



AGENDA
BOYNE CITY PLANNING COMMISSION
Monday, November 19, 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 October 15, 2012 Boyne City Planning Commission meeting.
4. Hearing Citizens Present *(Non-Agenda Items)*
5. Reports of Officers, Boards, Standing Committees
6. Unfinished Business
 - A. Kirtland Products follow up
7. New Business
 - A. 209 S Lake St development plan amendment
 - B. 1 Water Street Sketch Plan Review
8. Staff Report
9. Good of the Order
10. Adjournment – Next Meeting, December 17, 2012

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**Meeting of
October 15, 2012**

Record of the proceedings of the Boyne City Planning Commission meeting held at Boyne City Hall, 319 North Lake Street, on Monday, October 15, 2012 at 5:00 pm.

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

Call to Order

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

Roll Call

Absent: Lori Meeder (arrived at 6:20 pm)

2012-10-15-2

Motion by Crum, seconded by St. Dennis, PASSED UNANIMOUSLY, a motion to excuse the absence of Meeder as she will be arriving late.

Meeting Attendance

City Officials/Staff: Planning Director Scott McPherson, City Manager Mike Cain, City Attorney Jim Murray, Main Street Manager Hugh Conklin and Recording Secretary Pat Haver

Public Present: Forty eight, including a representative from the news press.

Consent Agenda

MOTION

2012-10-15-3

Ellwanger moved, Kozlowski seconded, PASSED UNANIMOUSLY a motion to move the consent agenda to 6B; as recommended by City Attorney Murray, as these minutes pertain to the unfinished Kirtland business.

**Comments on
Non-Agenda Items**

None

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

Shoreline Protection Strategy Report Plan. The material provided is for informational purposes. A couple of commission members served with this board and it could be placed on the agenda at a later date for discussion.

Unfinished Business

**Kirtland Products
follow-up**

City Attorney Murray gave a brief review as to the reasoning to have the minutes moved from the consent agenda. Looking at the minutes from 9-17-12, when staff met with the representatives from Kirtland, the minutes were "silent" on whether the decision of the Planning Commission was a final decision. That issue should be addressed. There are three options for you:

- (1) If adopted as written, it will trigger under the zoning ordinance, the 30 day window for Kirtland to appeal to the circuit court your decision, if they so choose.
- (2) You can make a motion to "amend after adoption" to address whether the decision was final or not. We are not here to revisit what was decided last time, just if it was your final decision.
- (3) Or you just do not have to adopt the minutes.

It goes to the letter dated October 12th, that was in the agenda packet. Staff and I did meet with Kirtland representatives. Applicant could seek to apply for an amended Conditional Land Use Permit, this would allow the city to review and create standards to implement and apply to the entire city, not just Kirtland.

MacKenzie - I felt it was not our final decision. We wanted to let them continue modifications and wait to have staff & the attorney meet with Kirtland representatives to get final reports in to review. We did not find them in compliance, but wanted to give them a chance to finish modifications.

Kozlowski – I agree, we need to allow reports to come in, review & understand what they say. How can we make a decision on what we don't know?

Ellwanger – I concur with Jim. I don't think we are ready for litigation; however, we need to move forward with some time lines.

City Manager Michael Cain – May want to consider 6B the adoption of the minutes with or without conditions, until after your full discussion and hear from Kirtland with their update and the public. It may have an impact on the decision you make on how you adopt the minutes and whether you attach conditions or not.

Planning Director McPherson gave a review of his staff report that was included in the agenda packet.

Joe Quandt – Council for Kirtland - We did meet with city staff to come up with some pathway to objective standards that the plant could work to achieve and was measurable and accountable to the city. Final plant modifications were made, asked Kodiak to come back and give us an updated report, it is just in, so will allow Tom Monley to address that, and any recommendations from them. DEQ stack testing is done, don't have that report as of yet, hope to have by the next meeting. There was a suggestion that the Traverse City code enforcement people come up and give us some input to see if the plant would meet their standards, and possibly give the group some recommendations. Get a consultant engaged by the city to draft an appropriate ordinance to have "measurable criteria" that can be met or not. Our end result is to get to an amended Conditional Land Use Permit after appropriate standards that are measurable have been established, for an enforcement tool and something the company can work towards.

Tom Monley – Kirtland Products. Last time there was one piece of equipment that needed to be corrected. Some citizens said they could hear the noise again. Kodiak Group was called back to verify fixes. They found two pieces of equipment that they made suggestions to do some additional "tuning" of. This past week the modifications were made to the stacks. Waiting for our startup day to see if the fixes will finalize what Kodiak had recommended.

Mackenzie – This is not a public hearing like last month, but we will open up for public comment.

Debra Ferris: 811 Brockway - We can smell and see the smoke, or what ever is coming out in those plumes, the sound is better, but we still hear it. We have lived in our house for over 35 or 36 years, if we continue to hear this, and have this pollution, we are going to have to move to a different city, I can't stand it.

Julie Howard: Boyne City - The temperatures have lowered, so you will start to see the plume of steam. I know this because my husband works there. In relation to the adoption of your minutes, take into consideration the 1100 names in support of Kirtland Products in relation to the 90 who are against. I have sympathy for them, but take the public opinion into consideration.

Larry Frechette: 1027 Wilson St. – Many times I have driven to the Industrial Park and subdivision and I have never noticed any noises louder than the gravel trains that drive by on M – 75. If I moved into an area that is near different noises from airports, zoned Industrial parks, and truck traffic going by every 5 minutes, you assume some risks.

Don Nessen: Live on Boice St. – Lived here 40 years, way before the Industrial Park was there. Kirtland came to you and said "this is what we will do"; I'm only asking that you make them do what they said. We have waited month after month, how long do we have to put up with it?

Tim Arner: 701 Alice St. – I didn't assume any risk when I bought my house 30 years ago, what I did assume is that the City and Planning Commission would do what was needed to protect the quality of life in Boyne City. Numbers don't matter

how many support a business against those who quality of life has been threatened. No one who has spoken is saying that Kirtland should go out of business. I do have a reason to be bothered by a plant that does disturb my peace and quite and enjoyment in my residential community. Since the last meeting, the weather has been colder and the windows have been closed, on a couple of nights the noise has been loud enough to put ear plugs in to block out noise to go to sleep. At 3 am when I wake up, the noise was there. It has changed, but it is a low frequency noise, not oscillating as much. They made certain representations to open the plant, and they have not upheld those representations. I hope they can improve and work this out. Hope this board would be sensitive to those people impacted.

Diane Haulser: Cozy Nook Lane - Across the river from the plant. Noise is not better by a long shot, vibrations and the odor is still there. There is not a lot of discussion about the odor and what can be done. When it hits you it is like an allergy attack.

Lisa Liebgott: 45 M-75 - live directly across from the plant. My husband who is a disabled vet is home 24/7. His eyes burn, he can smell the burning of wet wood. The noise rattles the large picture windows. It doesn't go away, it is better, and it has taken on a different sound, but still constant.

Bob Petersen: Live 10 miles south of here - I moved to a very quiet rural area from the UP. About 4 months after I moved in, a gas compression facility went in approximately ¼ mile away from my property, there is noise. Be careful if you move, you can get noise not only in the city, but in rural areas also.

Bridgette Nesson: 316 Boice St. - 9/25 very loud early am, 9/26 very loud and smelly, could see the plume and hear the plant on Park St. on my walk, 9/27 at 9:31 pm terribly loud it sounded like an old tug boat in our front yard, 9/28 smelled badly. In the immediate area have lots of kids that live in here all year around, plus the schools. Think about them.

Mark Kowalske: Fall Park Rd. - In 2008 my family and friends were in full support of Kirtland Products pellet plant and the people they would employ. Had the confidence our zoning would protect us; it would never allow uses that were detrimental to residences. The planning board asked several questions back in 2008 about stack emissions they were told that it is co2 and steam, they were never told about VOC and particulate matter. What about the odor? Kirtland visited two other plants and did not smell a thing, and told the planning commission that. There is an odor when the plant is running. Noise: was told 24dB at the property line and 15 dB at the nearest house. Stated it would be no louder than Lexamar. How large would the plume be? It is 50 times larger than Lexamar, was told only twice the size of Lexamar. Asking for help to uphold the zoning to protect the health, safety and welfare along with sanity of the adjacent property owners of Boyne City.

Board Discussion

Proposed course of action is to try to come up with some objective criteria that could be used for enforceable standards. These could be:

- Traverse City Noise Ordinance and the enforcement officer. Preliminary discussions is they will assist us, no firm date as of yet,
- Stack test results are not back yet,
- Engaging sound consultant? There is a possibility to accomplish that, however, who will pay for it?

Neidhamer - To clarify and speaking on my behalf only, we are very sensitive and aware the noises are obtrusive. We are also aware at the public patience is running thin. Tonight we are talking if we held them accountable to doing everything they

said in the Conditional Use and there are still noise problems after they perform that abatement process, we would have zero recourse, as they fulfilled the Conditional Use. If we go through the process of getting measurement standards to address the decibels and low frequency noises that are vibrating then we are asking for another 30 days to get experts in to get a measurement system, so we can hold them to a quantifiable result. Am I right in that assumption?

McPherson – That is a fair analysis.

Neidhamer – We are not insensitive to people's concern for noise, I have been to houses, I agree with you, I know. We have legal and staff advice, and we are going through the process we hope will solve the problems.

Murray – You are accurate. You are not being asked to cast anything in stone. Other than conceptual ideas for an amended conditional use permit, you are not being asked to only stay within what has been proposed by any suggestion or consultant; you will not be bound by anything that does not work. They can come back and the board can make a decision if last month was your final decision or not. What you are trying to decide is do you want to proceed to come up with objective standards to implement for the conditional use permit?

Neidhamer – Any standards set have to be favorable to the city with what we want.

Murray – Correct, any standards need to be agreeable to the city, citizens and surrounding areas. Reasonable standards that both can agree on. If the city set standards and if Kirtland felt they were too high and not agree, or too low the city may not agree. Both should agree and move forward. It would give them a quantifiable measurement to achieve those numbers.

McCahan – I am familiar with the Traverse City noise ordinance, it is very good. I met with the enforcement officer 2 years ago. He is very knowledgeable with community noise issues. Don't know if Kirtland would be in compliance with the TC ordinance. I visited 3 homes in the last week or two. It is definitely disturbing inside the homes. Getting the decibel level around 50 db at a residence property line could be a goal. Would support getting information from consultants.

Cain – I have spoken with Ben Difos the Traverse City Manager, to get the approval for his staff to assist and have attempted to make contact with their Police Chief Michael Warren to have his noise enforcement officers here to help with the issues we are dealing with, and determine if there is some type of standard we can develop to help us find that acceptable level.

Ellwanger – We need to time line this thing. It has been going on too long. We need something concrete that people can look at. It is frustrating and not good for all of us.

Kozlowski – Last month we did find them not in compliance with issues. Those are the issues we need to immediately target. They are the most offensive. What can and should be done? It needs to be done as quickly as possible. Most critical in my opinion: Stack testing results were due in two weeks after our last meeting.

MacKenzie - The report is complete, but not delivered yet. Noise readings, we need to have hard evidence to prove if better or not. Closure needs to happen soon. I believe everyone wants to get to objective standards that the company can aim for, and that we can enforce.

Frasz – We have to make sure we don't just focus on the sound. What about the other issues of odor, plume and its content. We put in good effort at the initial meeting to understand all of these issues, we asked good questions, and the information we received about the odor, plume and sound was incorrect. That is of concern to me; we need to focus on criteria for everything not just sound.

Murray – All those issues are on the table when we met with Kirtland, and have

not been forgotten. Tonight we are focusing on the sound. Details on odor and plume and particulate are still up for discussion. Outstanding issues all need resolution before coming back to this board.

Frasz – Are the standards that the DEQ and Traverse City have, our standards?

Murray – DEQ has exclusive jurisdiction as cities do not have environmental ordinances.

Frasz – I feel the onus has been put on this board, when we did due diligence, and we are getting pushed into hiring and doing things to go the extra mile, when it should be the applicant doing the extra work based upon the inconsistent information that was provided.

Kozlowski – The non compliant issues agreed upon, were all included in the minutes.

Murray – All of this has been addressed in our meeting with Kirtland and their representatives. You can have staff proceed towards the goal to amend the conditional use permit, and a desire to resolve all of these issues.

