

Court sends Shadow Wood Landing rezone back to square one

Judge reverses zoning change and remands to Bayfield County

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WASHBURN — Following about 40 minutes of oral arguments, Bayfield County Circuit Court Judge John Anderson Monday reversed a zoning change on 380 acres of land in Bayfield County's Town of Russell and sent the matter of Shadow Wood Landing back to the Bayfield County Board for reconsideration.

The rezoning is the first step in a planned exclusive fly-in development that would eventually include such amenities as a private airstrip, associated condominiums and a hotel complex. A Minneapolis-based group called CFS-LLC proposed the development and sought the rezoning changes needed to create the project.

Opposing the project is a group called "Committee for Responsible Land Use," made up primarily of area landowners, which asserts the project was developed arbitrarily and without adequate community input, does not meet requirements of the Town of Russell Land Use Plan and doesn't meet shoreland zoning requirements based on the presence of a navigable stream on the property.

Anderson made his ruling based on only one of those three arguments advanced by the plaintiffs, the issue of shoreland zoning.

He ruled that under state law, an intermittent stream on the property would be presumed to be a navigable waterway for the purpose of establishing whether shoreland zoning requirements should be applied to rezoning. Anderson noted that CFS-LLC's own rezoning documents identified the presence of an intermittent stream on the property, and that given state law, the presumption should have been that the stream was navigable, and thus the zoning should have been handled on the basis of shoreland zoning rules, which are considerably more stringent than the ordinary zoning requirements that were actually used.

Anderson directed the plaintiff's attorney, William O'Connor of Madison, to submit a proposed order for the judge's signature within 15 days. He will then hold the order for 10 days to allow time for objections before he signs it.

Bayfield County was represented by Rhinelander attorney Andrew P. Smith, who argued that only 40 acres of the development should be affected by shoreland zoning regulations if, indeed, the intermittent stream turned out to qualify as a navigable stream. He also asserted that the Committee for Responsible Land Use lacked standing to sue.

However, Anderson said that shoreland zoning laws clearly established the right of adjacent landowners to sue under the public trust doctrine. The public trust doctrine provides citizens the opportunity to challenge the validity of legislative acts against matters of the public trust, such as use of navigable waters.

In remanding the issue back to the county board, Anderson did not actually rule that the intermittent stream was navigable, but merely indicated that the information consented to by both sides was sufficient to raise the legal presumption that there was a navigable stream on the property.

The ruling requires that the county tackle the issue of whether or not there is a navigable stream on the property before determining the kind of zoning that is applicable.

Bayfield County Zoning Administrator Karl Kastrosky said since he did not yet have a written decision, he was uncertain what would happen next in the matter.

"I don't know what the intention of the developer is now, I haven't had any contact with them," he said. "Ultimately, the county board is going to have to make a decision on what action they wish to take, based on the judge's order. The owner of CFS is going to have to decide based on this issue and others whether they want to proceed."

Kastrovsky said it appeared to be uncertain in the eyes of the judge whether the parcel was a shoreland zone or not.

"If it's an intermittent stream, then it has to be proven non-navigable or else it's assumed that it is," he said.

Kastrovsky said the county needs to review the issue and CFS-LLC has to determine how they wish to move forward on the matter.

"The county may just do what they need to do in lieu of the applicant (CFC-LLC) doing anything. Not only is this an applicant's issue, but also we'd like to see some closure as far as the future is concerned. Is it a shoreland zone or not? Is the stream navigable or not? Someone else will perhaps own this land at some point in time. If any development plans are brought to our office we need to know how to apply the standards. It is still up in the air as to what the standards are."

Committee for Responsible Land Use member Tom Galazen said he was very pleased with the decision, and has no doubt about what the next step should be.

"I don't know ultimately where it is going to lead us, but at least the county has been instructed to take a closer look at things," he said. "We think it would be a good time, with the economy, and the way the decision was rendered, for CFS to look at another option for the land, like reforestation, to look at their motives and goals and perhaps find another use for the property."

Galazen said the decision was "a long time coming," noting that the case had been filed over a year ago.

"I am glad that our case has finally been asserted," he said.

Galazen said the decision was most likely not the end of the matter.

"Not in any way, not by our standpoint," he said. "But it's the best turn of events we've had in the case in quite a while."

Bayfield County Board Chairman William Kacvinsky said Monday the county board would wait to see the judge's order before determining a course of action.