

CITY OF KIRTLAND
PLANNING AND ZONING COMMISSION

MINUTES OF THE MEETING
MARCH 13, 2023

The meeting was called to order by Chairman Denk at 7:05 p.m. Present were Commission members Richard Blum, Michael Denk, Daniel Laux and Joseph Vinciguerra. Richard DeMarco was absent.

Also present were Mayor Kevin Potter, Assistant Law Director Thomas Lobe, City Engineer Douglas Courtney, Zoning Inspector Rick Loconti and Councilman Joseph Smolic.

MINUTES OF THE FEBRUARY 13, 2023 WORK SESSION

Mr. Blum moved to approve the minutes as presented, with the second by Mr. Laux. Upon roll call vote, the motion passed 3-0-1 (Ayes – Blum, Laux and Denk; Nays – None; Abstaining - Vinciguerra).

MINUTES OF THE FEBRUARY 13, 2023 MEETING

Mr. Blum moved to approve the minutes as presented, with the second by Mr. Laux. Upon roll call vote, the motion passed 3-0-1 (Ayes – Blum, Laux and Denk; Nays – None; Abstaining - Vinciguerra).

PUBLIC SESSION:

PUBLIC HEARING

Proposed Amendments to Sections 1468.05 and 1468.06
Solar Energy and Geothermal Energy Systems

Chairman Denk opened the public hearing at 7:08 p.m. and advised that the Commission is contemplating amendments to Sections 1468.05 and 1468.06 after receiving input from the Law Department and a consultant, Aaron Godwin, who is an expert in the field and a Kirtland resident. Mr. Denk noted that, if approved, the Planning and Zoning Commission will make a recommendation to City Council to adopt the proposed amendments.

Mayor Potter noted that Mr. Godwin is in attendance and available to answer questions from the Commission. Mayor Potter commended Mr. Godwin for his time and expertise in this matter

Mr. Denk opened the meeting to public comment on the plan. There were no comments or questions from the public, and Chairman Denk closed the public hearing at 7:10 p.m.

PUBLIC REQUESTS

Brian Milliff – Proposed Accessory Building – 9703 Glenstone Drive

Brian Milliff was present in this regard. Referring to the plans submitted, Mr. Denk noted that the square footage of the building is 600 sq. ft. on the ground floor; with the second floor, the total area is 1200 square feet. Mr. Denk noted that due to the slope of the land, half of the building is underground.

Mr. Denk noted that the first floor is a garage, and the second floor shows lawn equipment storage and a storage/sculpting workspace. Answering Mr. Denk, Mr. Milliff confirmed there will be no living quarters in the building; he noted there will be no running water.

Mr. Milliff noted that there will be outside steps to the second floor, as shown on the plans. He noted there is some brickwork in the back of the property, and he will use that same type of design to go around the outside of the new building.

Mr. Denk inquired about the existing French drain shown on the drawing. Mr. Milliff noted that on the south side of the property there is a creek; he said that runoff water from the property goes toward that creek. He noted that the creek is not on his property. Mr. Milliff said that water from the French drain runs past the existing shed. Discussion ensued regarding drainage and water runoff. There was discussion regarding lighting.

There were no comments or questions from the public. Mr. Vinciguerra moved to approve the application for the accessory building at 9703 Glenstone Drive as submitted. Mr. Laux provided the second. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Laux, Vinciguerra and Denk; Nays – None).

Church of Jesus Christ of Latter-day Saints – Plan Modification at Joseph Smith Store

Sonia Jakse Barone of AECOM was present in this regard, along with Benjamin Pykles of the Church History Department of the Church of Jesus Christ of Latter-day Saints. Mr. Pykles said they continue to be concerned about visitors' safety regarding illegal crossing of Chillicothe Road between the Joseph Smith store on the east side and the Joseph Smith home that is being restored on the west side of the road. Mr. Pykles said they are also concerned with the safety of the structure of the store building. Mr. Pykles stated that the solution they are proposing reaches an appropriate balance between not creating an attraction for visitors to cross that street illegally from the home site to the store site, while keeping the structure preserved as an historic building, in anticipation of the time when the safety concerns can be resolved.

Mr. Pykles said they are proposing that the bones of the home be restored and preserved according to the original plan that was approved, but to clad the structure in corrugated metal painted green so that it blends into the background. He noted that when the time comes that they can restore the building, they will peel off the modern veneer, put the historic windows in their place, and have a fully restored historic structure. Mr. Pykles noted they are also eliminating the planned signage regarding the store so the public is not enticed to go see it. They will remove any mention of the store from their public tours, as well as provide a vegetative screen in front of the building.