Quandt – The Traverse City ordinance is an objective standard, it is already drafted. That is one pathway forward, another is their enforcement officers' input; maybe have them come to a Planning Commission meeting to address citizen concerns. Hiring another consultant and talk about how to allocate cost. The onus is technically upon the city to enforce their ordinance, we are here to work with you in a way to accomplish that at the lowest cost, as quickly as possible with objective standards.

MacKenzie - The Traverse City ordinance would be a good starting point to see if this plant operation stacks up to their ordinance. Does it meet; however, people still can not sleep at night.

Quandt – VOC and particulate matter is regulated exclusively by the state and federal law. You can't make your own standards on those.

St. Dennis – Kirtland set high standards when they came to us in the first place. Looked at outdoor activity that is typically not allowed in the industrial park, when granting the conditional use permit, higher standards are set. There is a large diverse population affected in a negative way. Public welfare is my concern, how long do we ask the citizens to live with this?

Crum - I can't disagree with anything that has been said, I keep coming back to my desire to get some established standards set. I think we can do that, but don't know how quickly.

MacKenzie – We need to make sure that something happens so that we are further along.

Murray – If you approve the minutes either way it is silent if they are final. We need to know if they are final, because the meter begins and the applicant has 30 days, and most likely we could be a defendant in a Circuit Court of Appeals case. A motion to amend after adoption, it does not start the 30 day count down and you can continue to move forward with consultants. Or you can just not adopt the minutes.

MacKenzie - If we do make a motion that the September minutes were not our final decision, we can come back later and make a motion that they are final?

Murray – Correct.

Ellwanger – If we made them final decision, people would have to do something.

MacKenzie – They could take us to court, and that would not solve anything. It will not give us time to review and possibly adopt standards. It would be out of our hands at that point.

Cain – The decision you need to make tonight, would be is this issue best resolved through the Planning Commission or through the courts? I can see it moving slowly going to courts, two meetings ago no attorneys were present, last meeting

one attorney was present, and this meeting there are two attorneys here. Where do we think we will get the best results in the quickest amount of time? If this goes through the courts a judge will decide if and when they will be allowed to operate. We need to also look at the most efficient use of our resources and need to satisfy the public.

Neidhamer – If it went to court, do we have a time line? Maybe 6 months.

Cain – Maybe at the earliest, could be a year or two, and possibly longer with appeals.

Neidhamer – Based on that, we are better off solving this ourselves.

McCahan – I agree, we need to try to get Traverse City consultants in here, review Kirtland's progress and get the testing results within the next 30 days.

With no further board discussion, **moved by McCahan, seconded by Crum** a motion to amend the minutes of September 17, 2012 after adoption as the decision made regarding Kirtland Products is not a final decision.

MOTION

2012-10-15-6B

Roll Call:

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

Nay: None

Absent: Meeder

Motion Carries

Staff will continue to work with the direction given in order to work towards a resolution on all of the issues presented as quickly as possible.

Meeder arrived at 6:20 pm

Chair MacKenzie recused herself due to a conflict of interest, as her employer could benefit with this project moving forward. She left at 6:22 pm and turned the meeting over to Vice Chair Crum.

Ellwanger left the meeting at 6:22 pm

New Business Water Street Mall proposed development plan amendment

Planning Director McPherson gave a review of his staff report that was included in the agenda packet. Mr. Neff owner of Water Street mall is looking at amending his 1986 development plan by selling off a portion of the parking lot on the eastern side of the building, an area approximately 20 ft x 165 ft which includes 14 parking spaces. Ken Kruzel is looking at purchasing this area to provide parking for his apartment complex and any possible future developments of it. This is a site plan amendment, so there must be mutual consent between the Planning Commission and the applicant. You can look at this in total, something less, or nothing at all. Have some concerns about the portion of parking to be amended, possibly just allowing the portion behind Mr. Kruzel's property building, and there must be some sort of easement for ingress/egress in perpetuity.

Ken Kruzel – I am looking at purchasing the parking from Gale Neff. I currently rent 10 of these spots already, the purchase will be maintained for my apartments. We thought it would be easier and cleaner if I purchased the entire area up to behind the Legion hall. If this board feels differently, it doesn't matter to me. I would also like to look at the construction of a deck off the back of my existing building. I can't do that now, because I am right at the lot line.

Board Discussion - The is an amendment to the site plan for Water Street Mall,

which can be amended as requested in total or partially.

St. Dennis – I have no problem with the area behind Mr. Kruzel's, but do not make an irregular parcel.

Kozlowski – I would elect not to change the area or size to purchase.

Kruzel – I would like to have a parking area in the back, and drop off for the front. I have been approved for two apartments, once I met with builders, they indicated it was cost effective to put in four apartments instead of two. I need more parking, Mr. Neff does not need it all.

Kozlowski – We don't know in the future what will be in the Mall, maybe they will need more parking. Leave it as is, not break it up.

Meeder – Give him the option to buy what is behind his building. No long term lease now on them.

McPherson – This is in the Central Business District, which does allow the Planning Commission to adjust & waive parking. Is it the required number of parking for the mall now? It is really impossible to calculate. Have to look at it as a whole unit. What they have is working pretty well now. Is this board comfortable in adjusting it? I don't see the request changing things a whole lot.

Kruzel – It is necessary for the future development of my project. I don't want any more relief for parking, I just want parking.

Frasz – The last time you were here, you indicated that you were close to purchasing the adjacent (Roisen) property and would use the garage area for parking for the apartment building.

Kruzel – Yes, the plans were the garage would be torn down, but now I'm using it for the apartment building, so it does not make sense to tear down that building. My plans have changed to not allow parking in the garage. There is still room for (2) vehicles to park in front of the garage, however, technically that is parking for the house. If I use the garage area for parking for the apartment building, I would not have any parking for the house.

Frasz – For the CBD if we were to allow the amended site plan can we put restrictions on how much of it can be parking, or could he build all the way out, and not use any of it for parking?

McPherson - Things evolve, we need to know future planning, and think of any unintended consequences. You are being asked to amend this plan and separate the parking from the Water Street Mall. The separated parking is something this board will need to consider at a later date, perhaps with an updated site plan for the Kruzel property. What happens to the portion that was separated by transfer of ownership, how do we maintain what is being proposed without an updated site plan for the adjacent property to attach it to. There will need to be an easement granted from Mr. Neff to get to the portion of the parking lot that has been requested to be split off.

Because there is not an updated site plan for the apartment building construction, where the planned purchase of parking was suppose to be attached to, **motion by Neidhamer, seconded by Kozlowski** to table this development plan amendment request in addition to the Kruzel property that was approved prior, in conjunction with the proposal of the purchase of the 20 ft. x 165 ft. parking lot area.

2012-10-15-7A

Roll Call:

Aye: Crum, Frasz, Kozlowski, McCahan, Meeder, Neidhamer and St. Dennis.

Nay: None

Absent: Ellwanger and MacKenzie

Motion Carries

****MOTION**

Staff Report

Will be reviewing applications for the Assistant Zoning Administrator's job within the next weeks. Did receive 23 applications, many of them very good candidates. Staff will be attending the Michigan Association Planning Conference at the end of next week in Travers City.

Good of the Order

The next meeting of the Boyne City Planning Commission is scheduled for November 19, 2012 at 5:00 pm at city hall.

Adjournment

2012-10-15-10

****MOTION**

Meeder moved, McCahan seconded, PASSED UNANIMOUSLY a motion to adjourn the meeting at 7:09 p.m.

Jane MacKenzie, Chair

Pat Haver, Recording Secretary

Gretchen Crum, Vice Chair

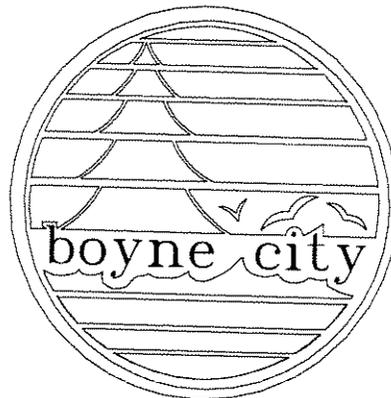
CITY OF BOYNE CITY

To: Chair Jane MacKenzie and fellow Planning Commissioners

From: Scott McPherson, Planning Director

Date: November 19, 2012

Subject: Kirtland Product Conditional Use Permit Review



BACKGROUND

At the October 15, 2012 Planning Commission meeting the Commission directed staff to seek assistance from the with the Traverse City police department in regards to determining if the noise levels produced by Kirtland Products would be in violation of the Traverse City ordinance. On November 8, officer Scott Maxson came to Boyne City and took sound measurements during the evening hours of November 8 and the morning hours of November 9. The attached table and map shows the decibel readings at the various times and locations. Noise measurements were taken in the A scale and the C scale. The Traverse City ordinance, typical of most noise ordinances, references the A scale. All of the readings at each location at each time would not been a violation of the Traverse City Ordinance.

Discussion

While the plant would not have been in violation of the Traverse City Ordinance, the plant was audible at all locations. As shown by the RSG study the noise produced by the plant is a low frequency noise that can travel long distances and which was evident by the higher C scale readings taken by officer Maxson. This type of low frequency noise can be bothersome, and the City continues to receive complaints about the noise from Kirtland. Low frequency noise is not addressed in the Traverse City ordinance and officer Maxson indicated that most noise ordinances do not address this type of noise. It is the opinion of staff that merely adopting the standards of the Traverse City Ordinance will not adequately address the Kirtland noise issue and that if any type of noise standard is developed for Kirtland it should include standards for lower frequency noise.

Kirtland has also submitted a landscape plan for approval. 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 that 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.

As of the writing of this report Kirtland has not obtained the results to the stack testing for submission to the DEQ. The City continues to get complaints in regards to odor and the visual impact of the plume. Staff continues to monitor the possible transmission of particulate from the site and since the original complaints last January, no additional evidence of possible particulate transmission has been found.

Recommendation

Review sound measurement data from officer Maxson and proposed landscape plan submitted by Kirtland. Make determination on status of compliance and establish next steps.

Map #	Time	Location	A scale	C scale
1	6:35 pm	Kirtland S prop line	66	81
2	6:44 pm	Altair Dr intersection (towards Kirtland)	56	71
3	6:44 pm	Altair Dr intersection (towards Lexamar)	56	71
4	6:54 pm	421 Boice backyard	46	60
5	6:59 pm	421 Boice inside house	43	47
6	7:05 pm	1038 Roosevelt backyard	46	60
7	7:16 pm	Airport	48	60
8	7:25 pm	1210 Nordic driveway	46	57
9	7:30 pm	1210 Nordic front porch	46	57
10	7:35 pm	1210 Nordic inside house	43	46
11	7:40 pm	Carters in front of bldg	53	65
12	7:47 pm	Carters inside (heating system blowers on) off	(48) 47	(67) 65
13	8:00 pm	450 Cozy Nook	46	57
4	10:45 pm	421 Boice backyard	45	61
6	10:55 pm	1038 Roosevelt backyard	46	60
8	11:20 pm	1210 Nordic driveway	44	55
13	11:35 pm	450 Cozy Nook	41	58
14	11:50 pm	1010 Kuhn Dr	42	56
4	4:00 am	421 Boice backyard	42	60
6	4:10 am	1038 Roosevelt backyard	42	58
8	4:25 am	1210 Nordic driveway	44	57
13	4:40 am	450 Cozy Nook	40	58
14	5:00 am	1010 Kuhn Dr	41	54
2	6:35 am	Altair/Air Ind Park intersection	48	59
4	6:20 am	421 Boice backyard	39	54
6	6:25 am	1038 Roosevelt backyard	38	50
8	6:10 am	1210 Nordic driveway	36	49
13	6:45 am	450 Cozy Nook	37	51
14	6:55 am	1010 Kuhn Dr	36	49
1	7:40 am	Kirtland South property line (plant still running)	62	77

The readings were taken by officer Scott Maxson on the evening/morning of November 8-9, 2012. Officer Maxson was accompanied by Scott McPherson, Tom Neidhamer, Ryan Giem and Mike Lange. Winds were calm and the temperature was in the 40's.

CHAPTER 652

Noise Control

652.01	Findings; application of chapter.	652.07	Civil actions.
652.02	Definitions.	652.08	Tampering with measuring devices.
652.03	Authority of noise control officer.	652.09	Retaliation.
652.04	Prohibitions.	652.10	Appearance tickets.
652.05	Exceptions and variances.	652.99	Penalty.
652.06	Continuous and impulsive sound levels threatening health and welfare; orders to abate.		

