

**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

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:

**Kirtland Products
follow-up**

- (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 Bifos 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

New Business Water Street Mall proposed development plan amendment

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

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 - There 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. Kruzal's, but do not make an irregular parcel.

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

Kruzal – 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.

Kruzal – 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.

Kruzal – 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 Kruzal 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.

****MOTION**

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 Kruzal 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

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

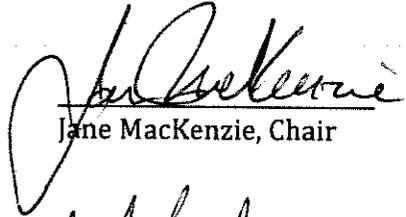
The next meeting of the Boyne City Planning Commission is scheduled for November 19, 2012 at 5:00 pm at city hall.

Adjournment

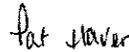
2012-10-15-10

****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