

AGENDA
BOYNE CITY PLANNING COMMISSION
Monday, October 15, 2012, 5:00 p.m.
Boyne City Hall



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1. Call to Order
2. Roll Call - Excused Absences
3. Consent Agenda

The purpose of the consent agenda is to expedite business by grouping non-controversial items together to be acted upon by one Commission motion without discussion. Any member of the Commission, staff, or the public may ask that any item(s) on the consent agenda be removed to be addressed immediately following action on the remaining consent agenda items. Such requests will be respected.

 - A. Approval of minutes from the September 17, 2012 Boyne City Planning Commission meeting.
4. Hearing Citizens Present (*Non-Agenda Items*)
5. Reports of Officers, Boards, Standing Committees
 - A. Shore Line Protection Strategy Report
6. Unfinished Business
 - A. Kirtland Products follow up
7. New Business
 - A. Water Street Mall Proposed development plan amendment
8. Staff Report
9. Good of the Order
10. Adjournment – Next Meeting, November 19, 2012

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**Meeting of
September 17, 2012**

Record of the proceedings of the Boyne City Planning Commission meeting held at Boyne City Hall, 319 North Lake Street, on Monday, September 17, 2012 at 5:00 pm.

Call to Order

Chair MacKenzie called the meeting to order at 5:00 p.m.

Roll Call

Present: Gretchen Crum, George Ellwanger , Chris Frasz, Jim Kozlowski, Jane MacKenzie, John McCahan Lori Meeder, Tom Neidhamer and Joe St, Dennis

Absent: None

Meeting Attendance

City Officials/Staff: Planning Director Scott McPherson, City Manager Mike Cain and Recording Secretary Pat Haver

Public Present: Fifty three, including representatives from the news press and TV news stations

**Consent Agenda
MOTION**

2012-09-17-3

Crum moved, Meeder seconded, PASSED UNANIMOUSLY a motion to approve the consent agenda. Approval of the August 20, 2012 Planning Commission minutes as presented.

**Comments on
Non-Agenda Items**

None

**Reports of Officers, Boards and
Standing Committees**

None

Unfinished Business

None

New Business

Chair MacKenzie went through the process for a public hearing, and read the rules from the back of the agenda.

**Public Hearing – Review
Conditional Use Permit
for Kirtland Products**

Meeder asked to recues herself due to a conflict of interest with the applicant, as there is an business economic partnership. Left at 5:03 pm.

Planning Director McPherson read his staff report that was in the agenda packet. In summary, after the start up in November of 2011, it quickly became apparent that the noise produced by the plant exceeded the expected levels and Kirtland did not appear to be in compliance with the conditional use permit. Many complaints were received from citizens on noise and stack emissions and odor issues, and Kirtland representatives quickly acknowledged the fact that the noise produced by the plant exceeded their expectations and implemented measures to reduce the noise with limited effect. A citizen committee was formed to address the noise and stack emissions/odor concerns, and a consultant was retained to review the noise issues. While an emissions consultant has not been retained, the citizen committee did submit a list of questions to the DEQ and requested additional emission modeling be completed; those questions and answers were included in the agenda packet. Resource Systems Group (RSG) completed their noise study in May of 2012 and made recommendations for mitigation. It was noted during the tests the operational sound levels ranged from 5 to 13 db higher than the background levels. Consistent with the sound abatement measures contained in Kirtland’s proposal and the approved development plan for the conditional use, the mitigation

recommendations included in the RSG report indicated that all of the above noted equipment should be in a building. The report recommended that heavy concrete masonry structures be constructed around all of the above noted equipment. The RSG report also indicated that the two existing enclosures that contain the Air Power Unit M-D5009 and the Air Power Unit 6" were ineffective and recommended those structures be rebuilt.

As per section 2.700(G)(4) the conditional use for Kirtland Products is being referred back to the Planning Commission for review to make a determination on compliance with the conditional use permit. Section 2.70(G)(4) is as follows:

The Planning Director shall make periodic investigations of developments authorized by conditional use approval to determine continued compliance with all requirements imposed by the Planning Commission. Noncompliance with the requirements and conditions approved for the conditional use shall constitute grounds for the Planning Commission to terminate the approval following a public hearing. Such hearing shall be held in accordance with the procedures used for the original hearing as required by this Ordinance.

After investigation of the development as authorized by the conditional use approval for Kirtland Products, the conditional use is being referred back to the Planning Commission as per section 2.70(G)(4) for the following reasons:

Representations and information provided by Kirtland Products to the Planning Commission in regards to the impacts of the plant on which the approval of the conditional use permit was considered were incomplete and/or inaccurate;

Sound produced by the plant exceeds levels represented to the Planning Commission;

The sound abatement and landscaping measures as proposed by Kirtland and approved for the conditional use final site plan have not been completed as all equipment exceeding 40dB was not placed inside the building and landscaping as shown and described in the final approved development plan has not been installed.

Public Hearing was opened at 5:19 pm

Joe Quandt 412 S. Union St. Traverse City – responded on behalf of Kirtland Products, LLC. He introduced Leon Tupper, Mike Lange, and Tom Monley, senior management for the company. The company has remained engaged in the remediation of the noise concerns, and wants to be a good neighbor of the community. From our legal prospective, once the site plan or development plan has been approved, everything legally coalesces into those approval documents. We believe the zoning permit, does not have any conditions attached, and all conditions imposed have been met. All equipment was moved inside, and are attempting to implement all of the remedial conditions recommended by Kodiak Company, and the last piece of equipment is being retrofitted now. We believe in the balance of the benefits the plant provides in jobs and the public concerns, the company is trying to do something about it, and ask to have the issue tabled in order to conduct additional evaluations. The company is in full compliance with the DEQ emissions report: Part 55 Air Pollution Standards for particulate, odors, and dust management.

Tim Arner - 701 Alice St. - Live approximately 1 mile from Kirtland, and have since 1984. This issue is not about jobs, it is about a zoning dispute, and compatible land use. I first heard the noise this spring, an unremitting nasty oscillating component, which was very annoying. I have become used to the neighborhood noises, these ambient noises are not constant, but intermittent; however, when Kirtland is running they are constant and upsetting. I can not enjoy my deck at night, or Avalanche Trail. Location, wind and weather can be a factor; this is about what level of noise is reasonable to a resident, who should not have to sacrifice their peace and enjoyment. It is not fair to those people who have to listen to it or are affected by it. I compliment Kirtland for their movement, however, the process is very slow, and I'm not sure of what improvements have been made, as I don't know if they have run much in the last month, so kind of hard to gauge.

Emily Jones - 1124 Nordic Dr. - Live approximately 1,000 feet from Kirtland, home was purchased 11 years ago. It has had a negative impact on our lives. Constant noise and multiple nights we wake up because of it. Sound echoes though out the house. The new fixed sound is like a helicopter constantly running outside. I have spent a significant amount of time at home due to my pregnancy. I would have to pack up the baby and go to my parents outside of town to get away from the noise and smell. My eyes and lungs are burning, so can not enjoy the out doors. A cloud of sawdust blowing from the plant, what do these affects have on an infant? Asking the board to revoke the conditional use permit based on the statements that were made in the November 2008 application. I do want jobs in Boyne City, but not at the expense of health and well being of the citizens. If no action is taken, our family may move from the community.

Ian Mitchell - 327 E. Cedar St. - Read his letter that was distributed to the members of the Planning Commission. Since Kirtland began its operations, the safety of my family has diminished due to the emissions in our yard and surrounding neighborhoods, and when the children are outside playing while attending schools. If they continue, our obligation to guard the health of our children will compel us to move to a community nearby, and take our Boyne based earnings to that other community.

Leslie Pritchard - 526 N. Lake St., and own 70 acres outside of town in Evangeline Township. - Have been following these issues in the media, I want to speak in support of Kirtland. We have opened our doors to the Industrial Park to create jobs. I respect concerns from the other residents over health and safety concerns, but the smells have been addressed by the DEQ. Well aware of smells and sounds coming from East Jordan when the winds are such that the Iron Works comes over our town, and I don't think they want to close them down. Kirtland has made efforts to comply and be a good neighbor. Our town was founded by the timber industry. Hearing all the sounds of the bands performing or practicing, the traffic on M 75, and even when the bars close down, these are part of living in our vibrant community.

Ron Crozier - 1121 Crozier Crest - My family has been in Boyne City for 5 generations, I live on the hill behind McDonalds. I hear nothing, smell nothing, and my windows are open all the time.

Ryan Giem - Boice St. - live 3/8th of a mile from the plant, for 14 years. No one is here to argue that you are below the DEQ levels in water vapor. Every emission has some level of risk, the concern is legitimate with a campus of 1200 kids, and I know those are emotions. You paid a lot of money to obtain facts, and as my background is principally a vibrations engineer I know that vibrations operate on waves and noise follows the same principles. Ambient noise is what is known as "white noise" it comes and goes and is a part of a small community. The overall level difference of 5 to 13 dB are not a lot, however, for every 10 dB it is a

“doubling” of perceived noise. Levels are pretty close, why? They were averaged levels. The wind graphs show the wind was quite during testing. When they did the ambient testing, the wind was blowing 10 to 15 mph. The ambient testing levels affected by the wind, microphones are placed in the trees by foliage, and can affect it. Near the Shell station, the road noise could be a large factor of the ambient noise. The 125 hertz and 250 hertz frequencies, were always more than a 10 dB difference and as you get further away from the plant difference between ambient and absolute don't change.

Tom Earhardt – Northern Lake Economic Alliance – organization assists businesses and helps to grow economy in Northern Michigan. Worked with Kirtland before and after they opened. The top management are concerned about the community, want to make things right, and want to add value and be apart of the community. There is alot of support within the Industrial Complex but they have chosen not to speak out. My office is less than 300 feet from Kirtland, and in the past few days have noticed a large decrease in the lower level noises. I commend the City of Boyne City for working with businesses and encouraging economic growth.

Don Nessen – 316 Boice St. - 1/3 of a mile from the plant. This town had a lot of pollution when the Tannery was open, they got rid of that, lost hundreds of jobs, but the town made it.