CROSS REFERENCES

Disorderly persons - see MCLA Sec. 750.167
 Disturbing meetings - see MCLA Secs. 750.169; 750.170
 Noise from watercraft - see SU & PS 1062.04(f), (g)
 Muffler noise - see MCLA Sec. 257.707(a) through (e)

652.01 FINDINGS; APPLICATION OF CHAPTER.

Excessive sound and vibration are a serious hazard to the public health, welfare, safety and quality of life, and a substantial body of science and technology exists by which excessive sound and vibration may be substantially abated. The people have a right to and should be ensured an environment free from excessive sound and vibration that may jeopardize their health, welfare or safety or degrade the quality of life. The damage and discomfort caused to the people arises both from stationary and from non-stationary sound and vibration and this chapter shall apply to both.

(Ord. 505. Passed 8-7-00.)

652.02 DEFINITIONS.

All terminology used in this chapter and not defined in this section shall be in conformity with applicable publications of the American National Standards Institute (ANSI) or its successor body. In addition, as used in this chapter:

Commercial area means land primarily being used as office, governmental, retail, or other commercial type uses.

Decibel (dB) means a unit of measuring the volume of sound, equal to twenty times the logarithm of the base ten of the ratio of the pressure of the sound measured to the reference pressure, which is twenty micropascals (twenty micronewtons per square meter).

Industrial area means land primarily being used as a manufacturing or industrial site, including airports.

Multi-Family area means land primarily being used for structures housing three or more families. If a multiple family use occurs as a mixed use with commercial uses, the primary use of the property will be determined by the ground floor.

Noise Control Officer means the Chief of Police and his or her agents who have lead responsibility for the enforcement of this chapter.

Noise disturbance means any sound which either exceeds the maximum permissible sound levels of this chapter or which endangers or injures the safety or health of humans or animals, annoys or disturbs a reasonable person of normal sensitivities, or endangers or injures personal or real property.

Noise sensitive zone means areas in the City which contain noise sensitive activities, such as schools, libraries, churches, hospitals and nursing homes, as designated by resolution of the City Commission.

Pure Tone means a single or compact range of frequency that may be perceived as a whine, hum, squeal, or buzz. The measured sound levels must not fluctuate by more than plus or minus 3 dB. Such sound sources include, but are not limited to: heating, ventilating or air-conditioning units; refrigeration units; and transformers.

Real property boundary means the imaginary line which represents the legal limits of property (including an apartment, condominium, room, or other dwelling unit) owned, leased, or otherwise occupied by a person, business, corporation or institution. In cases involving sound from an activity on a public street or other public right of way, the "real property boundary" shall be the nearest boundary of the public right-of-way.

Residential area means land primarily being used as a one or two family dwelling and located adjacent to or near other such residentially used land.

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels and that meets the standards of ANSI S-14 1983 or its successor.

Weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

(Ord. 505. Passed 8-7-00. Ord. 582. Passed 10-21-02.)

652.03 AUTHORITY OF NOISE CONTROL OFFICER.

- (a) **Powers.** This chapter shall be administered and enforced by the Noise Control Officer. In order to implement and enforce this chapter, and for the general purpose of noise abatement and control, the Noise Control Officer shall have, in addition to any other authority vested in him or her, the power to:

- (1) Conduct or cause to be conducted research, monitoring and other studies related

to sound and vibration; and

- (2) Upon presentation of proper credentials, enter and inspect any private property or place and inspect any report or record at any reasonable time when granted permission by the owner or by some other person with apparent authority to act for the owner. When permission is refused or cannot be obtained, a search warrant may be obtained from a court of competent jurisdiction upon a showing of probable cause to believe that a violation of this chapter may exist. Such inspection may include the administration of any necessary tests.
 - (3) Promulgate rules and procedures to establish techniques for measuring noise, and to provide for clarification, interpretation, and implementation of this chapter; and
 - (4) Review at least every three (3) years the provisions of this chapter and recommend revisions consistent with technology to reduce noise, or to address new sound sources within the City.
- (b) **Duties.** In order to implement and enforce this chapter effectively, the Noise Control Officer shall, within a reasonable time after the effective date of this chapter:
- (1) Investigate and pursue possible violations of this chapter;
 - (2) Delegate functions, where appropriate, under this chapter, to personnel within the Police Department and to other agencies or departments, subject to the approval of the City Manager; and
 - (3) Prepare recommendations, to be approved by the City Commission, for the designation of noise sensitive zones.
- (c) **Enforcement.** The administration and enforcement of noise control shall be controlled by the following standards:
- (1) The primary means of detection of a noise disturbance shall be by means of the Noise Control Officer's and other properly delegated enforcement officials' ordinary auditory senses of hearing not enhanced by any mechanical device, such as a microphone or hearing aid.
 - (2) An enforcing officer or other witness need not determine the particular words or phrases being produced or the name of any song or artist producing the sound.
 - (3) The detection of any rhythmic base or reverberating type of sound is sufficient to constitute a plainly audible sound which may constitute a noise disturbance.

(Ord. 505. Passed 8-7-00.)

652.04 PROHIBITIONS.

- (a) Generally. No person shall unreasonably make or continue, or cause to be made or continued, any noise disturbance.
- (b) Radios, Musical Instruments and Similar Devices. No person shall operate or play, or permit the operation or playing of, any radio, television, phonograph, drum, musical instrument, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to:
- (1) Create a noise disturbance on public property or streets, across a real property boundary, or within a noise sensitive zone. If such a device is plainly audible on the property of another or within a building other than that within which the device is located, and if a complaint is made to the Noise Control Officer regarding annoyance or disturbance as a result of such device, this shall serve as prima-facie evidence of a violation.
 - (2) Create a noise disturbance when operated in or on a motor vehicle on a public right of way, public space or space open to the general public, or in a boat on public waters. If such a device is plainly audible at a distance of 50 feet in any direction, between the hours of 10 p.m. and 7 a.m. or 100 feet in any direction between the hours of 7 a.m. and 10 p.m., this shall serve as prima facie evidence of a violation.
- (c) Loudspeakers. No person shall use or operate for any noncommercial purpose any loudspeaker, public address system or similar device between 10:00 p.m. and 7:00 a.m. of the following day so that the sound therefrom creates a noise disturbance across a residential area or multi-family area boundary or within a noise sensitive zone. No person shall use or operate for any commercial purpose any loudspeaker, public address system or similar device so that the sound therefrom creates a noise disturbance across a real property boundary or within a noise sensitive zone, or between 10:00 p.m. and 7:00 a.m. of the following day on a public right of way or public space.
- (d) Sound Amplifiers. No person shall operate any sound amplifying device for the purpose of advertising announcing an event, or attracting the attention of the public. However, a school, governmental unit, or bona fide nonprofit organization may secure a permit from the Noise Control Officer to use such a device. No permit will be granted for such use on a Sunday or at any other time or duration or under any other conditions which, in the opinion of the Noise Control Officer will constitute a nuisance.
- (e) Heavy Equipment. Except for work on essential services, no person shall use any pile

driver, shovel, hammer, derrick, hoist, tractor, roller or other construction apparatus between 10:00 p.m. and 7:00 a.m. of the following day, within 600 feet of a residential area, multi-family area, or noise sensitive zone.

- (f) Loading and Unloading. No person shall load, unload, open, close or otherwise handle boxes, crates, containers, building materials, garbage trucks, garbage cans or similar objects between 11:00 p.m. and 6:00 a.m. of the following day in such a manner as to cause a noise disturbance across the boundary of a residential area or multi-family area, or within a noise sensitive zone.
- (g) Stationary Non-emergency Signaling Devices. No person shall permit the sounding of any electronically amplified signal from any stationary bell, chime, siren, whistle or similar device intended primarily for non-emergency purposes. Such devices, when used in conjunction with places of religious worship, shall be exempt from this subsection.
- (h) Maximum Permissible Sound Levels by Receiving Land Use. No person on private property shall create a continuous sound which exceeds the limits set forth for the receiving land category in the following table when measured at or within the property boundary of the receiving land which source of sound shall be deemed prima-facie to be a noise disturbance. "Continuous sound" means any sound having a duration of one second or more. For any source of sound which emits a pure tone, the maximum sound level limits set forth in the following table shall be reduced by five dBA.

MAXIMUM SOUND LEVELS TABLE

<u>Receiving Land Category</u>	<u>Sound Level Limit (dBA)</u>	<u>A-weighted Time</u>
Residential area	10:00 p.m. to 7:00 a.m.	60
and Multi-Family area	7:00 a.m. to 10:00 p.m.	65
Commercial area	10:00 p.m. to 7:00 a.m.	65
	7:00 a.m. to 10:00 p.m.	70
Industrial area	10:00 p.m. to 7:00 a.m.	70
	7:00 a.m. to 10:00 p.m.	75
Noise sensitive areas	10:00 p.m. to 7:00 a.m.	Established by Resolution
Noise sensitive areas	7:00 a.m. to 10:00 p.m.	

- (i) Impulsive Sound. Impulse sounds may exceed the permissible limits in the above Table by ten decibels if they occur less than ten times in any hour between 7 a.m. and 10 p.m., or less than four times in any hour between 10 p.m. and 7 a.m. If any impulsive sound

exceeds these frequencies, then the permissible limits in the Table apply. "Impulsive sound" means any sound having a duration of less than one second.

(Ord. 505. Passed 8-7-00. Ord. 581. 10-21-02.)

652.05 EXCEPTIONS AND VARIANCES.

- (a) Emergencies. This chapter shall not apply to creating sound for the purpose of alerting persons to the existence of an emergency or to creating sound in the performance of emergency work.
- (b) Lawn Maintenance Equipment. Customary lawn maintenance equipment for residential use, such as lawn mowers, leaf blowers and chain saws, from 8:00 a.m. to 9:00 p.m., if in good working order and if used only as needed, may exceed the maximum sound levels established above.
- (c) Residential Snow Removal. Snow blowers for residential use if in good working order and if used only as needed may exceed the maximum sound levels established above.
- (d) Commercial Snow Removal. Snow removal from commercial or industrial property by any internal combustion device is permitted at all times if the snow removal equipment has a properly functioning muffler. However, commercial or industrial property within 600 feet of a residential area or multi-family area shall not have snow removal undertaken by commercial equipment in excess of 15,000 GVW prior to 6:00 a.m., unless permission is granted by the owners of that residential or multi-family area.
- (e) Municipal, School District and Hospital Equipment. This chapter shall not apply to sound made by municipal street and sidewalk maintenance equipment or snow removal equipment used by the City, a school district, a hospital or their agents.
- (f) Special Variances.
 - (1) The Noise Control Officer may, consistent with this section, grant special variances which may be requested.
 - (2) Any person seeking a special variance pursuant to this section shall file an application with the Noise Control Officer. The application shall contain information which demonstrates that bringing the source of sound or activity for which the special variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons. Any individual who claims to be adversely affected by the allowance of the special variance may file a statement to that effect with the Noise Control Officer containing any information to support his or her claim. If the Noise Control Officer finds that a sufficient controversy exists regarding an application, a public hearing may be held.

- (3) In determining whether to grant or deny an application, the Noise Control Officer shall balance the hardships of the applicant, the community and other persons of not granting the special variance against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected and any other adverse impacts of granting the special variance. Applicants for a special variance and persons contesting the special variance may be required to submit any information the Noise Control Officer may reasonably require. In granting or denying an application, the Noise Control Officer shall place on public file a copy of the decision and the reasons for denying or granting the special variance.
- (4) Special variances shall be granted by notice to the applicant containing all necessary conditions, including the time limit on the permitted activity. The special variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the special variance shall terminate it and subject the person holding it to the provisions of this chapter regulating the source of sound or activity for which the special variance was granted.

(Ord. 505. Passed 8-7-00. Ord. 583. Passed 10-21-02.)

652.06 CONTINUOUS AND IMPULSIVE SOUND LEVELS THREATENING HEALTH AND WELFARE; ORDERS TO ABATE.

- (a) The Noise Control Officer shall order an immediate halt to any sound which exposes any person, except those excluded pursuant to subsection (b) hereof, to continuous sound levels or to impulsive sound levels which endanger or injures a person's health or safety. Following the issuance of such an order, the Noise Control Officer may remove or modify the source of the noise.
- (b) No order pursuant to subsection (a) hereof shall be issued if the only person exposed to dangerous sound levels is exposed as a result of trespass, invitation upon private property by persons causing or permitting the sound or employment met by the person or by a contractor of the person causing or permitting the sound.
- (c) Any person subject to an order issued pursuant to subsection (a) hereof shall comply with such order until the sound is brought into compliance with the order, as determined by the Noise Control Officer, or until a judicial order has suspended the Noise Control Officer's order. No person shall violate an order issued pursuant to this section.

