

**PLANNING COMMISSION
CITY OF WILLOUGHBY
WORK SESSION
JULY 26, 2016
WORK SESSION MEETING
MINUTES**

PRESENT: R. Fiala; C. Cox; K. Kary; G. Patt; G. Merhar, Chairman

ABSENT: Jim Sayles, City Engr.;

OTHERS: Michael Germano, Asst. Law Director; Janice Lipscomb, Econ. Devel. Mgr;
Darryl Keller; Chief Bldg. & Zoning Official; Karen Brooks, Zoning Code Inspector;
Stephanie Landgraf; Vicki Grinstead, Sec'y

Chairman Gerald Merhar called the work session meeting to order at 6:32 p.m.

OLD BUSINESS

Kirtland Country Club
(Mr. Frank Floyd)

CUP-Review

Chairman Merhar explained that the reason the board called the Work Session was to review the offer the Kirtland Country Club (KCC) has made to improve the facility and to see what consequences this may have on the issues the sheet shooting has caused. Chairman Merhar went on to explain that last year in July the board approved a Conditional Use Permit (CUP) and they did so after following all of the normal procedures, which included a public hearing session. Chairman Merhar stated that there were many comments made at the public hearing that were not particularly diminutive to that idea. He also stated that the board listened to the shooting at the Kirtland Country Club and chose what they thought to be the best direction to preserve the neighborhood as well as let the country club enjoy their skeet shooting activities. Chairman Merhar stated that the Kirtland Country Club was operating under a Conditional Use Permit and that it lists all the conditions under which the club agrees to operate the shooting range, which included a review of the Conditional Use Permit (CUP) at the end of one year. Chairman Merhar reiterated that he did, at the last meeting, ask for the issue to be tabled so they could have a Work Session to discuss what the options would be for both sides to find a resolution. Chairman Merhar asked what the KCC has brought to the table today to improve the current situation, but also asked for a review from the legal department (Mike Germano). Chairman Merhar stated that there was a week long study done by the city's legal department and hence there was a memo put forth from the Law Director, Mr. John Wiles. Mr. Germano stated that law department was asked about the duties of the Planning Commission and what they would have to follow if a CUP was going to be revoked and this is what the legal department was asked to look into. Mr. Germano reads the memo in its entirety (see attachment).

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Chairman Merhar asked the KCC to amend their Conditional Use to include the improvements that they are proposing. The Chairman reiterated that the purpose of the Work Session is to discuss what improvements will be made to satisfy, as much as possible; the issues that have been brought up in the previous meetings and to have the KCC amend their Conditional Use Permit to include these new improvements. If the KCC does anything that the Planning Commission wants it to do in regard to the current CUP, it does have to be amended because it currently states that the KCC must direct the gunfire to the south, and the Chairman believes that this is not the most optimum direction for the range. Mr. Germano stated that the City is not asking them to make this request tonight, as this is a Working Session. If the KCC does make this potential request to modify their conditions they need to state what it is they will be modifying, but this will need to be done at a later meeting. Mr. Frank Floyd, President of KCC stated they have reviewed some of the measures they are willing to take and they will be presenting those this evening. Mr. Floyd introduces Mr. Patrick Alexander, Chairman of the Skeet Committee and member of the KCC. Mr. Alexander stated the KCC had starting by investigating any and all means possible to try to mitigate the sound issue for this particular problem. The KCC has hired various professionals to help the club understand about the sounds that were being produced and what they could expect if there were to incorporate changes in the actual skeet range itself and this is what they will present to the board today. Mr. Alexander stated he would explain things verbally first and then show diagrams etc. Mr. Alexander started off by explaining they would start by lowering the shooting field by 6-8 feet. He stated they looked at all the topography and have discovered that the direction they are shooting now, south, that if they were to lower the field and shoot toward the east that it will mitigate the sound by 10-15% that they currently have on the hill. The construction and incorporation of highly effective new technology and sound absorption are materials they will put on the walls that they will be building down in the ground that will help absorb the sound. Mr. Alexander stated that their expert told them they could expect anywhere between a 15-20% sound reduction with the incorporation of this technology. He then states they will place other mounding to the north and south above the sunken field. Chairman Merhar states in layman's terms that this means the KCC will scoop the dirt out and put in above and around the outside perimeter. Mr. Merhar asked Mr. Alexander how far down would this recess the shooting range after they have taken out the dirt. Mr. Alexander stated 12-18 feet, and in one of their topographies on the model it is actually 20 feet. The mounds that are to the north are 20 feet below the tops of those mounds. Mr. Patt asked about the sound absorbing materials and where they will be placed and Mr. Alexander stated they will be placed on three sides, one to the back and the two sides, one to the north and one to the south. Mr. Patt asked why they cannot put it in the front and Mr. Alexander stated they cannot because that is where they are shooting and this is where they will be putting the mounds. Mr. Alexander explained about the angle of the shooting and the testing shows (which board was given results at last meeting) that if they change the angle from south to east that they get an immediate 10-15% sound reduction and this is JUST by changing the angle in which they

