

Shadow Wood opponents file suit against Bayfield County rezone

By RICK OLIVO
Staff Writer

Published: Tuesday, April 7, 2009

Members of an unincorporated citizens' group, the Bayfield County Committee for Responsible Land Use, have followed through on threats to go to court to block development of a 380-acre parcel of land in the Town of Russell.

The group seeks to halt a development to be known as "Shadow Wood Landing," which would eventually include such amenities as a private airstrip, associated condominiums and a hotel complex. A Minneapolis-based group called CFS-LLC is proposing the project.

Late last month, through Madison-based attorney William P. O'Connor, the group filed suit against Bayfield County, seeking to reverse a rezoning of the property that would have opened the way for the filing of conditional-use permits to make the project a reality. The suit alleges that the county board's approval of the rezone was "arbitrary and unreasonable" because the uses permitted under the rezoning conflict with the Town of Russell Land Use Plan. The civil complaint noted that in January, the group had filed a notice of claim under state law, which objected to the Bayfield County Board's approval of the CFS-LLC rezoning petition, but that the county board had taken no action on the claim.

"One of the critical issues in this case is whether the county applied the proper law; that depends on whether the property is within the county's shoreland zone," said O'Connor.

O'Connor said properties that lie within the shoreland zone — 1,000 feet from a lake and 300 feet from streams — are subject to different zoning requirements than ordinary properties.

"Those county ordinance provisions are actually mandated by state law. So there are both standards that they are supposed to apply when they are considering those rezones in the shoreland area and procedural activities that they are supposed to go through. That is the error that the complaint focuses on," O'Connor said.

O'Connor said because the controversy was primarily one of law and involved a minimum number of questions of fact, it was a case that could be speedily resolved by the court.

"Sometimes zoning litigation can be expensive," he said. "Much of the factual evidence that the court will need to decide the case will be matters of public record. Overwhelmingly what this case will involve is legal argument rather than fact-finding. Litigation is usually significantly more expensive if there is an extensive fact-finding procedure, expert witnesses, evidence and so on.

"Most of what is involved in this case will be a matter of the record of the proceedings that the county went through in considering the rezoning. The principal focus of the case will be on reducing to writing the arguments that we will be making in laying out the case that the county improperly rezoned that property, and then the county will file responsive arguments."

O'Connor said he anticipated that there was a "pretty good likelihood" that the court would rule based on the written arguments without an extensive trial.

Bayfield County Administrator Mark Abeles-Allison, contacted last week, noted that the county board had twice discussed the committee's claims and had taken no action, instead turning the matter over to their attorney, Andrew Smith of Rhinelander. Telephone calls to Smith on Friday and Monday went unreturned.

Committee member Tom Galazen said the question of how far the committee was willing to take the matter was one that would be decided as the case moves forward.

"We certainly can't outspend the county," he said. "That's not our goal. We evaluate it at each stage and look where we've been and what is on the plate. We felt that a lot of work had gone into the legal examination, and we felt that we should follow up with it."

Galazen said that the committee continues to find more, almost on a weekly basis, that points to what he said was the "wrongness of the county's decision."

"It kind of inspires us, I guess," he said.

Galazen said among the objections was a close reading of the Town of Russell Land Use Plan and failing to determine how the rezoning could be reconciled with that document.

"It strikes me that there is more inspection that goes into an outhouse permit than what goes into a major rezoning like this," Galazen said.

According to the complaint, the county has 20 days to respond to the summons.