

**PLANNING COMMISSION
CITY OF WILLOUGHBY
JULY 13, 2017
REGULAR MEETING
MINUTES**

PRESENT: R. Fiala; C. Cox; Wade Mitchell; K. Kary; G. Merhar, Chairman
ABSENT: None
OTHERS: Mike Germano, Asst. Law Director; Darryl Keller, Chief Bldg. & Zoning Official;
Jim Sayles, City Engineer; Vicki Grinstead, Secretary

Chairman Merhar called the regular meeting to order at 7:05 p.m.

MINUTES

Regular Meeting Minutes

June 22, 2017

Mr. Mitchell moved to approve the Regular Meeting Minutes of June 22, 2017 as submitted and Mr. Kary seconded.

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

Motion Carried: APPROVED

Mr. Kary moved to untable Old Business and Mr. Fiala seconded.

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

Motion Carried: UNTABLED

OLD BUSINESS

Willoughby-Eastlake Bd. of Education (Ohio Living)
37047 Ridge Road
(Rep.- John Wiles)

**Lot Split/
PPN#27-A-007-000-005-0**

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Mr. Mitchell moved to table the Willoughby-Eastlake Board of Education's application per the applicants request and Mr. Kary seconded.

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

Motion Carried: TABLED

Kirtland Tudor Estates
Tudor Drive
(Rep.-Chuck Scuzs, Polaris Engineering & Surveying)
Lee Chilcote, Chilcote Law Firm LLP

**Development Plan/EAS
Phase III-Units 1-6/Plat**

Chuck Scuzs, Polaris Engineering, 34600 Chardon Rd., Willoughby Hills, Oh is representing Kirtland Tudor Estates (KTE). He is here with Kevin Callahan and Lee Chilcote, Esq., Chilcote Lawn Firm LLP 12434 Cedar Road, Suite 3, Cleveland Heights, Ohio 44106.

Mr. Scuzs thanked the staff for all of their help with this project. They reworked the 6 units on the east side of the site (shows Board on rendering). Originally they came in with three duplexes. They went to the Board of Zoning Appeals (BZA) and obtained a few setback variances, but came to realize the duplexes required too many variances, so they have made them all single units. He presented the Board with a rendering of what the homes will look like, but the materials may vary slightly from what was shown. Chairman Merhar asked if this will this be an association within an association. Mr. Scuzs replied no it will be Mark Franz, who is the developer. The record plat has Mr. Franz's name as well as Kirtland Tudors and they will be the developers and will be in charge of the infrastructure. The lots will be sold like a fee simple plat to individuals but they will be part of an association. Chairman Merhar asked who will be maintaining the roads. Mr. Lee Chilcote of Cleveland Hts., Oh is legal counsel for KTE. Mr. Chilcote explained the way they structured the project is the lots will be sold but the responsibility for maintenance of the roadways, the utilities and all of the care and maintenance of the project will be handled by KTE Tudor; the existing condominium association. We won't be formerly a part of that association but by virtue of easements and covenants, they will be responsible for all of that. We have tied ourselves as closely as we can to the association. Chairman Merhar asked if it would be a secondary association operating within the main association. Mr. Chilcote responded, actually they are single family homes and they will be serviced by the condominium association and will include the roadways, utilities, snowplowing, and lawn care which will all be serviced by the association. The homeowners will pay a fee to the association.

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Mr. Fiala stated in regard to the covenants and restrictions for the association; the city had this issue before where we had a staggered development and had flooding due to a failure of a stormwater system. Is it clear in those covenants the “homeowners”, whatever that means; it is their responsibility to maintain their stormwater management systems. Mr. Chilcote stated KTE Tudor, as the master developer, will maintain that system. The engineering drawings, as I understand, have already been submitted, and the sizing of the utilities has all been cleared with Jim Sayles. Mr. Fiala stated he is fine with all that but what he is referring to is if in five years from now a head wall collapses we would not want to see a dispute between a subset and have everyone show up here and blame the city because the covenants and restrictions weren’t well crafted. Mr. Chilcote responded, hopefully they are well crafted since I wrote them. I know what is in them and there is clear responsibility by KTE Tudor to cause the association to do all of the replacement, repair, maintenance, and well functioning of all utilities. He would be happy to share this with the Board if they would like to see it. Mr. Fiala asked Mr. Germano if they need a copy of it or will the minutes stand as record and Mr. Germano stated the minutes will stand as long as he’s putting them in on the record indicating the way they are drafted and we can look them over (nothing was handed in for the record). Mr. Fiala stated at the end of the day because it’s phased and because there are subsets or continuations of homeowner groups we just want to be assured that if there’s a dispute of the homeownership group, it does not end up at city hall and Mr. Chilcote agreed. Mr. Fiala asked if there was an architectural review board and did the homeowners review the design etc. for this development. Mr. Chilcote stated no, this would be a zero lot line single home construction. Mark Franz of KTE Tudor has approval rights over every aspect of the development. When we go to propose a home, in addition to complying with city requirements, we have to meet his approval. Also Kirtland Country Club will be reviewing the design and plans because it was originally their property. I do believe we have adequate review and approval processes built in. Mr. Fiala stated the point he was trying to make was sometimes the homeowners association restrictions could be more than the city. Mr. Fiala cited an example where a homeowner got a permit, built something and the homeowners association came after them and the city became involved. Mr. Chilcote stated the homeowner restrictions were set up in the original master association for this entire property. We are reflecting the same restrictions for these homes that are applicable to the condominiums and the villages. They are exactly the same and are a public record and were recorded at the time the city approved the master declaration. Mr. Fiala stated they are not enforceable by the City of Willoughby and Mr. Chilcote stated that would be true; they would be enforceable by KTE Tudor. Mr. Mitchell wanted clarification on the original master plan. He asked when the homes were constructed were those people aware of the restrictions or rights of the developer to make these changes and was it of record. Mr. Chilcote stated the entire plan development is of record. There is master plan of record and every condominium owner or owner in the villages is aware of the entire master plan. The only thing that is different about this from what was done in the past is that this is not a condominium project and these are not condominium units; these are single family, zero lot line homes. There are controls in place for approval for the architecture and the look of the homes etc. This project has already been approved by Mark Franz and he is very supportive of this project. Mr. Mitchell stated that since they have acquired setback variances on the rear lot line, he

