

Bayfield County Board of Adjustment overturns Waypoint permit

Ashland Daily Press, By RICK OLIVO

Published: Thursday, February 24, 2011

WASHBURN — Members of the Bayfield County Board of Adjustment voted 4-1 Thursday to overturn a conditional use permit issued by the Bayfield County Zoning Committee for the Waypoint residential fly-in development proposed for the northern Bayfield County community of Town of Russell.

The decision came after five hours of deliberation of evidence presented at an eight-hour hearing on the matter held last Friday.

Beginning the session, Board Attorney Mike Fauerbach told the panel that they should apply a dozen separate criteria that govern the issuance of conditional use permits. The session was in what is called a de novo review of the record and authorizes the board to substitute its judgment for that of the zoning committee.

Board members painstakingly went through each of the 12 items individually in light of testimony both for and against the project made before the board last week.

Board Chairman Randy Matis said he believed that the issues involved in the issuance of the conditional use permit had not been fully explored by the zoning committee.

"There was only one member who even addressed the items on the ordinance, and that was to say that it met the ordinance. There was no discussion or elaboration on any of the items," he said.

Matis said his view was that the permit was in conflict with the county ordinance controlling the issuance of such permits. He said he was also not reassured by the testimony of Waypoint-provided experts who said the site was suitable for the development and that issues like stormwater drainage could be handled without risk to the environment.

"We are looking at the potential for 25 or 100 houses on a spot like that. It makes me uneasy in looking at the nature of the landscape and the uses that exist there," he said.

Matis said his common sense told him that there were already two airports in the region and that the area was "a gem."

"I can't see how it is compatible," he said.

Matis said while he did not question the development's harmony with the Town of Russell's land use plan, he said it conflicted with county ordinances.

Board Secretary Phillip Lupa said he agreed with Matis, and said his biggest concerns had to do with the presence of wetlands on the property.

"I know how stringent we are with wetland use; it's one of the biggest things we do in our job," he said.

He also questioned arrangements for the provision of services like police protection and fire fighting.

"There is absolutely no indication where this is going to come from or what it's going to cost or if it is going to be feasible," he said. "There is so much here that hasn't been answered that I find it impossible to make a decision in favor of it," he said.

Board member Richard Compton said of especial concern to him was a lack of discussion about the 20 additional hangars that were planned for the airstrip.

"The testimony was to me marginal about whether we could make it work, and all we really talked about was an area 4,000 feet long and 60 feet wide. We've got considerably more area than that involved in here," he said.

Compton noted that while building an airstrip in zoning proposed by Waypoint was allowable with a conditional use permit, it was not a matter of right.

"In order to meet that criteria, we have to look at these 12 items, and I cannot find that this proposal meets the required 12 items," he said.

Earlier, Compton said the project was "completely inappropriate" for the location and said it had the potential to adversely affect the agriculture and orchard industry of the area.

The sole member of the board who voted for the conditional use permit was board member Frank Kostka, who noted that the developer bought the land in 2008 in good faith, bringing their plan to the Town of Russell.

"From day one they were discussing the runway," he said. "The township rezoned the property and allowed the project to go on with a 5-0 vote. If the comprehensive planning committee had thought they didn't want a landing strip out there, they should have zoned it to make the property unavailable for a landing strip."

Kostka said the project has also received county approval.

"I struggle with us overturning Russell Township and the zoning office and the zoning committee," he said.

Kostka admitted that if he lived in the area, "I probably wouldn't want an airstrip either."

"But that should have been taken into account a long time ago," he said.

The result, Kostka said, was that the developers have gotten their approvals and invested their money, only to see all that overturned.

"All of a sudden, the money they have invested, is that going to be thrown away?" he asked. "I am concerned with that."

Kostka said objections that the project would require expensive new infrastructure to be built such as roads and bridges could also be applied to existing businesses.

"We are focusing in on this one area with maybe 10 or 15 airplanes, I don't think it's a big thing," he said.

Kostka said one major player in the area with well-known concerns about the environment was the Red Cliff Indian Tribe. He said the fact that they were not actively involved in the debate indicated that they do not consider the matter to be a threat to the environment.

"I am startled by the fact that we don't have any input from the natives, on this issue. I've got friends who are Native American and when it comes to environmental issues they are very, very interested. And yet they are silent," he said

Kostka then affirmed his support for the project.

"I am suggesting that I am in favor of the project because I support the previous committees that approved it," he said.

Following the vote, attorney Shari Eggleston, who represented a group of area residents opposing the project, applauded the decision.

"I am delighted with the decision; we feel like, finally, our concerns were heard by thoughtful people who paid attention to them, and we got a good decision," she said.

At the evidence gathering portion of the Board of Adjustments hearing, Waypoint attorney Steve Katkov told board members that if the board's decision went against his clients, they would "be back at the next level," apparently alluding to a potential court challenge of the Board of Adjustment's ruling.

That did not appear to trouble Eggleston.

"It might not be over, but I don't know any better than you do," she said. "We will defend it if there is an appeal."

Meanwhile, Waypoint developer Annalisa Cariveau declined comment on the ruling by the board and also declined to say if they planned to appeal the decision.

Matis said the hearing had been involved and complex.

"The board worked very hard to make the best decision they could for the citizens of Bayfield County," he said, admitting that it had been a draining process. "I think we're ready to go home."