



FEATURED



The Spooner Cardinals complete a furious comeback to win and earn a place in the playoffs. **1B**

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# Campground permit denied

## DECISION LIKELY TO BE APPEALED IN CIRCUIT COURT

BY DANIELLE DANFORD  
For the Spooner Advocate

SHELL LAKE— The controversial 200-site campground by Spooner Lake has stalled after the Washburn County Board of Adjustment did not affirm the conditional use

permit (CUP) for the campground during a hearing on Friday, July 31, in effect denying the CUP which would have allowed the proposed campground development of the property under certain conditions.

The BOA recognized that its determination likely would be appealed to circuit court. Since the board vote denies the CUP, the Thompson's likely will be

the party to appeal the decision to circuit court so they have the chance to move forward with the campground development.

### Case origins

In February, the county zoning committee approved a CUP for the campground near Spooner Lake. Then the Spooner Lake District appealed the zoning committee's

decision granting the CUP. The appeal brought the matter before the BOA.

The BOA includes Ruth King, chair, and members Harry Sorenson, Joe Weiss, Gene Bethel, and Zach Tranmer. At an initial meeting on the case in May the board determined each party would submit information and briefs in support

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Anders Helquist sits center with land surveyor Mark Krause at left and Steve Austin, a campground operator, at right. Behind them are the remaining public that at the outset of the hearing filled all the available seats in the Washburn County board meeting room.

## Campground

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of their case for the hearing.

The parties include Christa Westerberg of Pine Bach law firm representing the lake district; Anders Helquist of Weld Riley law firm representing the CUP applicant, Chris Thompson; Thomas Frost, Washburn County corporation counsel representing the zoning committee; and Rebecca Roeker of Von-Briesen law firm, representing the BOA.

After public comments, the parties each received an hour to state their case to the board. Then each party received a half hour for their rebuttal. After the rebuttals, the BOA deliberated for an hour and 45 minutes before voting on the matter.

### Public comment

More than 75 people attended in person on Friday and over 20 people appeared virtually to share their comments with the board. In total the public comment portion of the hearing lasted just over an hour as the board allowed all present, in person and virtually, the opportunity to comment.

In general, all those that commented spoke in favor of the lake district's appeal and against the campground development. Not a single comment in favor of the campground development was offered.

Their concerns included its size and scale, light pollution, negative impacts on Spooner Lake, spread of aquatic invasive species, boat congestion, increased need for local emergency services, decreased property values on nearby property, increased vehicle traffic, pedestrian safety, objections to number of septic systems on property, and lack of key information for the project.

### Lake district's case

Westerberg, representing the Spooner Lake District, provided five reasons for their appeal to the board: that the application is incomplete, there was untimely application supplements, that the application did not meet the ordinance requirements for substantial evidence, the committee failed to explain how the CUP standards were satisfied, and that the CUP is contrary to the Residential Recreational II zoning district.

> First reason – Westerberg said the plot plan provided in the application is incomplete as an official ordinary high-water mark (OHWM) is not identified on the plan; road center lines, septic systems, and drain fields are not delineated on the map; the map itself, being too small to determine distances accurately, was a point of contention; and the campground map submission itself is inconsistent with the county zoning ordinance as it needs to be with the CUP application.

> Second reason – The lake district said the untimely application supplement is due to how the CUP applicant shared new information, not in the original CUP application, about the project at public hearing. The new information included floodplain and wetland maps. Westerberg contends that should have been included with initial application.

Westerberg stated that the CUP conditions were exchanged among committee members and zoning applicants before the public hearing and the public did not have opportunity to meaningfully comment on them.

> Third reason – The appellant said the application did not meet the ordinance's requirements as it did not include substantial evidence that the property had suitable soils and meets shoreland zoning

requirements or dimensional requirements for a campground of its size.

Westerberg called Jamie Dunn, retired Department of Natural Resources hydrologist, Ted Smith, retired DNR water resources manager, and Kathy Bartilson, representative of Washburn County Lakes and Rivers Association, as expert witnesses to apply their knowledge to those points.

Dunn, who worked in Spooner for most of his 30-year career, testified that Natural Resources Conservation Service maps rate the area's soils as poor for septic systems, that the water supply for the significant development is missing from the plan, and it doesn't indicate the type of septic system or where drain fields are located.

Smith testified that wetlands on the property need to be delineated, the OHWM needs to be determined, and groundwater elevations are to be documented to support wastewater systems.

Kathy Bartilson, a retired DNR water basin supervisor with 40 years' experience, testified that the CUP application is not complete, the application does not include the OHWM, a condition for the county to approve the application, as it determines setbacks.

> Fourth reason – In arguing that the zoning committee failed to explain how the CUP standards were satisfied, Westerberg cited case law that states the zoning committee needs to explain why they approve or deny an application. She pointed out that the committee never stated how it evaluated each of the eight standards for CUPs and never explained why it granted the permit.

