

CITY OF KIRTLAND
PLANNING AND ZONING COMMISSION
SPECIAL MEETING

MINUTES OF THE MEETING
WORK SESSION
May 20, 2020

The meeting commenced at 6:37 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, Rick Loconti and Joseph Vinciquerra. 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.

Taking advantage of the Zoom platform, Chairman Denk was on site at the event barn property being discussed at tonight's meeting. The Chairman noted that the purpose of tonight's meeting is to discuss an application for a conditional use permit for streambank stabilization at 9199 Chillicothe Road. Mr. Denk noted that there is an active waterway that runs underneath the high-tension lines. He noted the area of concern, which is burrowing into the hillside; the applicant is requesting a conditional use permit to allow them to stabilize the slope. Mr. Denk was able to show the stream and the area that is an issue.

Mr. Vinciquerra inquired if the issue affects the building of the event barn. Mr. Denk stated that the applicant has concerns about constructing a two million dollar building on the property due to the issue with the slope. Andy Loncar of Loncar Quality Construction stated that the building would be 50 to 60 feet off the slope.

Chairman Denk inquired if soil borings were taken. Mr. Loncar stated that they had an engineer come out to look at the slope to make sure it is sound, and he advised that there is a dire need to take care of this issue as soon as possible. Mr. Loncar noted that excavations were taken at 8 to 10 ft. in the area where the building will be constructed.

In discussion of the issue, Mr. Loncar stated this needs to be addressed to stop any further damage to the slope. Mr. Loncar noted that looking at the satellite maps from 1993 to the present, the stream moved 60 to 70 feet to the west.

Referring to a letter dated April 6, 2020 from Steven Porpora of SCP Engineering, Mr. Denk noted that Mr. Porpora states that failure to properly address the severe stream erosion will continue to destabilize the subject area of slope and negatively impact the planned structure and improvements. Mr. Christopher stated that the plan that was put together and submitted to the City was done in concert with Mr. Porpora; his recommendation was to put in large boulders. Mr. Christopher said he decided to go the extra distance and use the locking blocks, which Mr. Porpora said would be an even better remedy.

Answering Mr. Denk, Mr. Loncar confirmed that the stream needs to be re-routed before stabilizing the slope. Mr. Christopher said the creek bed is 15 to 20 feet wide, with the deepest part being adjacent to and abutting the slope. Mr. Christopher stated the blocks can be placed in the stream bed, and once the Corps of Engineers gives authorization, the stream flow can be moved 60 feet, back to where it was originally. He stated this will provide stabilization until they can get final approval to move the stream 60 feet to the east.

Mr. Christopher stated his attorney contends that according to an ORC ruling the City has authorization to give them approval to move the stream because they are putting the piping and drainage system into the stream, and if they don't move the stream, the erosion will be increased and there will be damming.

There was discussion regarding the documents submitted with the application. Mr. Christopher advised there was a scope of work dated May 18, 2020; it was noted that the Commission did not receive this document. Mr. Lallo noted that he would e-mail this document to the Commission members. Mr. Christopher stated that the document is a step-by-step plan to remediate, along with a site plan.

Mr. Blum inquired if there is a report from the City Engineer. Mr. Courtney stated he has not prepared a report because there was no detailed plan submitted; there is no plan sheet, section views, or detailed design that is stamped by an engineer.

Mr. Christopher stated this is a very similar slope stabilization project to what was done at the Kirtland Creamery property last summer. He noted that the EPA was called out to investigate and it was remanded to the Corps of Engineers; the format of what they are now proposing follows an almost identical format they used in that remediation and slope stabilization. Mr. Christopher stated it was accepted by then City Engineer Phil Kiefer and approved by Planning and Zoning, noting that it was adjacent to and involving a riparian setback.

Discussion ensued regarding the application submittal and necessary documentation.

Mr. Christopher stated he was advised it would be imprudent to build until he gets the slope stabilized. Mr. Christopher referred again to the ORC ruling, and stated his attorney contends that the City has the authority to grant them the ability to move the stream, stabilize that wall and stop the damage to his property and the CEI tower. Mr. Christopher stated his attorney has been working with Mr. Lallo for the last several weeks and the Law Director's contention was the City "owns the land" and the Corps of Engineers "owns the stream". He said the Law Director advised that the City can authorize him to stabilize the slope, and he will have to get Corps of Engineers' approval to move the stream. Mr. Christopher stated his attorney has found no documents that the Federal government has overturned or superseded the ORC ruling.

Mr. Lallo stated that he made many attempts to help Mr. Christopher expedite this project, noting that the City accommodated him with a special meeting to try to get this done as soon as possible. Mr. Lallo stated that he researched the statute to determine if the law enacted in 1953 is still in effect; since that time there have been many other Federal and State regulations passed that have, in his opinion, superseded that statute. Mr. Lallo noted that he is trying to protect the City from any future lawsuits. Mr. Lallo stated that the City has jurisdiction over riparian setbacks and streambank stabilization, noting that he scheduled a conference call with the City Engineer, Mr. Loncar and Mr. Christopher's attorney to review this. Mr. Lallo stated he indicated that the applicant needs to obtain a permit from the Planning and Zoning Commission for the streambank stabilization in the riparian setback, and the applicant needs to get the U.S. Corps of Engineers' permit.

It was noted that Paul Mooney, attorney for Mr. Christopher, has joined the meeting.

Mr. Christopher stated that they have already filed their application with the Corps of Engineers. He stated if he can stabilize the slope, it will buy him enough time, noting that he is confident he will receive approval from the Corps of Engineers. Mr. Christopher stated he is asking for approval to stabilize the slope and put a wall down there so he does not have any further erosion. He stated if the Corps does not allow him to move the stream, that is all the more reason he needs to have the slope stabilized.

Mr. Christopher stated he will concede on asking for both approvals from the City, and they will go to the Corps of Engineers. Based on the plan that has been submitted, he requested that the City authorize him to put the wall down there and stabilize that slope so he will not lose any more land.

Upon completion of discussion, the work session meeting adjourned upon unanimous consent of the Commission members at 7:13 p.m.

CHAIRMAN

SECRETARY