

FILED
11-24-2021
Washburn County
Clerk of Circuit Court
2021CV000118

STATE OF WISCONSIN CIRCUIT COURT WASHBURN COUNTY

SPOONER LAKE PROTECTION AND
REHABILITATION DISTRICT
P.O. Box 73
Spooner, WI 54801,

JOSEPH and POLLY BANICK
W5581 Miramar Road
Spooner, WI 54801, and

Case No.
Case Code: 30955

NANCY HANSON
W5739 Bayside Road
Spooner, WI 54801,

Plaintiffs,

v.

WASHBURN COUNTY PLANNING AND
ZONING COMMITTEE
10 4th Avenue
PO Box 506
Shell Lake, WI 54871, and

WASHBURN COUNTY
10 4th Avenue
PO Box 639
Shell Lake, WI 54871,

Defendants.

SUMMONS

**THE STATE OF WISCONSIN TO WASHBURN COUNTY PLANNING AND
ZONING COMMITTEE AND WASHBURN COUNTY:**

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Washburn County Clerk of Courts, P.O. Box 339, 10 4th Avenue, Shell Lake, Wisconsin 54871 and to Plaintiffs' attorney, whose address is Pines Bach LLP, 122 West Washington, Suite 900, Madison, Wisconsin 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real property you own now in the future, and may also be enforced by garnishment or seizure of property.

Dated this 24th day of November, 2021.

PINES BACH LLP

Electronically signed by: Christa O. Westerberg

Christa O. Westerberg, SBN 1040530

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COMPLAINT

Plaintiffs Spooner Lake Protection and Rehabilitation District, Joseph and Polly Banick, and Nancy Hanson (“Plaintiffs”), by their attorneys, Pines Bach LLP, hereby submit this Complaint for the remedy available by common law certiorari. Plaintiffs seek review of Defendant Washburn County Planning and Zoning Committee’s decision to

approve a conditional use permit for a 200-site RV campground on October 26, 2021 (“Decision,” attached as **Exhibit A**).

In support hereof, Plaintiffs allege as follows:

PARTIES

1. Plaintiff Spooner Lake Protection and Rehabilitation District (“Spooner Lake District”), is a public inland lake protection and rehabilitation created under Wis. Stat ch. 33, subch. IV, whose address is P.O. Box 73, Spooner, Wisconsin 54801. It is dedicated to protecting and enhancing Spooner Lake, including protecting water quality and enhancing recreational uses on the lake, and its members and leaders engage in activities to protect and study the lake and make plans for its management.

2. Plaintiffs Joseph and Polly Banick are adult residents of the State of Wisconsin whose address is W5581 Miramar Road, Spooner, Wisconsin 54801. They are members of Spooner Lake District.

3. Plaintiff Nancy Hanson is an adult resident of the State of Minnesota whose part-time address is W5739 Bayside Road, Spooner, Wisconsin 54801. She is a member and board member of Spooner Lake District.

4. The Washburn County Planning and Zoning Committee is a county zoning board under Wis. Stat. § 59.69(5e), and is authorized by Washburn County Ordinance ch. 38, Article IV, Div. 20, to grant or deny conditional use permits. Its address is 10 4th Avenue, PO Box 506, Shell Lake, Wisconsin 54871.

5. Washburn County (“County”) is body corporate under Wis. Stat. § 59.01, with the duties and authority specified therein, and whose address is 10 4th Avenue, PO Box 639, Shell Lake, Wisconsin 54871.

JURISDICTION AND VENUE

6. Venue is proper in the Circuit Court for Washburn County under Wis. Stat. § 801.50(2)(a)-(c).

7. The Committee's Decision is a quasi-judicial decision which this Court has jurisdiction to review. *E.g., Ottman v. Town of Primrose*, 2011 WI 18, ¶ 34, 332 Wis. 2d 3, 796 N.W.2d 411.

8. This complaint is timely filed, within the six-month period for common law certiorari actions. *State ex rel. Czapiewski v. Milwaukee City Serv. Comm'n*, 54 Wis. 2d 535, 196 N.W.2d 742 (1972).

FACTS

9. Spooner Lake is a 1,132 acre navigable lake in Washburn County. Its maximum depth is 17 feet, but its average depth is 6-8 feet. As a shallow lake, it is very vulnerable to contamination and nutrient inputs like nitrogen and phosphorus.

10. According to the Lake Watershed Management Plan for Spooner Lake, development practices adversely affect the quality of water entering the lake through activities like runoff, which increases soil erosion and contributes nutrients through manure spreading, septic systems, fertilization, and other activities. Development in the subwatershed area of Spooner Lake has already increased the speed of eutrophication of the lake.

