

CITY OF KIRTLAND  
PLANNING AND ZONING COMMISSION  
SPECIAL MEETING

MINUTES OF THE MEETING  
MAY 20, 2020

The meeting was called to order by Chairman Michael Denk at 7:13 p.m. Due to the current state of emergency regarding COVID-19, the meeting was held virtually via Zoom. Present were Commission members Richard Blum, Michael Denk, Joseph Loconti and Joseph Vinciguerra. Richard DeMarco was absent.

Also present were Mayor Kevin Potter, Law Director Matthew Lallo, City Engineer Douglas Courtney, Zoning Inspector Wayne Baumgart, Council President Richard Lowery and Councilman Joseph Smolic.

PUBLIC SESSION:

PUBLIC REQUESTS

Andrew Loncar, Loncar Quality Construction – Application for Conditional Use Permit for Streambank Stabilization at 9199 Chillicothe Road

Andrew Loncar of Loncar Quality Construction was present in this regard, along with Thomas Christopher, the property owner. Also present was Mr. Christopher's attorney, Paul Mooney. Chairman Denk noted that the application indicates the conditional use permit requested is for "slope stabilization in a riparian setback and shifting of stream to prevent any more damage on property." Mr. Denk noted that documents included with the application are a site plan, aerial photos from 1994 and 2018, correspondence from SCP Engineering, photos of damage and a photo of the concrete blocks to be used. Mr. Denk noted that the Commission was made aware of a supplemental report that was submitted to the Mayor and Law Director on May 18. Mr. Denk noted that the Commission received photographs today from Mr. Loncar.

Chairman Denk noted that the Commission also received three e-mails from neighboring residents, two of which relate to the event center itself and do not relate to the current application before the Commission. Mr. Denk read into the record the third e-mail from neighboring property owner Ken Mitchell stating that he and his wife are in agreement with the proposal for streambank stabilization and they support his project.

Mr. Christopher stated he had a document prepared and sent to Law Director Lallo on May 18; he wanted to make sure that the Commission members have received it. He said it includes his engineer's statement of the work to be done and a site map indicating where the proposed work will be completed and the location of the proposed slope stabilization wall. Mr. Vinciguerra noted that it was forwarded to the Commission from Mr. Lallo approximately 10 minutes ago. Answering Mr. Denk, Mr. Courtney stated he has reviewed the document. He stated the document is not signed by anyone and is not stamped by an engineer; the plan is a copy of their site plan with some hand-drawn items and is not qualified or certified by a professional engineer.

Mr. Christopher stated they have had multiple professionals, including structural engineers from Connecticut, soil engineers from Ohio, a structural engineer from Akron, Ohio; he noted they can provide names and signatures of everyone who contributed to this recommended remediation plan. Mr. Christopher stated they were not aware they needed engineered plans, since they were not required for the similar project done last year at the Kirtland Creamery.

Answering Mr. Denk, Mr. Courtney stated that he could generate a comment letter based on what has been submitted, but he would not recommend approval at this point. Mr. Christopher questioned what the City “has to have” vs. what is “nice to have”.

Mr. Loconti stated that from a building code perspective, he cannot review or accept any application for commercial work unless it is stamped by an engineer. He noted it reverts the liability to the engineer and away from the city.

Chairman Denk referred to Section 1294.06 and inquired about the streambank stabilization erosion control plan mentioned in this section. Mr. Courtney stated that when he looks at a code requirement for a streambank stabilization/erosion control plan, he expects plans to be submitted rather than written documents explaining what will be done. He stated a section view through the slope is needed, and in this particular case, an access plan to get to the bottom of the slope is needed, along with materials to be used and how they will be installed. He stated erosion and sediment control measures must be considered in accordance with other City ordinances. He noted that after his last conversation with Mr. Loncar, he was under the impression the applicant was in discussion with Polaris Engineering to provide that plan, but he had not heard anything until yesterday when he received the documents dated May 18. He stated that he did not have sufficient time to review the documents, and the submittal is insufficient.

Responding to Mayor Potter, Mr. Courtney stated plans and section views are needed, similar to the two recent submittals for riparian streambank stabilizations that were approved by the Commission. The plans have to be stamped by a registered professional engineer in the State of Ohio and need to include the elements he outlined earlier.

