

**PLANNING COMMISSION
CITY OF WILLOUGHBY
AUGUST 25, 2016
REGULAR MEETING MINUTES**

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

ABSENT:

OTHERS: John Wiles, Law Director; Stephanie Landgraf, Asst. Law Director;
Stephen Byron, Special Counsel; Janice Lipscomb, Econ. Devel. Mgr;
Darryl Keller; Chief Bldg. & Zoning Official; Vicki Grinstead, Secretary

Chairman Merhar called the regular meeting to order at 7:50 p.m.

MINUTES

Regular Meeting Minutes

August 11, 2016

A motion was made by Mr. Patt and seconded by Mr. Kary to approve the **Regular Meeting** minutes of August 11, 2016.

ROLL CALL: Yeas: Mr. Patt; Mr. Kary; Mr. Fiala; Mr. Cox; Chairman Merhar
 Nays: None

Motion Carried: APPROVED

OLD BUSINESS

Fraden Holdings
(Adam Wojnovich)

Preliminary Plans

Chairman Merhar stated it was his understanding that Fraden Holding is not present this evening and Vicki Grinstead confirmed they will not be here.

Chairman Merhar asked for a motion to untable the old business except for Fraden Holdings.

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A motion was made by Mr. Kary and seconded by Mr. Fiala to untable old business.

ROLL CALL: Yeas: Mr. Kary; Mr. Fiala; Mr. Cox; Mr. Patt; Chairman Merhar
 Nays: None
 Absent:

Motion Carried: UNTABLED

Chairman Merhar stated the only item on the agenda at this point is the Kirtland Country Club Conditional Use Permit review for amendment. Chairman Merhar asked if someone would like to come forward to represent the Kirtland Country Club.

Kirtland Country Club
39438 Kirtland Road
(Frank Floyd, President)

Amended CUP- Review

Mr. Frank Floyd of Shaker Heights, Ohio, President of Kirtland Country Club stepped forward to speak. Mr. Floyd addressed Chairman Merhar and stated if he understands the question correctly he would like him to restate the amendments to the current CUP and Chairman Merhar stated that was correct. Chairman Merhar stated he should state how he is going to propose to amend the Kirtland Country Club's conditional use for the sheet shooting.

Mr. Floyd stated that the only amendments to the original would be there will no sheet shooting on Easter Sunday or Christmas Sunday and the sheet shooting platform will be pointed in the easterly direction. A good faith and reasonable effort will be made to complete engineering studies and construct a shooting pavilion with mounding and recess by November 1, 2018, if not earlier. Mr. Floyd stated that these are the changes to the original CUP. Chairman Merhar asked Mr. Floyd if he intends to take all the steps that were discussed earlier when we were leading up to this revision in the conditional use and Mr. Floyd responded absolutely. Chairman Merhar reiterated so you are building the pavilion and mounding dirt, building sound barriers around the back and Mr. Floyd responded absolutely. Chairman Merhar asked Mr. Floyd if he minded that all the things they just discussed will be stated in the conditional use. Mr. Floyd stated he wasn't sure if he minded because they are still experimenting with shooting in the easterly direction and they will experiment themselves to find out what is best and

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so if you put those details in use permit, then you are determining in writing what the KCC has to do. Chairman Merhar states the current CUP states that you will be firing in a southerly direction and Mr. Floyd stated that is correct. Chairman Merhar stated you are amending that and Mr. Floyd stated yes sir. Chairman Merhar asked and you are amending it to (?) and Mr. Floyd stated easterly direction. Chairman Merhar asked if there will be a better result if the KCC directs the sound to the northeast and Mr. Floyd stated there is. Mr. Floyd stated the KCC was not given the opportunity to perform in the north easterly direction except for tests. Mr. Floyd stated when they took those tests; there were major improvements as far as sound abatement. Chairman Merhar stated so per chance if we changed that from an east to a north east direction, whichever reduces the decibels by the greater amount, you would have no problem with that. Mr. Floyd stated that if the Planning Commission wants to define right now, on paper that north east is the best direction that is the commission's decision. Mr. Floyd went on to say the KCC would like to go on to find out with tests what actually exactly that is and therefore, I would prefer not to be defined as such. Chairman Merhar stated defined as to direction and Mr. Floyd stated he didn't mean to split hairs east or north east, they want to find the best direction. Chairman Merhar stated what he is proposing is that can the Planning Commission add to their CUP, that they can choose, either east or north east, one of those two, as the direction based on the greatest reduction in decibel levels and Mr. Floyd stated yes sir.