Jim Baumann – Executive Director of Boyne Area Chamber of Commerce - Ask to give Kirtland more time, RSG report came out just a couple of months ago, began mitigation right away, the preliminary DEQ results are in, final results are coming. Lets give them a change to finish what has been started, and get the full testing results. We need to work with them a little while longer.

April Marshall – visiting her mother from Newfoundland - I could hear the noise and do not like it, mom lives across the street. Believes that people don't want to live here with the noise and smells.

Mark Kowalske – Fall Park Rd. – Couple invested in a closed grocery store business near the plant. Due to the smells is this where a grocery store should be? We invested everything we had, just like Kirtland, and ask you keep this in mind.

Ryan Glem - I'm just trying to understand the difference in the ambient and operational noise levels when they are running. Pay attention to the 125 and 250 hertz frequencies, those are the ones that you hear and are annoying. These are the ones that go through structures. Remember that 10dB is doubling of perceived sound. The wind last night picked up a lot of ambient noise so that I could not hear the plant running, when I shut my slider door, I could hear the 125 hertz noises. We are not anti Kirtland, or anti jobs, or anti Boyne City we would like to be able to close our doors and sleep at night.

Kurt Rolland – Springwater Beach Rd. – Asked the board if they have been to the sites or been in their homes, to hear and experience what they are talking about? Amazed at how loud the noise was, to live in that situation, you would question what was going on.

Joe Jones – 1124 Nordic Dr. – The most recent fixes from my perspective the slow oscillation has changes, but has not gone away, just sped up, and I haven't noticed any dB decrease.

Chris Whittet – 1115 Boyne Summit – I have been taking dB readings from February until recently, before changes it was 47 – 53 db last week it was 45 to 54dB, no change in volume, maybe in the sound itself, but not volume. Can't get away from it. Just need it to stop.

Mindy Startzel – 427 High St. - Several people have asked me lately if Kirtland has been running. I know people who live out on M75 and work at Lexamar that were unable to hear any noise after the changes. Is this being told to the public? Do they

report the positive and not just the negative? I have never seen the particulates and dust on the green transformers. Smoke smell for three days, a brush fire was being burned nearby. School enrollment is up this year.

Mike Cummings – I started the first petition, so you could hear the silent majority in this city. We agree there is a sound and noise problem, and a smell problem has developed, what worried us is we read in the paper that it was to close that plant, and pull their permit. They have sympathy for the people who are hurting; we are asking to not close the plant. 1985 it was declared an Industrial Park, awhile back it was changed to a Business Park. Give them a continuation; it is not going to be fixed in a short period of time. What would it do to pull the permit and shut them down? We can afford to give them extra time.

Joe Quandt – We appreciate all of the comments, however, most of the negative comments have been subjective, except Mr. Giem's, who has an engineering degree. We have looked at the graphs and as RSG is the expert, they would know how to "balance" what ambient sound is and sound from other circumstances. Kurt Childs, Air quality manager with DEQ visited the facility and stated the odors were barely deductible at 7.29% opacity on a scale range between 5 – 15%. All scientific, reliable and objective documentation presented, none of the readings taken have exceeded the EPA guidelines and other community guidelines. We are looking for objective criteria. Company is willing to sit down and put together an objective criteria in respect to noise level ranges based on certain distances from the plant. You have a general nuisance standard that applies to Boyne City that is subjective. Look at all of the documents; believe the zoning permit does not have any conditions, other than the approved site plan, has to be recognized. The administrative record has no specific criteria that it relies on except berm for trees which will be planted this fall and production equipment inside, which it is. Those are the criteria that are relevant.

James Kozlowski – Board member – Earlier you stated the agreements and all the minutes have no bearing on the Conditional Use findings; is that correct?

Quandt – No, everything coalesces into the actual conditions. The dialog between the parties is not apart of the permit. The planning commission's job is to evaluate the permit itself, and determine if the conditions have been satisfied with the findings of fact. The issue of whether the facility is in compliance is based on the final documents.

With no further comments from the public or clarification for the board members, the public hearing was closed at 6:23 pm

Board Deliberation

MacKenzie – Scott, anything you would like to add?

McPherson – Nothing specific other than the board needs to do two different things:

- 1) Determine if they are they in compliance with the conditional use permit?
- 2) Based on that, determine what you are going to do about it.

Ellwanger – Sympathetic to both sides, the noise is upsetting. Kirtland is working hard to get rid of the noise. Read the RSG report summary and suggestions, and some things haven't gotten done that were promised. Would like some of these things implemented.

MacKenzie – RSG report came from the committee, it was a list of items that could be done to help reduce the noise, but Kirtland was not required to follow.

Ellwanger - If we hired them, I would like to see some of these suggestions implemented to get some resolution to the problems. You stated that the dB would not be higher than 24; and we know that is not true. We would like to work with you.

St. Dennis - Zoning Ordinance and Planning Board is suppose to protect. Kirtland has made progress, but comes back to thinking Carters Building, St. Matthews and that area would be affected, not surrounding residential areas so far away. Very concerned about property values and health. Sites and sounds. Took the man at his initial word. Sound is getting better, I guess, but still an awful lot of concerns and problems.

Kozlowski - 24 dB, the noise is higher than that. It was the number discussed and you tried to achieve. Some of the conditions, in the findings of fact, public health, safety and welfare stated that the standards have been met and was completed. There are still some issues out there. Property values have changed; don't want to see people move away, that is an issue. Environmental stack emissions, we know nothing about findings, dealing with facts right now at this time. Referenced landscaping and the steps to take care of that. Sound was the big issue findings described how that was going to be achieved and the mechanical equipment; in my eyes they haven't been resolved at this time.

Frasz - I appreciate the challenge on both sides and the emotion. We have to get to an objective way to review. Are they in compliance with the conditional use permit that was granted? Yes or No. If yes, then they are; if not at what point and what discussion needs to be held to help identify ways to eventually get there.

Crum - I'm in closer agreement with Chris. How do you get to the objective criteria? It is doable, like some of the others, we should allow more time, and not take it lightly to revoke the permit. I rely on the expert findings. We do have some preliminary. They have gone above and beyond the original conditional use, and it raises more questions that came after some of this. I certainly would not want to revoke the permit at this time.

Ellwanger - If asked the question are they in compliance, I would say no, do we need to give more time? I think we should. The area residents are getting frustrated. I don't want to see 30 jobs lost. I am leaning towards giving them an additional shot at it.

Neidhamer - In the spirit of the conditional use permit, I would find that they are not in compliance based on fact that when they said all equipment exceeding 40dB would be inside a decoupled wall building and it is not, I agreed when they said the loudest noise would be the backup beeper on the loader, and not louder than Lexamar, I believed those items are a part of the conditional use permit. I too appreciate the spirit of cooperation, and from day one, said we can solve this. Recommendations by Kodiak in the last two weeks, have improved, but you can still hear the sounding in the walls from the people affected.

McCahan - There is a lot of blame to go around. In 2008, in the midst of a huge recession, believed that 60 or 70 jobs would be brought to the community, gave the benefit of the doubt to most items stated, instead of looking further. Maybe the plant should not have been located there; however it was not heavy industry. Let's try to make it work. They indicated they would abate the noise in 2008 & 2009, and it sounded good. Only after the plant was up and running did they admit that it was more than they anticipated, and they are trying to fix it. There is more that could and should be done. I also understood equipment that was louder than 40dB would be put in a decoupled building or placed inside, and as the RSG report states, there are still six pieces of equipment out side, you are not bound by that, but you are bound by the permit that stated noise would be abated. It is the 125/250 hertz low frequency sounds that go through the structures. Conditional Use Permit was

issued based on the assertions made, property values would not decrease. I really believe, although hard to prove, that there are a lot of values decreased in the residential neighborhoods. If you fix the noise, and get rid of the low frequency vibrations you are going to solve the problem, and everyone will be happy. The vapor, VOC, and particulates, we need to wait for the final reports, but if the DEQ say all is ok there is nothing that we can do. They are the experts. There is more that can be done on the noise issue, the low frequency noises have got to be fixed. I believe also they are not in compliance, and we should give them more time, how much; I'm not sure. Progress has been made, we need to see more and get rid of the noise.

MacKenzie - I agree about the low frequency sounds. You hear no other ambient sounds like the crickets or the breeze, that low frequency is the noise you hear. Concur with what others have said. They are not in compliance, but would like to give them time to achieve, as they are working towards a solution. Is further testing the next step, what are the objective criteria? More time for modifications, get testing results, and do further sound testing.

St. Dennis - If the DEQ said it is alright, it was a stretch to bring to the community, so close to church and schools. We were told that it would be very clean out of the stacks.

MacKenzie - DEQ has done their tests, and are waiting for the written report.

Crum - Would the DEQ not be an objective criteria? We are talking about setting a standard and moving forward, we need to agree on what the standard will be.

St. Dennis - We've talked a lot about the noise, what about the smell? Are they going to do more or are they maxed out in getting rid of the vapor or smell?

McPherson - I don't believe they have any additional plans beyond the DEQ requirements, but are bound by our performance standards which do cover nuisances which talk about odor, dust, particulates and smoke. It is a very difficult thing to prove something maybe objectionable to one, but not to someone else.

McCahan - DEQ did present answers to the citizen committee's questions about limits to organic compounds, and when they did the stack tests the preliminary report on the VOC does show they are within the limits. Particulate matter is unknown at this time. May find that out with the final report.

Quandt - The company is willing to try to meet any objective standards. The air quality issues, the MDEQ has exclusive jurisdiction with the Air Pollution Control Act. Have your consultants and ours come up with what is the objective criteria that can be measured and reasonably based. The company is looking for a way to mitigate the problems through objective criteria.

Neidhamer - I believe we have some black and white items we can rule on.

McPherson - The conditional use permit is clear. I disagree that the zoning permit was issued with no conditions; it was issued to be in compliance with all of the original approval and all amendments to the plan. That was the condition. A number of things they indicated they would do on the final plan have not been done so they are not in compliance. You need to decide two things, are they in compliance? If there are fine, if they are not, then you need to decide what you are going to do. I'm hearing from the board you want to continue to work with them. Kirtland has been up front in the entire process, and a willing participant in the citizen committee, taken proactive measures, would agree the right way to go is to allow them to continue. You need to recognize that they made obligations, admitted that things did not work out the way they said. Does the Planning commission need to look at the permit and adjust it and work with them to come up with objective standards that we can live with as a community. Both parties have to agree to any amendments to the plan.

