

CITY OF DELAFIELD SPECIAL PLAN COMMISSION MEETING MINUTES

DRAFT

Call to Order

Chair DeYoe called the Wednesday, March 21, 2018 Plan Commission meeting to order at 7:00PM.

Pledge of Allegiance

The Pledge of Allegiance was recited.

Roll Call for the Wednesday, March 21, 2018 Plan Commission meeting:

Present

Michele DeYoe, Mayor

Tim Aicher, Ald.

Dave Greenway

Dan Jashinsky

Jeff Krickhahn

Jeff Miller

Jim Reiher

Roger Dupler, Planner

Tom Hafner, City Administrator

Jim Hammes, City Attorney

Scott Hussinger, Building Inspector

Absent

David Simon

1. Approve Plan Commission meeting minutes of February 28, 2018 meeting.

Hearing no objections, the February 28, 2018 Plan Commission meeting minutes were approved.

2. City of Delafield Citizen's Comments pertaining to subjects on this agenda.

John Barker, 3776 Kettle Court East, owned two properties on the north side of the Hartland Sportman's Club (HSC). The first one was built in 2012 directly north of the HSC and the second building was on the same street located on the vacant lot on the map included in the epacket. Three businesses occupied those buildings with 30-40 employees, lots of traffic, trucks and deliveries to these businesses. He was opposed to the HSC Conditional Use Permit to operate a firing range and trap shooting range at the current location. While he understood that the HSC could not make recreational use of the land for the shooting range, the overall history of the HSC was that it was a piece of land that had the City and Town develop around it. Businesses and residences were not there 50-60 years ago when the HSC started and as things developed it was now difficult to say that it was safe. All the ranges pointed at his buildings. He did not want to live in fear that he or his employees would walk out of the building and hear gunfire or wonder if a round was going to leave the HSC grounds. History repeated itself and that was a scary thought. Safety was a huge factor of concern as was the noise pollution. He did not want to hear the loud gunfire. He lived in the Town of Delafield from 2002-2009 and could remember when the HSC was open. Activity from the HSC could be heard Tuesday evenings two miles to the north at that time. Property values were also of concern for the adjacent neighbors and neighborhoods if the HSC were to be allowed to open with many different impacts. Previously the HSC had ideas on how to make the HSC safe including "No Blue Sky" and baffles; however, the human error could never be able to be taken out of those situations. Bullets strayed course and introduced an element of danger. The safety of the community was important. It was also important to be able to enjoy the tranquil peaceful quiet scenery. Opening the HSC would take away that element completely. The HSC was in close proximity to industrial areas. It seemed ridiculous to allow the HSC back in business.

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Lori Dehn, 3479 Broken Bow Trail, noted the HSC had been an issue that residents addressed over the 21 years she had lived at her residence. Many on the Commission might not be aware of the information provided to the City in that time. The HSC Conditional Use permit should be denied due to the many negative effects a shooting range would have on the City. The negative impact to health, welfare, safety and compatibility to the neighborhood would be significant. There were misleading statements presented in the HSC CUP application, specifically on page 5, Item 5. Over the years, neighbors had complained about the increased noise and ineffectiveness of the sound abatement. Increased noise from AK-47 rifles and other assault rifles, combined with 65 hours a week of shooting would not be compatible with the neighborhood. The amount of lead in the soil at this location was also an issue. The CUP should be denied. (Clerk's note: Please see item attached to these minutes.)

Kate Duborg, 3526 Broken Bow Trail, lived at her current residence for 18 years. She knew that the HSC was there when she moved into the neighborhood; however, she was shocked to learn that bullets had left the range. When improvements were requested, the HSC had said that those improvements would take time and money that they did not have. There were many valid safety and noise issues. One issue was to erect a fence so that no one could wander onto the range. To date, the HSC did not have a fence around the grounds when shooting took place. This told of the priorities of the HSC. Safety was important. There were bullets in the grounds as well. As families shopped and gathered on the outdoor patio of nearby restaurants and home, it would be important not to have to listen to the noise of gunfire for 8-12 hours a day. It was not a matter of if something would happen, but when. For the visitors and citizens of the City, the CUP should be denied based on these factors. (Clerk's note: Please see item attached to these minutes.)