11. On September 8, 2021, North Camp Properties II LLC applied to the Washburn County Zoning department for a conditional use permit ("CUP") to build a 200-site seasonal campground, designed for recreational vehicle use.

12. The campground property borders Spooner Lake and much of the campground would be in the shoreland area of Evergreen Lake, a 16-acre navigable lake with a maximum dept of 8 feet.

13. The campground property is dense with wetlands, many of which surround or are adjacent to Spooner Lake and Evergreen Lake.

14. The campground site is currently undeveloped and hosts high-quality, native wetland vegetation with few invasive species. This vegetation is sensitive to disturbance from development activities and intrusion by non-native species.

15. The campground would more than double residential density around the lake, which currently stands at about 150-160 homes, and would be the largest campground in Washburn County.

16. The proposed campground relies on conventional and mound septic systems to treat wastewater. However, soils in the area are rated as “very limited” for septic according to U.S. Department of Agriculture maps. While the applicant contended that the campground would meet state standards for privately owned wastewater treatment systems, that contention relied on state standards that assumed discharge would be 30 gallons per day per camping unit, when modern park models of campers such as those planned for the campground are estimated to generate much more.

17. The September 8, 2021, CUP application was not the first for the campground. An initial application was rejected out-of-hand by the Committee in December 2020 as incomplete.

18. The Committee approved a second CUP application on February 23, 2021, by a 4-0 vote with one abstention, but the Spooner Lake District appealed the CUP decision

to the Washburn County Board of Adjustments (“Board”). The Board disapproved the CUP in a July 30, 2021, meeting because, *inter alia*, the application was still missing necessary information such as the ordinary high water mark (“OHWM”) for Spooner Lake and Evergreen Lake.

19. The Board’s bylaws provide that no matter that has been acted upon by the Board concerning the same or part of the same property shall be considered again within one year from the date of the action, except for reconsideration and/or rehearing. No party requested reconsideration or rehearing of the July 30, 2021, vote.

20. The September 8, 2021, application was still incomplete, missing information such as dimensions for all proposed structures such as shower houses, property lines, locations for septic drainfields, accessory structure information, complete wetland locations, and information to determine compliance with shoreland zoning standards, which are applicable to all CUPs and campgrounds in shoreland areas under the County’s ordinances.

21. The campground has generated substantial opposition because of the risk the development poses to the lakes and surrounding wetlands, concerns that it will lower property values, and because the significantly increased density will change the character of the area and cause noise, traffic, light, and similar impacts, among other reasons. Several written comments submitted ahead of the meeting noted the application did not contain a wetland delineation report.

22. Pursuant to County ordinance, the Committee noticed the CUP application for a public hearing to be held on October 26, 2021. The Committee accepted written comments prior to the meeting.

23. Anticipating that the applicant would make an extensive presentation in favor of their application at the hearing, as it did in February, Spooner Lake District asked the Committee Chair for equal time to make a presentation, or at least twenty minutes. That request was denied. The Chair did not respond to a separate request to provide copies of any conditions the Committee was considering in advance of the meeting, so the public could comment on them.

24. At the October 26, 2021, hearing, the applicant gave an over 90-minute presentation with a 67-slide powerpoint presentation. The presentation reiterated much of the written application, though new information was also submitted, such as the applicants' over 200-page wetland delineation report. No time limits were imposed on its presentation.

25. At the public hearing, the Committee Chair requested that people who had submitted written comments not speak during the public hearing because the written comments were "on record." She invited those who had not submitted written comment to come to the microphone, though speakers were strictly limited to three minutes per person and were cut off at precisely three minutes. Written comments were not read.

26. Commenters were overwhelmingly opposed to the campground CUP, so the Chair's directions were disproportionately imposed on project opponents.

27. After the hearing, the applicant's attorney was permitted to interrupt and, at times, guide the Committee's deliberations.

28. The Committee approved the CUP application, 4-0, with one abstention. It found the application was complete and reviewed the Ordinance's standards but did not make findings or explain its findings on all of the standards. Comments during deliberations indicate members misapplied the standards, such as by stating the campground

was ¼ mile from Spooner Lake and the wetlands would filter any contaminants before they reached the lake, without considering impact to the wetlands themselves or Evergreen Lake.

29. The applicant did not provide substantial evidence that all requirements of the County's ordinance were or would be met, and the Committee's decision was not supported by substantial evidence to this effect. Other substantial evidence in the record indicates the requirements will not be met. For example, Sec. 38-370 of the County's ordinance requires that "[t]he soil conditions and other physical features must be suitable for such use" in the RR-2 District, and Sec. 38-563(12) requires evidence that camping units will be served by suitable sanitary facilities. Yet evidence of record showed the soils and planned septic would not be sufficient for a campground of this density, size, and local environmental conditions, and that the applicants' calculations underestimated impact.