Board discussed reasons they felt Kirtland was not in compliance such as noise,

odor, landscaping issues, emissions, and public health and safety.

Kozlowski moved, Ellwanger seconded, that Kirtland Products, LLC is not in compliance with the Conditional Use Permit based on the following factors:

- Sound produced by the plant exceeds levels represented to the Planning Commission,
- The sound abatement and landscaping measures as proposed by Kirtland and approved for the conditional use final site plan have not been completed as all equipment exceeding 40dB was not placed inside the building,
- Landscaping as shown and described in the final approved development plan has not been installed,
- Concerns for public health, safety or welfare by reason of excessive production of traffic, noise, smoke, odors or other such nuisance.

2012-09-17-7A(1)

Roll Call:

Aye: Ellwanger, Frasz, Kozlowski, MacKenzie, McCahan, Neidhamer, St. Dennis.

Nay: Crum

Absent: None

Abstain: Meeder

Motion Carries

Board has found them not in compliance, discussion revolved around what the next step is going to be.

Kozlowski – When are test emissions coming in?

Tom Monley – Kirtland – Expect them within 2 to 3 weeks. We want to take the work that has already been done to evaluate the impact that it has had on the noise, then come up with objective criteria that can be used to determine what needs to be done next, and work towards those goals.

Kozlowski – Would like to give them time to continue, but don't want to stretch out too long.

Quandt – You have to give us some thing objective to meet. Outside fans that are over 40dB can't go inside, that is their purpose is to be exhaust fans.

Kozlowski – Try to help set some type of limit to achieve these standards. You stated 24dB at the property line. EPA/DEQ sets a standard, the city has an ordinance that you have to abide by, I would think that is your standards.

McCahan – There is no objective standard in town. Can appreciate that they need to have something to measure by. Maybe the City, Kirtland and the citizens committee can get together to try to come up with standards. The RSG report suggested 40dB; maybe also could limit to 35 at night, other cities who do have definable noise limits have standards of 50 to 55dB at night. Also to mitigate the low frequency noises.

McPherson – They would like to re-evaluate after they complete all the Kodiak Group's recommendations. Once that is done, they can come back to the city and let us know what they have. If they want they can propose to the Planning Commission an amendment to their plan, or bring it in to compliance. Must be agreed upon by both parties. You can send it back to them to do the evaluation, meet with the city to tell us where they are, and determine what the objective standards they should meet.

McCahan – The limit of 24dB is probably impossible to meet. We need to come up with something. Propose maybe 30 days to get discussions going, and 60 days to

evaluate it.

MacKenzie - I want to look at the reduction 125/250 hertz, and overall noise levels of 40 dB or less, and work on pulsation and hums.

Neidhamer - There is going to be discussion with the lawyers, and negotiations of items that they promised us, the bottom line, it has to work in the city's favor. If they come back to us and say there is something that is not practical to be done or they can't decouple the machine, could be negotiated as long as they solve the problem of noise. The World Health Organization standards were recommended by RSG which is 40dB at night at the receiving place. There is going to be a process to work through, and it is going to take some time maybe the next 30 to 60 days.

McPherson - To do the evaluation, get a third party in to do analysis, it will take at a minimum of 30 days; 60 days would be more practical.

McCahan - Maybe put limits on times of operations to give the residence a break, until we can confirm the sound levels are down to what we expect.

MacKenzie - What restrictions are they under?

McPherson - They are under no restrictions, they are self imposed hours of operations to alleviate some of the problems. As the staff or City Commission we had no ability to tell them what to do, they made those requests, and we worked with them.

Crum - The mechanical work was stated to be completed within 2 weeks, what is the anticipated dB level when that is completed?

McPherson - It was not anticipated, but a re-evaluation was going to take place.

Crum - Is there a model of what expectations will be once done?

Monley - The intent of the modifications was the number one concern of RSG it wasn't a noise level reduction, but to get rid of the pulsation. Worked on the system to get rid of that, nothing to do with dB drop. 90% complete with that, one piece left to be done this week. Then an evaluation of the elimination of the pulsation. The pulsation was the fingerprint to allow people to know that Kirtland was running.

Frasz - While waiting for the data, is it beneficial to meet with our attorney to get a feel on how we might word something relating to what we just passed on the non compliance, and address those issues? Get the recommendation from engineers, council and staff, so we are clear on what has to be met, and we agree with it. That could be done within 30 days, and gather information back. The board agrees with this. Discuss maybe a limitation of hours of operation?

Leon Tupper - Kirtland - A restriction of hours at this time would be a severe economic disadvantage to the business. From the beginning, we have been accommodating and recognizing the necessary modification required before the start of the season. We recognize the level of concerns from the residents. DEQ standards, as far as we are concerned, we will be within them. If we do not operate around the clock, we operate inefficiently.

Monley - It is hard on the equipment with start up and shut down cycles. The manufacturer even states this. Look at limiting the number of days, and not the hours for the equipment.

McCahan - Can you operate 3 days a week and be happy?

Monley - Would prefer to work 3 days 24 hours, instead of limited hours 5 days a week. One day a week we schedule maintenance, so already shut down. Have been running 24 hours a couple days a week for a couple of weeks, due to stack testing. Looking for objective standards.

MacKenzie - Would we get RSG to come back, or someone more local?

McPherson - A qualified expert to give independent analysis is what is needed.

Neidhamer - Who is responsible to make the tests for dB? The City or is it their responsibility?

McPherson - The city did fund the RSG study to the cost of almost \$15,000. Kirtland should bear some responsibility for the costs to evaluate, but we need to have input on who does that evaluation.

With no further discussion, **motion by McCahan, seconded by Neidhamer** in the next 30 days the Planning Commission and/or staff meet with the city attorney to create objective standards and allow Kirtland Products to run 3 days/24 hours, and come back to the Planning Commission with results in 30 days.

2012-09-17-7A(2)

Roll Call:

Aye: Ellwanger, Frasz, Kozlowski, MacKenzie, McCahan, Neidhamer, St. Dennis.

Nay: Crum

Absent: None

Abstain: Meeder

Motion Carries

Planning Commission members received various letters in the mail, all of which will be given to the Planning Director, for duplication will be gone through, and will become a part of the permanent record. (Attachment A)

Meeder returned at 7:50 pm

Staff Report

Charlevoix County is looking at eliminating the County Planning Director's position at his retirement at the end of September, this staff and several other communities have some concerns. His current assistant will be used as staff support to planning commissions. Possible contracted position or full time based on cost savings. There are statutory items that must be done by the County Planner, and there can be a financial advantage in order to receive grants. The board agreed that a letter of support for the need of a full time planner and staff at the County level be sent.

Good of the Order

None

Adjournment

The next meeting of the Boyne City Planning Commission is scheduled for October 15, 2012 at 5:00 pm in the Commission chambers.

****MOTION**

2012-09-17-10

Crum moved, St. Dennis seconded, PASSED UNANIMOUSLY a motion to adjourn the meeting at 8:00 p.m.

Jane MacKenzie, Chair

Pat Haver, Recording Secretary

Shoreline protection strategies:

Report of the Lake Charlevoix Shoreline Zoning Study Group
City of Boyne City



Dean Solomon, Senior Extension Educator, MSU Extension
Rod Cortright, Charlevoix County MSU Extension Director Emeritus

September 2012

Shoreline protection study group participants

Joe Kimmel, Eveline Township
Rene Santana, Bay Township
Mark, Penzien, East Jordan
Tom Neidhamer, Boyne City
Lynn Maxwell, Bay Township
Jeffry Rogers, South Arm Township
Rod Cortright, Evangeline Township
James Kozlowski, Boyne City
Barry Wood, Eveline Township

This effort was funded in cooperation with the Tip of the Mitt Watershed Council through a grant from the Michigan Department of Environmental Quality, Non-Point Source Program.

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Introduction

One of the most effective ways local communities can protect the water quality of Lake Charlevoix is to focus on the development and redevelopment of riparian properties along the shoreline and tributaries. Though upland issues can affect water quality, in the Lake Charlevoix Watershed the riparian zone is the area that has the most impact.



During early 2011 and 2012 MSU Extension conducted a mail survey of local officials in the Lake Charlevoix Watershed. The results of the surveys revealed that local elected and appointed officials strongly believed in the importance of Lake Charlevoix quality for economic development and quality of life. Local officials also indicated that they would support changes to their plan and ordinance to improve water quality.

A couple of results led the project team to think about additional ways to support local units. First, local officials varied widely in their awareness and use of planning and zoning practices to improve water quality. Second, one of the practices that respondents were least familiar with was coordinating water quality zoning provisions with neighboring communities.

To address these issues, a group of appointed and elected officials convened several times between May and September, 2012 to:

1. Review water quality science and shoreline protection strategies.
2. Review township and city master plans and zoning ordinances using the Tip of the Mitt Watershed Council Charlevoix County Local Ordinance Gaps Analysis as a guide.
3. Identify opportunities for greater coordination and consistency between ordinances.
4. Review specific possible ordinance language.
5. Produce a customized report for each participating township and city that summarized the discussion and outlines specific potential shoreline zoning ordinance changes.

This study group focused specifically on the Lake Charlevoix shoreline issues, **not those related to rivers and streams**. The recommendations of the group are intended to complement the analysis provided in the Tip of the Mitt Watershed Council Local Ordinance Gaps Analysis.

Technical and staff support from MSU Extension and the Tip of the Mitt Watershed Council was provided to the team.

Cities and townships – different approaches

The focus of the recommendations is to maintain good water quality by ensuring that stormwater seeps into the ground before entering the lake, and preventing nutrients and pesticides from getting into the water. The study group recognized early on that while the principles are the same, there was no way to develop a uniform set of recommendations that applied equally to both townships and cities.

For townships, this is done primarily by vegetative means and by limiting the amount of impervious surface on shoreline properties. These solutions are non-engineered and rely on natural systems. Best practices include shoreline setbacks, limiting the amount of impervious surfaces and the maintenance or installation of greenbelt/buffer strips, and septic system regulation. These practices are both cost-effective and low maintenance methods for controlling the vast majority of potential runoff.