(Ord. 505. Passed 8-7-00.)

652.07 CIVIL ACTIONS.

Any person aggrieved by a violation of this chapter may commence a civil action on his or

her own behalf against any person who is alleged to be in violation of Section 652.04. No provision of this chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this chapter or from other law.

(Ord. 505. Passed 8-7-00.)

652.08 TAMPERING WITH MEASURING DEVICES.

No person shall damage, interfere with or tamper with any sound measuring device used to enforce this chapter.

(Ord. 505. Passed 8-7-00.)

652.09 RETALIATION.

If there is any evidence of retaliation by any offender against any complainant or witness, such evidence shall be communicated to the District Court. When sentencing any violator, the District Court shall first examine the evidence of retaliation, and if such is shown, shall consider such acts and sentence the violator accordingly.

(Ord. 505. Passed 8-7-00.)

652.10 APPEARANCE TICKETS.

The Police Chief and the appointed officers of the Police Department, or such other officials as are designated by the City Manager, are hereby authorized to issue and serve appearance tickets with respect to a violation of this chapter pursuant to Section 1 of Act 147 of the Public Acts of 1968, as amended (MCL 764.9c(2); MSA 28.868(3)(2)). Appearance tickets shall be in such form as determined by the City Attorney and shall be in conformity with all statutory requirements.

(Ord. 505. Passed 8-7-00.)

652.99 PENALTY.

- (a) A person found in violation of this chapter shall be guilty of a civil infraction and shall be fined not less than \$100 nor more than \$500.
- (b) A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues.
- (c) The minimum fine shall be doubled for a second violation and tripled for a third violation within any 90 day period.

(Ord. 505. Passed 8-7-00.)

Noise Control

652.06

Kirtland Products Landscaping Plan

Kirtland Property:

The below described property is owned by Tupper Enterprises, LLC, which is solely owned by Leon Tupper:

Tax ID: 015-336-165-15; Legal Description: LDFA PA 281 OF 1986 89SP1188 FROM 336-165-00 & 336-166-00 COM AT S 1/4 COR SEC 36 T33N R6W TH N89 DEG36'51" W AL S LI SEC 36, 335.78FT TH N1DEG19'49"E 621.00FT TO POB TH N89DEG 36'43"W 618.49FT TH N1DEG09'08"E 727.15 FT TO C/L OF EARTH BERM TH S87DEG39'56"EAL SD C/L 620.76FT TH S1DEG19'49"W 706.10FT TO POB PART OF SE 1/4 OF SW 1/4SEC 36 T33N R6W REF: IFT 051-990-008-00/051-995-008-00

An illustration of this property with lot lines and dimensions is included as Figure A.

Landscaping Zones:

Kirtland Products, LLC addressed landscaping with the City of Boyne City Zoning and Planning Commission to address two factors; noise abatement, and aesthetics. In regards to noise abatement, RSG's Eddie Duncan indicated that foliage provides negligible noise abatement qualities unless it is dense and of significant depth. Landscaping was therefore not considered in RSG's report as a noise abatement technique. In regards to aesthetics, Kirtland will plant evergreen trees in zones identified as visual zones in compliance with Article XXIII, Section 23.35 Waste Receptacle and Mechanical Equipment Screening. Areas between these zones are subject to Article XXIII, Section 23.15 Special Provisions for Existing Sites. Visual zones are identified as areas where equipment is visible from M-75. Figure B illustrates the landscaping zones and associated sections of M-75 where these areas block the view of mechanical equipment from a passerby.

Location, Species, Size and Spacing:

Article XXIII, Section 23.40, Paragraph F, indicates evergreen trees are required to be between 10' and 20' apart. All of the species selected have mature spread diameters of greater than 20'. Figures C and D illustrate the species, size, and spacing of the landscaping. In these illustrations, the trees are represented by 20' diameter circles. The overlap indicates compliance with the table in Section 23.40, Paragraph F of the landscaping standard. The trees will be staggered, to a level appropriate to accommodate emergency vehicle access required by Article XIX, Section 19.4f), Paragraph F. All trees will be a minimum of eight foot in height, with a branch spread of at least three feet. If species indicated are not available at time of planting, substitutions will be communicated to the Zoning Administrator prior to planting.

Planting and Care of Trees

Planting will occur during the period of time while the trees are in a dormant state. The root balls will be a minimum of 10 times the caliper diameter of the tree. Holes will be dug to a depth equal to the height of the root ball, and a minimum of two times the diameter of the root ball in accordance with MSU Tree and Shrub Planting Guidelines. Topsoil will be mixed with peat moss to promote proper aeration and drainage. Plants will be mulched using hardwood chips. Watering will occur every seven days or as conditions dictate otherwise, using drip irrigation and a separate valve at each landscape zone.

Figure A: Kirtland Products' Property (Owned by Altair Leasing)

