

In re Appeal of:

North Camp Properties II LLC Conditional Use Permit (Washburn County Board of Adjustment review of a conditional use permit approved by the Washburn County Zoning Committee) requested by the Spooner Lake Protection and Rehabilitation District et. al.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Washburn Board of Adjustment (“Board”) made and recited its oral decision denying the Appeal and upholding the grant of the Conditional Use Permit by the Washburn County Zoning Committee via unanimous vote of the Board on May 20, 2022 which was entered on the record and transcribed.

Now comes the Board for the purpose of ascribing those findings and conclusions that were made by the Board at the end of its deliberations following a properly notified and extensive Public Hearing on the Appeal held on said 20th day of May, 2022.

I. BACKGROUND AND FACTS

This matter came before the Board on appeal by the Spooner Lake Protection and Rehabilitation District (the “District” or “Appellant”). Appellant sought review of a decision made by the Washburn County Zoning Committee (the “Zoning Committee”) on October 26, 2021 to issue a conditional use permit (the “CUP”) to North Camp Properties II LLC (the “Applicant”) for a seasonal campground (“Proposed Use”) on property located in the Town of Spooner and as more fully described in the Application for Conditional Use Permit dated September 10, 2021 (“CUP Application”). The parcels of real property described in the CUP Application (collectively, the “Property”) abut Spooner Lake and Evergreen Lake. The Zoning Committee held a public hearing on October 26, 2021 and also rendered its decision to approve the CUP Application and the issuance of the CUP on October 26, 2021.

The Appellants filed this appeal on November 24, 2021 seeking reversal of the Zoning Committee’s approval of the CUP and issuance of the CUP. The Appellant cited the following reasons for appeal: (1) the Committee’s process for hearing the Conditional Use Permit Application was improper; (2) the Zoning Committee erred by approving an application because the application was not complete (3) the Zoning Committee erred by accepting a wetland delineation report at the last minute without sufficient time for public comment, (4) the North Camp Properties CUP Application did not demonstrate that all requirements and conditions established are or would be

satisfied by substantial evidence, (5) the Zoning Committee failed to make adequate findings that the requirements of the County's ordinance were satisfied.

II. HEARING

The Board held a public hearing on May 20, 2022 ("May 20th Hearing") at which time the Board considered its options under the ordinance and appropriate state statutes as to whether to take additional evidence or simply rely on the record and the submitted statements of the interested persons. A lengthy discussion occurred and the Board determined that it would proceed based on the existing record but that it would allow the parties and the public through public comment to make additional arguments and submit additional materials for Board consideration.

Initially it was noted that the Public Hearing was properly noticed and that all interested parties were present and represented by counsel. The meeting (including the Public Hearing) was convened on May 20th, 2022, at which time the Board heard presentations from the Appellant (by counsel and witnesses offered), the Zoning Committee (by counsel) and the Applicant (by counsel). The May 20th, 2022 hearing was transcribed by a court reporter. These Findings of Fact and Conclusions of Law shall include that portion of the transcript as to the deliberations on determinations of the Board following the closing of the Public Hearing.

The following documents in addition to the actual record from the Zoning Committee hearing and other exhibits admitted during the hearing were submitted by counsel for Appellant, counsel for the County Zoning Committee and counsel for the Applicants:

1. Appellant's Position Statement
2. Zoning Committee's Position Statement
3. Applicant's Position Statement

Many members of the public spoke at the May 20th hearing to voice opinions on the CUP Application and correspondence from members of the public was read aloud at the May 20th hearing. The Board was able to ask questions of the parties at the May 20th hearing, and did indeed do so. The May 20th hearing and the Board's deliberations lasted over seven (7) hours.

After preliminary discussions on process and procedure, the Board proceeded with the public hearing. The Board heard from all parties present and afforded everyone present the opportunity to speak or present evidence. The Parties were allowed time to make their arguments without limitation and with occasional questioning from the Board and its legal Counsel.

After the public hearing, the Board allowed the Applicant and the other interested parties an opportunity to summarize their positions. Questions were asked by the Board and each party was afforded an opportunity to respond to any new or unique inquiry that may have arisen.

After closing of the presentation of the evidence, the Board commenced its deliberations.

The Board must render its decision pursuant to Wis. Stat. § 59.694 and *Osterhues v. Board of Adjustment for Washburn County*, 2005 WI 92, 282 Wis. 2d 228. More specifically, the Board may “reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may make the order, requirement, decision or determination as ought to be made,” and to that end the Board has all powers of the Zoning Committee. The legal questions before the Zoning Committee, and hence before the Board as it stepped into the shoes of the Zoning Committee, are: (1) whether the CUP Application complied with the County Ordinances; and (2) whether such decision is consistent with the terms of Wis. Stat. § 59.69(5e). In setting forth its arguments, the Applicant’s legal counsel, the Appellant’s legal counsel and the County’s legal counsel utilized the standards of certiorari review in answering the legal questions. Those certiorari standards are: (1) whether the Zoning Committee kept within its jurisdiction when it approved the CUP Application and issuance of the CUP; (2) whether the Zoning Committee proceeded on a correct theory of law; (3) whether the Zoning Committee’s decision to approve the CUP Application and issue the CUP was arbitrary, oppressive, or unreasonable, and represented its will and not its judgment; and (4) whether the Zoning Committee might reasonably make the decision to approve the CUP Application and issue the CUP based on the evidence.