Chairman Merhar asked if the board had any questions. Mr. Fiala stated he had a couple things to add. Mr. Fiala stated he was still struggling with this and he was the one, who asked for computer modeling, but even given that, what assurance do we have that in a year from next spring or whenever you do this work that we are not going to have another 100, 50 or 80 people in this room still complaining. Mr. Fiala also stated that what he would like desperately to do is not to have their hands tied at that moment and pull the plug on this if it is not working. Mr. Floyd stated that this is a very good question but he cannot guarantee him that there will not be people here because, and this just doesn't pertain to this situation, but there are just some people in this world you cannot please. The crowd was very upset and Mr. Floyd stated he was not referring to this body and Mr. Fiala stated he understands. Mr. Floyd stated they have hired, and the Planning Commission has heard this professional sound expert stand before the Planning Commission that the KCC brought in from Florida and Atlanta. Mr. Floyd stated they will hire the best in the country to help the KCC design their facility. Mr. Fiala stated that their consultant did not really offer the commission much and except for the fact that he's done a lot of this stuff and the fact that he's worked for the Seals, Rangers and everybody else, but he did not comfort him in the fact that he did not have any hard evidence that he was going to do what you are recommending. Mr. Fiala stated that, in fact, he did not even present what you are recommending and he thinks a member of the KCC presented it. Mr. Fiala stated he still has a problem feeling comfortable that we're solving the problem and what we don't want is the KCC investing hundreds of thousands of dollars only to have this

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range pavilion not be successful. Mr. Floyd stated Mr. Fiala I think his experience speaks for itself; he has addressed these issues internationally, successfully. Mr. Floyd stated that this is the best they can do is bring the best in the business to this site and that is what the KCC is willing to invest in. Mr. Kary addressed Mr. Floyd and stated correct me if I'm wrong but the sound engineer is a sound expert that deals with the military that helps prevent hearing loss to the military shooting guns and that is not the situation we are dealing with here and this is totally different; so his expertise is not in this area. Mr. Floyd stated he begs to differ. Mr. Floyd stated that his expertise is in sound abatement, period, Mr. Kary to prevent hearing loss, Mr. Floyd well to abate sound. Mr. Kary stated those are his terms; he used those terms. Mr. Floyd stated whatever the reason, his profession is noise and sound abatement, whether it's military or anything else and he's been extremely successful in the business and we think he's the best.

Mr. Patt stated at the last meeting when they asked were there other locations that were similar to this that he did work and the answer was you had none. Mr. Patt asked if he has provided the KCC with anymore since then. Mr. Patt stated when he was here to talk to the Planning Commission his comments were the first step was to develop a criteria, allow orientation to change the direction and provide design solution for construction of a range facility, so that the audibility of the gunfire is significantly reduced. Mr. Patt asked how far has it gone with him in that regard. Mr. Floyd addressed Mr. Patt and stated that Mr. Patt asked Mr. Floyd to forward to him his contact information, his website and he thinks if you or anybody else refers to his website he thinks you'll be very impressed by his success and his projects. Mr. Floyd stated that he thinks it will overwhelm you with the projects that he has performed on and in a successful manner and he would be very willing to provide all that information. Mr. Patt stated he did comb his website pretty well and did other research on it as well and could not find evidence of a similar situation and it wasn't thorough in terms of what he did. Mr. Floyd stated if he was not mistaken he offered, that evening, to provide background resources as much as you can accept. Mr. Patt stated he has offered to provide it but he has not yet and Mr. Floyd stated he doesn't think it was formally requested. Mr. Fiala stated the reason, at least myself, why I'm so personally concerned with really defining this very tightly and having a very clear understanding is because one of the unfortunate consequences of conditional use is you don't know until after you've granted it if what you've just granted works and we are finding this out. We thought as a Planning Commission we'd done our due diligence investigating the noise and weren't some of in Kirtland testing the noise and we thought we did everything to investigate both the consequences to both the City of Willoughby residents as well as the Kirtland residents and they find out now that this is not the case. Mr. Fiala goes on to say they are kind of handcuffed now because, at least by your opinion Stephen (Stephen Byron, Special Counsel), we don't have the authority to revoke this and Mr. Byron stated right and given that I'd like something to put my arms around to say that we're going to make these folks as happy as we can make them.

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Mr. Fiala stated he hasn't heard anything that you've said in terms of what you're going to do to mitigate sound that gives me that comfort. Mr. Floyd stated well sir just the direction in itself, we've discussed that the limits on the borders of the KCC are 95 decibels and I'm not a professionalist but I have a fairly good facility with these numbers. Mr. Floyd stated that the highest decibel level in Kirtland Hills was below 70 and we have learned through tests last year that if we just turn the direction we will decrease that by 50%.