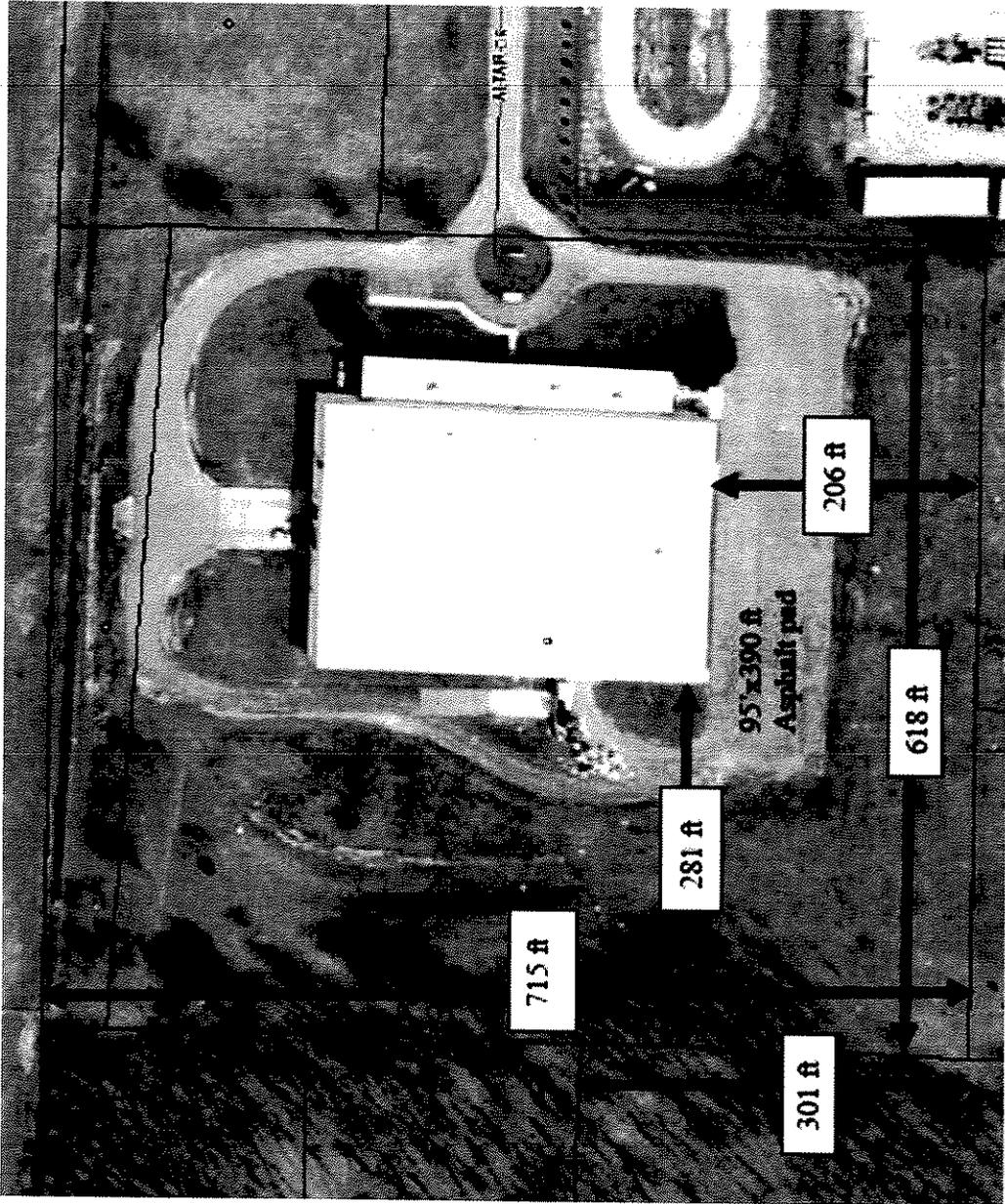


Figure B: Kirtland Products Landscaping Zones

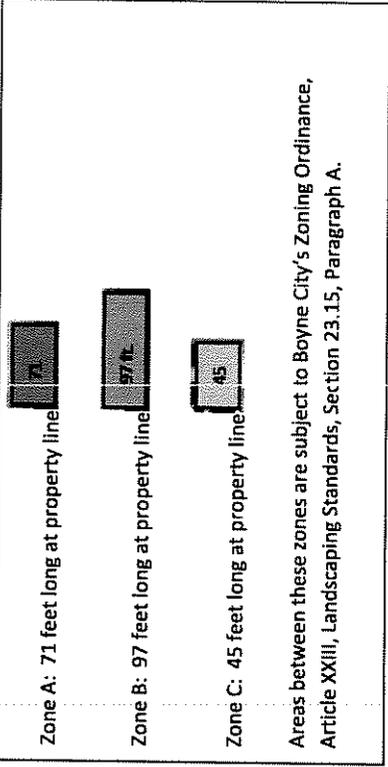
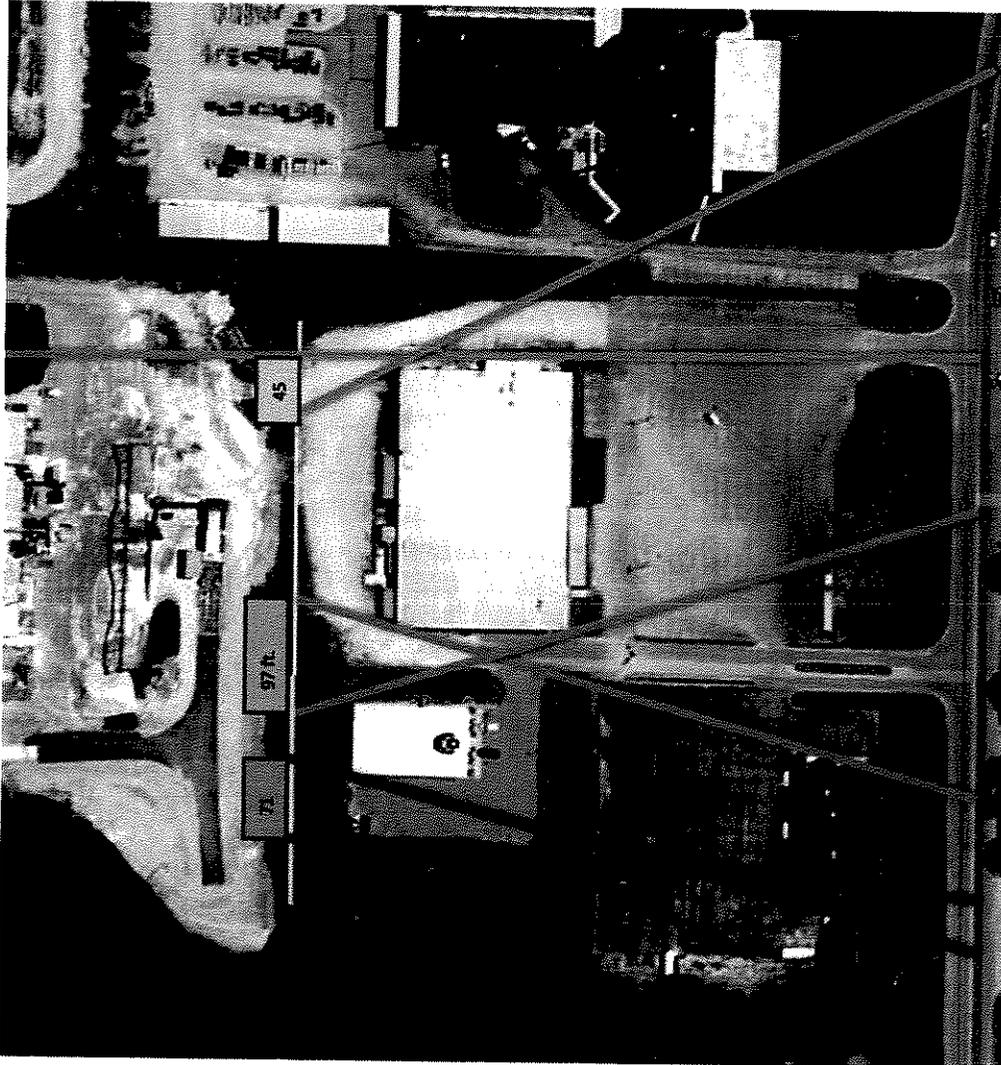
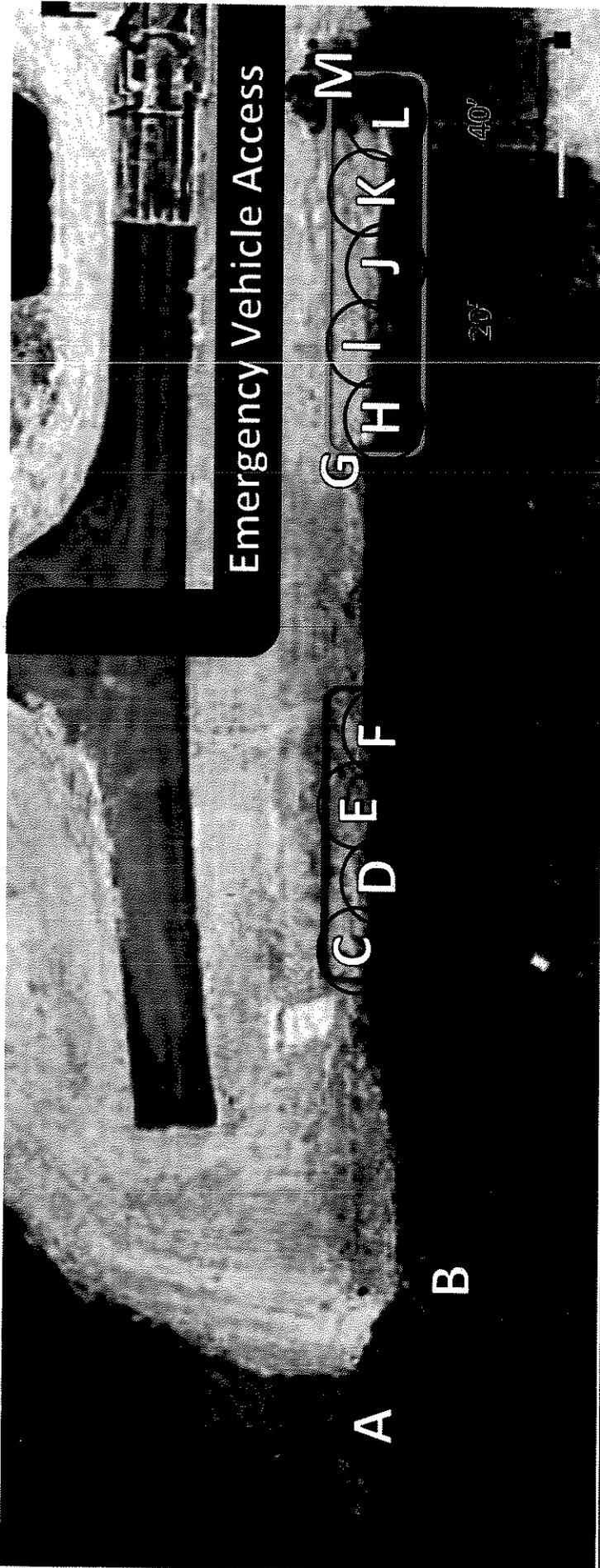


Figure C: Kirtland Products (SW Corner)



A = existing trees (populus tremuloides) existing quaking aspen – various caliper size

B = existing tree (pinus resinosa) red pine - 8.5" caliper

C = new tree (pinus resinosa) red pine - 8' min height, 3' min spread

D = new tree (picea pungens) blue spruce - 8' min height, 3' min spread

E = new tree (picea abies) Norway spruce - 8' min height, 3' min spread

F = new tree (pinus sylvestris) Scotch Pine - 8' min height, 3' min spread

G = existing tree (pinus resinosa) red pine 2.5" caliper

H = new tree (pinus sylvestris) Scotch Pine - 8' min height, 3' min spread

I = new tree (picea abies) Norway spruce - 8' min height, 3' min spread

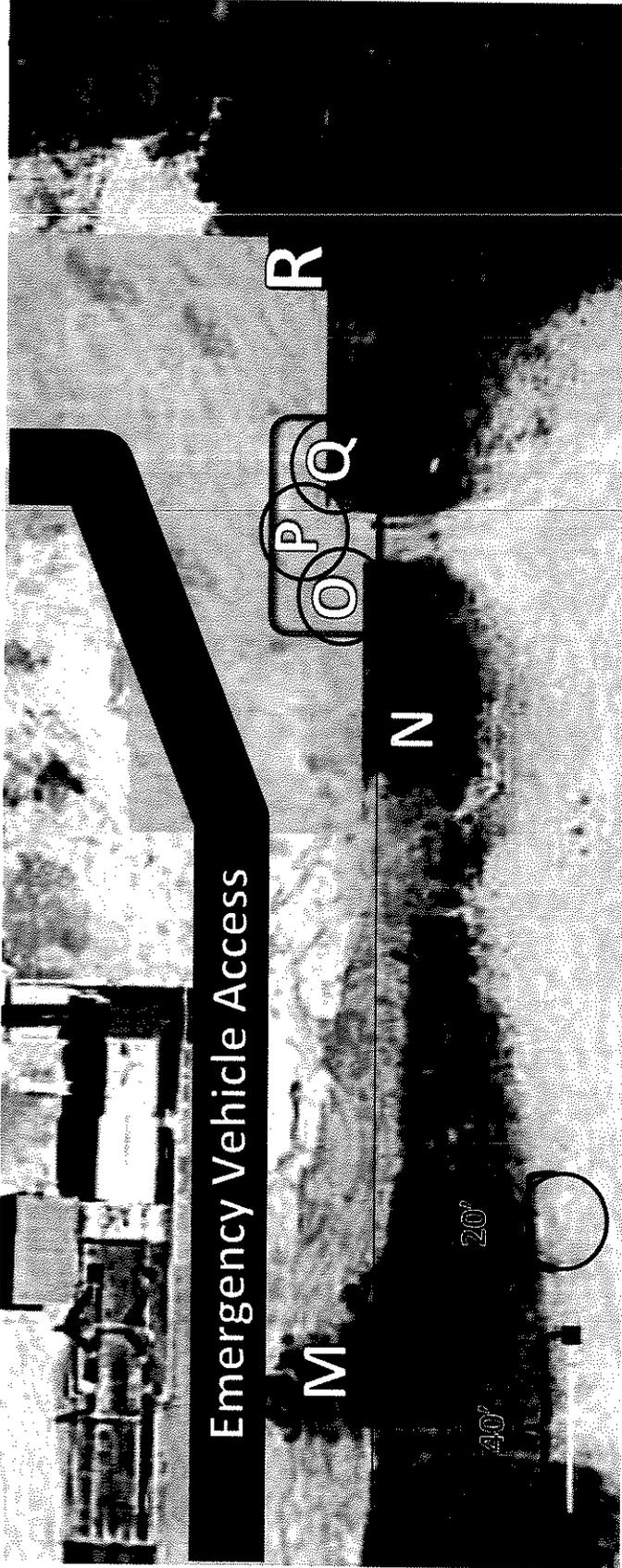
J = new tree (picea pungens) blue spruce - 8' min height, 3' min spread

K = new tree (pinus resinosa) red pine - 8' min height, 3' min spread

L = new tree (picea abies) Norway spruce - 8' min height, 3' min spread

M = existing trees (ulmas Americana or parvifolia) elm - 17" caliper

Figure D: Kirtland Products (SE Corner)



M = existing trees (ulmas Americana or parvifolia) elm - 17" caliper
 O = new tree (pinus sylvestris) Scotch Pine - 8' min height, 3' min spread
 Q = new tree (picea pungens) blue spruce - 8' min height, 3' min spread

N = existing tree (fraxinus americana) white ash - 11.5" caliper
 P = new tree (pinus resinosa) red pine - 8' min height, 3' min spread
 R = existing trees (populus tremuloides) existing quaking aspen - various caliper

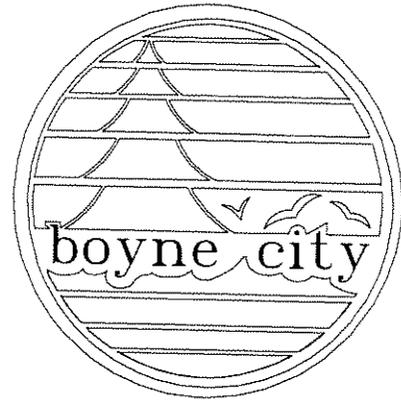
CITY OF BOYNE CITY

To: Chair Jane MacKenzie and fellow Planning Commissioners

From: Scott McPherson, Planning Director

Date: November 19, 2012

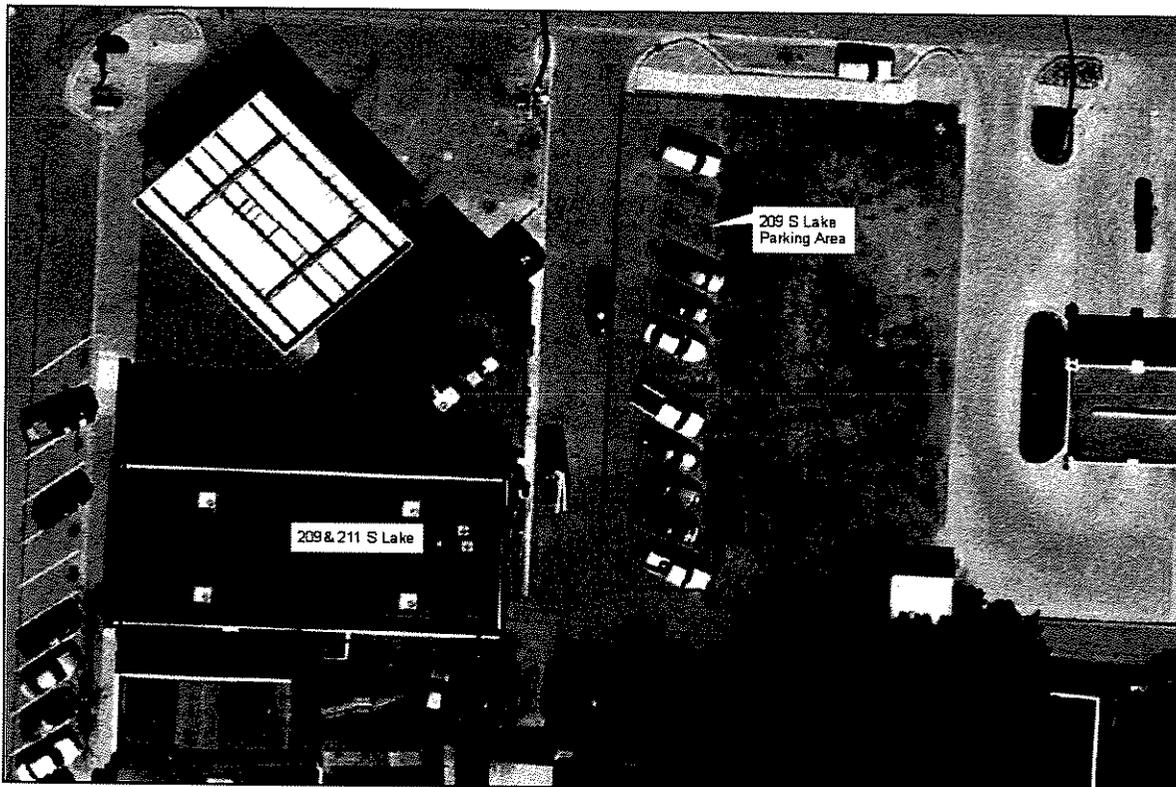
Subject: 209 S Lake Street



BACKGROUND

In 1996 the Boyne City Planning Commission approved a site plan for 209 S Lake Street for construction of a 42' x 96' 2 story commercial building. Boyne Valley Printing was located in the ground floor of the building and 4 apartments were constructed in the 2nd story of the building. Since that time the ground floor of the building has changed uses and it is now occupied by Dunagain's Antiques and Collectibles.

