

## MARSHFIELD DEVELOPMENT REVIEW BOARD

Meeting Minutes • Thursday, March 6, 2008 • 7:00 p.m., Old School House Common

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### *Dennis Fortin, Change of Use, Appeal*

DRB Members present: Paul Brierre, Dina Bookmyer-Baker, Bruce Hayden, Chuck Bohn, and Rich Baker, who served as an alternate. Also attending were Bob Light, Zoning Administrator; Dennis Fortin, the Appellant, Brooke Dingleline, counsel for the Appellant; Paul Gillies, counsel for the Town of Marshfield; and John Warshow and Chris Martin, Selectboard members of the Town of Marshfield.

At 7:25 p.m., Paul Brierre opened the hearing on the appeal of the Zoning Administrator notice of violation for a non-conforming use of Dennis Fortin's Onion River Campground. Paul explained the process. All parties were sworn in.

During the course of the hearing, the DRB received and considered the following documents:

- A compilation of excerpts from the Marshfield Selectboard meeting minutes from the following dates: August 2, August 23, September 20, and October 18, 2005.
- A letter sent October 14, 2005 from the Mr. Fortin's then attorney, Thomas Koch, to the Selectboard.
- A letter sent November 9, 2005 from the Zoning Administrator to Mr. Fortin, via certified mail.
- A Notice of Violation letter sent October 24, 2007 from the Zoning Administrator to Mr. Fortin, via certified mail.
- A letter of Appeal sent November 7, 2007 from the attorney currently representing Mr. Fortin, L. Brooke Dingleline, to the DRB.

DRB Chair Paul Brierre offered the attorneys the opportunity to make opening comments.

Attorney Gillies summarized the Zoning Administrator's position that this is a procedural challenge. The Zoning Administrator first notified Mr. Fortin in 2005 that the campground should not be open year-round and that is the point to establish.

Attorney Dingleline commented that she had asked for the file on this case, which she was told did not exist, so she doesn't want to see anything for the first time during this meeting.

Bob Light (ZA) was sworn in and he summarized:

- Appellant had attended the September 20, 2005 Selectboard meeting during which he stated that

it was a seasonal campground when he purchased it, then in 1991 he began using the campground year-round. The Selectboard had advised Appellant that he could use the campground as a seasonal use as it had been in the past, or to apply for a Site Plan and Conditional Use review before the DRB. ZA had given Appellant the applications.

- The October 14, 2005 letter addressed the Selectboard's concerns about the use of the campground by year-round residents and stated that Appellant had notified the occupants to leave by December 1, 2005.
- The October 18, 2005 Selectboard minutes state that Selectboard member Chris had received a letter and a phone call from Appellant's attorney that the year-round campers would vacate the premises by December 1, 2005.
- On November 9, 2005 the ZA sent a letter telling Appellant that the campground is for seasonal use only, that no year-round residents are permitted. The letter stated that if he does not comply, the ZA will find him in violation and impose a fine. The letter included instructions on the appeal process. Appellant did not appeal that letter.
- Recently the ZA noticed the year-round occupancy of the campground. He sent a notice of violation letter (on October 24, 2007) to Appellant that stated the fine and his right to appeal.
- The property is located in the Agricultural and Rural Residential district, the Forestry and Conservation district, and the Flood Plain.

In response to questions from Attorney Dingleline, ZA testified about the following points:

- The ZA understood the intent of Attorney Koch's letter of October 14, 2005, which addressed the financial ability of the Appellant and the problem with year-round residents.
- ZA cannot cite the specific zoning ordinance that restricted campground operations to the dates of May to October.
- Appellant never agreed specifically to comply with the Marshfield zoning regulations, but at the Selectboard meeting said that he would get back to them.
- In his (November 9, 2005) letter, ZA might have misinterpreted Attorney Koch's position.
- The year-round individuals had moved out.