Mr. Pykles confirmed that the building is currently down, and they are determining which pieces still have structural integrity; those that don't have structural integrity will be replaced with new material. He said right now only the foundation can be seen; the rest is under tarps, and it will be going back together as soon as the weather allows.

Ms. Jakse Barone said the plan is to retain the proposed security system and security lighting that was originally proposed and approved. She said there will be reinforced turf for access to the site. Mr. Blum noted that the split rail fence looks nice.

Mr. Loconti said that the building has been an eyesore from a zoning perspective for a long time; he stated concern about the proposed corrugated exterior. Understanding that the Church does not want to make it attractive, Mr. Loconti stated concern about it being unattractive, noting that temporary often becomes permanent. Mr. Loconti stated from his perspective, corrugated steel would not be a good look. Mr. Pykles said it will be the same material that is seen on utility sheds or barns; he said it will not be an eyesore. Ms. Jakse Barone said the color is not a bright green; it is a subtle green. She said the idea is to give it a barn-like storage building appearance so people are not attracted to it. Answering Mr. Loconti, Ms. Jakse Barone said they have a sample of the material, but they do not have it with them. She noted they could bring a sample to the Commission.

Chairman Denk opened the meeting to public comment on the matter.

Aaron Godwin of 10299 Longview Drive said that barn siding would be symbolic of board and batten. He said that corrugated metal is a different material and would tend to not look as good. Mr. Pykles said it would be a barn type of siding.

Mr. Loconti inquired if there is a timeframe for finishing the restoration of the store. Ms. Jakse Barone said there is not a set timeframe, noting that the Church will look into a possible future crosswalk near the Temple.

Thomas Buchter of 8735 Singlefoot Trail inquired if it is the site or the building that is critical to the Church's interpretation. Mr. Pykles said that the building on the original site is important. Mr. Buchter noted that the construction and placement of the building in the 1830's is very different than it is now. Mr. Pykles said they are trying to keep it as historically accurate as possible, noting that the store is setback farther than it was in the 1830's.

Answering Mr. Denk, Mr. Pykles said they looked into relocating the building, but it would be very difficult. He said the best thing for the building is to keep it standing in its original location.

Aaron Godwin of 10299 Longview Drive questioned the methods being used for restoration of the Joseph Smith home. As an important historic structure, he inquired why modern materials are being used. Mr. Pykles responded that every piece of original material that survived is in the home, including studs, beams, corner braces, joists, rafters. Responding to Mr. Godwin's question of why modern materials were used for the remainder, Mr. Pykles said they want the structure to stand for another 100 plus years. Mr. Pykles noted it needed to be properly insulated and weather-tight; he said the original fabric is there.

Mr. Blum commended the Church for the direction they are taking to protect the safety of the visitors. Mr. Pykles added they are also concerned about the safety of motorists.

Mayor Potter thanked the Church representatives, noting that for every step throughout the process, the Church has come before the Commission for its consideration and recommendations, and they have been open to all of the City's concerns.

Upon completion of discussion, Mr. Blum moved to approve the plan modification for the Joseph Smith store as submitted. Mr. Laux provided the second. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Laux, Vinciguerra and Denk; Nays – None).

TABLED REQUEST

Brandon Dynes, Esq. – Proposed Accessory Building for Thomas Schroeder at 8700 Singlefoot Trail
Mr. Vinciguerra moved to remove the matter from the table, with the second by Mr. Blum. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Laux, Vinciguerra and Denk; Nays – None).

Attorney Erik Walter of Dworken & Bernstein advised that Mr. Dynes has withdrawn, and his firm was recently retained in this regard. Mr. Walter said it is his understanding that the public hearing was held on October 10, and the matter was tabled. He said there were supposed to be some subsequent meetings between Mr. Dynes and Mr. Lallo, but for various reasons that never occurred. Mr. Walter said it is his understanding that the proposal fits within the code and that everything required from Mr. Courtney was addressed.

Chairman Denk noted that the reason the application is before the Commission is because the structure exceeds 1,000 square feet. Referring to the October 2022 meeting minutes, Mr. Denk said the Commission has some concern about the square footage and height of the building, as well as the existing structure on the property. Mr. Walter said there is no height issue per the code.

Mr. Walter said the building will not be used for commercial use; it is an accessory building that falls within the parameters of the Kirtland code. Referring to the manure issue, Mr. Walter said they are willing to do whatever is needed in that regard.

