

**JULY 24, 2012
REGULAR MEETING**

RECORD OF THE PROCEEDINGS OF THE REGULAR BOYNE CITY COMMISSION MEETING DULY CALLED AND HELD AT BOYNE CITY HALL, 319 NORTH LAKE STREET, ON TUESDAY JULY 24, 2012

CALL TO ORDER

Mayor Ron Grunch called the meeting to order at noon followed by the Pledge of Allegiance.

Present: Mayor Ron Grunch, Mayor Pro-Tem Gene Towne, Commissioners Derek Gaylord, Laura Sansom and Tom Neidhamer

Staff: Andy Kovolski, Scott McPherson, Dennis Amesbury, Barb Brooks, Craig Remsberg, John LaMont, Michael Cain, Hugh Conklin, Jeff Gaither and Cindy Grice

Others: There were 18 citizens in attendance, including representatives from the Petoskey News Review and Charlevoix County News

**CONSENT AGENDA
MOTION**

2012-07-104
Moved by Gaylord
Second by Towne

Approved the June 17, 2012 City Commission Kirtland Products Noise Assessment Work Session minutes as presented

Ayes: 5
Nays: 0
Absent: 0
Motion carried

**REVISE JULY 10, 2012
MINUTES**

The July 10, 2012 City Commission minutes will be revised and re-presented.

CITIZENS COMMENTS

Ron Crozier announced the upcoming dedication of the new memorial at Veteran's Park this Sunday at 2 pm.

CORRESPONDENCE

None

CITY MANAGERS REPORT

City Manager Cain reported:

- This year's Boyne Thunder was the biggest one yet. All went well.
 - We have been working with Consumers Energy regarding the resolution of the frequent, brief power outages. This has also been affecting the water/wastewater operations.
 - We recently held the first ever visit from the MEDC CAT team who were all quite impressed after touring the community.
 - Assessor interviews took place this past week, with four firms being interviewed.
 - It was nearly one year ago that Precision Edge announced their decision to build in Boyne City.
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**REPORTS OF OFFICERS,
BOARDS, AND STANDING
COMMITTEES**

The June, 2012 Financial Statement was received and filed.

Since our last meeting, the City has received additional complaints regarding Kirtland.

Tom Monley of Kirtland said they have contacted RSG, and other consultants for engineering proposals. City Manager Cain added that he has contacted the Northern Lakes Economic Alliance to advise them the RSG report is available. He also added Kirtland is focused on the #1 mitigation issues that RSG reported on. Mayor Grunch asked if the operational time could be shortened. Commissioner Samson said she has received a lot of comments, some saying it is worse than it was before. People are having a difficult time sleeping. Tom Monley said they are focusing on what is most annoying. Commissioner Neidhamer said at the end of the work session it was discussed where do we go from here. At what point do we say you have to start getting the mitigation in place. At what point to send it back to the Planning Commission. Also it's not fair to put a lot of money in sound mitigation if the smokestack fails.

Mayor Grunch read correspondence from Ryan and Mindy Giem encouraging the Commission to limit Kirtland's operation time and addressing the emissions question. An email from Emily Roland Jones filing another complaint regarding Kirtland was also read.

Citizens Comments: Bill Kuhn said it is going into 10 months, he has been patient. It's time to act.

Tim Arner said he didn't notice the noise until this spring. The last couple of months have been a problem. There are days and nights when you can't sit outside, it's intolerable. He hears other intermittent sounds but not a pulsating, constant drone. By his own observations, the City has been very patient. Kirtland put themselves into this situation. He would encourage the Commission to keep on track, it could end up with multiple lawsuits if something isn't done. He understands the sympathy for Kirtland. The City has gone to great lengths. Some action needs to be taken.

Hugh Conklin, said there are no easy answers. It's complicated. He understands the disruption but also feels the need to support Kirtland. They put all their chips on the table. The plan has obviously not gone as expected, from financing to finally starting up, and to the noise.

City Manager Cain said he agrees with everything that's been said. There are clear actions the City can take. We have taken the more difficult path.

Mayor Grunch asked if the Commission has the right to ask Kirtland to cease and desist. City Manager Cain said he feels the Commission has the right to enforce hours.

Commissioner Neidhamer said he agrees with what has been said. Can we limit the hours from 8 am to 6 pm. At the same time, we have asked Kirtland when the MDEQ can test for emissions, that particular week, can we allow 24 hour production. I don't know if those are allowable or doable.

Commissioner Gaylord said he is going to recommend that we are going to follow the process. Kirtland is operating under a conditional use permit. The planner has the oversight of that conditional permit. He added that when he indicated that the Planner should be involved, he was not abdicating City Commission responsibility. He thinks that Scott McPherson, under the direction of the City Manager needs to take information that has been received from reports and the citizens and make a decision, how long they run, how many hours, when, and do they not run until they show a clear plan with recommended abatements and a financial ability to carry them out. We have extended and given opportunities for this. Anything else is further muddying the waters. There is clear frustration and he is not sure why it seems like he is the only one who understands this but that is what it is. That is his position under the supervisory of the City Manager.

