forward to the Dept. We don't believe it was the intent of the Committee, the Town, or the owner, and the matter needs to be cleared up. He said of the forty acres, twenty are proposed to be sold and so the title didn't get clouded, and this is understood, it needed to go back through 'the process'.*

File Report: *This went back to Bayview and was approved to release the vacant acreage in the E ½ of the NW ¼ NW ¼ from the present special use permit and reissuance of special use permit pertaining only to the W ½ of the parcel with improvements. The Town also noted if complies with their land use plan.*

*Motion by **Jardine / Miller to approve.** **Kastrosky** clarified that this permit would release the E ½ of the NW ¼ of the NW 1/4, the twenty (20) acres not encumbered by the conditions on permit #06-0540. Motion carried 3 yes / 0 no.*

I. STAN STEVENSON PRELIMINARY PLAT APPROVAL (7 Lots): (Bayfield)

***Kastrosky** said this was a condo plat approved 'years ago' but was not selling; there are 11 to 12 potential units; they want to overlay a condo plat with seven lots in subdivision plat. It was approved by the Town of Bayfield with their reasoning attached to the TBA form. **Kastrosky** said Corp Counsel's legal opinion is they can overlay the condo plat; the Final approval will be on next month's agenda. Motion by **Miller / Jardine to approve;** carried. 3 yes / 0 no.*

J. BREMER BANK FINAL PLAT APPROVAL (7 Lots): (Bayview) **Agent Rick Geisen** was present. Motion by **Miller / Jardine to approve.** **Kastrosky** reported Town of Bayview recommended approval. Motion carried 3 yes / 0 no.

K. CITIZENS' CONCERNS / INPUT:

- **Tom Frizzell:** Concerned that Item 5.A is spot zoning.
- **Kathy Wendling:** Concerned about many misconceptions on Town/ County levels (Item 5.A).
- **Russ Klinger:** Concerned (5.A) that the Committee didn't consider two residents in area. Said every year the road is closed for part of the time.
- **Sam Atkins:** Feels Item 5.A is an illegal rezone.

L. DISCUSSION / POSSIBLE ACTION: Comprehensive Planning

***Kastrosky** reported that this would be in front of the County Board on March 30th (for maps to be approved).*

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

- **Mark Putman** (landscape architect – Telemark) presented a draft; gave a brief report noting their hope and encouragement of the revitalization of Telemark; **Gary Crandall** noted support of the efforts to this sale / transaction / land use planning. **Kastrosky** said he is working w/ Mike (Furtak) to narrow the focus on what issues are Town, County, etc.; he answered a question that part of the objective is to potentially create an overlay district for Telemark.

11. **MONTHLY REPORT:** After brief discussion, motion by **Miller / Jardine** to approve the Feb. 2010 report. Carried 3 yes / 0 no.

12. **ADJOURNMENT:** Motion by **Miller / Jardine** at 5:03 PM; carried.

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

Finalized by MJJ on 04/06/10
Approved by KLK on 04/08/10

cc: Administrator; Clerk; Corp.Counsel; DNR; Committee; Supervisors
K/ZC/Minutes/2010/Apr