30. The Committee imposed the same permit conditions as it had in February, along with the additional prepared, generic conditions.

31. A different campground CUP request was considered earlier in the Committee's October 26, 2021, meeting, for a 70-site campground on Silver Lake. The plans for that campground did not show dimensional requirements for shower houses and structures and distances on the map, and the CUP application was not approved for that reason.

32. Plaintiffs are harmed by the Defendants' actions. The Spooner Lake District has invested substantial volunteer effort and funding to protect and study the lake and make plans for its management. Its members own property on Spooner Lake, including members who live in close proximity to the proposed campsite. Spooner Lake District will be harmed by the CUP and campground, which is likely to reduce water quality in the lake, its

adjoining wetlands, delineated sensitive areas along the lake shoreline, and groundwater, undermining the District's efforts to improve water quality. The District and its members will also be harmed by increased noise, traffic, development, light, and visual impacts caused by the campground, along with lower property values. Additionally, several members of the District did not speak at the public hearing due to the Chair's comment that people who submitted written comments should not provide verbal comment.

33. Joe and Polly Banick are aggrieved by the Committee's decision because it will lead to increased noise, vehicle traffic, boat traffic, along with lower property values. The Banicks reside very close to the proposed campground and have 300 feet of lake frontage, and would be harmed by lower water quality in the lake, sedimentation, and other effects.

34. Nancy Hanson is aggrieved by the Committee's decision because she was deterred from speaking at the October 26, 2021, public hearing due to the Chair's comment that people who had submitted a written comment should refrain from speaking. She is also aggrieved because she will be affected by increased boat traffic and the density the campground will bring to the Spooner Lake area.

CAUSE OF ACTION

35. Plaintiffs reallege all the preceding paragraphs as if specifically set forth herein.

36. Under Wisconsin common law, a circuit court may test the validity of a decision rendered by a lower tribunal through certiorari review. The court may reverse or affirm, wholly or partly, or may modify, the decision brought up for review.

37. On certiorari review, a court considers whether a committee kept within its jurisdiction, acted according to law, exercised its will and not its judgment, and based its decision on evidence that reasonably supported that decision.

38. The Committee's Decision to approve the CUP should be reversed on certiorari review for at least the following reasons:

- a. The Committee violated common law concepts of due process and fair play, and the County's ordinances regarding public hearings for conditional use permit applications, Ord. §§ 38-524 and 38-650 ("Public hearings shall be held to obtain information from the public and to increase public awareness"), and acted arbitrarily, based on the Chair's direction that people who had submitted written comment should not offer verbal comment, different public comment opportunities and treatment for the applicant and those opposed to the project/public commenters, content-based restrictions on speech and/or viewpoint discrimination, and prejudgment of the project to approve with prepared conditions;
- b. The Committee lacked jurisdiction to hear the CUP application within a year of the Board's prior decision;
- c. The Committee erred in approving an incomplete CUP application, and approving the application without the opportunity for the public to review and comment on the wetland delineation report;
- d. The Committee erred in approving a CUP application that was not supported by substantial evidence on all applicable ordinance requirements, *e.g.*, Ord. § 38-522; Chapter 38, Article IV, Division 24, Campgrounds and Resorts; and Chapter 38, Article IV, Division 27, Shoreland Protections; and

- e. The Committee did not make sufficient findings to determine that the standards and requirements of the ordinances were satisfied. *Lamar Cent. Outdoor, Inc. v. Bd. of Zoning Appeals*, 2005 WI 117, 284 Wis. 2d 1.

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Grant the Plaintiffs' petition for certiorari;
- B. Reverse the decision to approve the CUP; and
- C. Grant such other relief as the Court determines is just and equitable.

Dated this 24th day of November, 2021.

PINES BACH LLP

Electronically signed by: Christa O. Westerberg

Christa O. Westerberg, SBN 1040530

Attorneys for Plaintiffs

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**Decision of the Zoning Committee
Washburn County, Wisconsin**

Findings of Fact

Having heard the testimony and considered the evidence presented, the Committee finds the application to be **Correct** / **Incorrect**.

Conclusions of Law

Based on the above findings of fact, the Committee concludes that:

CONDITIONAL USE – The application for a conditional use permit **Does** / **Does Not** * qualify under the following criteria of Section 38-522 of the Washburn County Zoning Ordinance:

- 1) The location, nature, and size of the proposed use.
- 2) The size of the site in relation to the proposed use.
- 3) The location of the site with respect to existing or future roads giving access to it.
- 4) Its compatibility with existing uses on land adjacent thereto.
- 5) Its compatibility with the immediate and surrounding environment and the possibility for reclamation, if needed.
- 6) Its impact upon and harmony with the future environment and the future development of the district.
- 7) Existing topographic and drainage features and vegetative cover.
- 8) Its relationship to the public interest, the purpose and intent of this article, and substantial justice to all parties concerned.