Mr. Floyd states that every 10 decibels that you decrease, cuts the sound by 50% and ambient is pretty close to 50 decibels and we're going to be very close to that. Mr. Patt stated that he concurs with Bob's opinion that last time he asked about computer modeling you associate said there would be and I just don't feel comfortable yet that there's a complete proposal with some numbers and some facts behind it yet. Mr. Patt stated he appreciates that we talked about changing the direction and I did ask for a bearing of what direction you were going to change this so we could get a more exact number. Mr. Patt feels a response to the people of Kirtland, it wasn't our intent to say point it toward Kirtland. The reason we said that is because we weren't familiar with the direction of east, north, south and west and the way it was proposed toward Kirtland ok we knew that then but it wasn't to direct it away from Willoughby and toward Kirtland that was just the way it was recorded in the minutes. Mr. Patt stated so we talked about changing the direction and that was 10-15% and this is from the last meeting and lower the shooting field 6-8 feet and that was another 10-15% and structure with sound absorption on three sides, another 15-20%, add mounds around the perimeter that would in essence bring the floor of the range to 20 feet below the top of the mounds and a pavilion roof that you talked about and these are the five items we talked about. This brings that to a 45-70% reduction potentially but those are the numbers that your associate provided. Mr. Patt stated he would really feel better with some modeling by this expert and some references to some similar locations or similar situations, not a military range. Mr. Patt stated you had mentioned that there was a country club in Shaker Heights that has a shooting range. Mr. Floyd stated it was Pepper Pike. Mr. Patt stated that he is really anxious for more information and he doesn't feel fair in deciding in your favor or against either way I need more information and right now you're the one that has the experts at their command. Mr. Patt stated we're not engineers and he thinks they need more information.

Chairman Merhar stated that is they were to approve this that we will be putting a lot of faith in you and the people that you hire that you are going to try to be the best neighbors you can be and reduce the sound by most that you can reduce it. We do not have the ability, according to our Special Counsel as well as our law department to revoke the permit but if the situation stays, as difficult as it is, for the surrounding people I'm sure the city will take every move it can to shut the shooting down. So we are

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placing in your hands the future of shooting at Kirtland Country Club by the steps that you take to improve the sound situation for the shooting. Chairman Merhar asked Mr. Floyd if this is alright and Mr. Floyd states yes sir. Chairman Merhar asked Mr. Floyd so you have no problem with the north and north east idea to the least decibels in one of those two directions or somewhere in between. Mr. Floyd states no sir.

Mr. Cox stated to Mr. Chairman that he has a question. Since the Planning Commission has no authority to enforce any of the conditions of the CUP, is this correct and the Chairman stated this is correct and that would be Darryl's job (Darryl Keller). Mr. Cox stated if the noise becomes excessive can they call the police, can a resident call the police and that would be an obvious thing for a resident to do. Chairman Merhar asked call the police for what and Mr. Cox stated call the police for the noise, a public nuisance sort of thing. Chairman Merhar stated that's what they have been doing. Chairman Merhar stated the police have taken many reports from people calling in. Mr. Cox asked where do those reports go and Chairman Merhar responded on record. Chairman Merhar stated we don't have a sound ordinance that they can enforce. Mr. Fiala stated just a nuisance ordinance. Chairman Merhar stated he didn't know what he capabilities are within the city of enforcing what we are talking about tonight, but we have to take a lot of faith and the reason we have to take a lot of faith is because if we don't pass it tonight they are back to shooting to the south and with no barriers and that is obviously going to upset people every place and I don't know what direction to go from there other than if people complain sufficiently to the police and there's a nuisance I don't even know where that goes. He explains that is out of Darryl's hands and that's into the police and the court. Mr. Cox stated he was looking at the attorney's comments and the thing is since the Planning Commission has no authority, then the authority rests with the Building and Zoning Commissioner. Chairman Merhar states but only to enforce the building code and their conditional use, only what we put in there for the conditions. Mr. Cox stated but we do have a public nuisance ordinance I assume right and Chairman Merhar stated right and I believe is enforceable by the police and I can't imagine Darryl would do nuisances. Mr. Cox stated that if someone was shooting guns off in his neighborhood he would call the police. Chairman Merhar stated that if things are not satisfactory at the end that the city will take whatever steps through the police department or through the City Council. Mr. Cox asked at the end of what, at the end of another year and Chairman Merhar stated we cannot review in another year because that is not a condition that is being requested in the amendment so it's not a review situation it will be more of a police situation with disturbing the peace. Mr. Cox wanted to know what the solution to all of this is and Chairman Merhar stated that at this point in time the Planning Commission is out of it. Chairman Merhar states that after it's approved the condition is permitted and they have gone to the efforts of revising their conditions in order to alleviate some of the complaints and we're out of it; we're not an enforcement body.