The lake district's fourth reason for appeal, cited by Westerberg, is that the CUP is contrary to the Residential Recreational II zoning dis-

trict as it creates a high-density development in a low-density area and is not being done in an orderly fashion because the information provided lacks key details like the OHWM.

### Thompson case

Helquist, representing the CUP applicants, went through each of the appellants' five points for appeal and provided reasoning for why each is flawed. In making his case, Helquist called Mark Krause, a registered land surveyor, as an expert witness.

> First reason – Helquist contended that the CUP application was complete as it satisfied the county zoning ordinance requirements. Helquist pointed out that the application included a scale map of the project that showed details on the campsites, property boundaries, property entrances, existing structures, and proposed arrangement of future structures like shower houses, septic systems, roads and their widths.

Helquist noted that a scale map is not required for a CUP but it was provided, and it allows for measurement between points of interest on it.

Krause told the board that he establishes OHWM on almost all of the properties he works on. He testified that the OHWM on Spooner Lake is a half-foot above the normal water level of 1089.5. He pointed out that Spooner Lake's water level is considered static because it is a flowage where its water level is controlled by a dam.

Krause stated that many campsites on the property are 8 to 12 feet above the OHWM, that the property includes 220 acres of upland property.

> Second reason – Helquist argued that the applicants submitted all necessary information following all requirements, which were in the application, and

additional information presented or discussed at the committee did not change the proposed use at the site.

Helquist told the board that the project never changed from the time the CUP application was submitted and the county zoning ordinance allows the zoning committee to receive or require additional information to ensure ordinance standards are met.

> Third reason – Helquist contended that the committee's decision was supported by substantial evidence. He stated that the site's soil conditions were reviewed by Thompson and Krause, who concluded the property had suitable soils, with more tests to be done in the future.

Krause, who shared he previously worked as a certified soil tester, testified that there are poor soils on the property, but septic systems would go in elevated soils and sites will be laid out after the septic systems are determined and normally it is not required to do that before. Based on his experience Krause told the board that he believes the soils and elevations on the property will work for septic systems.

Upon questioning by King, chair of the BOA, Krause stated that he doesn't know if an official OHWM has been established by the zoning office or DNR, but he assumes they have.

Helquist contended that the committee determined the information supplied in the CUP application met requirements and is substantial evidence when they agreed to a hearing on it.

> Fourth reason – Helquist contends that the zoning committee explained its reasoning behind it approval of the CUP adequately, citing comments made by two members of the zoning committee.

Helquist pointed to a

comment made by David Haessig, vice chair of the zoning committee, shows he considered all the evidence and that a deliberative process occurred for the CUP approval.

Helquist cited a comment made by zoning committee member Bob Olsgard shows deliberation on the matter, and that no prejudgment was apparent.

>Fifth reason – Helquist stated that the applicants fulfilled the purposes of the county zoning code, pointing out that campgrounds are land uses specifically encouraged by the county zoning code.

He pointed out that the applicant demonstrated how the campground met the general zoning standards, and that RR2 zoning districts are where campgrounds are allowed specifically.

### County case

Frost, in representing the county zoning committee, told the board that the zoning committee properly issued the CUP, that all requirements were met, that the committee believed the CUP application was complete, and that the committee considered all letters, public comment, presentation and oral arguments before deciding to issue the CUP.

Frost called Dale "Butch" Beers, Washburn County zoning administrator, as an expert witness on his expertise in zoning, the CUP permitting process, enforcement duties.

Beers, who has six years experience in zoning and is also a certified soil tester and wastewater treatment inspector, testified that he reviewed the CUP application and determined it was complete and detailed so he referred it to the zoning committee.

Beers stated that the

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# Campground

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scale map provided in the application was enough to determine setbacks, that the zoning committee did not request additional information, and that no part of the application was received after the final zoning hearing.

Beers' testimony shed light that even with the CUP approval, the campground development faces additional hurdles before any work can be started. Those hurdles include obtaining a permit to get a campground license approved from the Department of Agriculture, Trade and Consumer Protection, which is provided to the county zoning office, an inspection of the campground for health and safety and others.

Beers stated that the campground needs to meet requirements for sewer systems, which depend on the soils where the system is installed. Certified soil tests of site soils are necessary to receive state approval of the sanitary systems.

On the issue of wetlands, Beers testified that wetlands are not a concern because no structures were proposed in wetland areas. If a project would disturb a wetland, a DNR permit would first need to be obtained.

Beers stated that structures, campers, and impervious surfaces in the shoreland zone need to be calculated out with setbacks calculated from the OHWM and wetlands.