- The fine imposed was the maximum, which is the amount that the town has set.
- ZA would not withdraw his notice of violation, but wished to proceed.
- Appellant bought a campground that was a seasonal campground, which he operated as a seasonal use for many years and then changed the use, which was not grandfathered. The violation was that by changing the use, he lost his grandfathered status.
- ZA informed the Appellant that he could have gone to the DRB and apply for the proper permits to come into compliance.
- Appellant had people permanently residing at the campground.
- Appellant had campers staying at the campground outside of the dates that ZA stated for a seasonal campground.
- Appellant described what he purchased as a seasonal campground.
- Appellant did not mention to ZA that he had campers coming in for hunting season.
- ZA did not know that Appellant hosted snow-mobilers in the winter.
- ZA felt the Appellant should have appealed the November 9, 2005 letter if he did not agree with what it said.
- The November 9, 2005 letter does not say that it is a notice of violation and does not state that Appellant needs to apply for a permit.
- Someone reported the Appellant to the ANR.
- The ZA authority to take action and issue decisions is given to him by the state and local ordinances.

In response to questions from Attorney Gillies, ZA testified about the following points:

- ZA would consider withdrawing this notice of violation.
- ZA met with Appellant before attorney Koch sent the letter (of October 14, 2005).
- ZA discussed with Appellant that his campground was more than seasonal.
- Children were living at the campground and going to school. It was apparent to ZA that this space was being used on a year-round basis. This led to ZA meeting with Appellant.
- ZA would have issued a notice of violation letter even if he had not received a letter from Attorney Koch, because there was a violation there; Appellant was using the campground as a year-round residency.

- ZA was not surprised to receive the letter from Attorney Koch. He expected it, as he was told it was coming.
- ZA sent the November 9 2005 letter because he wanted to notify the Appellant that there was a violation.
- ZA understood that Appellant had agreed to remedy the situation. ZA did not intend to misstate Attorney Koch's opinion.
- ZA did not consider the November 9 letter a notice of violation. He intended to tell Appellant that it was his understanding that the campground would return to the seasonal use that it was when Appellant bought it, and that if folks didn't move out then there would be a notice of violation.
- ZA did not know of the hunters and snowmobilers camping on the property as discussed earlier.

In response to questions from the DRB, ZA testified about the following points:

- The campground waste disposal system was not inspected by an administrative officer as described in the zoning regulations.
- Appellant doesn't know how many campers the waste disposal system is regulated for. The waste disposal system was grandfathered. There was nothing in writing from the town regarding how many campers could be there.
- The Town would regard a campground as a commercial operation. All commercial operations as such would fall under the broad category of a commercial operation and associated regulations.
- A campground is not permitted specifically.
- According to the zoning ordinance, a **Camp** is a structure used primarily for recreational purposes and as a seasonal dwelling unit, not as a primary year round residential dwelling. This seasonal dwelling can not be occupied for more than 12 weeks at any given time and can not be occupied for more than six months in any given year.
- According to the zoning ordinance, a **Structure** means an assembly of materials for occupancy or use, including a building, mobile home or trailer, sign, wall, or fence.
- A recreational vehicle (RV) would be considered a structure under that definition.
- Appellant would not describe the use of the property as a camp.
- Appellant would describe the use of the property as a Travel trailer park.
- Appellant does not know if this was an existing travel trailer park.
- Nothing was presented to ZA regarding the year-round residency of the campground.

- ZA understands that the burden of proof (regarding the grandfathered use) is on the Appellant, not the ZA.
- ZA did not hear from Attorney Koch following his issuance of the November 9 letter.
- The October 14 letter (from Attorney Koch) did not say that Appellant cannot afford to comply with the State's requirements for mobile home parks, but stated that he is unwilling to make the investment.
- ZA has sent letters like this before. A couple of times per year he has sent a letter to a resident that stated his position and notified the resident that he/she was in violation.
- If Appellant had called ZA and said that he wanted to have hunters and snow-mobilers on his property, then ZA would have issued a notice of violation. And if Appellant had appealed that letter, ZA would have referred it to the DRB.
- When ZA discovered a violation, he talked to the resident first.
- If the resident said he would comply, ZA often sent a letter to confirm that he and the resident understood what was discussed. The November 9 letter was such a letter.
- ZA considered the November 9 letter a decision.
- A statement that the burden of proof is on the Appellant was not addressed in the November 9 letter.
- The October 24, 2007 letter stated that Appellant was bound to the seasonal use. That was what ZA and Appellant talked about.
- ZA believed that he had the authority to make that decision.
- ZA did not know if anyone stayed in the campground after October 24, 2007.