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Mr. Patt stated he had a legal question and asked Special Counsel Byron. He asked since Mr. Wiles has issued an opinion both ways, you have given us your opinion, is the decision ours and Mr. Bryon asked which decision. Mr. Patt stated if we choose to consider the original CUP and we consider Option 6 and we believe that to be true and we make a decision in that case and we say we are revoking the permit. Mr. Patt asked Mr. Byron if in his opinion this is the commission's decision. Mr. Byron responds by stating the commission can do what it will, the legal effect of it is what is what you're asking about, what will happen as a consequence of that. Mr. Bryon stated that, in his opinion, because the board doesn't have jurisdiction over the matter the board would not successfully revoke that permit. Mr. Bryon believes it would go to court. Mr. Bryon stated that one of the things that you are struggling with is who has the enforcement rights, who can protect the property rights of other individuals and that is what the courts are for. He stated that this board's job is to consider the applications that come in front of you and apply your zoning code to those applications. You are limited in what you can do pursuant to that law and if there are other issues that are out there, if there are considerations that weren't presented by the code they should consult with their legal counsel. Mr. Bryon goes onto say if their property rights are being violated, you don't have jurisdiction to just go out and fix every property rights violation. He stated that I'm not saying that that is what's happening but that would be their remedy is to pursue their own legal action. Mr. Patt asked Mr. Bryon if we were to make this decision as I proposed who would seek legal remedy. Mr. Bryon responded if you tried to enforce it would be the property owner, Kirtland Country Club (KCC). Mr. Patt wanted to address what Mr. Todd Davidson proposed and does our code indeed require an EAS (Environmental Assessment Statement) evaluation. Mr. Keller responded I don't believe it does. It requires an EAS evaluation if there's an application for a grade permit and there was no application for a grade permit, which typically goes along with a Development Plan. Mr. Patt stated there was a change of grade when they dug out and added the mounds in the back. Mr. Fiala stated that there should be a grading permit for this work though and Mr. Keller stated they should submit site plans and they would go through a Development Plan. Mr. Fiala asked Mr. Bryon for clarification that the Planning Commission does not have the power to revoke this permit, in his opinion and Mr. Bryon stated this is correct. Mr. Fiala asked, also in your opinion when there are issues related to nuisance or nuisance in general, for the City of Willoughby, do those cease at the city line or can we consider or can we consider from nuisances from adjacent cities such as Kirtland for example. Mr. Byron stated that if you started from square one and you were initially considering this you would certainly be able to consider the impact on any neighboring property. Mr. Kary had a question in regard to number 7 on the original CUP. He reads from the proposed document: A berm will be installed around the perimeter on the north side that will direct noise south toward Kirtland and away from the Tudor Estates. Mr. Kary asked if there was a berm installed and Mr. Patt answered yes. Mr. Kary stated that if there was a berm installed wasn't there grading. Mr. Keller stated soil was moved. Mr. Kary

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stated that's grading. Mr. Bryon stated he was not asked to look at that is not conversant in all of your code. Mr. Patt wanted to ask Mr. Bryon one more question about his opinion. Mr. Patt stated that one item was about duration, the one page you addressed topic of duration, so was our mistake such that we could've had the opportunity at that time last year to say this permit is for one year and Mr. Bryon stated I think you could do that. Mr. Bryon stated and at that point the property owner could have made the determination whether the capital investment is worth the risk involved.

Mr. Patt addresses Chairman Merhar and stated he feels we do not have enough information from Mr. Floyd's experts and I feel we've raised some issues of whether the grading was qualifying as an EAS assessment and I again move that we table this for more information.

Mr. Fiala asked Mr. Patt are we looking to see if there is a failure to file an EAS and Mr. Patt stated that he is looking for more information from Mr. Floyd's expert, references, looking for a more detailed analysis from the expert. We received information from Mr. Floyd's associate. He stated he would like to see some sort of executive summary with support from the sound expert in those five areas we were talking about if that's their proposal, more detail in that respect. He stated we are going to be making a decision tonight with insufficient information.

Mr. Cox stated he didn't know what decision we'd be making anyway because it appears to me as all we are doing is listening and we don't have the authority to make any decisions. Mr. Patt stated we have the authority to make and accept these three additional conditions. Chairman Merhar stated all we can do is table it and they are back to doing things as they did last season.