Mayor Pro Tem Towne agrees to an extent but believes he still wants to see a plan, definitely a time limit. We have done the first step. Our last option is to refer it back to the planning commission.

Commissioner Sansom said she wants to see a real definite plan. Is Kirtland going to be prepared to follow thru under the recommendations? She doesn't feel its going to happen. It feels iffy to her. They are looking at \$250,000 to \$400,000 of fixes adding that she thinks Kirtland would want to work with the City and citizens of this community and limit times as much as they can and would like to see that by August 14 and not have the citizens endure the noise level. Would suggest maybe operation hours of 8 am to 6 pm would be more acceptable.

Scott McPherson said with all due respect to Commissioner Gaylord, he believes his ability to do this is being overestimated. In the ordinance it is his job to make sure the permit is in compliance. If it is beyond what he can do. He can't amend, add to or adjust the permit. His responsibility is to monitor and his opinion is that they are not in compliance. It is beyond the scope of what he can do and well beyond the requirements. We went down the path to help find a solution to solve the problem. Boyne City went beyond what is required and should be applauded. It is beyond what he can do. He cannot amend but he can refer back to the Planning Commission who is the body who can amend and rescind and determine if it is in compliance and if a request is made to amend, they can consider those. They can review and determine compliance and can consider any amendment requests.

Mr. Gaylord stated to clarify he wasn't asking Scott to amend the permit, but if they are not in compliance that he can make the decision how much to run until they get into compliance. Scott said he can refer it back to the Planning Commission who has not changed the initial approval.

City manager Cain said it might be more appropriate that he mediate with Kirtland but needs guidance from the City Commission. It was then determined that City Manager Cain be given clear direction to be the mediator.

Approved to take a brief recess at 1:16 p.m.

Ayes: 5
 Nays: 0
 Absent: 0
 Motion carried

**RECONVENE MEETING
 MOTION**

2012-07-106
 Moved by Grunch
 Second by Towne

To reconvene at 1:22 p.m.

Ayes: 5
 Nays: 0
 Absent: 0
 Motion carried

**Second Reading
 Conditional Rezoning**

Consideration of second reading of an amendment and approval to allow conditional rezoning of a parcel located at 1 Water Street subject to review and approval of the final development plan by the Planning Commission

Planning Director Scott McPherson discussed the application that was received for the 1 Water Street conditional rezoning and development plan. The parcel is 83,200 square feet and is a wedge shaped corner lot with 299 feet of frontage on Front Street and 383 feet of frontage at the end of Water Street. The parcel has approximately 200 feet of frontage on Lake Charlevoix. The parcel is located in the Waterfront Marina District and is adjacent to Central Business District on the East, Community Service District on the north and the Multi family Residential District on the South.

The proposed plan is to replace the approved 37 unit hotel and construct 13 detached resort cottage structures. The ground floor of the structures would primarily consist of motel units designed for short term transient occupancy and would have only a bedroom and bathroom. It is anticipated that 3 of the ground floor units will be used for commercial uses however, this could fluctuate depending on market demand. One unit would be dedicated as a bathroom and shower facility for marina users. The second and third floors would contain 15 two bedroom units intended to be used as vacation rentals that could be used for short term or long term occupancy. The applicant is applying for approvals of the uses as principal permitted uses in the Central Business District as per section 1.20(J) and 10.20(M).

Doug Mansfield representing 1 Water Street said this proposal meets market demand, and is financially fiscal. City Manager Cain said the community has received the first two phases well. This will become another great asset.

Staff Comments: Hugh Conklin reiterated the support of Boyne City Main Street that the project is a great addition to downtown and the Community.

Citizens Comments: None

Board Deliberation: Commissioner Neidhamer said he is in total support, it is the right plan and piece of property. Commissioner Gaylord stated he has talked to citizens and they are vastly more in favor of the individual units. Commissioner Sansom, Mayor Grunch and Mayor Pro-Tem Towne are also in support.