That concluded Bob Light's (ZA) testimony.

In response to questions from Attorney Gillies, Appellant testified about the following points:

- The first meeting with the ZA and Appellant was sometime in 2002 regarding the papers for his leach field.
- Another meeting included the health inspector.
- Appellant got a lawyer because he wanted to have people there all year round. He doesn't care about year-round residents any more, but wants to have fisherman, hunters, and snow mobilers.
- Appellant has owned the campground since 1989. It operated as a seasonal campground but he had some issues with drinking, and noise.
- Appellant had the sewer inspected in 2005 when he got a violation from ZA.

- Appellant does not want a mobile home park. Appellant is content with the campers that he has.
- ZA came to see Appellant regarding issues around the year-round campers with kids in school and the Fast Response Team.
- When Appellant received the November 9 letter, he consulted with his attorney.
- Appellant hadn't wanted year-round people there any more, so his attorney told him that he didn't need to respond to the letter.
- In response to the notice of violation, Appellant told the two families who were residing there that they had to move out.
- The families vacated the premises.
- The campground was not in operation after that date, but Appellant keeps it plowed in the winter in case someone shows up who wants to stay overnight.
- Appellant feels that having the occasional temporary snowmobiler is in keeping with the historical use.

In response to questions from the DRB, Appellant testified about the following points:

- Appellant would characterize the use of his property as a travel-trailer park.
- Appellant has people who rent all summer.
- Snow-mobilers bring their own campers and hook up to the sewer.
- Appellant has 2 or 3 units in which campers stay 3 1/2 to 4 months.
- Appellant does not own any of the units.
- Some campers leave their units on the property year-round.
- Prior to October 24 there were campers staying there.
- The permanent resident issue is gone as of the time that attorney Koch sent his letter.
- Appellant followed what Attorney Koch said he would do in the October 14 letter from Attorney Koch.
- Appellant appealed because he felt if he hadn't appealed, then he was endorsing the idea that ZA has the power to issue a notice of violation.
- The issue of the appeal is that there is no seasonal aspect required of campgrounds.
- No campers have stayed at the campground during the off-season, not even in the winter, since 2005.
- Appellant had explained to Attorney Koch after he received the November 9, 2005 letter that he

wanted to have snow-mobilers and hunters stay at the campground.

- During the time Appellant has owned the campground, it has operated it year-round. He plowed it out in the winter and had hunters, snow-mobilers, etc.
- For the first two years that he owned it, he only operated it from April to October. He had no permanent residents for the first 2 years.
- Appellant has come into compliance with this violation.

That concluded Dennis Fortin's (Appellant) testimony.

DRB Chair Paul Brierre offered the attorneys the opportunity to make closing statements.

Attorney Gillies stated that this is an appeal of the decision of the Zoning Administrator (not only a notice of violation), that this is an appeal of a decision to enforce a prior decision. All the prior uses or violations occurred back in 2005. When the Supreme Court writes about the exclusivity to appeal, it stresses to deal with the issue while the information is fresh. This decision was not appealed in 2005.

Attorney Dingleline didn't disagree with Mr. Gillies. But stated that the problem was that they don't

understand what the decision was and don't have a file. This was different than a decision to issue a permit. This was a violation of due process. This was not an appropriate decision; it was made without authority and without due process or notice to be heard. When Mr. Fortin showed this letter to his attorney, there was no pending case with a decision of any authority. Mr. Fortin has been operating the place since 1989. Attorney Dingleline's argument was that even if no one came in for hunting this year, that doesn't mean that her client loses the right to have this use in the future. She asked for a reasonable, rational approach here. There was no meeting of the minds evident in these letters.

Testimony was closed at 9:55 p.m. The DRB has 45 days to issue a decision.

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*Deliberations*

At 10:00 p.m. the DRB went into closed session to deliberate. At 10:35 p.m. Bruce moved to adjourn, Paul seconded, all were in favor. The meeting was adjourned.

Respectfully submitted,  
Dina Bookmyer-Baker