Mr. Denk stated that looking at the site and the size of the proposed building, it appears more like a commercial vehicle storage building as opposed to what would be expected for a horse stable. Mr. Walter stated there will be no commercial vehicles, other than potentially a horse trailer.

Mr. Denk noted that there is a horse stable currently on the site. He noted the proposed building is a bit larger than the 12' x 12' horse stall in the corner of the building.

Mr. Walter noted there is no requirement in the code that there must be a horse on the site before a stable can be built to house it. He noted that was addressed by Mr. Dynes.

Mr. Denk noted the Commission has some concerns about manure on site. Mr. Walter said that Mr. Dynes addressed that, noting they are willing to do whatever needs to be done on that issue. Mr. Walter said every one of those concerns was addressed in the October 10, 2022, Planning and Zoning Commission meeting minutes.

Mr. Denk said that the area and height of the building in this neighborhood is a concern; it is over 4,000 square feet. He noted there is no screening, and it creates an accessory building that will dwarf the other structures in the area. Mr. Walter assured that there is no nefarious intent. He said the intent of the building is to be a barn to house horses, noting that the trailer will be stored in there as well. Mr.

Walter noted that the ordinance does not allow certain vehicles to sit outside more than 72 hours. With regard to screening, Mr. Walter said they are willing to work with the Commission. Mr. Denk said the Commission needs to understand what the applicant is willing to do with regard to screening.

Mr. Denk inquired about the plan for the manure. Mr. Walter said it is his understanding it would be composted in the back, and they will put it wherever it needs to go. They will do whatever the Commission requests, but the original plan was to compost it far away from any other property owner so it would naturally decompose.

Mr. Denk said that the detail of the 6 inch concrete floor was noted, as it is not conducive to a horse stable. He noted there was concern about the break in the fence for the proposed driveway on Eagle Road.

Answering Mr. Denk regarding the duplication area for the septic system, Mr. Walter said that would be handled through Lake County.

With regard to the second stable on the property, Mr. Walter said there is no prohibition in the code. Mr. Denk said he would take issue with two structures in the yard serving the same purpose.

With regard to landscaping, Mr. Denk said the Commission needs to know what the applicant plans to do to soften the effect of the building in the area. Mr. Denk noted that the Commission has a responsibility to the neighbors.

Mr. Vinciguerra noted that because the building exceeds 1,000 square feet, it requires approval of the Commission. Mr. Denk added that because of the size of the building, it is under the purview of the Commission.

Mr. Laux noted that the building is over 4,000 square feet with the overhangs. He questioned why a horse needs a 6 inch concrete floor, along with two doors at 20' x 14' and another door at 14' x 14'. Mr. Laux said that the height and size of the building is excessive and not conducive to the neighborhood.

Mr. Blum added that there is still a question in that the property owner does not have a horse, and they already have a stable on site. He questioned the justification for an accessory building of over 4,000 square feet. Mr. Walter said the proposed building is heated, so it is a better facility than the one existing on the property. Mr. Walter said the existing building will remain; he said he does not know what the use of that building will be. Mr. Vinciguerra noted that the Commission would like an answer regarding the intended use of the existing building.

Mr. Denk noted that for buildings exceeding 1,000 square feet, the Commission would recommend some evergreens to soften the effect of the building. He noted that the vehicle entrance coming off Eagle Road is also a concern with regard to safety.

Answering Mr. Denk regarding opening the meeting to public comment, Mr. Lobe said it is not required, but it is the Chairman's call. He said the hope is that comments are not repetitive or duplicative in nature. Mr. Denk said there is strong concern from the neighboring residents, including

concerns with the driveway on Eagle Road and with regard to composting of the manure. Referring to another property, Mr. Denk noted that they have a dumpster to have the manure hauled off the property.

Mr. Denk noted that the Commission received concerns about the sanitary sewer, although it is not necessarily in the Commission's purview. Julia Sandy of 8710 Singlefoot Trail said she has submitted some information to the Commission in this regard.

Mr. Denk noted that the Commission has received written communication from several residents regarding their concerns about the proposed building.

For the record, Mr. Lobe advised that he has a conflict of interest in this matter.

Discussion ensued regarding the possibility of tabling the matter so the applicant can address the concerns that the Commission has raised. Mr. Walter said he would like the opportunity to meet with Mr. Lallo to see what they can do to address any concerns of the Commission. Mr. Walter said he does not intend to delay the matter, and would plan to have it removed from the table at the next meeting. He said that when he comes back, he will have answers for the Commission, or they can vote it down. Mr. Walter suggested that the Commission provide to Mr. Lallo a list of the issues and questions they would like addressed.