2012-07-107

Moved by Towne

Second by Sansom

MOTION

To approve the second reading of an amendment and approval to allow conditional rezoning of a parcel located at 1 Water Street subject to review and approval of the final development plan by the Planning Commission

Ayes: 5

Nays: 0

Absent: 0

Motion carried

Consideration to rescind the June 12, 2012 City Commission vote on the Park Street construction project as it relates to the Water Street intersection south to the alley and approve the plan with parallel parking on both sides of Park Street between the intersection south to the alley

Park Street Intersection Alignment

City Manager Cain discussed the concerns staff has regarding the intersection alignment. A grant has been awarded for this project. The road was marked out showing the proposed plan and it appeared different than anticipated. Since then, the Main Street Board met at the sight also. A City Commission work session was held this morning at the intersection. The project is currently out for bid right now and bids are due August 1st. Main Street Director Hugh Conklin discussed the special Main Street Board meeting held on Friday July 20 to review issues related to the approved plan. A memo was provided to the Commission stating that the most pressing concern is how the approved plan, which maintained the current parking configuration of angle parking on the Ace Hardware side and parallel on the Pat O'Brien side, creating severe safety issues with the lane alignment. The Main Street Board recommended that the previous Commission decision be rescinded, and approve a plan with parallel parking on both sides of Park Street between the intersection and the Alley, realizing that the number of parking spaces may be reduced by two, but accepted.

Larry Fox of C2AE discussed and displayed various options to the Commissioner, showing shortened sidewalk widths, no left turn lane and angle parking on both sides.

Staff Comments: Andy Kovolski supported going with the option of limiting ourselves from eliminating the left turn lane. Police Chief Gaither stated the 3 lane option is the safer one. Water Wastewater Superintendent Dan Meads said that the left turn lane was installed 30 years ago. Barb Brooks also supported maintaining the 3 lanes, along with better alignment of the intersection. Scott McPherson said the concerns of the first parking spot closest to the intersection can be addressed.

Citizens Comments: Jim White, owner of Ace Hardware said the plan is a net zero gain, both sides with angle parking is a net gain of two parking spots/ Cindy Grice, speaking as a citizen, encouraged the Commission to

maintain the left turn lane.

City Manager Cain discussed the public information meetings that were held where there was no press for additional parking spaces. We are trying to find a balance for pedestrians and commercial. He would like to see the left lane kept with the possibility of flexibility. Dan Meads added that there used to be a 12 foot sidewalk requirement in the downtown area per ordinance.

Board Deliberation: Commissioner Neidhamer said he is in favor of maintaining maximum sidewalk and keeping a left turn lane. You want to create walkability in downtowns. We always have to plan for long term range. Design for maximum width and flexibility while keeping the left turn lane. Mayor Pro Tem Towne said he likes the plan, originally he wasn't exactly for it. He would like to keep the left turn lane also. Commissioner Gaylord said the first issues of this topic was the process issues where he believes only one commissioner was notified of the Main Street meeting, he knows he didn't get a call. Mayor Pro-Tem Towne said he was not notified of the meeting, he went downtown and met with Hugh Conklin. Commissioner Gaylord stated the City Manager's direction should have gone to the City Commission first. Regarding the parking, there will be a lot of work trucks parking on the side of the Ace Hardware. An 8 foot sidewalk is plenty of room if a truck with a plow parks there as shown at this morning's work session. He added he doesn't have data on the comments he has heard on the three versus two. With two lanes you may have to wait a short time, but he thinks it is being presented in a far more negative light than it will probably be. Commissioner Sansom said she knows a lot of people would like to keep a left turn lane and a lot of people who don't like parallel parking. She did a brief study today at that intersection and didn't see where not having a left turn lane would present an issue. She would like to see more studying of that area.

Larry Fox said he doesn't have a clear cut preference the two options presented and respects the police chief's statement that no left turn lane could present safety issues.

Commissioner Neidhamer said maximum width sidewalks are better for pedestrian traffic. Commissioner Gaylord said if two designs could work, it would be foolish to use a design that didn't offer more parking. Commissioner Neidhamer said we should go on staff recommendation. Mayor Grunch agrees with Commissioner Neidhamer and said the number one thing is safety and keeping 3 lanes provides that.

Another Citizen commented that locals know shortcuts, tourists do not. Don't let your tourists get stuck.

2012-07-108

Moved by Gaylord
Second by Sansom

That the Park Street project be modified from the last vote to reflect angle at 45 degrees parking on the east and west side initial striping, two lanes, 8 foot sidewalk on the east side and 10 foot sidewalk on the west side

Ayes: 3

Nays: 2, Mayor Grunch and Commissioner Neidhamer

Absent: 0

Motion carried

Marina Fueling Request

Consideration to deny the request of Boyne Parasail for a permit for fueling in the F. Grant Moore Municipal Marina.