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would like them to go on record and state that if someone develops the property behind this development, however unlikely it may be, then you would not object to them acquiring similar variances on rear setbacks. Mr. Mitchell pointed out which property he was referring to on the large screen behind the wall, which is the adjoining property owned by CEI. Mr. Chilcote stated they do not have any objections to this or any involvement with that property and would be supportive of similar variances. Mr. Cox wanted more clarification on the homeowners' association rules and will the homeowner association be voting on issues. Mr. Chilcote stated yes, the condominium association when the development was created, did create this opportunity for additional homes in this location and it was always contemplated that the association would have responsibility for enforcing the covenants that they themselves have imposed upon themselves. This could have been done at that time but due to a slow economy it was not, so there has been a long hiatus. What they have tried to do is make these six homes be as compatible and consistent in terms of enforcement of covenants and restrictions as the condominium units themselves. It has been a successful project and is well funded and has reserves and they will enforce the covenants. They have lien rights to enforce these covenants against these homeowners if they don't comply with covenants and restrictions. Chairman Merhar asked if there was an association in existence beyond KTE and Mr. Chilcote replied no. These homeowners will always work with the association. KTE is the sponsor of the association. Chairman Merhar asked if KTE is also the association and Mr. Chilcote replied no. It is called the KTE Tudor Condominium Association and it has reserves. Every unit owner of the fourteen units that are in a condominium pay into that and is governed by Ohio Law. It is a very successful operation and that is why they turned to it to be their sponsor. The homeowners would be subject to the same requirements as those unit owners and this is helpful to everyone including the city. Mr. Cox asked if the members of the association are homeowners in the development and Mr. Chilcote replied yes, the condominium unit owners are members of their association and our homeowners will be part of that condominium association. Mr. Cox asked if the six homeowners and the fourteen condo owners have equal rights and Mr. Chilcote replied yes. Mr. Kary asked if there is a Board and Mr. Chilcote stated there is a Board of Directors that runs the condominium association and they will take on the added responsibility to run the six housing units. KTE Tudor and Mark Franz were the original owner and developer of this entire project. He turned over the responsibility to the condominium association a number of years ago. They have run the condominium association since 2008. Mr. Kary asked if the property for the single family homes and the condominiums all common ground and Mr. Chilcote replied yes. Mr. Kary stated so a homeowner cannot put up and fence and Mr. Chilcote stated no they cannot. The six homeowners cannot be an officer on the condominium association board. The Villages has its own association which does not include the condominiums. There is a condominium association which covers the east end of the property which will include these six new single family homes. Mr. Kary expressed concerns that the single family homes, with a zero lot line, will have the condominium owners telling them what they can and cannot do. Mr. Chilcote stated the rules are a public record. There are no limits on the unit owners except as to architectural approval, which has three levels; the city, the Kirtland Country Club and the condominium

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association. Mr. Cox asked if someone has a flood who can they come to for assistance and Mr. Chilcote replied the association. Mr. Chilcote stated when the homeowners accept their deeds to their property they will be fully informed of everything. They will pay a monthly fee for services just as the condominium owners do. Mr. Kary asked if the homeowners' fees will be less because the condos fees include replacement of siding, windows etc. and Mr. Chilcote stated that is correct. Chairman Merhar asked Mr. Germano if foresees any issues ending up in the courts. Mr. Germano said no it is between them. It is a closed community and as far as the city is concerned it is their "internal government".

Mr. Fiala moved to approve the Development Plan/EAS/Plat for Kirtland Tudor Estates, Phase III/Units 1-6 as submitted and Mr. Cox seconded.