Prior to the site plan approval by the planning commission the zoning board of appeals made a determination that 17 parking spaces would be adequate for the use. Unfortunately I do not know rational used to make this determination. When looking at the site, it appears a maximum of 13 cars could be parked in the parking lot. It is my guess that a calculation was made using a parking space width of 8 feet was used to calculate the amount of available parking to arrive at the 17 spaces.



DISCUSSION

With the consent of Dr. Kirkby, the proposal for the site plan amendment is being initiated by the City Main Street Program. As outlined in the attached memo from Hugh Conklin, the proposed amendment can provide significant benefits to the property owner and the City and may provide future opportunities for the City to address downtown parking needs. While there may be concerns about eliminating parking requirement for this uses, it is the opinion of staff that very little will change if the City acquires the property. Currently the property is basically used as a public parking lot, and while the property is signed, it is not enforced. It is anticipated the parking lot will continue to be used in the same way if the City acquires the property. Some additional maintenance will be required if the property is obtained but this would be minimal additional obligations. The property is currently adjacent to an alley that is maintained and plowed by the City and the City has an easement over a portion of the parking lot which it has already agreed to maintain and plow.

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. To approve the proposal as presented the Planning Commission must take the following two actions:

1. Waive the required 17 space parking requirement
2. Rescind the requirement that the parking lot (parcel number 051-341-138-10) be combined with 209 S Lake Street (parcel number 051-055-063-00)

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.



Date: November 19, 2012
To: Scott McPherson, Boyne City Planning Director
Boyne City Planning Commissioners
From: Hugh Conklin, program manager
RE: Property transfer

As part of the Park Street construction project, overhead utility lines on Park Street between the Boyne River bridge and Ray Street, and between the Wright Builders building and the Johnson Oil gas station on Ray Street are in the final stages of being moved underground. When the project is completed, the City will have taken a very large step in reaching its goal of burying all utility lines in the downtown area.

For the utility lines along Ray Street, a location was needed for the new electric box at the west end of the project. After reviewing a couple of different locations the best option identified was the parking area along the alley behind Johnson Oil. The property is owned by Dr. Dennis Kirkby, who also owns the building at 209 and 211 S. Lake St. He purchased the property about two years ago from Phil Johnson. The first floor retail space of the building is occupied by Dunagain's Antique and Collectibles and there are four apartments upstairs.

A meeting was held with Dr. Kirkby to see if he would grant an easement to the City for an area approximately 15'x15' next to the sidewalk on the north end of the parking lot to locate the new electrical box. Not only did Dr. Kirkby agree to the easement but he offered to give to the city the entire piece of property running parallel along the alley, which has a total of 13 parking spaces.

This seemed like a win-win situation for the City and Dr. Kirkby. He felt the area was already being used as a public parking area, despite signs to the contrary, and he thought it was a fair exchange to give the City the property and in return he would save maintenance costs and property taxes. In addition, the City years ago was given a 15' easement through the property to create a wider alley off Ray Street to better serve the properties. For the City, this allowed it to move forward in placing the new utility box and it also created possible future opportunities to expand public parking in the downtown area.

However, in reviewing the January 1996 site plan approved when the 209 and 211 S. Lake St. building was built and the parking area established, a stipulation was discovered that does not allow for the property to be transferred to the city. (See attached minutes of January 15, 1996 planning commission). The plan was approved with the condition that the parcel proposed for the 17 parking spots behind the building be recorded with the Register of Deeds as one contiguous parcel to the main parcel at 207-209 South Lake St., meaning the two parcels were combined as one. This was required to be done within a year, but apparently it was not completed since 18 years later Dr. Kirkby still receives a tax bill for three parcels rather than two.

Regardless of whether the two parcels were recorded as one, the fact remains the site plan approved by the planning commission in 1996 required it be done and as a result the City is not able to accept Dr. Kirkby's offer unless action is taken by the planning commission to amend its previous decision.

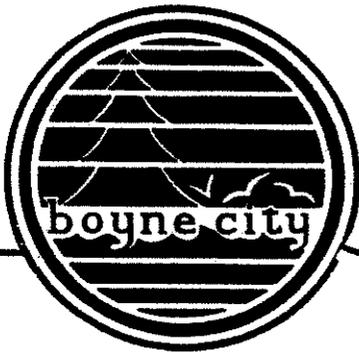
And that is the purpose of my letter to the planning commission: On behalf of Dr. Kirkby and the Main Street Program I am asking the planning commission to consider amending the original site plan in the following way:

1. That the parking area not be combined with the main parcel at 209 South Lake St.
2. The 17 parking space requirement for the building be waived.

Approving these two requests would allow the city:

- To accept Dr. Kirkby's offer to give the city the parking behind his building;
- Place the new electrical box on public property; and
- Create opportunities to address future parking needs.

I appreciate your consideration of this request. If you have questions feel free to contact me.



City of Boyne City

319 N. Lake Street

Boyne City, Michigan 49712

Phone 616-582-6599

FAX 616-582-3677

Prepared: 2-1-96

Approved: _____

**MEETING OF
JANUARY 15, 1996**

**MINUTES OF THE BOYNE CITY PLANNING COMMISSION MEETING
DULY CALLED AND HELD ON MONDAY, 15 JANUARY 1996, AT 5:00
P.M. IN THE COMMISSION CHAMBERS OF CITY HALL.**

CALL TO ORDER

Vice Chair Knurick called the meeting to order at 5:00 P.M.

ROLL CALL

Present: Chair Pat Kubesh (arrived at 5:05), Jim Knurick, Mark Kowalske, Jack McLeod, Alison Mellon, Tom Neidhamer, Cindi Place, Joe St.Dennis, and Todd Wright.

Staff City Manager W. Randolph Frykberg, City Attorney Timothy Arner, City Clerk Sue Hobbs, Commissioners Thelma Behling, William Grimm, Sandra Stanley, and recording secretary Josette Lory.

**MEETING
ATTENDANCE**

There were approximately 20 people in attendance.

**APPROVAL OF
MINUTES**

Neidhamer moved, Kowalske seconded a motion to approve the minutes of the Boyne City Planning Commission meeting held 11 December 1995 as presented.

At the request of petitioners, and with no objection from Safe Lake I, the public hearing items were addressed first.

**209 SOUTH LAKE
SITE PLAN -
JOHNSON**

Site plan review requested from Beverly and Phil Johnson, 207 South Lake Street, for construction of a 42' x 96' commercial building on the vacant lot at 209 South Lake Street. The existing Boyne Valley Printing facility will be relocated to the proposed site, with the existing structure being sold for commercial use. The interior layout of the proposed structure will be similar to the existing facility with consideration of a center wall enabling half of the lower floor to be leased out for retail use. It appears the site plan meets all City zoning requirements.

On 9 November 1995 the Zoning Board of Appeals interpreted that seventeen (17) parking spaces is adequate parking for the proposed construction at 209 South Lake Street, approving a parking variance to accommodate the relocation of existing business. Should apartments be built, two parking spaces per apartment will need to be designated.

Chair Kubesh opened the public hearing at 5:05 P.M.

Phil Johnson noted the proposed structure will conform to the City's Victorian style. The rear of the building may be colored block (alley side) and the side adjacent to the smaller building (southside) will either be vinyl or block.

No public comment.

Public hearing closed at 5:07 P.M.

SITE PLAN REVIEW

Wright asked if the petitioner had any plans for the upstairs portion of the proposed structure. Johnson noted with the ZBA parking variance he would be able to have up to three apartments in the upstairs.

The rear parking area will be maintained by the property owner.

No dumpster is planned, weekly pick up of bagged refuse.

Dust free parking is required.

Vinyl siding to comply with Victorian theme.

Plan to use same signage.

Projected move in date of July 1996.

The board discussed the need to have the rear parking area connected to the main lot (209 South Lake Street). The parcel proposed for parking should be recorded with the Register of Deeds as one contiguous parcel to the main lot, and the area will be maintained for parking only. Johnson assured the board he would take care of this in July when the construction is complete.

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Knurick moved, Wright seconded approval of the site plan as presented with a condition for the rear parking area (across from alley) to be combined and recorded as one parcel with the primary building at 209 South Lake Street within a one year time frame.

ROLL CALL

Aye: Kubesh, Knurick, Kowalske, McLeod, Mellon, Neidhamer, Place, St.Dennis, Wright.

Nay: None.

Abstain: None.

Absent: None.

MOTION CARRIED.

900 FRONT STREET HARBORAGE RENAISSANCE COMPANY

Site plan review to amend a previously approved site plan for Harborage Renaissance Company, for one single family home replacing a previously approved four unit building in the 900 block of Front Street, lying between said street and Lake Charlevoix.

The petitioner requests consideration of amending the 20 June 1994 site plan for the four unit building. The petitioner agrees this single family dwelling will meet the existing requirements placed on the Harborage Shores site plan approved 17 July 1995 for six single family homes.

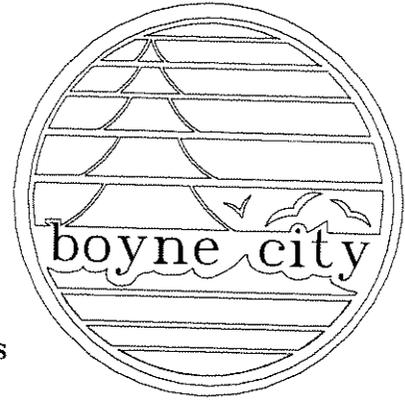
CITY OF BOYNE CITY

To: Chair Tom Neidhamer and fellow Planning Commissioners

From: Scott McPherson, Planning Director

Date: November 19, 2012

Subject: One Water Street Unit 8 and 9 Final Design Plans



BACKGROUND

Final Design plans for units 8 and 9 have been submitted for review. The units are the duplex units located on the southwest corner of the property. The submitted plan combines the 2nd and 3rd story dwelling units into one unit and also combines the ground floor rental units into one unit and adds a kitchen and dining facilities to the rental unit.

DISCUSSION

The proposed plan includes some modification to the plans submitted to the Planning Commission. As the dwelling and rental units have been combined the floor plans have been modified and the overall density has been reduced. The proposed uses of the units remain unchanged. The proposed buildings are 3.5 stories and the building height as measured per the ordinance requirements would be 41'6". In the plan submitted to the planning Commission the buildings were shown as 3 stories with maximum building height of 37 feet. In the CBD district the maximum building height is 45 feet or 3.5 stories. As the submitted plan reduces the density of the development by 1 dwelling unit and 1 rental unit this would reduce the overall parking requirements for the development by 3 spaces. (2 spaces per dwelling unit 1 space per rental unit). The proposed plan would eliminate one parking space by the conversion of one garage to floor area.

Process

The proposed plan meets the requirements for Administrative review of a sketch plan as per section 19.15 and can be administratively approved.

Recommendation

Approve the proposed plan as presented.

November 14, 2012

Mr. Scott McPherson, AICP
City of Boyne City, Planning/Zoning Director
319 N. Lake Street
Boyne City, MI 49712

RE: One Water – Resort Cottages

Dear Scott:

As we discussed, Catt Development has a potential buyer for Unit #8 & #9 on the south end of the development. This particular building was originally presented as a duplex unit consisting of our concept "Unit A" and "Unit C" connected to make one duplex building.

Our potential buyer would like to have the whole building be one unit. The buyer still wants to have a rentable "lock off" extended stay motel unit on the first floor. We have gone to great lengths to create a viable lock off in combining two units. The result is a lock off that, while larger than the others, allows us the ability to have one larger extended stay suite. We believe this will enhance our rental potential. The buyer is also interested in the roof deck option. Please refer to the preliminary floor plans I left with you.

We are not looking at changing the footprint or the exterior architecture; we are only changing the interior layout to meet the needs of our buyer with this being one unit instead of two units. With the roof deck option the building height would be similar to the presented "Concept A" Unit (only slightly higher by 1'-2'), but well within the maximum height of 45' for the Central Business District (CBD).

As a development/design team it is our opinion this combined #8 & #9 Unit as sketched would still meet all of the requirements of our conditional re-zoning approvals.

We want to be proactive and prudent by communicating this potential change of Unit #8 & #9 to one unit in lieu of a duplex unit.

