

**Meeting of
January 21, 2013**

Record of the proceedings of the Boyne City Planning Commission meeting held at Boyne City Hall, 319 North Lake Street, on Monday, January 21, 2013 at 5:00 pm.

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

Call to Order

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

Roll Call

Absent: George Ellwanger (arrived at 5:04 pm)
Vacancy: One

Meeting Attendance

City Officials/Staff: Planning Director Scott McPherson, Assistant Planning Director Leslie Meyers and Recording Secretary Pat Haver
Public Present: Twenty, including representatives from the press

Consent Agenda

2013-01-21-3

Minutes of December 17, 2012 have been tabled until the next meeting for clarification.

**Comments on
Non-Agenda Items**

None

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

None

Lori Meeder excused herself, due to a conflict of interest.

Unfinished Business

**Kirtland Products
follow-up**

Planning Director McPherson reviewed the staff report included in the agenda packet. In December the Planning Commission identified a combination of elements in the 3 proposals from Kirtland as a way to move forward. Staff and representatives from the Commission and Kirtland met on January 7th & 14th and discussed the proposals, the building enclosures in proposal #3 specifically, with some concerns expressed about their effectiveness and is there a way to identify reduction in noise levels? Could Eddie Duncan at RSG input the proposed structures into the model to get some idea if the buildings would work in limiting the sound to existing background and ambient noise levels? Would he be able to tell if these would be effective, or if additional mitigation would be needed? Kodiak Group are designing the enclosures, and they will be sent to Eddie Duncan, who has indicated he could begin working on the designs on January 23rd. The designed structures were included as a part of the packet for consideration.

Tom Monley: Kirtland Products - Discussed the conceptual drawings that were included in the agenda packet. The enclosure on the south side will be made up of acoustical panels that will enclose two equipment units; the 115-035 & 115-045. The existing structure around the piece of equipment 115-045 will be taken out, and replaced with this structure. Acoustic louvers were being looked at for venting; however, the venting will now be done into the building, so no louvers will be used that could add additional noises. The second structure, on the west end of the building, will house the 140-010 bag house fan, also up against the building, so will be vented into the main building. We have been working with Kodiak on these structures, and once the final design of the structures is done, they will be sent to Eddie Duncan at RSG.

McPherson - The stack test results have not been received from the DEQ as of yet,

but in Friday's paper, an article was written of a finding of non-compliance on some of the emissions and believe that there is an appeal period, that Kirtland may work through with the DEQ to resolve. A number of letters and emails from various people voicing their concerns which were received have been forwarded to the commission. We also received communication from Kirtland's attorney regarding the minutes and determination of final decision, which this commission pretty clearly stated that the decision was not final yet (received and filed as Appendix A.)

Monley – We are working with the Kodiak Group to finalize the drawings and make sure the design is technical. RSG can not start this project until the 23rd of January, and were hoping to have something back by the 31st regarding the modeling of the two enclosures on the overall sound levels with the 125/250 hertz noises that we are focusing on.

MacKenzie – So the city has not had any formal communications from the DEQ?

McPherson – No, we have not received anything.

Monley – We have not either.

Public comment opened at 5:11 pm

Ryan Giem: 421 Boice St. - It has been a year, and there has been no progress from where we started. Mr. Cain's comments from a couple of meetings ago, urged you to consider how the conditional use permit was granted in the first place with the information that was provided in the Fall of 2008. Noise and visual impacts were important. The noise has been found to be non-compliant. They have some plans in place to have evaluated to the 125/250 hertz frequencies. Eddie Duncan made comments that you will still hear the noise, it won't go away completely. Kirtland made statements that they needed objective criteria to evaluate to and goals to work towards. These were given during the findings of fact; you were told that the plant would not be any louder than the rest of the park. You have to look at the visual impact and image of Boyne City with emissions. Would you have considered the conditional use permit with the current permitted VOC output of 161,000 lbs. per year and the permitted 105,000 lbs. per year of particulate matter? Noise levels, visual impact and emissions they are not doing so well. I encourage you, as you go forward to keep all of these items in consideration.