Mr. Bryon stated he just heard a fact for our zoning official and there's a timing issue that occurred. Your CUP requires the review of Council's action and you didn't require the berm until after you did your action, so there wasn't going to be grading until you required the berm. They (KCC) couldn't have done an EAS before you mandated that because they weren't doing the grading as I understand it. Mr. Patt stated he did not understand. Mr. Bryon you took your action on the CUP before they were going to be grading so there would not be an EAS required. Chairman Merhar stated in other words not having the EAS does not void the CUP because the EAS would have been required after the conditional use was issued, if indeed it needed to be.

Mr. Patt states in his option they still have an option of disregarding your opinion and abide by the terms of the original CUP with which condition 6 says we have the ability to review it, and it was our intention, every single member of this board, that the review was the possibly of revoking it and in fact we presented that to Mr. Floyd at the time. We said to are you willing to take the risk of in a year and

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Chuck's words were let's do it for a year and see what kind of response we get or what complaints we get. Mr. Patt stated this is what we said and that was our intent. Chairman Merhar asked Mr. Patt if he was making a motion and Mr. Patt stated yes.

Chairman Merhar asked Mr. Patt what motion he was making and Mr. Patt stated on the original Conditional Use Permit to look at condition 6 and believe upon review of condition 6 as put in the original one the club's skeet shooting shall be reviewed at the end of the first season and our intent was to consider whether to continue it or not. Chairman Merhar asked are you asking to revoke it then and Mr. Patt stated yes. Mr. Bryon recommended that if they are going to do this that they provide notice and an opportunity to be heard on that issue because you haven't done that for tonight, so it's out of order if there's going to be that sort of motion considered you need to follow due process with respect to that motion. Chairman Merhar asked what would the due process steps be and Mr. Bryon stated you'd put in on an agenda that you'd consider revocation and then give notice and an opportunity to be heard on that. Mr. Cox asked if they can table it and Mr. Byron stated they can table. Mr. Cox stated to Mr. Patt that maybe he wanted to make a motion to table this and Mr. Patt stated he brought that up first.

Mr. Patt moves that we table the KCC CUP Amendment Permit until the commission receives additional information as originally stated. Mr. Patt stated to make this more clear he is looking for a more official engineering report from the sound expert talking about the five conditions you are proposing to change; the direction, lowering the shooting field, a structure with sound absorption on three sides, adding mounds, bringing the total field down to 20 feet and adding a pavilion and roof with sound reduction. Mr. Cox seconded.

ROLL CALL: Yeas: Mr. Fiala; Mr. Cox; Mr. Patt; Mr. Kary; Chairman Merhar
 Nays: None

Motion Carried: TABLED

NEW BUSINESS

Janice Lipscomb
(Community Development Manager)

ZONING CODE BOOK CHANGES

Mrs. Lipscomb stated she would like to schedule a Work Session on September 8th at 6:00pm to update the zoning code. Dave Hartt and Chris Hopkins will be here to start the process and go over what we

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have discussed so far with them and that will be the first part of it. On September 22nd at 6:00pm the school board, school administrators and their architects would like to come and talk about the new project that they are proposing for the YMCA, the senior center and the new high school. These meetings will be joint meetings with the members of City Council.

Chairman Merhar asked for a motion to approve these Work Sessions.

Mr. Kary made a motion to approve the Work Session for September 8th at 6:00pm for zoning code updates and Mr. Patt seconded.

ROLL CALL: Yeas: Mr. Cox; Mr. Patt; Mr. Kary; Mr. Fiala; Chairman Merhar
 Nays: None

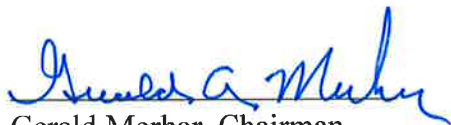
Motion Carried: APPROVED

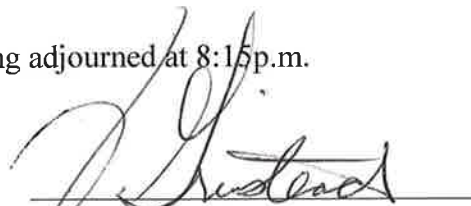
Mr. Patt made a motion to approve the Work Session for September 22nd at 6:00pm for the new school project. Mr. Cox seconded.

ROLL CALL: Yeas: Mr. Patt; Mr. Kary; Mr. Fiala; Mr. Cox; Chairman Merhar
 Nays: None

Motion Carried: APPROVED

There being no further business the regular meeting adjourned at 8:15p.m.


Gerald Merhar, Chairman


Vicki Grinstead, Secretary