For cities, approaches focus on managing stormwater runoff through engineered systems. This can be achieved through both land use regulations and infrastructure improvements. There are, however, some shoreline areas within the city limits that have characteristics that are the same as parcels in the townships. Greenbelts, greater setbacks, and impervious surface requirements should be applied in these areas.

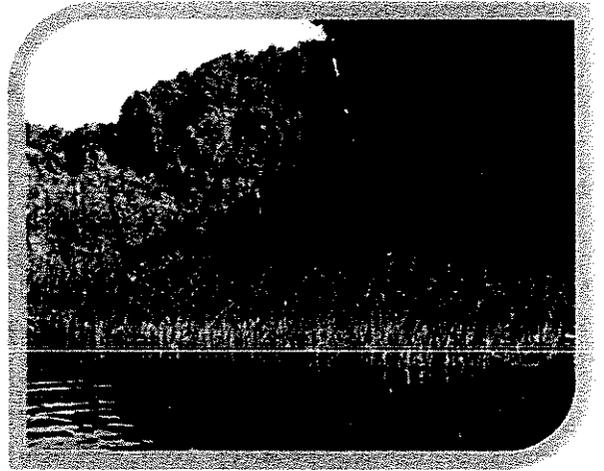
Given the differences in approaches for cities and townships, the study group recommends that leaders and staff in Boyne City, East Jordan and Charlevoix engage in a similar process to explore coordination and consistency in urban shoreline protection ordinances.

Zoning authority

This report emphasizes zoning provisions upslope (toward the home) from the high water elevation. However, zoning authority extends to the water's edge and bottom lands, and is concurrent with state and federal regulations. The study group recommends that cities and townships take this into account when revising zoning strategies so that the whole shoreline area is protected.

Recommendations

Two classes of recommendations are being made here. **Basic recommendations** are those that all communities should adopt in areas where single family waterfront residences predominate. Basic recommendations are the minimum requirements for water quality protection. Communities currently have or may set higher standards than these. **Enhanced recommendations** are those measures that communities may consider that will provide more flexibility, reduce shoreline erosion, and provide alternative methods of controlling runoff when application of the basic recommendations are not practical.



Specific ordinance language is also included for each community. This language is provided as a **starting point** for discussions, **not** an authoritative solution.

High Water Elevation – All Areas

Basic recommendation

All communities around Lake Charlevoix should adopt a uniform **high water elevation** of 582.35 IGLD. Great Lakes water levels can and do vary greatly, both seasonally and from year to year. In the past 50 years the water level of Lake Charlevoix has varied by over six feet. 582.35 IGLD is the highest level it has reached on Lake Charlevoix since records have been kept. Some communities around the lake have used an elevation of 581.5 IGLD, defined by the US Army Corps of Engineers as the ordinary high water mark (OHWM) for Lake Michigan/Huron. There are problems with this approach. First, the main purpose of the OHWM is to set the legal location in Lake Michigan/Huron beyond which Great Lakes riparian property owners do not own. This principle does not apply to inland lakes such as Lake Charlevoix. Here riparian property owners own the bottom land out to the center of the water body. Second, historical Lake Michigan/Huron water levels have frequently been higher than the OHWM and have been so for months at a time.

Although the 10-inch difference between the two elevations doesn't seem like much, that distance can be significant in areas with fairly flat shoreline areas. Using the lower elevation, loss of effective shoreline buffers may occur when high water levels return to the lake. Achieving consistency between governmental units on either the 582.35 IGDL or 581.5 IGDL number is advantageous for zoning administrators and landowners.

Shoreline Setbacks – Single Family Residential Areas

Basic recommendation

The ideal minimum setback width is determined primarily by slope, soils and the amount of impervious surface on the parcel. Those factors vary significantly at various locations around the lake, making it difficult to enact a single standard that will provide adequate protection for all parcels.

If a single “one-size-fits-all” standard applicable to all parcels is desired, the group recommends a minimum 100 foot setback.

Enhanced recommendation

A more flexible approach can be applied whereby minimum setback is determined according to the specific site characteristics, or the predominant characteristics within a special shoreline zoning district.

Using this approach, the recommended minimum setback upland from the **high water elevation** for new development or redevelopment should be a minimum of 50 feet, though 100 feet would achieve greater buffering and should be considered when there are steeper slopes and/or greater impervious surface.

This recommendation, along with the minimum greenbelt/buffer strip width recommendation, is based on the USDA Natural Resources Conservation Service runoff equation which predicts the peak rate of stormwater runoff and the total volume. This equation was employed to determine the minimum building setback and green belt widths that would be necessary on a typical lot to prevent stormwater runoff from reaching the lake from a typical rainfall event. According to this equation, in order for all stormwater runoff to infiltrate into the soil before reaching the lake, the building setbacks should be a minimum of 50 feet upland from the water, and the greenbelt/buffer strip should be a minimum of 25 feet (see next section). This calculation applies on lots with:

- (a) well drained sandy loam or courser soils,
- (b) where slopes 12 percent or less predominate, and
- (c) contain 15 percent or less impervious surfaces.

Where steeper slopes, finer soil (sandy loams or loams), or poorer drainage predominate, greater setbacks and greenbelt/buffer strip widths should be required.

Certain shoreline areas in some of the townships are relatively steep. For lots where slopes greater than 12 percent predominate, a minimum 100-foot setback is recommended. This setback should be for all structures and impervious surfaces with the exception of necessary shoreline protection structures, docks, water viewing platforms, and paths and stairways accessing the lake.

Greenbelt/Buffer Strips – Single Family Residential Areas

A 2007 study by the Tip of the Mitt Watershed Council found that that 30 percent of the parcels on Lake Charlevoix shoreline have "poor" shoreline buffers. Greenbelt requirements generally require 1) maintenance of the existing natural shoreline buffer, where it already exists, and 2) re-establishing a natural shoreline buffer where it has been altered.

Basic recommendation

As with setback distances, the ideal greenbelt setback width is determined primarily by slope, soils, and the amount of impervious surface on the parcel. Those factors vary significantly at various locations around the lake, making it difficult to enact a single standard that will provide adequate protection for all parcels.

If a single "one-size-fits-all" standard applicable to all parcels is desired, the group recommends that a minimum 50-foot wide vegetative greenbelt extend upland from the high water elevation of the water body.

These provisions should be required for new development and redevelopment of shoreline parcels. *The Planning Commission may waive this requirement if it finds that existing vegetation is essentially equivalent to ordinance standards.*

- 1) All vegetation in the greenbelt/buffer strip should be native to this area and adapted to the specific site conditions.
- 2) All new low-growing plantings should be done at a spacing which should normally result in complete ground coverage within two years.
- 3) No lawn should be established or maintained between the greenbelt/buffer strip and the water's edge.
- 4) No structures except boat docks and shoreline protection structures should be permitted between the greenbelt/buffer strip and the water's edge.
- 5) A single waterfront viewing platform, a maximum of 120 square feet in area, (200 square feet on lots with 100-foot frontage or greater) may be allowed within the greenbelt/buffer strip.
- 6) A single path, a maximum of 6-feet wide, may be allowed through the green belt/buffer strip to provide access to the water.
- 7) Provisions allowing limited tree trimming within green belt/buffer strips for "filtered" views should be included.

Enhanced recommendation

Using a flexible approach, a 25-foot buffer width is a useful starting point for well-drained, gently-sloped parcels with modest impervious surface areas. Many parcels around Lake Charlevoix do not meet those criteria and require modification of the basic standards in order to provide optimal water quality protection. The minimum shoreline buffer width should be doubled in situations where the current and/or proposed impervious surface area exceeds 15 percent of the lot area within 500 feet of the high water elevation or on lots where slopes greater than 12 percent predominate on the lot within 500 feet of the high water elevation.

There is an advantage to maintaining trees in the greenbelt/buffer strip area to reduce velocity of downpours, thus allowing more infiltration. Forested areas have higher infiltration rates than non-forested areas. Trees should be scattered somewhat uniformly throughout the greenbelt/buffer strip area. The remainder of the green belt/buffer strip area (*including under trees*) should primarily consist of a dense covering of low-growing woody plants and shrubs.

Maximum Impervious Surface Lot Coverage – Single Family Residential Areas

Water runoff from impervious surfaces can lead to water quality problems. One common way to prevent runoff is to limit the percentage of waterfront lots covered by buildings, driveways and other surfaces that prevent water from infiltrating into the ground.

Basic recommendation

A standard allowing a maximum of 15 percent of the lot area of waterfront parcels within 500 feet of the high water elevation to be covered by impervious surfaces should be adopted.

Enhanced recommendation

Allow a maximum of 20 percent impervious surface in situations where greenbelt/buffer strip widths are doubled.

Zoning Enforcement – Townships and Cities

Committee members discussed at length the challenge of enforcing development standards in shoreline areas, and related many instances of site changes occurring without zoning approval, or completed in violation of zoning requirements.

Members strongly believed that more rigorous enforcement procedures are a high priority.

Basic recommendation

No site alterations should commence prior to issuance of all required state, federal and county permits, and a zoning permit.

Enhanced recommendation

Formal Site Plan Review by the Planning Commission - Planning Commissions should conduct a formal site plan review and give the approval on waterfront property development projects. *(Some minor projects may be exempted.)* An approved formal site plan provides more precise documentation on what will happen on the property. The Zoning Administrator then only has to insure that the project has been developed as per the approved site plan. It also provides the documentation if there are questions about violations in the future. This process also helps prevent misunderstandings between the community, the applicant and/or their agent(s). It sends the message that the community is serious about its ordinance standards being followed.

The Planning Commission in Evangeline Township has been conducting site plan review and approval on all waterfront development projects for a number of years. In their experience, it has both reduced misunderstandings and improved the compliance with zoning ordinance standards.

The site plan for waterfront parcels should include an accurate map of the parcel, drawn to scale. At minimum, it should show the following:

- The location of all property boundaries.
- The location of the **high water elevation**.
- Contour lines drawn at 2-foot intervals.
- The location of both existing and proposed structures, along with other impervious surfaces.
- Calculations of the percentage of existing impervious surface and proposed imperious surface lot coverage
- Details about the greenbelt/buffer strip, including a planting plan that describes the species to be planted, their locations and spacing.
- In some situations, the planning commission may require more information that it considers relevant for their review.