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shoot. He stated anyone to the south will notice instantly before he makes any other changes to the range that they will notice the 10-15% reduction in the sound. Mr. Alexander stated that the last thing they are investing is the possible construction of a pavilion roof which would add another 10-20 percent reduction in sound. Chairman Merhar asked, if at this point do they have a 100% reduction in sound to which Mr. Alexander stated they do not. Mr. Alexander stated that with all the changes he just explained will reduce the sound by 50% and the high estimate is 75%. Mr. Alexander explains that as it currently stands, the way the sound travels now, it goes from the top of the hill and across the club property and goes down the valley toward Kirtland and there is nothing to absorb or deflect the sound that they have now. Their study discovered that the loudest sound that they had was on Markell St. in Kirtland and was 72 decibels. He goes on to explain that 72 decibels is loud, but for every 10 decibels you take sound down you can enjoy a 50% reduction in sound. The biggest factors that aid or hinder the sound travel is the presence of the ambient noise (e.g.-highways, trains, planes etc.). He states that light and heavy commercial industries also contribute to the ambient noise that we might have in our particular area (e.g.-car repair garages, mills etc.); but these are man-made activities. We also have wind, barometric pressure, temperature, humidity and these all have a keen influence on how sound travels in our particular area. The club shooting on a weekend when these activities are a little less may sound louder. Their experts state that on a weekend a quarter of the sound is present due to the fact that everyone is home and most businesses are closed. The sound on a Tuesday is different because of all the activity during the week. After analyzing all the data from their experts the KCC expects they can achieve between a 50-75% drop in sound if they do what they are proposing. Chairman Merhar reiterates that the sound level at any given location will be reduced by 50% and Mr. Alexander confirmed that it would. Mr. Alexander also stated that this information was in the documents the board received at the last meeting. Mr. Alexander then showed the board a model of the skeet shooting range with all the proposed improvements. He believes shooting toward their 17th green where there is a huge hill will aid in the absorption of sound. Mr. Patt asked if 72 decibels go south won't 72 decibels go east and Mr. Alexander stated it would if they did absolutely nothing. Mr. Patt asked if they aim this south will this be aimed toward Lakeland Community College and Mr. Alexander stated he wasn't exactly sure where it would go. Mr. John O'Neil, member of KCC wanted to answer Mr. Patt's question about shooting south instead of east. Mr. O'Neil stated we would we get 72 if we shot east instead of south. Mr. O'Neil stated in anticipation of this question, their sound study that they did on March 16, 2016 took those measurements standing at the range shooting directly east instead of south. The results were, instead of getting 72, they got 61, 60 and 58 because of the natural terrain. Mr. O'Neil then stated they would be starting out with a 60 number not 72. Mr. Kary asked about the firing of the shells and if there was an overlap of sounds and how fast the possible repetition of the gunfire is and Mr. Alexander stated if you fire twice it is as