Mr. Christopher inquired about the professional standard that dictates those items, noting that they were not required for the slope remediation at the Kirtland Creamery. Mr. Loconti stated that the requirement for an engineer’s stamp on these plans can be found in the Administrative Code of the Ohio Building Code 2017, which requires a wet stamp or digital stamp on all plans submitted for approval.

Noting that the application submitted requests a conditional use permit for slope stabilization in a riparian setback and shifting of the stream, Mr. Vinciguerra inquired if the application has changed. Mr. Christopher stated he is trying to get a compromise tonight, noting that he would like to put up the concrete wall to stabilize the slope; he will address the stream movement with the Corps of Engineers.

Discussion continued with regard to documents required for the application for streambank stabilization.

Chairman Denk noted that the Commission would be in a position to approve the application for streambank stabilization, once a recommendation for approval is received from the City Engineer.

There was discussion regarding the possibility for the Commission to approve the conditional use permit contingent upon the City Engineer's review and approval. Mr. Christopher stated he would not be in favor of that contingency. Mr. Christopher stated he is asking for a standardization that aligns with Code requirements, noting that he is concerned about over-reach. He stated that if Mr. Courtney requests items that his engineer says are not necessary, he would ask the City Engineer to provide professional justification or documentation of why it is required.

There was discussion regarding standards for plans, including the stamp of a registered engineer.

Mr. Christopher expressed his frustration in not having been advised right away that his plans were determined to be deficient so he could have corrected it in time for the meeting.

Mr. Courtney stated that after the application was submitted, he had conversations with Mr. Loncar and was led to believe that a plan was to be submitted for review after the application was submitted; however, he received nothing until Tuesday. Mr. Courtney stated that the application was not sufficient for review, and he was expecting a set of plans with time to review them before the Planning and Zoning Commission meeting.

Answering Mr. Denk regarding a plan review, Mr. Courtney stated he can provide a response tomorrow regarding required items to be submitted.

Mr. Loconti inquired about reconvening another special meeting, allowing the applicant time to present the proper documents and time for City Engineer review. Mr. Lallo noted that there would not be a need for 10 days' notice, because the property owners have already received constructive notice. He stated that 24 hours' notice of the meeting would be required.

Mr. Blum noted that the Commission also needs to receive documents in sufficient time for the members to review them.

Discussion ensued regarding steps to be taken to move forward on this matter. Mr. Loncar stated that it would be helpful if the City Engineer would provide a punch list of items needed. Noting that he received two documents from Mr. Lallo that would be a gold standard for submission of plans, Mr. Christopher stated he will have his engineer provide the same documents, with the exception of a letter from the Corps of Engineers, because he has been advised that they are closed and they are backlogged. There was discussion regarding the risk of the applicant going into the stream and performing the work before receiving approval or clearance from the Corps of Engineers. In response to comments from Mr. Christopher regarding the City assuming the risk since municipalities have sovereign immunity, Mr. Lallo stated he would not recommend that the City assume any of that risk because it could result in significant litigation costs and he would not want to involve the City in potential litigation.

Responding to questions from Chairman Denk regarding resubmission or tabling of the application, Mr. Loncar requested that the application be tabled so they are not subject to the 10 days' notice requirement; he stated that he will work with the City Engineer to provide the documents needed. The Commission members confirmed that they will be available for another special meeting.

Mr. Loconti moved to table the application, with the second by Mr. Blum. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Loconti, Vinciguerra and Denk; Nays – None).

Mayor Potter stated his thanks to the Commission, noting that they did not hesitate to schedule a special meeting. The Mayor thanked Mr. Lallo and Mr. Courtney for their work in this matter and for protecting the City's interests. He thanked Mr. Christopher and Mr. Loncar for their efforts, noting this is a great project for the City and pointing out the great work that was done on the Kirtland Creamery. Mayor Potter stated his appreciation of Mr. Christopher's willingness to invest in this City, noting that he does not want the tabling of this matter to reflect poorly on the City's appreciation for what Mr. Christopher is trying to bring to the City. He encouraged all involved to work together on this, noting that in the future, the standard for what is needed will be known.

Chairman Denk thanked the Mayor for his input, along with all those present tonight. He stated that the Commission will be available for another special meeting as needed, noting that the Commission looks forward to moving forward in this regard.

#### Adjournment

There was no further business before the Commission, and Mr. Blum moved to adjourn. Mr. Vinciguerra provided the second, and the motion passed upon unanimous vote. The meeting adjourned at 8:38 p.m.

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CHAIRMAN

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SECRETARY