Troy Duborg, 3526 Broken Bow Trail, lived at his address for the past 18 years. He was strongly opposed to a new CUP for the HSC. He knew the criteria that needed to be met in consideration of a CUP and none of the health, safety and welfare criteria were appropriately met by the HSC. Many bullets had left the grounds of the HSC over the years. He had genuine concerns about a new CUP because the HSC had not abided by the past CUP. The existing uses bordering the Club were not compatible with the HSC use. There would be a negative impact to property values for those close to the gun club. The Club would also produce a lot of noise on nights and weekends. While he knew what he was getting into living next to the gun club, it did not matter if the Club had operated unsafely and would continue to do so. The HSC had no business getting a CUP and he strongly urged the Common Council and Plan Commission to deny a CUP for the HSC. (Clerk's note: Please see item attached to these minutes.)

Wayne Dehn, Alderperson, 3479 Broken Bow Trail, was present. He distributed information pertaining to lead contamination of the soil at the HSC as noted by several emails to the City assessor regarding past property valuation claims by the HSC. When considering the CUP, the Commission was required to consider impacts to health, safety and welfare as well as property values that the CUP would cause in the City. There were many pages in the distributed information that stated property values would be affected by the clean-up of the shooting range that dated back to 2012. The HSC had petitioned its own assessor to reduce the property valuation from \$14,000 to \$9,000 based on the negative functional economical clean-up of lead contamination and required cost to remediate the lead issues in the land. A market stigma associated with contaminated soil cleanup costs in other sales data were the primary sales reduction information provided. This indicated the HSC knew that lead caused property devaluation. (Clerk's note: Please see item attached to these minutes.)

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Penelope Roberts, 3482 Broken Bow Trail, lived close to the HSC range. She had purchased her property in 2011 at a time of inoperation for the HSC. When she purchased the property, she was told that the shooting range/gun club was closed and would never open again. She did not do anymore "homework" at that point regarding purchase of her property. She was concerned about the noise issues during the proposed hours of operation. The anticipated noise and hours of operation were totally unacceptable to her family and pets. To open the gun range would change the entire "feel" of the neighborhood that her family loved and had moved into in the past. If the CUP were approved, she anticipated negative impacts to property values as well. Safety in the area was of great importance. The best laid plans often went astray. One stray bullet could cause someone to get hit. While she understood the people that liked to shoot guns, it didn't make any difference who was present first in the area; the HSC was now surrounded by residences and businesses. She hoped that the HSC would relocate on that basis. The Commission should question whether they would want to hear gunfire in the referenced hours of operation and whether they would like to have their property value deflated. She requested the Commission take into account all that was heard and asked at this meeting. (Clerk's note: Please see item attached to these minutes.)

Ally Crow, Cherokee Trail, bought the property five years ago under the unfortunate pretense that a pregnant woman had been shot and that the HSC would not be allowed to operate. Her children were two and five years old. They played outside all the time. She was very concerned about their safety. She questioned whether this matter would be considered if the woman shot was killed and not just injured. History did repeat itself. There was no way that she would feel safe on her property if the HSC were allowed to re-open and she also questioned how she could possibly sell it to someone else.

There was no others present wishing to speak at this time. DeYoe closed City of Delafield Citizen's Comments.

3. New Business [HSC](#)
 - a. Discussion and possible action on a request from the Hartland Sportsman's Club for a Conditional Use Permit to operate a firing range and trap shooting range at the current location.

PLEASE SEE THE EPACKET FOR THIS MEETING TO LOCATE DETAILED INFORMATION ON THIS ITEM.