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

Motion Carried: APPROVED

NEW BUSINESS

**Craggy Bogland's
4857 Robinhood Dr.
(Daniel Budreo, Owner)**

**Conditional Use Permit/
Tavern w/Food Service**

Mr. Daniel Budreo, Owner is representing his application. Chairman Merhar explained that a Conditional Use permit sets the perimeters under which a business will operate and cited a few examples. Mr. Budreo stated his hours of operation will be 6:00 a.m. until 3:00 a.m., 7 days a week. Chairman Merhar asked if he will sell breakfast and Mr. Budreo stated no, but St. Patrick's Day and being an Irish pub they will be open early. Mr. Budreo has a D6 liquor license with no restrictions and can begin serving alcohol at 6:00 a.m. Chairman Merhar asked what type of entertainment they will have. Mr. Budreo stated occasionally they will have live bands and other than that nothing because it is small. Chairman Merhar asked if he has external speakers and he stated no. Chairman Merhar stated you do understand if you do have live music the doors must remain shut because you are in proximity to Breckenridge and Mr. Budreo understood. Chairman Merhar asked how often he would anticipate having live music and Mr. Budreo replied maybe once or twice a month, but during the month of March maybe more because of the holiday. He usually would have live music on Fridays and Saturdays with the exception for the month of March from the 1st through the 17th. They will typically have something every day such as bagpipers etc. along with food and drink specials. Chairman Merhar asked if he would be ok with live music being Fridays and Saturdays and Mr. Budreo stated he would like to add Thursday as well. Chairman Merhar asked what his time frame for this music would be and Mr. Budreo stated they would start setting up between 7:00-7:30 p.m. and run until

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midnight. Chairman Merhar stated this will fall within our new city guidelines if approved. Mr. Fiala stated it appears that the back of your building is all service so you won't have a patio back there. Mr. Budreo stated there is not one now but what he is contemplating, for the future, is to add a pergola for his smoking clients, so he can move them from the front of the building away from the public purview. Chairman Merhar told Mr. Budreo he would have to come back before the Board when he is ready to finalize those plans. He asked if Mr. Budreo was doing anything outside the four walls including service of alcohol and he stated no. Chairman Merhar asked where his garbage is stored before it is picked up and Mr. Budreo stated in a dumpster behind the building in the enclosed alleyway which currently has a fence away from the public view (shows photo of the alleyway to the Board members).

Chairman Merhar asked Mrs. Grinstead to read back the conditions so the Board can understand what they are approving: No external speakers are allowed; Doors are to remain closed during live music; Live music allowed Thursday through Saturday from 7:00 p.m. until midnight including the entire month of March each year. Hours of operation: 6:00 a.m. until 3:00 a.m. 7 days a week. The dumpster will be kept in the enclosed alleyway. The Board agreed this sounded correct.

Mr. Mitchell moved to grant a Conditional Use Permit to Craggy Boglands with the above conditions specified and Mr. Kary seconded.

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

Motion Carried: APPROVED

**First Family Limited Partnership (Alpha Imaging)
4455 Glenbrook Rd.
(Rep.-Joe Myers, Myers Architects)**

**Development Plan/EAS/
Addition to existing bldg.**

Mr. Joe Myers of Myers Architects, 38030 Second St., Willoughby, OH is representing Alpha Imaging. Alpha Imaging sells CAT scan machines and x-ray equipment. They are looking to put an addition on the back of the building so they can add some additional labs that they can use for training people on the equipment they sell. Most of what you see in the parking lot has already been there and is pretty well landscaped both around the front of the building and as well as the islands in the parking lot and screening around the dock area. There will be additional parking added to the back of the parking lot. In this development it was set up originally to handle stormwater retention for the whole development so it is not required individually within this lot. The addition itself will consist of brick and windows to match the existing building. Mr. Fiala stated the EAS was approved at the last Council meeting. Chairman Merhar asked Mr. Keller if parking was adequate and he said yes. Chairman Merhar asked Mr. Sayles if run off was fine. Mr. Sayles stated yes, as Joe mentioned when Mr. Paris brought this development into the city he paid for most of the cost for building the meadowlands retention basin with the idea he could sell these lots

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and they could be developed without doing individual retention basins.

Mr. Fiala moved to approve the Development Plan/EAS for the addition to the existing building for First Family Limited Partnership (Alpha Imaging) and Mr. Kary seconded.

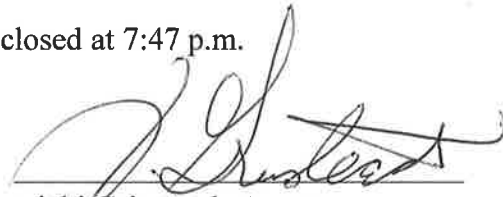
ROLL CALL: Yeas: Mr. Mitchell; Mr. Kary; Mr. Fiala; Mr. Cox; Chairman Merhar
 Absent: None
 Nays: None

Motion Carried: APPROVED

There being no further business the regular meeting closed at 7:47 p.m.



Gerald Merhar, Chairman



Vicki Grinstead, Secretary