Beers testified that the OHWM is determined on the site before any structures are placed. He stated the OHWM is determined by county zoning staff meeting with surveyors who use their surveying equipment to set elevations.

Beers stated that the CUP included annual inspections of the campground with the zoning administrator to report back to the zoning committee in June annually. The CUP also included the condition that the



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**Members of the Washburn County Board of Adjustment discuss the case before them with their attorney: (from left) Joe Weiss, Ruth King, attorney Rebecca Roeker, Gene Bethel, Zach Tranmer, and Harry Sorenson (not pictured).**

zoning committee can place any other conditions on the property in the future.

Beers explained that the CUP is issued to the Thompsons but the CUP stays with the property when it is sold and that all conditions stay with the CUP.

In his closing Frost pointed out that there are layers of regulations on property use for campgrounds beyond county zoning ordinances which enforces regulations on top of other agencies. Frost asked the board to reaffirm the zoning committee decision approving the CUP.

## Rebuttals

In the lake associations rebuttal, Westerberg pointed out that the determination for the OHWM for the property seems like a desk-top review with no field review of elevations or the OHWM. She pointed out that the determination of the OHWM has a huge impact on the campground plans but it is unknown.

Westerberg contended that the records show soils on the property aren't suitable and that conditions for septic systems are not substantial evidence.

She stated that one zoning committee member comment is not enough to show the committee provided reasoning for its determination.

Westerberg argued

that even though campgrounds are an accepted conditional use in RR2 zoning, they are still just conditional uses.

Westerberg stated that since all wetlands are not delineated on project plans, it isn't known if they could be impacted by the plan.

She questioned what the annual inspection in June will find if it is done before camping season begins each year.

Westerberg questioned the condition that the zoning committee can add any additional conditions to the property in the future, stating that placing new conditions in the future to deal with potential issues are vague.

## Thompson rebuttal

In the applicant's rebuttal, Helquist pointed out that there is no evidence that setting 1090 as the OHWM is incorrect since the lake district's plan states the lake's water levels have remained static since 1975.

He contends that Act 67 requires that if the application requirements are met, the county shall grant the permit, and that the application was complete and had substantial evidence.

## County rebuttal

In the county's rebuttal, Frost stated that protecting Spooner Lake is a shared concern but the lake district ignores that there is oversight of campgrounds by the

county and state agencies. The county ordinances have conditions as requirements of campgrounds after they are built, and if they are violated, it could get shut down.

Frost stated that the campground has a lot of steps to go through still and the developers need to follow conditions set in the CUP along with state and federal requirements.

On the issue of the OHWM and setbacks, Frost stated that people will observe them in the future and apply them to the campground.

## Deliberation

In its deliberation the BOA noted that it bases its decision on four factors: Did the zoning committee keep with its jurisdiction, did the committee proceed under the correct theory of law, was the decision arbitrary or unreasonable, and whether the committee might reasonably make the determination in question.

The board unanimously found that the zoning committee did keep within its jurisdiction since the committee accepted the application and approved it, actions that acknowledge the committee had jurisdiction of CUP applications. The board unanimously agreed that the committee was the appropriate legal body to hear the matter.

In determining if the committee proceeded under the correct theory of law, the board was divided on whether the committee had all the information necessary to make its decision.

From discussion it was found that the board unanimously believes that the zoning committee's decision was not arbitrary or unreasonable. In discussion Tranmer stated he believed the zoning committee acted in good faith on the evidence provided.

However, the board was split on if the zoning committee reasonably made its decision.

Following no further discussion, Bethel then made a motion to affirm the approval of the CUP by the zoning committee, which was seconded by Weiss.

In discussion of the motion, Weiss commented that this case is a balancing test of the protection of natural resources and protecting a property owner's right to what they want with their property. Weiss stated he believes the zoning committee acted on that premise. He added that he personally doesn't like development and believes there are too many people here already, but he also doesn't want to tread on the rights of property owners.

Bethel commented that there is a review process in place for campgrounds and that there

are plenty of watch dogs eyeing the development to report any possible violations.

Sorenson commented that he was still hung up on the process taken by the committee and the lack of a completed application. He noted that it is important that the application process follow the rule of law and that substantial evidence be presented with the public having opportunity to provide comments. He ended by stating that he doesn't believe substantial evidence was provided at the time of the CUP application.

Tranmer commented that if he was on the zoning committee, he would have wanted a more detailed plan, more specifics laid out in the application, and requested more information before agreeing to it.

King commented that she is not sure it met the threshold of substantial evidence at the time the CUP was issued and that it was missing information. She stated she would have asked for more information if she was on the committee to determine if a 200-site campground could fit there.

The committee then failed the motion to affirm the CUP with Weiss and Bethel voting yes and Sorenson, King, and Tranmer voting no.

The board's failed motion in effect denies the CUP.