Mike Hausler: State St. – You have to realize the particulate is a fine dust, and with it being near schools, it is not a good thing. When I purchased the CDs from the city for the 2008 meeting, I heard you ask the questions, and you were not given the right answers. It is time now to rescind the permit. We have waited long enough and have been patient. I am not against the owners, but they did not do their homework. The plant needs to be on flat land, with higher stacks and not near residences. I wish there was a solution, but I don't think there is one. When the plant first opened, they mailed letters to 30 of us, and held a meeting admitting that there was a noise problem, and they did not realize how much noise would be coming out of the stack.

Debbie Ferris: Brockway St. – Question; once they do this enclosure, will they guarantee it will take care of the noise; really take care of it? What happens if we sign an agreement to pass the design, if it doesn't take care of the noise, what do we do? I'm really concerned about the emissions, we see it on the snow, we are breathing it, my grandkids are breathing it at the schools, and I don't think it is a good thing.

Nick Liebgott: M-75 – The noise is higher than the promised 24dB; which has been recorded up to 69dB. Recently the Petoskey News Review reported that up to ½ pound of fine sawdust is coming from the stacks every hour. A DEQ report for work order # 12090865, on page 5, emissions of acetone and hexane with side

effects were reported, which include irritations to the eyes and throat, headaches, dizziness and nausea. On several dates given, he had experiences with some of these side effects along with hoarseness and loss of his voice. He is not able to accomplish work outside on his property when Kirtland is running. Kirtland is not in compliance with the conditional use permit, and ask that you act in due capacity and force a shut down until they are in full compliance.

Mark Kowalski: Fall Park Rd. - I agree with what has already been said. This has gone on long enough, for 14 months now. The plant that was permitted is not the plant that was built. The noise issue is a big factor, and it affects a lot of people depending on the wind directions. Odors can be smelled downtown and all over town. The plume is the first thing you see when coming into Boyne City. The emissions reported in the paper are important stuff, with the output of fine sawdust, carbon monoxide and formaldehyde. VOCs floating around in Boyne City are not good, and we must protect our town. You approved this plant based on misinformation supplied by the applicant. You must pull the permit based on false statements given. It is not CO2 and water coming from the stacks as stated; it is time to take action, the citizens of Boyne City have been through enough. A picture of St. Matthew's Church was passed around to the commission members showing what the snow looked like with the fine sawdust particles that came from Kirtland's stacks.

Donald Nessen: Boice St. - If you go and modify Kirtland's permit in any shape or form, what kind of justice is that for us citizens? What happens if it gets real noisy in the future, or any other company you may negotiate with? Your job is to protect Boyne City and its citizens, we have been real patient. Can we afford even one more day, or the pollution falling on the kids in the school yard?

Mike Smith: Evangeline Township - Live north as the crow flies. I can hear the plant as if it was right down the street. I'm here because of a quote in the Petoskey News Review, one of the owners stated that the factory is no louder than Boyne City's ambient noise. The citizens have been patient. Southerly breezes I can smell the plant, and I can hear the plant.

Emily Jones: 1124 Nordic Dr. - I am tired of emailing the city and DEQ. The plant has been dishonest from the beginning. We have a shop in the Industrial Park, and it is a mess with sawdust. The plant is blowing down on us; I have to hold my breath going in and out of my shop. My 8 month old daughter can't hold her breath. I encourage you to protect the citizens and do what is right. What is the adverse reaction on the kids, no one knows.

Bill Kuhn: 1010 Kuhn Dr. - If you have any doubt about the noise, I invite you to come to my house and spend the night in one of our guest rooms or in the basement with me.

Bridgette Nesses: 416 Boice St. - I am shocked, this has been going on for a year, enough of this. It is not fair to Boyne City.