*Explanation of criteria if "does not" is circled:

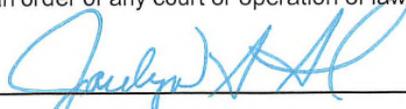
Order and Determination

On the basis of the above findings of fact, conclusions of law, and the record in this matter, the Committee orders:

CONDITIONAL USE: The request for a conditional use is **Denied** / **Granted** / **Granted in Part** subject to the following conditions _____

_____ administrative review in annually in June years _____ committee (public hearing) review in _____ years

The Zoning Administrator is directed to issue a decision permit incorporating these conditions. Any privilege granted by this decision must be exercised within one year of the date of this decision by obtaining the necessary building, zoning, and other permits for the proposed construction, if applicable. This period will be extended if an order of any court or operation of law stays this decision.



Zoning Committee, Chair

26 Jul 2021

Date

This decision may be appealed by filing an appeal with the Board of Adjustments within thirty (30) days of this decision.

Washburn County Zoning

North Camp Property Conditional Use Conditions.

1. Must meet all Wis. Admin. Code Ch. ATCP 79 requirements which are enforced by state personnel or their designated agent, all sanitary requirements of the sanitary ordinance and Wisconsin Administrative Codes, and any other applicable county, state and federal codes. Must comply with Washburn County sanitary maintenance program.
2. Owner will work with Washburn County Land Information Department to develop a numbering system that is compatible with the 911 system for each individual site. The production, installation, and maintenance will be paid for by the owner.
3. A campground map shall be placed on file in the zoning office and shall include the campground layout, location of campsites, roads, property lines, required setbacks, structures, water supplies, private waste disposal system, recreation areas and any other information that the zoning committee shall deem necessary prior to construction. Any proposed changes in the approved campground shall be presented to the zoning office for approval. No implementation of the proposed change shall take place until written approval is received from the zoning office
4. Land-use permits shall be required for all accessory structures and facilities (e.g., sheds, decks, screen porches) associated with a campground and shall conform to the provisions of division 27 of chapter 38 of the Washburn County Code. Both land owner and the renter are responsible and will be fined if violated.
5. Camping units shall meet all WI camping unit requirements.
6. A copy of the State campground license must be provided to the zoning office before any land use permits will be granted.
7. Annual compliance inspection report submitted to the zoning committee at their June meeting.
8. Lighting in campground will be down lighting.
9. A map for emergency dispatch, emergency management and the zoning office to be provided to the zoning office.
10. All road ways be wide enough for emergency services to be able to get in.
11. Quiet hours in the owner's contracts 10:00PM-10:00AM
12. Emergency phone number for manager to be provided to the zoning office.
13. Storm shelters on site.

Conditional Use Permit

Applicant:

North Camp Properties

Hearing Date:

26 Oct 2021

Is the Application complete?

Are the boxes checked?

1 Does Plot Plan show location of:

Wells

yes 4

Septic tanks, holding tanks, or drain fields

yes 9

Existing and proposed structures with dimensions noted

yes

Lakes, ponds, streams, rivers, wetlands, and flowages

yes delineation

All public roads

yes

2 Does Plot Plan show distances of any existing or proposed structures from:

Ordinary high water mark of all lakes, ponds, streams, rivers and flowages

yes

Wetlands

yes

Centerline and/or right-of-way of any public road

yes

Side and rear property lines

yes

Other structures

3

Are the locations and distances sufficiently detailed?

yes

4

Other issues:

Findings of Fact/Conclusions of Law --- Required

1. Is the location, nature and size of the proposed use compatible with zone and ordinance? *yes*
2. Is the size of the site appropriate to proposed use? *yes*
3. Is the location of the site appropriate with respect to the existing or future roads giving access to it? *yes*
4. Is the proposed use compatible with existing uses on adjacent land? *yes*
5. Is it compatible with the immediate and surrounding environment and the possibility for reclamation, if needed? *yes*
6. What is its impact on the harmony with the future environment and the future development of the district? *yes*
7. Are existing topographic and drainage features and vegetative cover compatible with proposed use? *yes*
8. What is its relationship to the public interest, the purpose of this (ordinance) article, and substantial justice to all parties? *yes*
9. Other considerations:
suitability of soil conditions *not an issue*

Granting Permit and Conditions

- Identify conditions to be attached to permit. Are they reasonable, practical and measurable? *yes*
- Does applicant agree to conditions? Is there substantial evidence applicant can comply? *yes*
- Is there substantial evidence to support granting of the CUP? What is it?
Summarize *Summary of evidence by the committee is available on the video of committee deliberation*