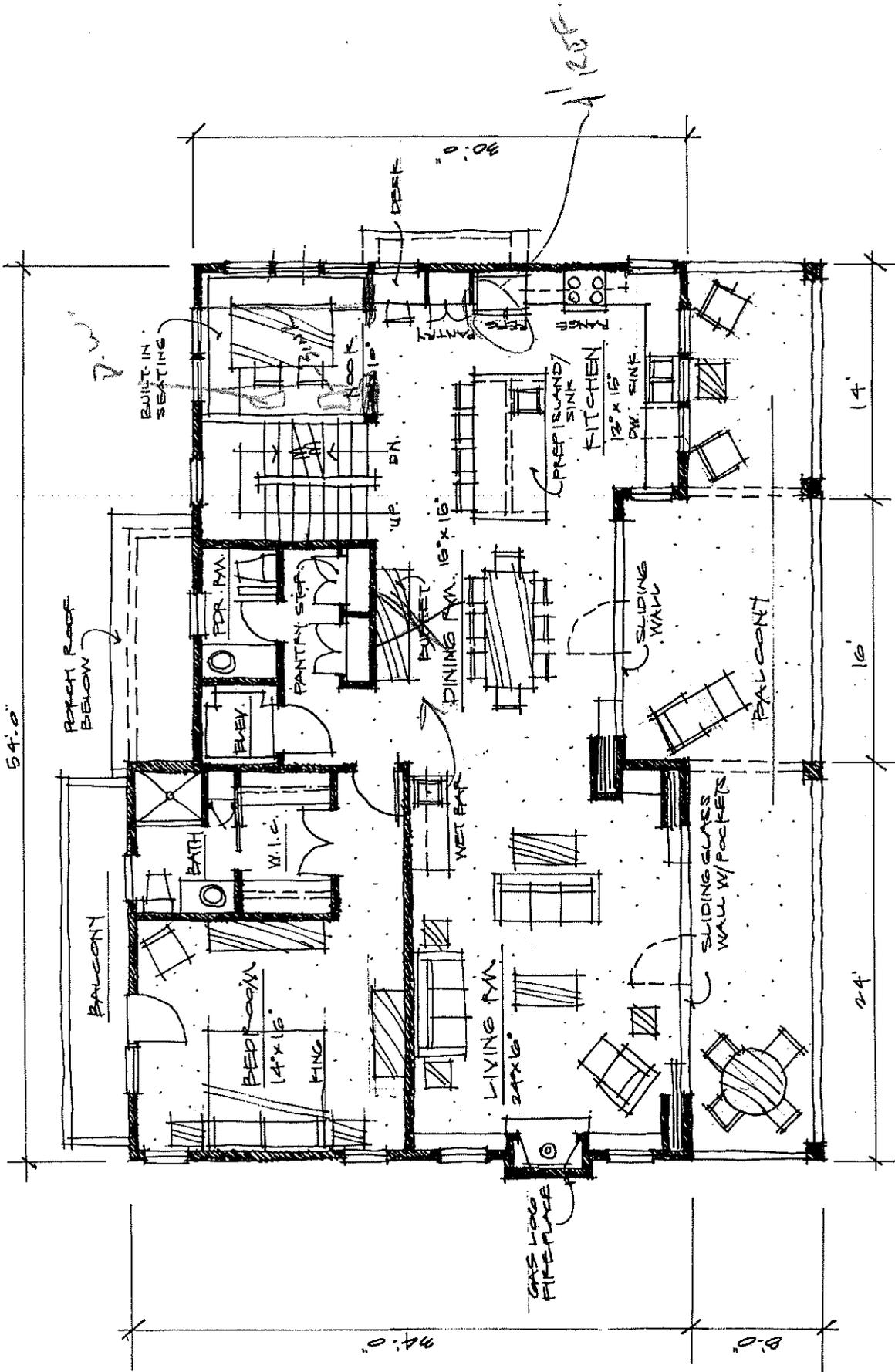
This potential buyer would like us to "break ground" in the early spring of 2013. As a development and design team we are very excited about this opportunity and think this could start the momentum in sales we are all looking for in order to complete our One Water Development.

Please contact us with any questions.

Sincerely,

ONE WATER DEVELOPMENT/DESIGN TEAM

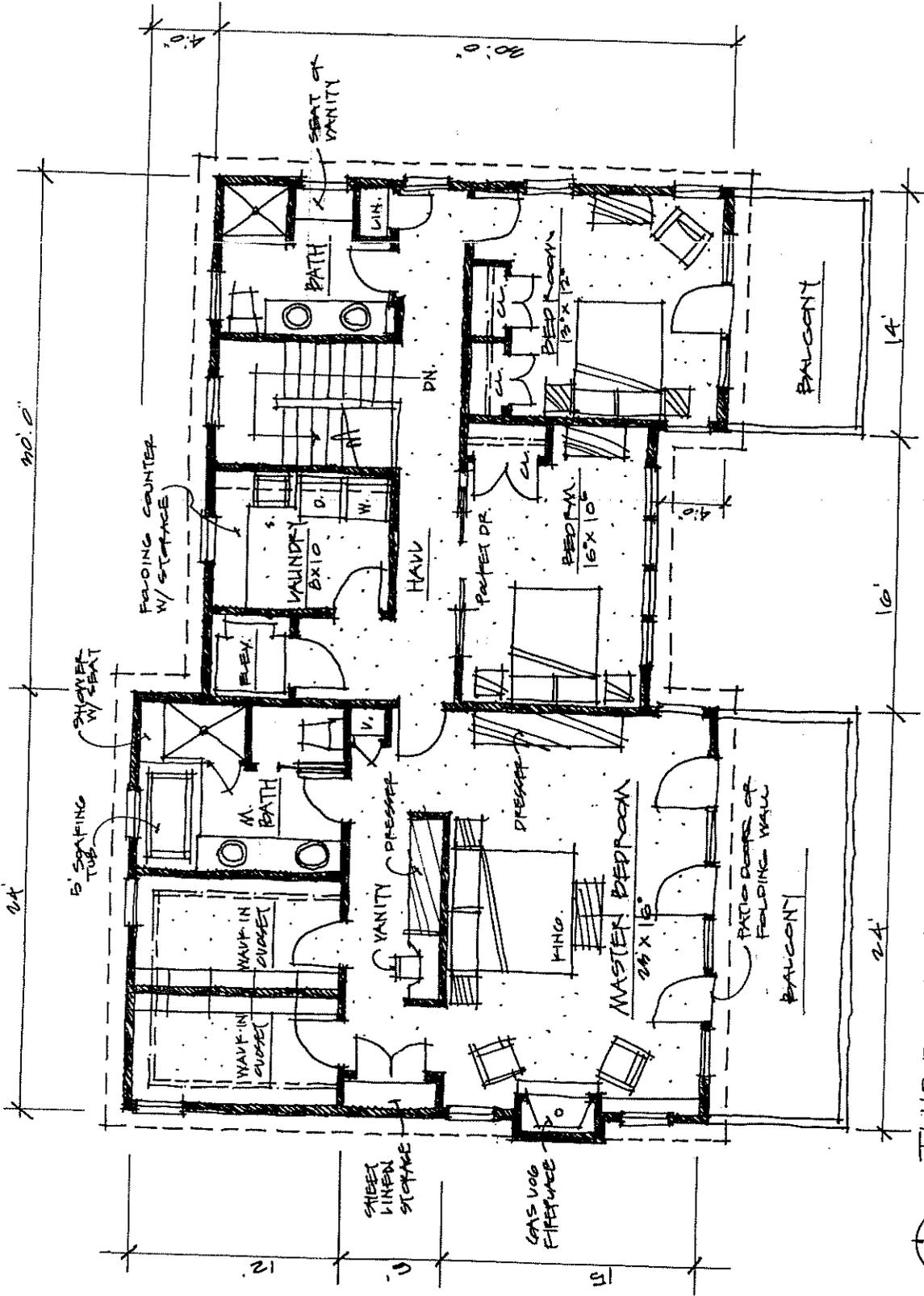
Glen B. Catt – Developer
Wally J. Kidd – Real Estate Consultant
Douglas L. Mansfield – Land Use Consultant
David L. Spala – Architect
Edmund L. Hunt – General Contractor



SECOND LEVEL FLOOR PLAN.

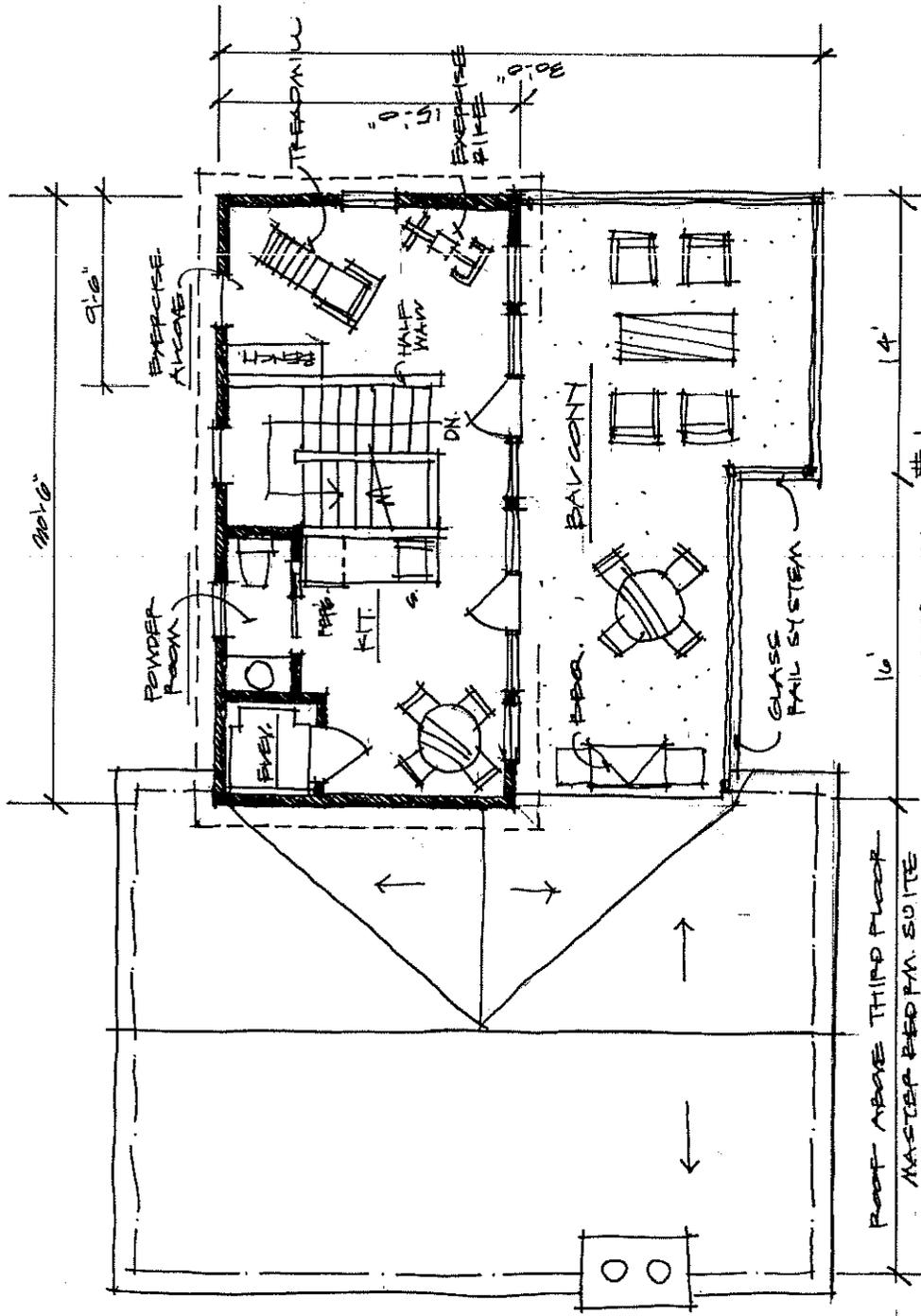
SCALE: 1/4" = 1'-0"

1652 SQ. FT.
 NORTH ONE WATER STREET DEVELOPMENT - TRAVERSE ARCHITECTURAL GROUP 10/24/12

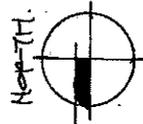


THIRD LEVEL FLOOR PLAN
 SCALE: 1/4" = 1'-0"

ONE WATER STREET DEVELOPMENT - TRAVERSE ARCHITECTURAL GROUP 10/24/12
 1652 SQ. FT.