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little as a second between shots. Mr. Alexander also stated that there is an overlap in sound and there is supersonic and subsonic and the supersonic is the sound you can't overlap, and that you can't catch up to it. The subsonic sound is the sound that moves much more slowly. Chairman Merhar asked if this explains the different readings in the same direction that ranged from 58-62 or 64 and Mr. Alexander states that their expert says those readings depend of humidity, temperature and wind direction. The Chairman asked if these studies were done on different days and Mr. Alexander responded yes. Chairman Merhar stated that there were different environmental conditions. Mr. Alexander admits that the KCC knew instantly they were going to have an issue with the sound and starting investigating immediately to see if they were below legal limits. Their investigation found out they were below the legal limits but they wanted to find out how they could mitigate the sound anyway. Mr. Patt stated he was at the range and he did his own listening experience on Markell Road and in the three minutes that he was there, and the sound that went on during the session varied significantly, and asked if he could explain this. Mr. Alexander stated that he could not. Mr. Patt asked if there were different rifles used and Mr. Floyd stated that they needed to be very specific and they do not use rifles and they were using a single shotgun. Mr. Floyd stated the different gauge shotguns did not have different sounds. Mr. Floyd stated that of the numerous times they were shooting, he went into the communities at least half the time or more often on the weekends and he recognized that the wind direction makes a difference and will change the volume of the shot. Mr. Patt asked if he explain the difference between and 12 and 24 gauge shotgun sounding the same. Mr. Floyd explained it has more to do with the length of the barrel then it does the gauge and the shell and how much gunpowder is in it and therefore all skeet shells will be used exactly for that purpose. Mr. Alexander stated there are target loads and skeet loads that they use. Mr. Kary asked if any of their members are loading shells and Mr. Alexander replied they don't currently have any loaders now. The KCC is making sure their members do not violate the CUP or any of its conditions and are checking to see that they are shooting only target and skeet loads. Mr. Alexander states the KCC has mandated they only use a dram and a quarter for the shells or a dram and eight which is the most common. Mr. Floyd states that the people that are shooting in the club are not amateurs and they know exactly what they are doing when packing these shells and safety is their primary issue. He also stated that they have a safety individual that monitors these activities. Mr. Alexander presents drawings that show the walls and side walls. Mr. Alexander states they are investigating putting walls inside walls (or baffles) that will capture sound on a direct right angle to a wall on the model. Mr. Patt asked why they would not put sound actuation in the space on the front range. Mr. Alexander responded, because we believe that the mounds will capture the sound and will be 6, 8 or 10 foot mounds. Mr. Fiala asked how the physics of sound works and if the wind hits it will it drift and Mr. Alexander cannot answer and will ask Mr. Bergiadis. Mr. Fiala said he's heard two things, humidity and wind effects sound and he doesn't understand the physics of how this happens. Mr. Patt states that humidity will attenuate the sound and that's why in the winter time it goes farther and

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when the KCC did testing in the summer, to our perception it wasn't as loud because the humidity in the air will absorb the sound, so the winter season is not advantageous for those reasons. Chairman Merhar asked what the roof would accomplish on the model and Mr. Alexander stated that the sound that is present right around the gun area would be captured even more, especially the subsonic sound. Mr. Patt asked if their next step would be to do detailed engineering drawings of the proposed gun range and Mr. Alexander stated that was the next step. Chairman Merhar asked what the cost involved with this range would be and Mr. Alexander stated it would be very expensive. Mr. Fiala asked Mr. Alexander about the science behind the model and Mr. Alexander stated that the model was their first attempt. The KCC then had Mr. Bergiadis take a look at the model and make a few suggestions, which Mr. Alexander alluded to earlier in the presentation, of adding the side walls or baffles. Mr. Patt asked Mr. Alexander if Mr. Bergiadis provided KCC with any evidence of similar installations, to which Mr. Alexander answered no he did not provide them with any. Mr. Alexander stated he would ask Mr. Bergiadis if he had any similar installations. Mr. Fiala asked if someone actually ran a computer model of the range that was presented at today's meeting and Mr. Alexander stated no there was not, but that they have looked at all the topography and they have made simulations on those models. Mr. Patt asked if the consultant will do the more sophisticated modeling before they do the design and Mr. Alexander confirmed this was correct. Mr. Patt asked if there was a separate engineer for this part of the project and Mr. Alexander stated they have not decided that as of yet. Mr. Patt asked if they were willing to come back to the Planning Commission Board with this information and Chairman Merhar stepped in and stated that they cannot do anything this evening and that the KCC will have to modify the conditions on the Conditional Use Permit, which he hopes will incorporate whatever final design the KCC decides upon. Chairman Merhar also stated that the current CUP states that they will be shooting south but since that will no longer be the case and they will be shooting east or whatever direction is decided upon, this will have to be modified in their conditions. Mr. Patt stated that a bearing number would probably be good to add to the CUP. Chairman Merhar stated he hopes they will add about not shooting on holidays as well. Chairman Merhar asked if they would have time to get the project done by fall and Mr. Alexander stated not a chance. Mr. Alexander stated for this coming year they have been discussing what they can do to mitigate the sound and they have discussed changing of the direction and digging down a few feet and take that dirt and put it to the south to help mitigate the sound. Mr. Alexander stated they asked their engineer about this and he stated that a 10-15% reduction of sound is all they (KCC) can expect this year with only lowering the range and changing the angle. Mr. Patt asked Mr. Alexander if he could explain the difference of measuring decibels on an averaging type meter versus linear measuring and Mr. Alexander stated he did not know that. Mr. Patt explained that if you did a scale and measured how loud something was and it was four (4) on a linear scale, then four (4) would be twice as much as two (2), so on a decibel scale, it's logarithmic so as he said the reason that 10 decibels is half or double when you go from 40-50, 10 decibels is not half or double of 40 decibels,

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50 is twice as loud as 40. The readings the KCC's sound company took were average ratings and a sound decibel meter measures an average and their sound company's ratings were average.