Public Comments closed at 5:40 pm

Board Discussion

Kozlowski - I came from an industrial environment so am familiar with some of the things going on. The people who presented this to the commission, they have the most knowledge of their equipment. They did not present problems with noise, smell or emissions. What is the present plan to alleviate the problem? The burden needs to be on Kirtland, how do they plan to move forward? We have conceptual drawings that are speculation at this point. My opinion, until they have all of their information back, they need to not operate in the current form.

Ellwanger - I agree with what was said last month with the four points, that have not been done. We need something solid that is going to work, I know they are trying, but the residents have been very patient. Unless something comes up, the conditional use permit can not go on any further until the noise and the emission problems have gone away. I know they are trying, but that is my position.

St. Dennis - I agree. Trying to figure out how to keep them going, but I can't figure it out, and have to leave it to Kirtland to figure it out. It has been going on for a long time.

Frasz - I agree with all the comments stated. We were presented information, and made our decision on that information, which proved to be inconsistent. We have been very accommodating in trying to work with the applicant. My position even last month before a last minute document was presented is they were non-compliant based on the 4 points stated in September. We have been looking at only one aspect of these four issues. With the testing coming in from the 5 stacks, it is alarming that 3 of the 5 stacks exceeded the permitted levels; there are particulates in the air which are more than water vapor and carbon dioxide. The pellet grinder is 10 times the permitted levels, and that is by a school in our community. In my eyes, the issues have not been addressed over a long period of time. We should not have to wait any longer for something to be done. My hesitancy, even at the last meeting was what if this goes to court, it would be out of our hands, and taxpayers' money would be going to a court case. We have to look back at how we found them non-compliant, agree that they are still non-compliant for the same issues, and with more evidence of what is coming out of the stacks, rescind the conditional use permit. We need to stop the permit because of non-compliance.

Crum - My views align best with what Jim said, with the proposals presented we still can't make a determination today, and it would go back to another meeting, and I am not comfortable with that.

Neidhamer - I believe every public comment that has been made the past 14 months; I have been out there visiting, listening and watching, I also at the first meeting said let's solve this problem with patience, data, time and money. The patience has worn out; the city is not into it for any more money, are we at a point when we can't problem solve any longer? We have met with Kirtland and came up with the sound enclosures designed by sound engineers as a way to solve the noise. Do we give them an opportunity to complete the enclosures? The dilemma is we are so close; do we give them another month to try to abate the sound? What if they build it and it is still audible? We might be close, or we may not be? What is the scenario if we vote tonight to revoke the conditional use permit?

McPherson - You would need to make the determination that you made earlier of non-compliance final, which would start the clock today, and I'm assuming they would immediately appeal.

Neidhamer - Rhetorical question, if they appeal would they begin construction for sound abatement or not? We are back to not solving any problems, other than the clock is now ticking and we are forcing the issues.

McPherson - I believe you would be forcing a legal course of action. I personally feel that they would not begin construction of anything.

Kozlowski - Is there a possibility of a voluntary shutdown, until things are resolved and proven?

Frasz - If we rescind the permit could move towards a legal position.

Neidhamer - I am saddened that we can't solve this. We may be close. If we find them today non-compliant can they stay open for another 30 days?

McPherson - The permit would be rescinded immediately, if that is the determination tonight, this puts in place legal time lines that they would need to act on.

Frasz - I think we are all saddened by this that is why it has taken so long, everyone has wanted to try to make this work. At some point, we have to look at the information, and then to have the report on the particulate matter, it is a whole other aspect than just the noise. Who deals with that and measures it? We make the previous determination final, and if the applicant wants to go back and look at what they are doing, they can come back with a process that does not have any particulate emissions and noise issues. We can then make a decision at that point. We just can't keep going on and on because they are not in compliance.

Ellwanger - I have an industrial background and got on the initial committee to help them. We have all tried, we just can't keep going on.