Hammes spoke to the March 15, 2018 memorandum explaining that the Court had remanded this matter back to the Plan Commission and that had been distributed to the Commission as noted in the epacket for this meeting. In the decision of February 14, 2018, the Court set aside the initial denial of the CUP by the Delafield Common Council, not the recommendation of the Plan Commission as a recommending body, because the Court said that the rationale was not adequately explained or laid out. In addition, he had received a letter from Attorney Levinson for the HSC that was emailed to him at 5:07PM on Tuesday, March 20, 2018, after the epacket for this meeting had been uploaded. Hammes had distributed Levinson's letter of March 20, 2018 to Commissioners in advance of this meeting because he wanted Commissioners to understand the background of the letter and ongoing discussion with Levinson. Hammes had written to Levinson on February 22, 2018 explaining the procedure that the City proposed to be followed. No response had been received to that writing as of February 28, 2018, so Hammes wrote again on March 2, 2018 and on March 15, 2018, Hammes sent Levinson the memorandum included in the epacket for this meeting letting Levinson know he could

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supplement the records if Hammes' observations were wrong. He wanted the Commission to know he had made every effort to try to engage Levinson in this type of process and the letter received on March 20, 2018 was his response. Hammes noted there was no written recommendation presented in front of the Commission regarding this matter. He then reviewed the process of and options for consideration by the Commission. There was information provided to the Commissioners, as noted in the epacket, which explained the zoning code provided specific guidelines regarding the distance a building was allowed to be located relative to an adjoining lot line. The HSC storage shed was only 15 feet off the property line. While historic structures, due to annexation, were allowed to stand with "grandfather" status, with consideration of the amended CUP, this would not be a legal conforming use. It was also his opinion that the range law did not apply in this instance. The discharge of firearms was prohibited within City limits where otherwise prohibited by Code. Hammes provided clarification on the various cases cited in the legal Decision rendered by the Court of Appeals in this matter, noting the Commission needed to reconsider the matter. A Public Hearing had already been conducted on this CUP; however, if the Commission thought another Public Hearing was needed, one could be conducted. It was important to respond to the four points referenced in the Levinson letter. First, there was no reason for the City to return to trial court and ask the Court to send it back here if that was going to be the remedy anyway. A certiorari court could not order the Board to perform a certain act. It would have to come back to the Plan Commission or ask the Court to do that. Until the March 20, 2018 letter at 5:07PM, there was no response from Levinson regarding asking the Court to do so. With regard to the second point of there being no decision to make because the record was closed; simply because reasons for denial were not adequately expressed regarding conditions of denial did not automatically mean the CUP was granted. With regard to the third point that referenced the March 15, 2018 discussion of compatibility being counterfactual, he was unclear what that meant. The Commission needed to reconsider the matter as if it were a new application that had come forth. The application presented by the HSC did not mean it was burdened by the HSC being there forever. With regard to the fourth point in the Levinson letter, Hammes had requested that if any comments, suggestions or observations regarding the content or lack of content were noted by Levinson, he should contact Hammes. As noted in the records on the website, some information such as aerial photos, updated population estimates and a letter from the Police Chief were additional documents provided to the Commission before March 21, 2018. The response from Levinson was the March 20, 2018 letter at 5:07PM. Hammes noted he had been consistent in his message all the way through the correspondence.

Reiher thought it reasonable to conclude that by writing and verbal discussions, there had been reasonable opportunity for the applicant or a HSC representative to be present at this meeting. No counsel was present. HSC members were in attendance but had chosen not to speak at this meeting. Dupler had contacted the HSC President regarding notification of this meeting. At that time, the HSC President was unaware that this meeting was taking place with the HSC CUP on the agenda. DeYoe noted the City's policy of denying matters where the applicant or representative was not present to address the issue and she questioned why special treatment should be given in this case. Hammes suggested the Commission consider the matter and make a recommendation that would clearly identify appropriate citations that should be made. He would provide a draft that the Commission could approve if they desired and make a recommendation to the Common Council on this matter.

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Aicher noted that if this were a piece of land where the property owner wanted to open a gun club where there was one in the past, it would be important to determine what modifications and infrastructure was needed, to determine whether the gun club could operate with certain hours of operation and with proposed safety measures. It was also important to consider whether it was an appropriate use of the land and if not as described, how it could potentially be made to work. There were several issues with the current proposal. Discussion ensued regarding whether the HSC was considered to be in existence. Clarification was given that if it was a corporate legal entity, the question remained whether that activity could be conducted on that property. A property could be owned but that did not necessary mean the owner was allowed to conduct certain activities on that owned piece of property. It seemed completely outlandish to open this type of business in between business and residential lots.