After evaluation and discussion of the evidence, the Board determined that the CUP Application did comply with the requirements set forth in the County Ordinances and that the Zoning Committee’s decision was consistent with Wis. Stat. § 59.69(5e). As such, pursuant to Wis. Stat. § 59.694(8), the Board did affirm the Zoning Committee’s decision.

FINDINGS OF FACT

Having heard the testimony and considered the evidence presented, the Board determined the facts of this case to be:

1. That the Board did abide by its rules and that the Board did review the entire records and all of the properly submitted materials. Each Board member affirmatively voiced his or her affirmance on the record.
2. That the Proposed Use was a conditional use under the RR-2 zoning district and therefore required a conditional use permit pursuant to Sec. 38-372, County Ordinances.
3. That the Applicant was required to submit a complete application pursuant to Secs. 38-520 and 38-521 and 38-522, County Ordinances.
4. That the Applicant did full its duty by filing an Application pursuant to Secs. 38-520 and 38-521 and 38-522, County Ordinances which was complete and did include all of the required elements as set forth in the County Ordinances.
5. That the Application was submitted on the proper standard form conditional use application, along with a complete and accurate Plot Plan as required.

6. That the requirements as to wetland delineation/location were complete as required by the ordinance.
7. That the Board believes that the development as proposed does meet the definition of a campground as set forth in the ordinance and as permitted in this zoning district
8. That the application made by North Camp Properties II, LLC was a new application by a new applicant and that as such it did not violate any time frame related to reapplication for denied variances or permits.
9. That the Zoning Committee followed proper procedure in making its decision in the manner it took testimony, reviewed the application, and made its decision. That no inequity existed in the manner the Committee chose to allow the testimony and comments to be presented.
10. That the Zoning Committee did consider the relevant factors expressed by the public comments and did determine that opinions may vary as to the effect the applicant has addressed the concerns set forth in the ordinance noting that there are many more steps that the Applicant must take before the final occupancy or use of the area as the campground becomes a reality.
11. That the evidence related to the wetland delineation report would not have affected the decision because its detail was not required and that testimony has now been taken that does not change the decision that the required materials were presented and properly considered.
12. That the Zoning Committee did fully and completely analyze the materials presented, that the Committee did articulate their findings, and that those findings were sufficient to support their decision.

CONCLUSIONS OF LAW

Based on the above Findings of Fact, the Board concluded the following:

1. The CUP Application did comply with the County Ordinances because the CUP Application was complete meeting all of the requirements of the ordinance.
2. The Zoning Committee's decision did comply with the County Ordinances.
3. The Board's conclusions set forth herein are based on the entire record as it existed at the time of the May 20th Hearing.
3. The Zoning Committee's decision was consistent with the terms of Wis. Stat. § 59.69(5e) because the CUP Application was complete and the decision to approve the CUP Application and issue the CUP was supported by substantial evidence.

4. The Zoning Committee did proceed on a correct theory of law when it granted the CUP.
5. The Zoning Committee's decision to issue the CUP was not arbitrary and unreasonable
6. The Zoning Committee provided sufficient analysis in reliance on the testimony and evidence as supported by their discussion on the record to support the Committee's decision to grant the Conditional Use Permit.

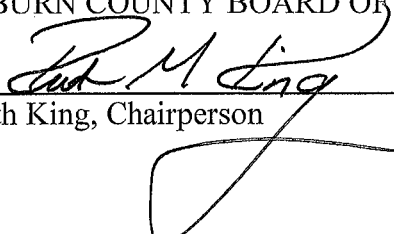
Based on the foregoing Findings of Fact and Conclusions of Law, the Board affirms the Zoning Committee's decision to approve the CUP Application and issue the CUP.

III. APPEAL/REVIEW OF BOARD'S DECISION:

The Washburn County Board of Adjustment's decision may be appealed by filing an action in certiorari in the circuit court for Washburn County within 30 days after the date of filing of the decision. The decision was filed on June 29, 2022. These Findings of Fact and Conclusions of Law are hereby issued to further illustrate the reasoning for the Washburn County Board of Adjustment's decision rendered on May 20, 2022 and filed on June 29, 2022. The Washburn County Board of Adjustment assumes no liability for and makes no warranty as to reliance on the decision or the issuance of these Findings of Fact and Conclusions of Law.

Dated this 29th day of June, 2022.

WASHBURN COUNTY BOARD OF ADJUSTMENT


By: Ruth King, Chairperson