MacKenzie - After our meetings, hoped we were coming to a solution. Seemed like there was a plan for noise reduction to a level that would not invade the homes. That is just one of the 4 items, I realize DEQ is in charge of emissions, and the amount going on for 5, 10, 20 years, it just adds one more thing that I did not realize how much was out there. Are there processes that are less impactful?

****MOTION**

With no further board discussion, **motion by Frasz, seconded by Ellwanger** to make the previous determination of non-compliance final, to rescind the conditional use permit based on the 4 specific points when they were earlier found non-compliant.

2013-01-21-6A

Roll Call:

Aye: Crum, Ellwanger, Frasz, Kozlowski, MacKenzie, Neidhamer, and St. Dennis

Nay: None

Abstain: Meeder

Vacancy: One

Motion Carries

Meeder returned to the meeting at 6:03 p.m.

**New Business
2012 Planning & Zoning
Report**

Planning Director McPherson reviewed the 2012 Planning and Zoning report that was included in the agenda packet. A lot of good things have been happening, and a lot has been accomplished as a department and with both boards.

**Resignation of Planning
Commissioner John
McCahan**

Planning Director McPherson reviewed the memo and letter of resignation that was submitted by John McCahan. His appointment was due to expire in May of 2013. Aaron Place who had applied earlier is still interested, and more than happy to serve. There were a couple of other applicants, however, the Planning Commission was listed pretty far down on their listed choices of boards to serve on, and felt that Aaron was the leading candidate. With no further board discussion, **motion by Ellwanger, seconded by Crum, PASSED UNANIMOUSLY**, to recommend to the City Commission Aaron Place to fill the remainder of John McCahan's open position, to expire in May 2013.

****MOTION**

Staff Report

None

Good of the Order

- Master Plan update: The entire document needs to be updated. As of tomorrow, a request will be made to the City Commission to apply for the "Re-development Ready Community" designation, which has specific items for Master Plans. It would be a good coordination of the process for the designation with grant approvals to update our plan at that time. It will give us more opportunities. The Market Study that was recently completed could also be included in the plan. The review process could begin as early as next month's meeting and could be done at each meeting.
- Shoveling of sidewalks - We have done a great job of promoting Boyne City as a walkable community, and with the recent snow fall, we have large banks that we have to walk over, and because we have several places that the sidewalks and bridges are not cleared off and accessible, you have to walk in the roadway, which is not safe.
- Kudos to the people who are doing the plowing of the streets with the recent snowfall.

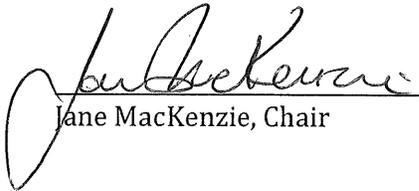
Adjournment

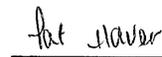
The next meeting of the Boyne City Planning Commission is scheduled for February 18, 2013 at 5:00 pm in the Auditorium.

2013-01-21-10

**MOTION

Crum moved, MacKenzie seconded, PASSED UNANIMOUSLY a motion to adjourn the meeting at 6:22 p.m.


Jane MacKenzie, Chair


Pat Haver, Recording Secretary

**KUHN, DARLING, BOYD AND QUANDT, PLC
LAW OFFICES**

412 SOUTH UNION STREET
P.O. BOX 987
TRAVERSE CITY, MICHIGAN 49685-0987
TELEPHONE 231-947-7900
FACSIMILE 231-941-5154

R. EDWARD KUHN
A. BROOKS DARLING
JAMES W. BOYD
JOSEPH E. QUANDT
GINA A. BOZZER
EDGAR ROY III
GREGORY J. DONAHUE
TROY W. STEWART

Lansing Office:
2937 Atrium Drive, Suite 200
Okemos, MI 48864
Telephone 517-347-7720