Police powers ordinance directed at agents of property owners – Zoning enforcement, by law, is directed at the property owner. With that in mind, the study group recommends that communities consider adopting a police power ordinance that subjects agents of property owners (*e.g. landscapers, contractors, etc.*) to penalties and fines if they violate waterfront zoning ordinance provisions. This would

also address those situations when a zoning permit or formal site plan review is not required for a project.

Standards for Shoreline Protection Structures

Basic recommendation

All county, state and federal permits must be obtained before any site alteration may commence.

Enhanced recommendation

In situations where shoreline erosion control structures are necessary, communities should adopt standards that discourage seawalls in favor of revetments (rock rip-rap) and engineered natural shorelines. This could be accomplished by prohibiting seawalls, except when there is no other practical alternative.

Waterfront Districts – Townships and Cities

Basic recommendation

Given the importance of high Lake Charlevoix water quality, all waterfront areas, both in townships and cities, residential and commercial areas should include special zoning provisions in shoreline areas to protect the lake from nutrients and pollutants. In cities, standards in those areas may emphasize stormwater management and erosion control instead of setbacks and buffer strips.

Enhanced recommendation

Establish multiple shoreline districts. Shoreline development along Lake Charlevoix is very diverse. While the basic recommendations outlined above will work in most areas where single family waterfront development predominates, there are areas even in this class where some of them are not practical. For example, in areas where pre-existing shallow lots predominate, some of the setback, greenbelt/buffer strip and maximum impervious recommendations might not be practical and may need to be modified. Stormwater runoff control practices that are more highly engineered may be needed. (*e.g. pervious paving, rain gardens, vegetated roof tops, retention basins, etc.*) In these cases, a separate waterfront district specific to these areas may be called for. The same applies to situations with multi-family, commercial and public use areas. Again, in these areas, large waterfront setbacks and wide greenbelt/buffer strips may not always be practical and more engineered stormwater control solutions may be called for.

Septic Systems

Improperly functioning septic systems may leak nutrients into Lake Charlevoix causing excessive near-shore algae growth. This is an on-going issue, especially with older and undersized systems.

Basic recommendations - Zoning permits should not be issued until the district health department issues a septic system permit.

Enhanced recommendation - Study group members discussed the challenge of assuring that septic systems were functional and did not impact water quality. One approach used by other communities in Michigan is to adopt a police-power ordinance requiring comprehensive septic system inspection by the District Health Department when property is sold or transferred (time-of-sale). The study group recommends that townships enact a sensible, long-term strategy, including time of sale inspections, and/or periodic inspections for all systems on shoreline parcels.

It's Not Just Zoning

Planning commissions, township and city governments may also use education as a tool to protect water quality. Many Lake Charlevoix residents have little experience with shoreline living and, consequently, develop their property or make major modifications that impact water quality.

Basic recommendation

Township and city planning commissions should develop educational materials and conduct periodic training sessions to help property owners, lake association leaders/members, contractors, landscapers and realtors understand shoreline protection goals and ordinance standards in their community.

Enhanced recommendation

Township and cities should work together to develop and fund education programs about shoreline protection and zoning requirements, perhaps in conjunction with the county planning commission and other organizations.

Other Issues

Beach sanding – Establishing beaches in areas where beaches don't naturally exist poses a water quality risk from erosion and harm to shoreline habitats. The study group discussed this issue, but didn't come up with any specific zoning recommendations. Zoning could limit the extent that beach sanding is permitted.

Beach sanding requires Michigan Department of Environmental Quality/Army Corp of Engineers permits.

Marina regulations – Study group members brought up concerns about potential water quality concerns related to marinas. These issues were not discussed at length by the group, but were identified as a topic for future discussions.

Final Thoughts

This project provided an excellent forum for elected and appointed officials to discuss common waterfront zoning issues, concerns and frustrations. It was just a beginning, though. Regulation of shoreline areas is complicated and ever-changing, with new people coming into the process all the time. An on-going forum is recommended to continue efforts toward achieving consistent, coordinated and effective waterfront zoning around Lake Charlevoix. We need to continue the conversation.

Specific Zoning Ordinance Recommendations

As mentioned previously many of the recommendations in this report are more suited to single family residential development in the rural townships around Lake Charlevoix. However there are waterfront single family residential areas within the Boyne City limits where some of the recommendations may be workable and desirable. The Study Group suggests that Boyne City review these recommendations and incorporate them into their zoning ordinance as they see fit.

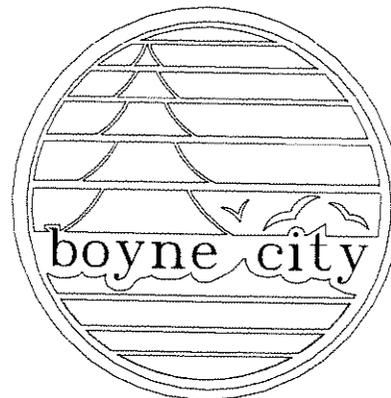
CITY OF BOYNE CITY

To: Chair Jane MacKenzie and fellow Planning Commissioners

From: Scott McPherson, Planning Director 

Date: October 15, 2012

Subject: Kirtland Product Conditional Use Permit Review



BACKGROUND

AT the September 17, 2012 Planning Commission meeting the Kirtland Products conditional use permit was reviewed and the Commission made findings that the Kirtland products was not in compliance with the conditional use permit. The reasons for the non compliance were stated in the motion as follows:

Kozlowski moved, Ellwanger seconded, that Kirtland Products, LLC is not in compliance with the Conditional Use Permit based on the following factors:

- Sound produced by the plant exceeds levels represented to the Planning Commission,
- The sound abatement and landscaping measures as proposed by Kirtland and approved for the conditional use final site plan have not been completed as all equipment exceeding 40dB was not placed inside the building,
- Landscaping as shown and described in the final approved development plan has not been installed,
- Concerns for public health, safety or welfare by reason of excessive production of traffic, noise, smoke, odors or other such nuisance.

The Planning Commission then made a determination on what actions should be taken. Recognizing the facts that Kirtland Products acknowledged early on that the noise produced by the plant exceeded their expectations and Kirtland has been cooperative throughout this process and has taken steps to try and reduce the noise and that a reasonable and objective standard to quantify and measure noise should be identified the Planning Commission made the following motion:

With no further discussion, **motion by McCahan, seconded by Neidhamer** in the next 30 days the Planning Commission and/or staff meet with the city attorney to create objective standards and allow Kirtland Products to run 3 days/24 hours, and come back to the Planning Commission with results in 30 days.

DISCUSSION

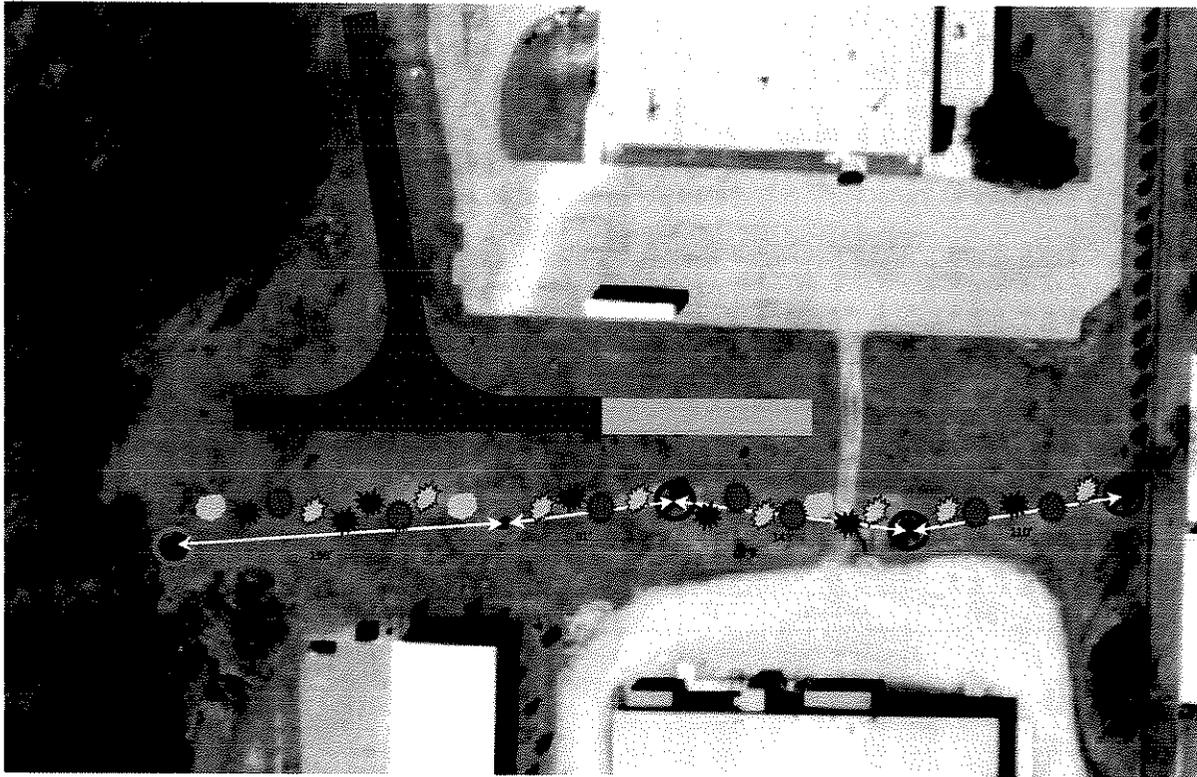
As per direction of the Planning Commission this issue is being brought back to the Planning Commission. Staff has met with the City Attorney and with representatives of Kirtland and discussed the need to evaluate the effect of previous and ongoing fixes made at Kirtland and how to identify and establish objective standards that can be used to determine compliance. Kirtland representatives indicated that once evaluation processes are developed and objective standards are established all specific actions that need to be taken to bring the plant into compliance can be identified and Kirtland can submit a plan to the City that identifies the specific actions to be taken and timelines for implementation. The attached letter from Kirtland's attorney describes their proposal and it is being submitted to the Planning Commission for review and consideration. Kirtland has also submitted a landscape plan for approval. The plan does not meet the minimum plan requirements as per Section 23.10. The plan is not to scale and does not indicate the location of lot lines. Tree spacing is not shown and the plan does not include planting details and specifications. Irrigation and/or the nearest water source is not shown.