With regard to the criteria outlined in 17.42, the question remained of whether what was proposed was adequate to keep gunfire contained to the property and mitigate the likelihood of an accident. The impact of shooting on the neighborhood posed some problems, especially when people had spoken that they had recently moved into the neighborhood with the impression that no activity would be taking place there in the future. Child and dog activity would be severely hampered. To have that activity introduced into their backyards where previously a decade of inactivity had taken place was a concern. He did not see this as a viable use of this land.

Reiher agreed. He had reviewed the historical documents prepared by Hammes related to this matter. There was a pattern of activity that began in the Year 2000 when the CUP was in place. Bullets were located at New Age Chemical in 2000 and 2003 with one bullet going through a skylight window close to residents and businesses. The human factor could never be ruled out even if the "No Blue Sky" bafflement was added. Eight years ago a bullet left the range and hit a pregnant woman at the Delafield Brewhaus. No stray bullets were noted by the police chief since 2010 because they were denied a source. There had been an eight year period where people had moved into the neighborhood because it was safe, peaceful and they had expressed a legitimate concern in the proposal for a shooting range. The pattern had been established a long time ago, it was time to address it.

Krickhahn noted he worked a half-mile from an area gun club. He could not imagine hearing gunfire all day long. Some people had come forward during Citizen's Comments noting the Commissioners could not imagine the noise; he knew exactly the noise and he would not want to live with it. Reiher also noted the Zoning Report of March 16, 2018 explained the hours of operation. After listening to the public commentary at this meeting regarding families, noise, pets, gunshots similar to fireworks for animals, etc. this was not what residents bought into when they came to the neighborhood. Things evolved and changed. A community evolved with its businesses. In this case, residents were trying to work together. The matter needed closure in a reasonable and measurable way. Ample opportunity had been provided for the attorney to present information to the Commission.

Aicher noted the City allowed development to occur around the parcel. The Kettle Court area and Rural Estate zoning to the east was designated long before the subject property was annexed to the City in 1997. The property was designated as B-6 business on the Master Plan. It had been planned as a mixed-use space for a long time. Jashinsky noted the HSC was present on the property first. The City had brought the mixed use designation to the HSC

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property. Aicher noted it was the responsibility of the property owner to contain its activities within boundaries. There was a big difference between the noise a gun club made and other activities. He was uncertain how the stigma of someone being shot could be eliminated. Each time shooting noises took place in the neighborhood, there would be an association of someone getting shot. Some shooting ranges were completely indoors and perhaps this was what it might take for the gun club to be able to operate. Reiher noted there was a definite reaction of children and dogs to gunfire. Connections to family would suffer and life enjoyment would suffer as well. Hours of operation were extensive. The HSC activities were incompatible with the surrounding area and a gun club would have a negative impact on property values as noted. To say anything to the contrary was ludicrous. The City would not allow a restaurant to operate with outdoor music in this manner and the hours of operation proposed seemed excessive.

DeYoe noted the Commission had denied the CUP in the past. Consensus was still being heard relative to comments of noise, safety had dissipated approximately eight years ago, interference with use and enjoyment. There was also a setback issue relative to discharge of weaponry. Additional discussion and consideration would take place at the next Commission meeting.

4. Reports of City Officials

a. Clerk

1. Plan Commission Meeting Dates & Deadlines
Next Plan Commission Meeting – March 28, 2018
April Public Hearing Deadline – March 26, 2018

2. Correspondence

- i. Email from Virginia and Paul Niebler to Mayor DeYoe opposing the CUP for Hartland Sportsman's Club.

b. Planner – None.

c. Building Inspector – None.

5. Adjournment

There was no further business; therefore, the Wednesday, March 21, 2018 Plan Commission meeting adjourned at 8:12 PM.

Minutes Prepared By:

Accurate Business Communications, Inc.