

# Citizen group seeks to halt Shadow Wood Landing development

*Claims Bayfield County rezoning violated DNR water rules*

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Bayfield County residents living around a 380-acre parcel proposed for development as a private airstrip, condominiums and hotel complex formed a group called the "Committee for Responsible Land Use" and have filed a legal claim against Bayfield County, a possible precursor of a legal challenge to zoning changes on the property 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.

The firm late last year obtained zoning changes for the project despite opposition from over 20 speakers and over 100 area residents who packed the Bayfield County Board room. The project still requires conditional use permits from the county before it can become a reality.

According to a news release issued by the committee, its members oppose the project because of objections to what the release called "spot zoning" and cited dangers of noise, pollution and impacts on the neighboring fruit growing district as well as stress on Town services, and the effects of runoff, sewage and chemicals on the headwaters of Pikes Creek.

The group has retained Madison attorney William O'Conner to press the matter. In the claim, O'Conner asserted that the county's action in granting the zoning changes was "arbitrary and unreasonable," that the changes would conflict with the Town of Russell land use plan and didn't consider the detrimental effects to storm and floodwater storage capacity, the flow of groundwater, filtering and storage of sediments and nutrients, fish and wildlife habitat and areas of special recreational and scenic interest.

O'Conner also claimed that the County Board "erred as a matter of law" by not following state statutes "affecting shorelands relative to a navigable tributary of north Pikes Creek that extends to within the boundaries of the rezoned property."

O'Conner referred to a letter sent by Department of Natural Resources Water Management Specialist John Spangberg to Bayfield County Zoning Administrator Karl Kastrosky.

In the letter, dated January 23, Spangberg said the department had received a complaint through the DNR tipline about logging operations in the bed of a stream at the Shadow Wood Landing site.

"The stream in question is shown on USGS maps as an intermittent stream with a stream length of about one half-mile," Spangberg said in the letter, noting that he had gone to the site and viewed the stream in question. "Based on my observation of the altered stream channel, the length of the drainage area for the stream and anecdotal information, this stream is certainly potentially navigable and will need to be further evaluated this spring to determine if the watercourse is a navigable waterway."

O'Conner said if the stream is navigable, the county didn't follow proper procedure in issuing the zoning change.

"There is nothing that we were able to uncover in reviewing the legal record of this thing that indicates that the county addressed the stream on this property," he said.

O'Conner said this is despite the county's use of their own maps that indicated the presence of what appeared to be a navigable waterway.

"The fact that there was a stream shown on the records that were shown by the zoning staff and considered by the County Board, I think should have put up a red flag," he said.

The presence of a navigable stream on the property would change the situation with regards to the rezoning, O'Conner said.

"If that is a navigable waterway, there are zoning requirements that would be different than if the property was not affected by the presence of a navigable waterway," he said. "It appears that the county just ignored that altogether. I don't know if that was intentional or accidental, but it happened."

O'Conner said there were different standards to be used when there was a consideration of navigable streams on the property. He said the county would have been required to send notice of the zoning change to the DNR that they were considering a change to the zoning ordinance.

"That would have brought in the state agency that is chiefly responsible for the protection of the state's waters. They would have been brought in to consider the effect and whether they could approve that zoning change."

On Tuesday, Kastrosky said that Bayfield County Administrator Mark Abeles-Allison had received the notice of claim, but that he, Kastrosky, hadn't been aware of it until Tuesday. He said that the claim didn't surprise him.

"This was quite controversial at the time," he said of the zoning change. "It's under legal advisement," he said. "Since this is a county issue, it isn't particular to the county's zoning and planning department. It may be out of my hands. It may go to the county board or executive committee."

Abeles-Allison had little to say about the claim. On Tuesday, he sent an e-mail to The Daily Press, advising, "We have received a copy of the claim. We are reviewing it now with our legal department."

CFS-LLC chief executive officer Annalisa Cariveau said Tuesday that she wasn't aware of the claim.

"It does sound like it is something between the county and the group," she said. "I guess we will rely on due process to sort that out. Other than that, I don't think this is anything I would have anything to comment on at this time."

Committee for Responsible Land Use member Tom Galazen said the claim was intended to put the county and developer on notice that they were willing to go to court over the matter.

"Our interests and the interests of the area have not been met in the decisions that have been made," he said. "Court action is expensive and time-consuming for everyone, we are hoping that the county will take a look at this and re-examine and reverse the decision they made," he said.