While the matter is currently off the table, Chairman Denk opened the meeting to public comment.

Jim Kish of 8670 Eagle Road said his wife is Holly Welsh, and she submitted a letter by email today. Mr. Kish said they are directly south of the property, across the street. With regard to access from Eagle Road, Mr. Kish said there is a nature trail along Eagle Road, and he wants to make sure it is properly addressed.

Richard Takac of 8707 Singlefoot Trail said that he and his wife, Pat, are directly across the street, to the north. With regard to composting of the manure, Mr. Takac said there is currently a water trail going into the street, coming between two properties. He said he is concerned about water runoff from the manure going into the street. Secondly, Mr. Takac asked if a building of this size is approved as a horse stable, what happens when the property changes hands and the new owner decides to park large vehicles in the building.

Mr. Denk said that the composting could become a neighborhood problem, noting that Mr. Walter is hearing that concern. Mr. Denk noted that a successive owner may not be adept with horses and would find themselves with a very large accessory building.

Mr. Takac said they sent a letter with their concerns when the matter was first brought to their attention. He stated concern about the change in representation and that the future plans for the existing building are unsure. Mr. Denk noted that the Schroeder's were at the last meeting when this was discussed, and they did not address the matter; discussion has been through a mediator.

Karen Schroeder of 8700 Singlefoot Trail addressed the Commission, saying the reason they have representation for this matter, which has been going on for three years, is because the first time they

submitted it by their builder, it was denied. They felt it was bigger than what they wanted to handle, so they got an attorney. Ms. Schroeder said the water runoff that was mentioned has nothing to do with them. She said they had a topographical survey done, which proved that none of the runoff going into the street was from them. It also proved that with the building plan they had made, measures are in place for water runoff from the new building, and it all goes underground into the sewer system; therefore none of the runoff from the new building would go into the road.

Mr. Denk noted that Mr. Courtney has reviewed the plan and the drainage for the proposed building, and the Commission understands that the roof will drain into storm sewers. He noted that the Commission would want an understanding that there would not be potential runoff from the manure sitting on the property. Mr. Walter noted this can be addressed with Mr. Lallo.

Ms. Schroeder said they also have all of the screening in place, noting that has all been submitted. She said they have all kinds of evergreens planted for screening in front of all of the building.

Mr. Laux inquired of Ms. Schroeder if she is also on the deed, noting that it shows her husband. Ms. Schroeder confirmed she is not on the deed. Mr. Walter said she would have an interest in the matter, noting that Mr. Schroeder was unavailable tonight.

Upon Mr. Walter's motion, Mr. Vinciguerra moved to table the matter, with the applicant's agreement, for one month. Mr. Blum provided the second. Upon roll call vote, the motion to table passed 4-0 (Ayes – Blum, Laux, Vinciguerra and Denk; Nays – None).

PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

Richard Takac of 8707 Singlefoot Trail inquired what will be resolved or changed in the next meeting. Mr. Denk replied that he hopes the applicant comes back with additional information. He requested that the neighboring residents also attend the next meeting.

Jayne Sandy of 8710 Singlefoot Trail confirmed that the matter began back in 2020. He thanked the Clerk for forwarding the information requested. He noted since this application was submitted in 2022, they have done a lot of research; their biggest concern is the septic issue and the water runoff. Noting that he went to the Lake County Health Department, Mr. Sandy said he provided the Commission with the information he obtained, noting that it is all public record. Mr. Sandy said that in doing the research, he found that in 2005, there was an issue with the septic on that property. He said that when it was built in 1985, they had to plant grass in the location of the pasture in the back, because there were issues there. He requested that the Commission look at the reports from the County, which will shed a lot of light on the septic and the location, and any recommendation based on that.

Mr. Lobe advised that procedurally, everything that a resident provides or states to the Commission becomes part of the public record and will be considered by the Commission when they make their decision.

Richard Takac of 8707 Singlefoot Trail inquired about a potential crosswalk on Eagle Road. Mayor Potter advised that the City's Public Service Director is working with Lake Metroparks, noting that the

potential location is near the Silver Fox development. Unrelated to the crosswalk, Mr. Takac stated concern about the dip in the road in that area, and suggested that a “hidden drive” sign be placed there. Mayor Potter said he will relay the concern to the Service Director.

Answering an inquiry from Julia Sandy, Mr. Denk advised that no revised plans have been submitted to the Commission regarding the proposed accessory building at 8700 Singlefoot Trail.

Aaron Godwin of 10299 Longview Drive noted that the Commission needs to put everything in writing based on code and precedent, not on emotion or aesthetics. He noted that the attorney is clearly preparing for litigation.