ROOF ABOVE THIRD FLOOR
 MASTER BED RM. SUITE



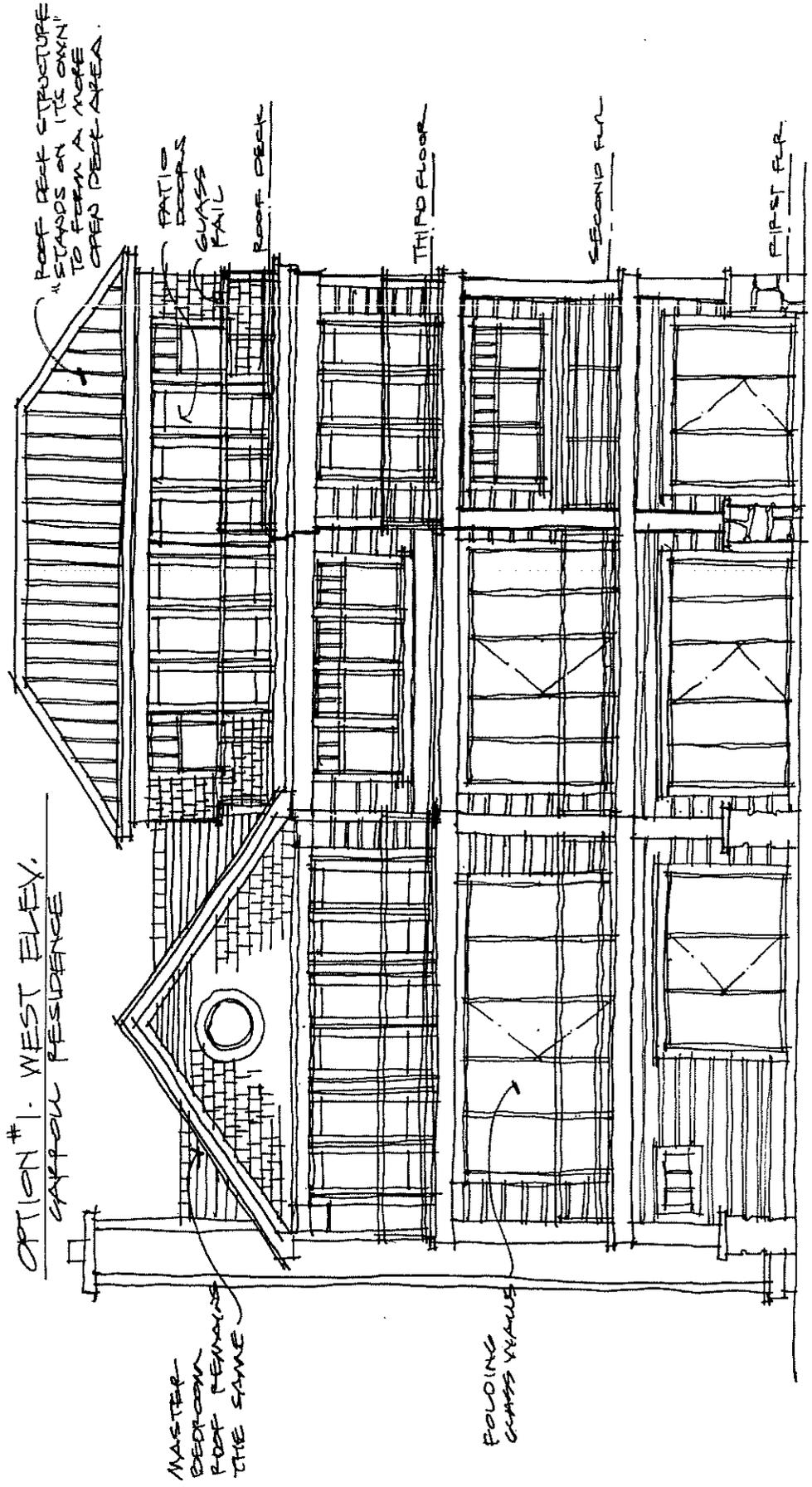
OPTION #1

#1 ROOF TOP DECK DESIGN.

SCALE: 1/4" = 1'-0"

ONE WATER STREET DEVELOPMENT. TRAVERSE ARCHITECTURAL GROUP 11/7/12

OPTION #1. WEST ELEV.
CARROW RESIDENCE



ROOF DECK STRUCTURE
"STAYS ON ITS OWN"
TO FORM A MORE
OPEN DECK AREA.

PATIO
DOORS
GLASS
RAIL

ROOF DECK

THIRD FLOOR

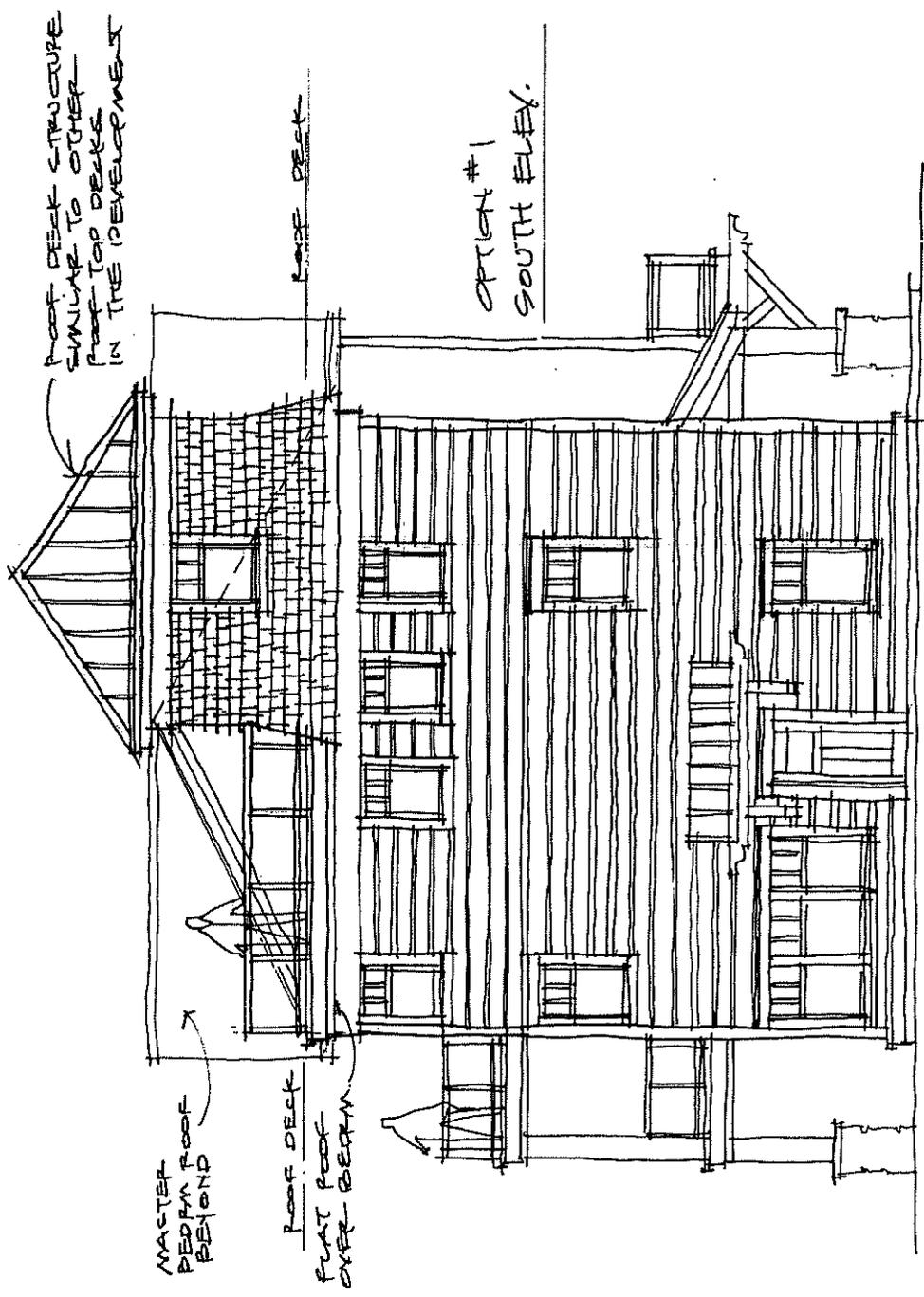
SECOND FLOOR

FIRST FLOOR

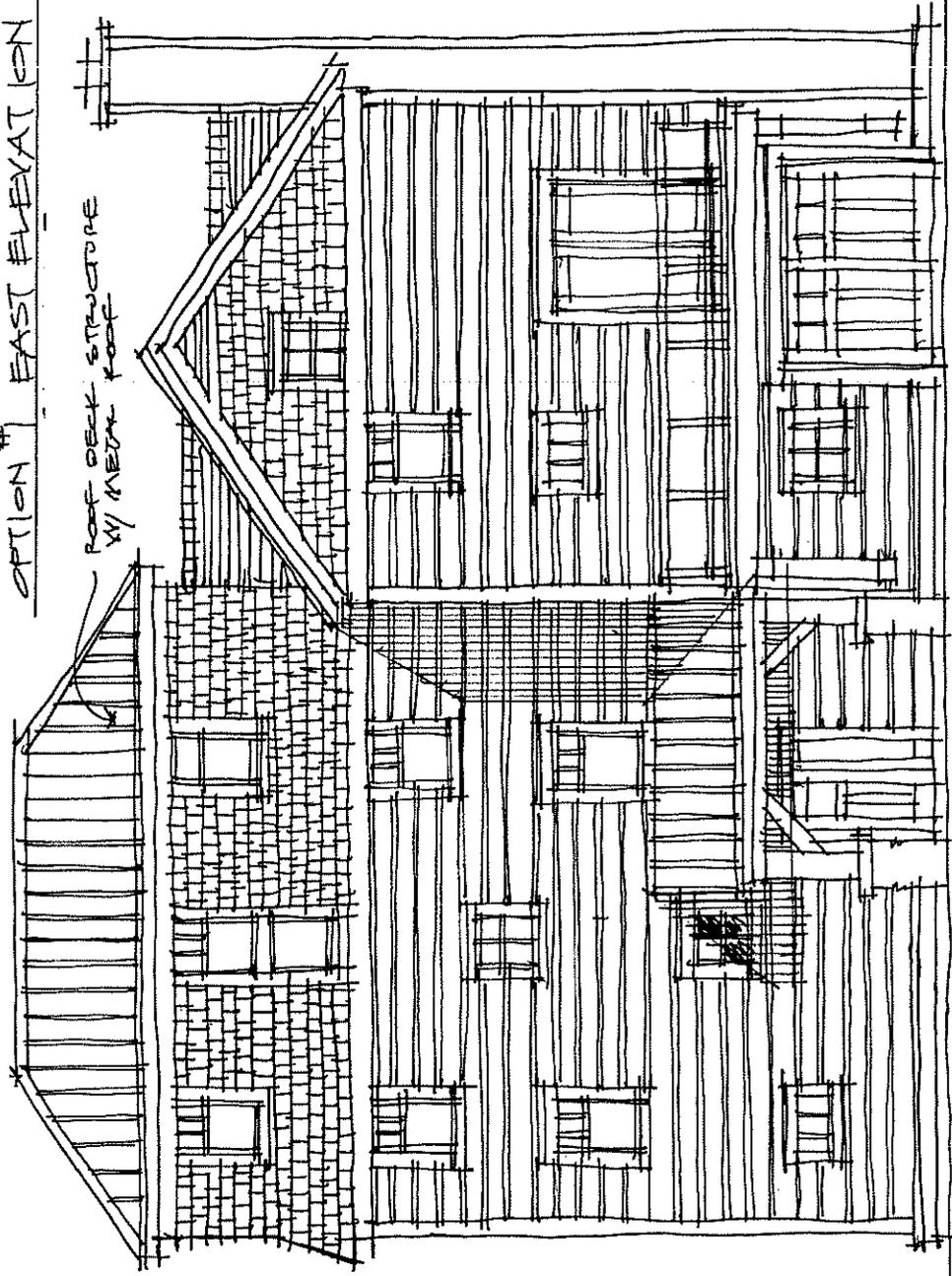
MASTER
BEDROOM
ROOF REMAINS
THE SAME

FOLDING
GLASS WALLS

AA'



OPTION #1 EAST ELEVATION



ROOF DECK STRUCTURE
W/ MEAN ROOF