City Manager Cain discussed the request he recently received from Parasail Adventure in Boyne City to permit private fueling of their commercial boat at the small boat launch. Section 74-28 of the Boyne City Code of Ordinances allows the City to grant a permit for fueling at the marina. To his knowledge, this section has never been used and a permit has never been requested or granted. The City of Charlevoix has similar ordinance language and does not grant such permits. We contacted our attorney and insurance and both were very cautious regarding this matter and said we are not required to issue any permit and that if we did it should only be done under strict conditions to protect the public, the environment and the City if something went wrong. The specific request is to allow their boat only to come to the small boat launch to refuel with diesel fuel from a transfer truck in the back of a shore based pickup truck that will be in the ramp. He has seen the equipment in question and it all looks new and in very good condition. Fuel would be pumped into the boat while it is still in the lake. Harbormaster Brooks provided Boyne Parasail the option of trailering their boat into shore and filling it there and it was indicated by Boyne Parasail that the extra work in that option negated the benefits of the self fueling they are proposing.

While the risk of a negative occurrence may be small, the results of one could be very unfortunate and expensive to deal with.

Josh Grove of Boyne Parasail said it is a small operation, all brand new equipment and an auto stop is in place if it would overflow. Money is a big thing, this could present a huge savings for a small business that wants to expand. They chose Boyne City over Petoskey or Charlevoix. They are asking to find solutions instead of reasons not to. They are looking at protecting fuel quality, and don't want an engine failure because they put additive in their fuel. Gary Koteskey reiterated that the equipment is new, has a shut off nozzle and would be fully attended. Chances of a spill are minimal. He doesn't think it's a huge liability for the City. They like the idea of controlling their fuel. It's a nice convenience and a money saver.

Staff Comments: Harbormaster Barb Brooks said the City Marina is considered a Clean Marina. The best defense is to minimize the potential of a hazard. It is not allowed for personal use vessels in the marina to fuel because of safety hazards. Police Chief Gaither said he commends Boyne Parasail, thinks it is great. We have to look at the worst case scenario. 90 gallons of diesel fuel washed up on the shore of Boyne City wouldn't be nice.

Board Deliberation: Commissioner Sansom inquired of the boat size and was informed 28 feet. She also inquired of fueling at the Harborage and was informed the biggest possible issue is quality of fuel. As of now, there are no issues. They want to make sure they have full control.

Commissioner Gaylord said he applauds the new business but has mixed feelings. Pulling the boat out on the trailer is a viable options, maybe slightly inconvenient. Mayor Pro Tem Towne said he understands cost issues, but believes environmental issue potentials are there. Commissioner Neidhamer asked if it is something we have to do and City Manager Cain

said according to our Attorney, we can allow it, but its not something we have to do. Mayor Grunch said he is not in favor of granting this permit. It would set precedence, unintended consequences do happen. He would hate to see the City have to clean this up.

MOTION

2012-07-109

Moved by Towne

Second by Grunch

to deny the request of Boyne Parasail for a permit for fueling in the F. Grant Moore Municipal Marina.

Ayes: 5

Nays: 0

Absent: 0

Motion carried

Consideration to approve the purchase of a JCB 4CX15 Backhoe from AIS Equipment in the amount of \$93,818 and authorize the City Manager to execute the necessary documents

Backhoe Purchase

Water Wastewater Superintendent Dan Meads discussed the proposed replacement of our 1998 JCB Backhoe. This has been a very good piece of equipment and served us well, but is beyond its scheduled replacement time. It has needed two major repairs in the last three years and is coming in need of more. He believes that the cost to do repairs that are needed at this time could well exceed its present trade in value.

Dan Nowak from AIS Equipment said the proposed new model matches what we have. He believes the JCB model is a proven piece of equipment.

Citizens Comments: None

Staff Comments: None

Board Deliberation: Commissioner Sansom discussed the two year warranty and Mr. Nowak said it is industry standard and with the way our City staff maintains equipment, we wouldn't need extended warranty. Commissioner Gaylord asked Dan Meads to reiterate the Backhoe uses which are water main installs, repairing leaks, setting manholes. Dan also added that this is the best fit we could have in our price range.

MOTION

2012-07-110

Moved by Towne

Second by Grunch

To approve the purchase of a JCB 4CX15 Backhoe from AIS Equipment in the amount of \$93,818 and authorize the City Manager to execute the necessary documents

Ayes: 5

Nays: 0

Absent: 0

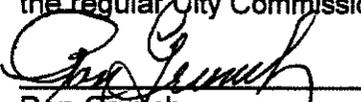
Motion carried

Commissioner Sansom said congratulations to Boyne Thunder, it was busier than the Fourth. Commissioner Gaylord said good job to Hugh Conklin and the Main Street. Kudos also to Classic Instruments for an awesome job. Mayor Grunch said he has had several calls regarding fireworks.

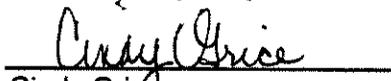
Good of the Order

Moved by Mayor Grunch, seconded by Mayor Pro-Tem Towne to adjourn the regular City Commission meeting of Tuesday, July 24, 2012 at 3:55 p.m.

**ADJOURNMENT
MOTION**



Ron Grunch
Mayor



Cindy Grice
Clerk / Treasurer