CHARLES H. MENMUIR
1903-1987
Of Counsel
LEWIS G. GATCH

December 27, 2012

Jim Murray
349-6413

James J. Murray
Plunkett Cooney
303 Howard Street
Petoskey, MI 49770

Re: Kirtland Products - Boyne City, MI

Dear Jim:

As a follow-up to the December Planning Commission meeting, I went back to review the minutes for the October and November meetings, and noticed that the minutes do not properly reflect the decisions made by the Planning Commission in October. Specifically, in October it was decided to not finalize the September actions of the Planning Commission, either in the context of finding the Kirtland facility out of compliance or recommending that the permit be modified to allow continued use for 24-hours a day, three days a week, while recommendations and proposed solutions could be considered.

As you know, the entire purpose of making the adjustment to the minutes was to reflect that the decision of non-compliance was not final and to eliminate the necessity of immediate legal challenge to that decision. I noted in the final approved minutes that the notation amending the status of the September decision as a non-final decision was made only with respect to the second motion (page 10 of the minutes), rather than on both motions (pages 8 and 10). Please make sure this is on the agenda for the correction of the September 17, 2012 minutes for the January 2013 meeting.

We will continue to proceed as though the September 17, 2012 minutes were appropriately amended, as discussed in the October meeting, unless I hear otherwise from you.

Sincerely,

KUHN, DARLING, BOYD AND QUANDT, PLC

Joseph E. Quandt
Joseph E. Quandt
Direct Dial: (231) 947-7901 x115
jequandt@kdbqlaw.com

JEQ:shp
cc: Leon Tupper

2

KUHN, DARLING, BOYD AND QUANDT, PLC
ATTORNEYS AT LAW

R. EDWARD KUHN
A. BROOKS DARLING
JAMES W. BOYD
JOSEPH E. QUANDT
GINA A. BOZZER
EDGAR ROY III
GREGORY J. DONAHUE
TROY W. STEWART

412 S. UNION STREET, P.O. BOX 987
TRAVERSE CITY, MICHIGAN 49685-0987
TELEPHONE 231-947-7900
FACSIMILE 231-947-7321

CHARLES H. MENMUIR
1903-1987
Of Counsel:
LEWIS G. GATCH

Email: eroy@kdbqlaw.com

January 21, 2013

James Murray
Plunkett Cooney
303 Howard Street
Petoskey, MI 49770

Via Email

Re: Boyne City Planning Commission/Meeting Minutes

Dear Jim:

I am following up with you concerning Joe Quandt's letter of December 27, 2012, and our exchange of voice mail messages over the last few days. Your most recent message was to the effect that you did not see anything confusing or requiring clarification in any of the prior meeting minutes - as it is clear that the P/C has yet to make a "final decision" in any of its previously approved motions. We take this to mean that no appeal period has commenced with regard to filing a Circuit Court action as there has been no "final decision".

Accordingly, it is my understanding that the P/C will not take up Mr. Quandt's request set forth in the attached December 27 letter; and, as the parties are continuing to work together to hopefully find a mutually satisfactory result, no final P/C decision has occurred triggering any deadline to take an appeal to Circuit Court.

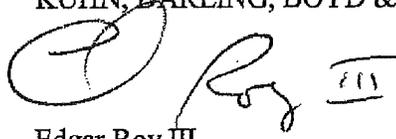
It is my understanding that neither you nor I will attend tonight's P/C meeting; however, I am asking that this letter and the December 27 letter be made part of the formal record. I anticipate Kirtland representatives to deliver both letters to the P/C tonight.

3

Thank you for your continued cooperation.

Sincerely,

KUHN, DARLING, BOYD & QUANDT, PLC

A handwritten signature in black ink, appearing to read "Edgar Roy III". The signature is written in a cursive style with a large initial "E" and "R".

Edgar Roy III

ER/ljd

Enclosures

cc Leon Tupper (via email)