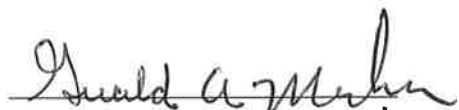
Mr. Cox stated that KCC is coming up with a number that they think is acceptable but may not be acceptable to everyone. Mr. Patt stated he went to the KCC and met their range officers and they did adhere to all the conditions of the CUP and were very particular about following the rules.

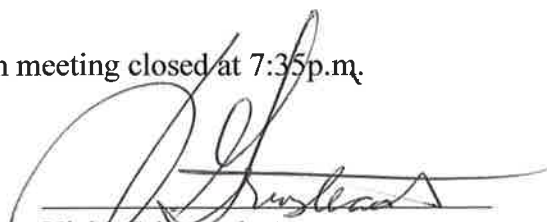
Mr. Patt expressed his concerns over the public's concerns on this issue and stated that this is why he is being cautious. Mr. Cox started off by stating that he admires all the work the KCC is doing to modify these issues with the CUP. Mr. Cox went on to say that the thing that concerns him is that the KCC and the Planning Commission Board thought that if any of these conditions didn't work out with the CUP, and now residents are coming in with valid complaints, that they could change it, but the board is now being told by the city's law department that this is not the case. Mr. Cox stated that they (the Planning Commission Board) approved this CUP in perpetuity. Mr. O'Neil stated he understands Mr. Cox's concerns and this is why they are doing everything they can to modify the CUP to make it work for everybody. Mr. Floyd stated these concerns have not fallen on deaf ears and they have reached out to the City of Kirtland and are trying to mitigate this problem as best as they can. Mr. Floyd reiterated that if they find improved measures they will take them, because again they are trying to be good neighbors. Chairman Merhar stated that technically the way the conditions read in the CUP that the KCC can continue doing exactly what you did last year without the expense of building this facility, but they are taking the initiative to improve it and have been good neighbors in that sense. Mr. Floyd stated that they knew going into this that this was only going to be a temporary facility and there was no way they could have built what they planned to build in such a short period of time. Mr. Floyd stated that this was a learning experience for them and that they are going to build the absolute best facility they can. Chairman Merhar asked Mr. Floyd about the estimated time frame for the completion of this new facility the KCC is proposing. Mr. Alexander stated November 1, 2017. Chairman Merhar stated that if they modify this CUP they will need to add to the CUP conditions the date that this facility will be initiated. Chairman Merhar stated that the next meeting of July 28, 2016 where the board was going to take action on this situation should be tabled for another meeting date. Chairman Merhar goes on to explain the reason to push this meeting date back is when the KCC submits their revised conditions that they are going to need to have another public hearing. He also stated the public does have a right to hear these new conditions, but this will only be on the changes they are proposing to the current conditions. The changes they should be adding are that the KCC will not be shooting on the holidays, when the new facility will be completed in November of 2017, and the direction in which they will be shooting. These will be the only things that will be on the agenda for the Public Hearing.

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Mr. Floyd asked about the Planning Commissions time frame for the next meeting date and Chairman Merhar answered the meetings are scheduled the 2nd and 4th Thursday of the month. Chairman Merhar stated that if the KCC wants more time to address these issues they may want to push the meeting date back to August 25, 2016 and that it would also give the Board Secretary more time to get notices out to the surrounding residents. Mr. Germano stated that August 25, 2016 would be a good date to do the Public Hearing.

There being no further business the Work Session meeting closed at 7:35p.m.


Gerald Merhar, Chairman


Vicki Grinstead, Secretary

Memo

TO: Planning Commission
Mayor David Anderson
Chief Building Inspector Keller
Community Development Mgr. Lipscomb
Attorney Michael Germano
Attorney Stephanie Landgraf

FROM: John W. Wiles
Director of Law

DATE: July 26, 2016

RE: Kirtland Country Club Conditional Use Permit

The Law Department received a request to render an opinion outlining the authority of the Planning Commission to amend, modify, add to, or revoke a conditional use permit issued by the Commission. The request is generated as a result of the Commission's review of a Conditional Use Permit (CUP) issued to the Kirtland Country Club (KCC).

The following facts are relevant to and are on what this opinion is based.

The Kirtland Country Club applied to the City for a permit to operate a skeet shooting range on its premises located in the City of Willoughby. A shooting range is a permitted use as provided in the Willoughby Codified Ordinances but subject to a CUP. As required by ordinance, KCC applied for permission to operate the shooting range. The Commission held a public hearing and discussed the issuance of the permit.