The conceptual landscape plan drawings provided to the Planning Commission in 2009 and 2010, each show multiple rows of trees. While it is understood these were conceptual drawings only, it appears the proposed landscaping is much less substantial than what was described and shown to the Planning Commission. To make sure there is no doubt to what the Planning Commission understood and what was required I am referring the proposed plan back to the Planning Commission for review.

Recommendation

The Planning Commission should review the proposal contained in the letter submitted by Kirtland Attorney and determine if the proposed course of action should be pursued.

Kirtland Products Landscape Plan



- Existing Coniferous
- Existing Deciduous
- ☼ Scotch Pine
- CB Spruce
- ✱ Norway Spruce
- Red/White Pine

Trees not surviving transplant will be replaced.

Planting will occur at times of tree availability prior to June 21, 2013.

Trees will be a minimum of 8' in height and 3' spread with root ball at least 10 times the tree caliper (6" above grade).

Scott McPherson, Boyne City Planning/Zoning Administrator (date)

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October 12, 2012

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**SETTLEMENT DISCUSSIONS
GOVERNED BY MRE 408**

Re: Kirtland Products - Boyne City, MI

Dear Jim:

Thank you for the opportunity to meet with you and your client to discuss our mutual desire to facilitate resolution to the community's concerns associated with the above referenced facility. As we discussed, the purpose of this letter is to address progress made since the last Planning Commission meeting and propose a path forward to resolve this matter in an objective fashion, such that it addresses the needs of the community and keeps Kirtland Products in business. It is our expectation that this path forward would culminate in an application for an amended Conditional Land Use Permit which would set forth enforceable conditions which are empirically objective, scientifically measurable and reliable in a way which will allow consistent and accountable enforcement. This result would also provide Kirtland an objective benchmark as a performance standard.

First, with respect to Kirtland's progress since the last Planning Commission meeting, please be advised that Kirtland completed the additional equipment modification recommended by Kodiak Group Consulting (and discussed during the last Planning Commission meeting). Kirtland requested a follow-up visit by Kodiak to evaluate sound performance after this modification and we have not yet received the results of the evaluation after the last equipment change; however, we expect their report within the next fifteen (15) days. I believe that you also know that Kirtland has voluntarily agreed to limit its operations and has followed the Planning Commission's request to restrict production to no more than three (3) days per week. As we discussed, that limitation creates a significant economic burden on the company and we may need to revisit the operations restrictions

October 12, 2012

Page 2

at a future Planning Commission meeting, but for the time being, the company will agree to this limitation.

During our recent discussion, we tried to address the issue of how to assure appropriate noise performance for the Kirtland facility in a scientifically objective manner. We discussed the inherent difficulty in achieving a standard or enforcing a standard which is, by its very nature, subjective and based upon the sensitivity of any one particular individual. We also discussed that other communities have specific scientifically measurable standards by which noise is restricted by ordinance. Some examples offered were the technical standards adopted by the communities of Alpena, Ludington, Traverse City and the EPA recommended standard. The City suggested that it might be appropriate to invite one of the ordinance enforcement officials from Traverse City to visit Boyne City and the Kirtland facility to evaluate whether or not the noise emanating from the Kirtland facility would violate the Traverse City noise ordinance. At that visit, City officials and the community can request suggestions from these professionals to see if they can provide any guidance on what an appropriate objective standard for the Kirtland facility would include. As was recommended by the RSG report, we anticipate that such a standard would include not only decibel readings but also suggestions on appropriate limitations for frequency range, oscillation, and other factors that may have a tendency to exacerbate noise levels. It is our mutual hope that such a visit and request for recommendation can be completed within the next fifteen (15) days.

At the same time as that effort moves forward, it would be expected that the City would seek cost estimates for the engagement of a sound consultant (possibly RSG or some other professional consultant acceptable to the City) and seek guidance and input from that consultant on appropriate parameters for what may be acceptable noise emissions from the Kirtland facility. The goal would be to have this consultant develop an appropriate noise standard for the Kirtland facility, taking into consideration decibel levels, range, frequency, oscillation, and any other element, including background noise levels, which the consultant would deem relevant. We would expect that, since the goal is to develop a standard which would be incorporated into an amended Conditional Land Use Permit, the development of the standard would be a collaborative process, transparent to the community and adopted through deliberation and approval by the Planning Commission. Once completed, an amended Conditional Land Use Permit would include these specific standards with appropriate measurement criteria which would be simple and cost-effective for the City to enforce. This would, likewise, give Kirtland the certainty of having a reliable benchmark for the purposes of ensuring compliance.

We understand that the Planning Commission may, if appropriate, at a future date, conduct a public hearing and, after conclusion of the public hearing, determine whether the proposed amended Conditional Land Use Permit is acceptable. We believe you share our interest in having

October 12, 2012

Page 3

the matter resolved in a public forum where the Planning Commission receives input from all concerned parties.

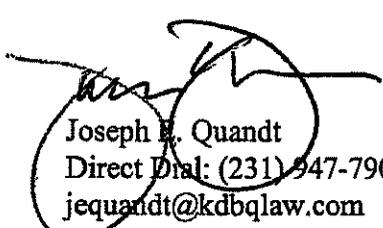
The issues related to concerns of VOC, water vapor plume and particulate emissions I believe you will find is regulated exclusively by statute under the Michigan Air Pollution Control Act (Part 55 of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended). As you know, we have submitted stack test emission information under DEQ oversight to a laboratory and we expect to have those results soon. The results of the stack test will determine if a part 55 permit is required. The issue of odor would seem best managed by applying the Boyne City ordinance related to nuisance conditions.

It is my hope that this proposal creates a constructive path towards resolution. Of course, we will need to have some additional details filled in along the way, but I am hopeful that the City can find this approach acceptable. Please keep in mind that we will also need to deal with the deadlines which impact this process as a result of the Planning Commission's actions at the last Planning Commission meeting. I would look forward to your suggestions as to how we deal with the timing challenges so that they do not present a stumbling block for progress. Please discuss these issues with your client and let me know how you wish to proceed. We will be available at the Planning Commission meeting scheduled for this Monday, October 15, 2012. Company officials and I will be available to answer any questions which Planning Commission members may have.

Should you have further questions or comments regarding this letter, please feel free to contact me.

Sincerely,

KUHN, DARLING, BOYD AND QUANDT, PLC



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JEQ:shp

cc: Leon Tupper

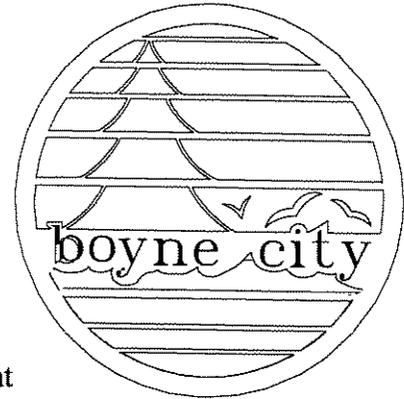
CITY OF BOYNE CITY

To: Chair Jane McKenzie and fellow Planning Commissioners

From: Scott McPherson, Planning Director

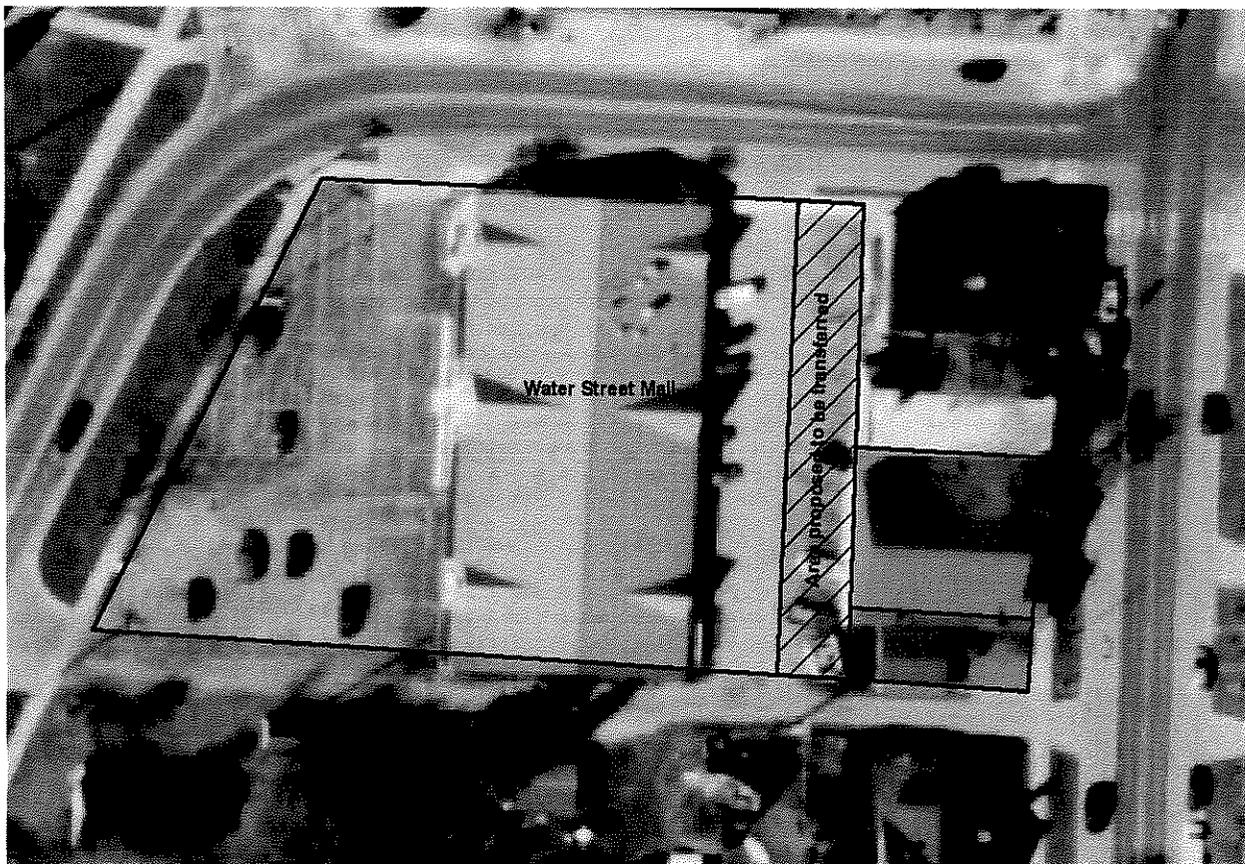
Date: October 15, 2012

Subject: Water Street Center Development Plan Amendment



Background Information

Y&T Properties owned by Gale Neff has submitted a request to amend the previously approved development plan for the Water Street Mall. Mr. Neff would like to sell a 20' x 165' portion of the parking lot to the adjacent property owner Ken Kruzel. To accomplish this, the Planning Commission would need to approve an amendment to the development plan that was approved in 1986. If approved a lot reconfiguration would need to be approved. The proposed plan would reduce the lot by 3,300 square feet and reduce the amount of parking for the Water Street Mall by 14 spaces from 55 to 41 total spaces. The image below shows the two adjacent properties owned by Ken Kruzel (blue and green), the Water Street Mall property (yellow) and the area proposed to be transferred (hatched). The other two adjacent properties are owned by the America Legion and Lake Street Market.