Tricia Takac of 8707 Singlefoot Trail inquired about the nature trail running parallel to Eagle Road, and whether someone has the right to put a drive through there. Mr. Denk noted there has been some discussion about deed restrictions that could affect this, along with HOA issues.

Mr. Denk reminded the public that this portion of the meeting is for comments on items not on the agenda. There were no further public comments.

WORK SESSION:

Communications and Bills

1. City Council Meeting Minutes – February 6, 2023 Council Meeting; and February 22, 2023 Finance Committee Meeting and Council Meeting.
2. Board of Zoning Appeals Minutes of November 15, 2022 Meeting.
3. Board of Zoning Appeals Notice of Decision – No. 23-1.
4. Zoning Permits Report – February 1, 2023 to February 28, 2023.

Old Business

1. Alternative Energy Ordinance – Chairman Denk referred to the Section 1468.05 and 1468.06 proposed amendments. It was noted that a correction is needed to the Section number in the title for Geothermal Energy Systems – 1468.05 should be corrected to 1468.06, as noted in the heading of that page. Responding to questions from the Commission, Aaron Godwin discussed changes that were made to the draft ordinance since the last meeting. Upon completion of discussion, Mr. Vinciguerra moved to recommend to City Council approval of the proposed amendment to Section 1468.05 Solar Energy and Section 1468.06 Geothermal Energy Systems. Mr. Laux provided the second. Upon roll call vote, the motion passed 4-0 (Ayes – Blum, Laux, Vinciguerra and Denk; Nays – None).
2. Review of Zoning Ordinances. Mr. Denk noted there are 11 items for potential recommendation to Council. With regard to landscaping cross references, Mr. Courtney said that he and Mr. Lallo are working on reorganizing areas of the zoning code. He noted that landscaping regulations are currently scattered throughout the code, and they would like to

include all of those regulations in one section of the code. Mr. Courtney noted they are looking at other gaps and overlaps in the code.

With regard to riparian setbacks, Mr. Courtney said that since that ordinance was passed, there have been new model ordinances issued by Chagrin River Watershed Partners. Mr. Courtney said he will review those model ordinances to determine changes needed in Kirtland's ordinance.

With regard to Airbnb, Mr. Lobe said it has become a legal hot topic. He said the State of Ohio wants to prevent municipalities, including chartered municipalities, from regulating this use. Even if the City passes regulations, the State may pre-empt those regulations. Mr. Loconti noted this would affect short-term rentals, along with Veterans homes and the like in residential neighborhoods, which the State is addressing under the Fair Housing Act. Mr. Lobe said that lawyers are raising issues on behalf of Airbnb's and they are raising Federal concerns and bringing lawsuits primarily to protect the Federally constitutional rights of these individuals under the Fair Housing Act. Mr. Loconti said there has been success with invoking the building code to make sure that the structures for these types of uses meet the building code. Mr. Loconti said that noise ordinances can be invoked, but very little from zoning.

Mr. Denk read the definition for "tourist home" in the zoning ordinance, noting that it refers to "transient guest."

Mr. Denk said he will work with the clerk on making a list of the recommended changes to the zoning code for discussion at the next meeting.

Mr. Blum noted that the Commission had discussed possible changes in regulations for accessory buildings on lots over two acres, noting that the maximum two percent restriction applies only to lots of two acres or less, as provided in Section 1268.04(b). Discussion ensued regarding the possibility of restricting the maximum area of accessory buildings on all lots, regardless of size, along with restricting the number of buildings on a lot. Mr. Vinciguerra said that better clarity is needed regarding the requirement for the Planning and Zoning Commission to review all accessory buildings over 1,000 square feet.

Referring to Section 1268.01, Mr. Lobe said that even if a use is legal, the code provides criteria that can be taken into consideration when the Commission is reviewing an application. He noted that the Commission should also consider Section 1260.01 relating to the intent of the zoning code.

With regard to the request of Attorney Erik Walters regarding the proposed accessory building at 8700 Singlefoot Trail, it was noted that a list of items of concern will be sent to the Law Director. In discussion, concerns noted were the area and height of the structure, number of horses and manure plan, driveway access on Eagle Road and crossing of nature trail, the existing accessory building, future use by successive owners, septic and duplication area, and visibility of the structure to neighbors.

New Business

None.

Adjournment

There was no further business before the Commission, and Mr. Laux moved to adjourn. Mr. Blum provided the second, and the motion passed upon unanimous vote. The meeting adjourned at 10:00 p.m.

CHAIRMAN

SECRETARY