On July 23, 2015, the Commission issued a CUP to the KCC for the operation of a seasonal skeet range at 39438 Kirtland Road, Willoughby, Ohio.

The CUP contained the following conditions:

1. Hours of Operation:
10:00 a.m. until 4:00 p.m. - Saturdays
12:00 noon until 4:00 p.m. - Sundays
2. The skeet shooting season shall be November 1 through March 31.
3. The shotgun sizes permitted are: 12-gauge, 20-gauge, 28-gauge and possibly others. Nothing is permitted higher than 12-gauge.

4. Skeet shells shall be used.
5. The skeet range location is where the star is located on the Google aerial printout that is part of the HZW Environmental report of the findings of the sound level meter testing depicting the Kirtland Country Club's skeet shooting range.
6. The skeet shooting shall be reviewed after the end of the first season.
7. A berm will be installed around the rear perimeter on the north side that will direct noise south toward Kirtland and away from Tudors Estate.

As required by Condition No. 6, the Commission, at a public meeting, reviewed the permit. Public comments were accepted from representatives of KCC and the public.

Any decision concerning the Commission review must be based on the facts presented at the review hearing and cannot be based on a Commission member's personal opinion that is not based on comments or exhibits submitted at the hearing.

The question then, is what authority the Commission has in any decision it renders. To answer that question, it is necessary to review the Willoughby Codified Ordinances and the terms set forth on the CUP.

The last paragraph on the CUP states as follows:

"Violation of any of the aforesaid conditions by the holder, or any use of the aforesaid described premises, contrary to any Ordinance, Rule or Regulation of the City of Willoughby, Ohio applicable thereto shall be grounds for revocation or suspension of this permit."

The language is copied from Section 1109.05(h).

Section 1113.04 Penalties states as follows:

"It shall be unlawful to: (d) Violate or fail to perform any condition, stipulation or safeguard set forth in any certificate issued pursuant to this Planning and Zoning Code, or continue to use or occupy the premises or building as previously authorized by such certificate beyond the duration limit therein stated;"

The penalty listed for the violation is that the violator is guilty of a misdemeanor of the first degree.

Section 1155.02 General Criteria for all conditional uses states in part as follows:

“the Planning Commission shall review the particular facts and circumstances of each proposed use in terms of the following standard and shall find adequate evidence that:

(e) The conditional use will not be hazardous or disturbing to the existing and future use and enjoyment of property in the immediate vicinity for the uses permitted, nor substantially diminish or impair property values within the neighborhood;

(f) The establishment of the conditional use in the proposed location will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;”

This ordinance is to be considered when the CUP is originally issued and is not a condition of the issued CUP. It therefore cannot be applied in the review.

Review of the above ordinances does not permit the Commission to revoke the CUP unless there is a finding that one of the conditions which are incorporated into the permit is violated by KCC.

In addition, I find no ordinance that permits the Commission to change or modify the terms of the CUP. The CUP could be modified at the request of the permittee.

The Commission should also be aware of C.O. 1113.03(b) which provides a procedure for handling complaints as follows:

1. The Zoning Inspector must receive written complaint of a potential violation of the Planning or Zoning Code, including violation of a condition imposed on a conditional use permit; the complaint must fully state the causes and basis for the citizen's complaint (C.O. 1113.03(b)).
2. The Building and Zoning Inspector must then inspect the condition alleged to be in violation of any of the provisions of the Planning or Zoning Code; the Inspector must then issue written notice to the violator to correct the condition (C.O. 1113.03(c)).
3. For a residential or business use, if the Building and Zoning Inspector determines a violation to have occurred, he shall notify the persons responsible for the violations, including the nature of the violation (C.O. 1113.03(d)).
4. The violator must be given reasonable opportunity to correct/cure the violation. *City of Canton v. Campbell*, 2002-Ohio-1856.
5. If the violation is not corrected, the Inspector may issue a Notice of Discontinuance of the Use to the owner (C.O. 1113.03(d)).

In summary, I am of the opinion, and you are so advised that:

- (1) the Planning Commission does not have the authority to revoke a CUP unless there is a violation of the terms or conditions on the permit;
- (2) the CUP can be modified at the request of the permittee;
- (3) the CUP can only be revoked in accordance with C.O. 1113.03.

It should be noted that the Commission's decision is legally considered an administrative act, and can be appealed by any interested party to the Board of Zoning Appeals and to the Common Pleas Court of Lake County.



John W. Wiles
Director of Law

JWW/cll