Discussion

The development plan for the Water Street Mall was approved in 1986. The approved site plan and the minutes from the November 3, 1986 Planning Advisory Board have been attached for your review. The approved plan showed the development to have a total of 57 parking spaces and at the time a determination was made that the proposed development needed 55 spaces. At the time the only known user of the property was Burns Clinic, but how much area they intended to occupy is unclear. In item 7(a)(3) on page 5 of the attached minutes it states "Burns Clinic will be using 1/3 of the building or 500 square feet". As the building is 10,800 square feet, 1/3 of this would be 3,600 square feet. The remainder of the building was to be divided up into individual shops with tenants determining the use and size of the units. It should also be noted that in the 1986 proposal a parking space was shown in front of the American Legion exit. This space was eliminated in the approved plan as it would interfere with the exit.

The parking provided for the building is approximately 1 space per 175 square feet of usable floor area. Given the information contained in the minutes and the file it is impossible to determine what basis or standards were used to make the determination on how the required amount of parking for the proposal was calculated.

Given the current occupancy and varying and transitional nature of the uses at the Water Street Mall, calculating the amount or required parking per current ordinance standards is difficult. The number of parking spaces that would be required by the ordinance may fluctuate significantly depending on the types of users and the amount of floor space occupied.

Process

The proposed request would be an amendment to an approved development plan. The City of Boyne City Zoning ordinance provisions for requesting and approving amendments to an approved development plan are contained in section 19.65 Amendments to Approved Development Plans which is as follows:

Section 19.65 Amendments to Approved Development Plans.

The development plan, if approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved development plan unless a change or addition conforming to this Ordinance receives the mutual agreement of the landowner and the Planning Commission. Incidental and minor variations of the approved development plan, with written approval of the Administrator, shall not invalidate prior development plan approval. Amendments to the approved final development plan may occur only under the following circumstances:

- A. An applicant or property owner who has been granted final development plan approval shall notify the Planning Director of any proposed amendment to such approved development plan.
- B. Minor changes may be approved by the Administrator upon certification in writing to the Planning Commission that the proposed revision does not alter the basic design, compliance with the standards of this Ordinance, nor any specified conditions of the plan as agreed upon by the Planning Commission. In considering such a determination, the Administrator shall consider the following to be a minor change:
 1. For residential buildings, the size of structures may be reduced, or increased by up to five percent (5%), provided that the overall density of units does not increase.
 2. Square footage of nonresidential buildings may be decreased or increased by up to five percent (5%) or one-thousand (1,000) square feet, whichever is smaller.

3. Horizontal and/or vertical elevations may be altered by up to five percent (5%).
 4. Movement of a building or buildings by no more than ten (10) feet.
 5. Designated Areas not to be disturbed may be increased.
 6. Plantings approved in the final development plan landscape plan may be replaced by similar types and sizes of landscaping which provides a similar screening effect on a one-to-one or greater basis, provided they comply with the landscaping standards of this Ordinance, with approval of the Planning Director.
 7. Improvements to site access or circulation, such as inclusion of deceleration lanes, boulevards, curbing, pedestrian/bicycle paths, etc., which conform to the requirements of this Ordinance.
 8. Changes of building materials to another of higher quality, as determined by the Planning Director.
 9. Changes in floor plans which do not alter the character of the use.
 10. Slight modification of sign placement or reduction of size.
 11. Relocation of sidewalks and/or waste receptacles.
 12. Internal rearrangement of parking lot which does not affect the number of parking spaces or alter access locations or design.
 13. Changes required or requested by the City for safety reasons shall be considered a minor change.
- C. Should the Planning Director determine that the requested modification to the approved final development plan is not minor; the Planning Commission shall be notified in writing that the development plan has been suspended, and, if construction has initiated, a stop work order shall be issued for the section of the project deemed not to be in compliance. Thereafter, the applicant may revise the development plan and submit to the Administrator for resubmission to the Planning Commission.
- D. Should the Planning Commission determine that the modifications to the final development plan significantly alter the intent of the preliminary development plan, a new submittal shall be required.
- E. Any deviation from the approved final development plan, except as authorized in this section, shall be considered a violation of this Ordinance and treated as such.

Process

If the Planning Commission determines that the proposed amendment does not significantly alter the intent of the approved plan, and is in conformance with the Ordinance standards the requested amendment may be approved through the mutual agreement of the landowner and the Planning Commission.

Options

The Planning Commission can agree to the changes presented and approve the amendment; the Planning Commission can decide not to agree to the changes as presented and not approve the amendment; or, modifications to the proposed amendment that the applicant and the Planning Commission mutually agree on can be made and the proposed amendment with modifications can be approved by the Planning Commission.



Prepared 11-11-86

Approved _____

MINUTES

BOYNE CITY

PLANNING ADVISORY BOARD SPECIAL MEETING

Monday, November 3, 1986
5:00 p.m.

Office of the City Manager
City Hall

I. CALL TO ORDER.

Chair Parsons called the meeting to order at 5:00 p.m.

II. ROLL CALL.

Present: Paul, Parsons, Dunnette, Casper, Clark, Woodbury, Bowman,
Kowalske (arrived 5:11 p.m.).

Absent: Stanley.

Also Present: City Manager Frykberg, Recording Secretary Seamon.

Citizen Attendance: There were 12 people in attendance, two of whom
were from the news media.

III. CALL OF THE MEETING AND PUBLIC HEARING.

A. Site Plan Review request from Jeff Anderson and Joe Deisler to
construct a new 64' x 165' single-story building on the site of
the old IGA Store, 5 West Main Street, which is to be razed.
Said property is located in the Central Business District (CBD)
and will house business and professional offices.

1. City Manager Frykberg explained it was found that the
original plan to utilize the present building with a facade
treatment only was not possible due to the deteriorating
condition of the roof. It was recommended that the building
be completely razed to the foundation.

2. Mr. Nicholas White, Architect for this new construction, was in attendance to present the new plan.
 - a. The two entrances off West Main Street will be one-way drives and will exit off the alley to the south of the building. The parking lot to the east of the building measures only 60'. Because 65' is required for 90 degree parking spaces, angle-parking off the center one-way drive will be utilized.
 - b. On the west side of the building, there are 5 rows of parking spaces. They also are proposing parallel parking spaces along the grassy strip at the westerly property line in the City's right-of-way, however, 6 parking spaces are not critical to the project. There are 26 parkings spaces in the east parking lot and 31 parkings spaces in the west parking lot including those in the City's right-of-way for a total of 57 spaces.

The building dimensions total 10,725 square feet, which would require 61 parking spaces. However, because hallways and entrances total 1,000 square feet, the number of required parking spaces is reduced by 5-1/2.

Mr. Dunnette wondered if more handicap parking spaces would be required because of Burns Clinic. There are 2 handicap parking spaces on one side of the building and 1 on the other side. There is to be 1 for every 25 spaces according to State Code and their parking meets the code.

- c. The stores may be entered from either the mall or the outside. The medical offices at the end of the building will be off by themselves. The remaining floor plan merely is a proposal depending upon clientele and how each would desire their area to be divided. The smallest shop size will be 500 square feet.

Mark Kowalske arrived at 5:11 p.m.

3. Chair Parsons opened the Public Hearing at 5:11 p.m. for public input.
 - a. Warren Davis, representing the American Legionnaires, indicated the American Legion Hall has been the adjoining property owner for over 45 years. Their major concern was the fact that their back entrance doors swing out over the property line. On several occasions, they have attempted to purchase the east parking lot but have been unable to negotiate the purchase. They are in favor of the project which would be a nice addition to our City. They have never had a problem with this encroachment with the other property owners and wanted to be assured there would be no problem at the present time. A portion of the east

parking lot property could be dedicated to the American Legion Property, however, they only require the use of this entrance Tuesday evenings for Bingo and one Thursday evening out of every month. They have made improvements to the building of over \$7,500 over the past 4 or 5 years and would prefer to keep that entrance as it is now.

- b. Chair Parsons noted that the parking spaces which would interfere with their entrance are extra long in depth. Perhaps a cement bumper could be placed so the open doors would not interfere.
 - c. Mr. White advised that those parking spaces which would interfere with the entrance could be eliminated.
 - d. Mr. Casper mentioned that there usually are 4 or 5 cars using that parking lot on the Thursday Meeting night. Mr. Dunnette also noted that the apartment house next to the American Legion Hall on South Lake Street also use that parking lot which would amount to perhaps 3 spaces. Mr. White advised, because there is plenty of parking available, this may not interfere.
 - e. Mr. Wilfred Roisen, 320 South Lake Street, whose property abuts the east parking lot, expressed his concern as to what the elevation of the new building will be, and whether it will be the same as the former building or higher. Mr. Bill Seals, Seals & Roberts Construction who is the builder, noted that the 4/12 pitch of the roof will be steeper than the original roofline. It will be a total height of 25' which is 10' less than what is allowed.
 - f. Mr. Casper pointed out that the survey indicated the American Legion electric meters extend over the lot line and wondered whether this would be a problem. Mr. White advised this would not be a problem as there would be no excavating on the east side of the building and only recapping the existing blacktop.
 - g. Chair Parsons questioned if the maintenance of the building would be accomplished by the owner. The answer was "yes".
4. Chair Parsons closed the Public Hearing at 5:24 p.m.
 5. There were no communications received.
 6. The Board then reviewed the Site Plan page by page:
 - a. Page one - no comments.

b. Page two -

- (1) Mr. Dunnette questioned whether traffic could be routed from the alley towards Front Street by placing a curb designed so that traffic would go this way.
- (2) Chair Parsons wondered if the alley should be one-way. City Manager Frykberg indicated this was a possibility, however, it would be a good idea to leave it as is now.
- (3) Chair Parsons noted the overhang comes out 8-1/2' on each side of the building which covers the walkway.
- (4) Mr. White advised that on the Main Street side of the building they plan to take out the asphalt and landscape across the front. There will be a 6" curb all along there with a handicap access.
- (5) Chair Parsons questioned where they plan to lay sanitary lines. Mr. Seals advised they would need to know where the lines come from - either off Front Street or Main Street. City Manager Frykberg explained that an application for water and sewer installation would need to be completed although the lines are already there to service the building. The fire hydrants will be within the parking area.

c. Page Three -

- (1) There will be no dumpster but individual trash cans properly screened with the same siding as the building. There will be a 6' wall with a little gate. If possible, there will be a storage area and mechanical room facing the east parking lot.
- (2) Delivery trucks will service each store and usually is only a UPS Truck.
- (3) City Manager Frykberg advised both the State Fire Marshal and the Boyne City Fire Chief will inspect the blueprints for approval.
- (4) Mr. Paul pointed out that the design of the building allows the walkway to be clear of snow. The parking lot will be plowed.
- (5) Mr. Dunnette questioned whether the sign for "Water Street Station" would be attached to the building or free-standing. City Manager Frykberg pointed out that free-standing signs are not allowed in the CBD.

Plans are that the sign will be attached to the end of the building and an application for same will be completed later. He also inquired if each store would have a sign over their entry or would there be a joint sign at the end of the building. There will be individual signs over each store.

- (6) City Manager Frykberg noted that the number of parking spaces should indicate 57 and not 64.
- (7) Mr. Paul wanted it confirmed that the owner would maintain the grass and shrubbery and not the City.
- (8) Chair Parsons brought up that consideration should be given to placing a sidewalk on Main Street between the property and the street as well as on Front Street.

d. Page Four -

- (1) Again it was noted there are no free-standing signs in the CBD. There could be directional lines indicating the one-way drive.
- (2) Mr. Dunnette inquired if a completion date has been set. They would like to try for January, however, the builder, Bill Seals, feels this is not feasible. They are looking at spring. By June 1, 1987 would be completed with all landscaping.

7. The Board then reviewed the Impact Statement page by page.

a. Page One -

- (1) The center mall comprises a total of 10,800 square feet and the remainder of the building will be divided into individual shops with the tenants determining what each particular size would be.
- (2) Although a tenant may require a larger area, there will be no exterior changes. There may be two entrances to the same store.
- (3) Burns Clinic will be using 1/3 of the building or 500 square feet.

b. Page Two - No comments.

c. Page Three -

- (1) The curb and sidewalk on Main Street will match what is by the American Legion Hall with a green belt area between the sidewalk and curb.

- * 8. A motion was made by Casper, seconded by Clark, to Approve the Site Plan per the Site Plan Criteria with following stipulations:
- a. A right-turn off the east parking lot into the alley.
 - b. Construct sidewalk along Front Street.
 - c. Sidewalk on north side of building to line up with existing sidewalk of American Legion building with green belt from sidewalk to curb.
 - d. Eliminate 6 parallel parking spaces along Front Street.
9. Mr. Woodbury had a question regarding the green belt in front of the building. The former IGA Building had their entrance right to the street whereas the American Legion Hall has a curb. Will there also be a curb to the north side of the new building? Mr. Seals advised he would have to check with the owner before answering this question.

ROLL CALL: All Ayes by those present. MOTION CARRIED.

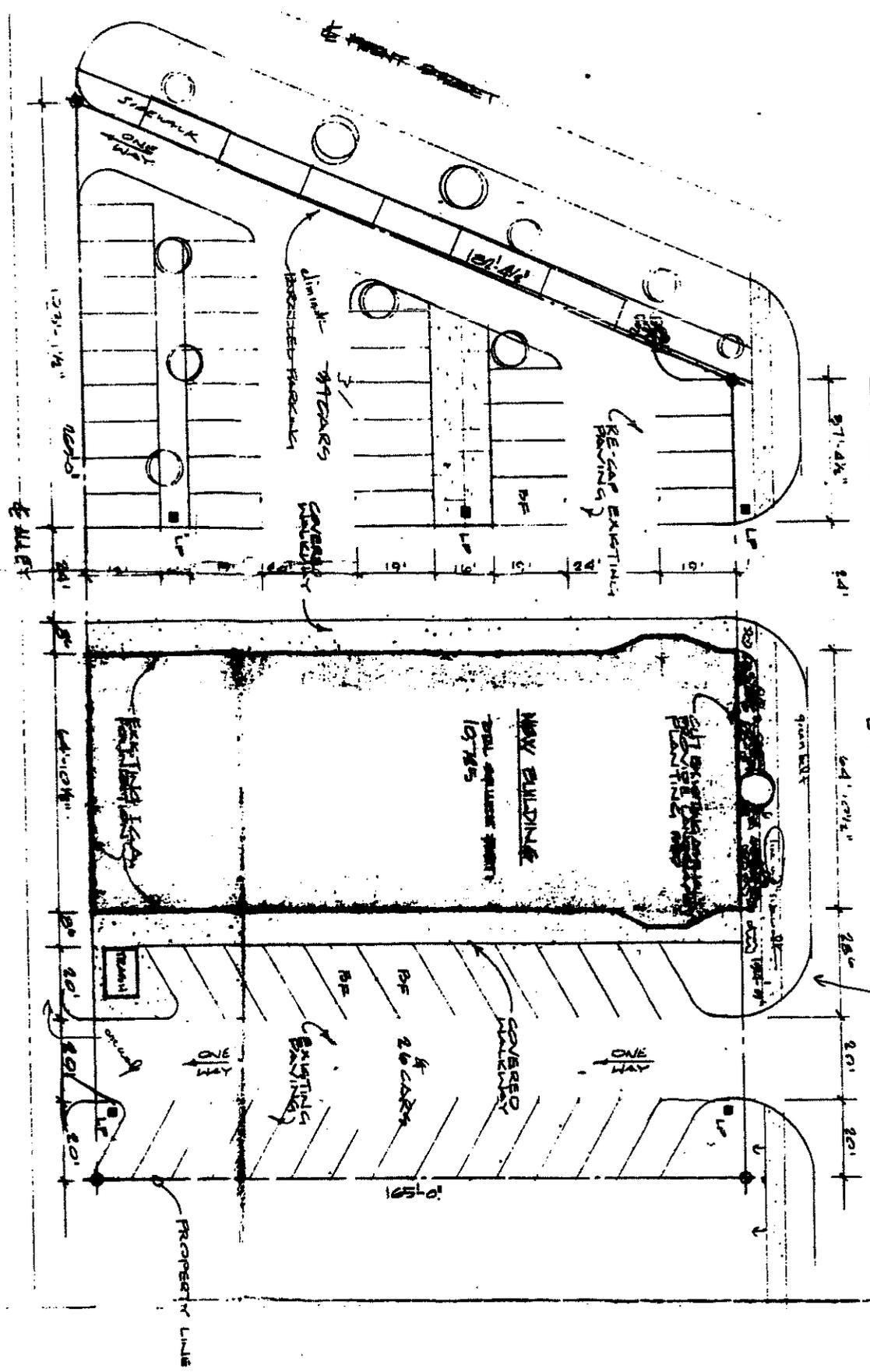
IV. ADJOURNMENT.

- A. The meeting was adjourned by Chair Parsons at 6:04 p.m.
- B. The next meeting of the Boyne City Planning Advisory Board is scheduled for Monday, December 15, 1986, at 5:00 p.m. in the Commission Chambers of City Hall.

Respectfully submitted,

Martin Paul
Secretary

MP/vs



part of lot 51 will be
 sidewalk will be
 as shown with layout
 on water line
 lot will not be used for building

SITE PLAN
 1/4" = 20'

PLANNING DEPARTMENT
 11-3-86

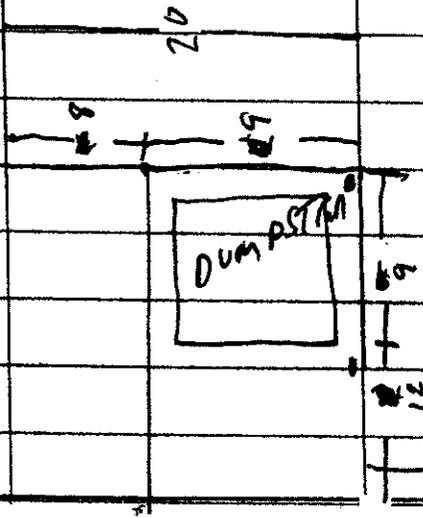


As approved by
 Planning Board on
 11-3-86

Boyer
Boyer

Jun 6th
61

44 FT
WATER
ST
MALL
RING



114

165.37

"
" Seed
" Seed

KRUZEL INS
Deli

~~AMERICAN
LEGION~~

9-20-2012

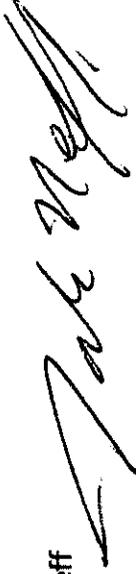
To; Mr Scott McPherson AICP
Planner/Zoning Administrator
City of Boyne City

From; Gale Neff
Owner Y&T Properties/Water Street Center 5 west main st

Subject; Parking lot Split

Please accept this as authorization from me to empower Mr Ken Kruzel to act on my behalf in the approval process related to selling him a 20' by 165.37' parcel along the east side of my property . Attached please find the application and sketch with the property description.

Gale Neff

A handwritten signature in black ink, appearing to read "Gale Neff", written in a cursive style.