

# Kensington-Talmadge Planning Group



P.O. Box 16391, San Diego, CA 92176

[www.ktpg.org](http://www.ktpg.org)

## Regular Meeting Minutes

2010-12-08

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**PARLIAMENTARY ITEMS**

**CALL TO ORDER, ROLL CALL AND INTRODUCTIONS**

A regular meeting of the Kensington Talmadge Planning Group (KTPG) was called to order by KTPG Chair Tom Hebrank on December 8, 2010 at 6:37pm in the Kensington Community Church located at 4773 Marlborough Ave., San Diego, CA 92116. The minutes were recorded by KTPG Secretary John M. Garrison.

**Members present at the start of the meeting:** Daniele Laman, David Moty, Frank Doft, Fred Lindahl, Gail Greer, Guy Hanford, John M. Garrison, Kevin Kelly, Sean Harrison, Sherry Hopwood, Tom Adam, Tom Hebrank.

Bob Coffin – arrived at 6:55pm

**Members absent:** Pam Hubbell, Tom Hoyt.

**Also present:** Dion Akers (from Council Member Todd Gloria’s office), Daniel Hazard, Senior Community Representative from the office of Susan Davis, Member of Congress, 53<sup>rd</sup> District, California.

Ben Zeiger – Field Representative from the office of Marty Block, Assembly member, 78<sup>th</sup> District, and numerous members of the public

**MODIFICATIONS TO AND ADOPTION OF AGENDA (ADDITIONS / DELETIONS TO AGENDA)**

A motion to approve the agenda with no changes was made by Frank Doft and seconded by Sherry Hopwood. The motion was approved 12-0. Tom Hoyt, Pam Hubbell and Bob Coffin were not present for the vote.

**APPROVAL OF MINUTES – MINUTES FROM PRIOR MEETING(S)**

A motion to approve the November, 2010 minutes was made by Frank Doft and seconded by John M. Garrison.



John M. Garrison, the KTPG secretary noted that there was one question David Moty raised about the draft minutes and John asked David if he would like to mention it. David said no, in the interest of time he would simply vote against the motion.

An audience member asked if the draft minutes were posted to the website. The secretary noted that they were posted but that they were only posted on the day of the meeting. The audience member said that that did not give the public the opportunity to read the minutes ahead of the meeting.

John M. Garrison – Yes, I agree and I apologize for that. I do try to get them posted within a week after the meeting happens, so that they will be available for review several weeks before the next meeting. In this case I got focused on updating the website information on two projects:

- Undergrounding (<http://www.ktpg.org/projects/undergrounding/index.htm>) and
- Macllvane (<http://www.ktpg.org/projects/222206/index.html>)

and I forgot about the draft minutes from the November meeting. There is no required date for us to post the minutes. In fact, I proposed we adopt a standard but the KTPG voted against doing so. However, the information from the subcommittee meeting on the Macllvane project was posted within 4 days of the subcommittee meeting, so people have had a chance to review the information about tonight's meeting. I usually do try to get minutes posted very soon after the meeting. I would also like to note that we are already doing far more than is required by the city. The city does not require us to post draft minutes, nor even to maintain a website for that matter. We will try to build on what we are doing and do even better in the future.

The motion to approve the minutes passed 10-1-1 with David Moty voting against and Sean Harrison abstaining. Tom Hoyt, Pam Hubbell and Bob Coffin were not present for the vote.

## TREASURER'S REPORT – REPORT FROM PRIOR MONTH

**Starting Balance:** November - \$37.97

**Donations:** 129.16

**Expenditures:** \$111.00 – Check #3097 to Postmaster for 6 months PO Box rental plus late fee

**Ending Balance:** \$56.13

## COMMUNITY FORUM / NON-AGENDA PUBLIC COMMENT

Dion Akers from Council Member Todd Gloria's office mentioned several items, including:

- The replica of the Kensington sign has been hung
- Planning continues for Balboa Park's 2015 Centennial Celebration

Daniel Hazard, Senior Community Representative from the office of Susan Davis, Member of Congress, 53<sup>rd</sup> District, California addressed the community and invited the community to contact their office as needed.

Ben Zeiger – Field Representative from the office of Marty Block, Assembly member, 78<sup>th</sup> District addressed the community and invited the community to contact their office as needed.

Michael Prinz – Community Planner for Kensington-Talmadge with the City Planning and Community Investment (CPCI) Department addressed the community and invited the community to contact their office as needed.



Sean Harrison – asked if SANDAG could reduce the amount of bus traffic on Adams Ave. Michael Prinz said he could not do anything about that but he would note the concern.

Sean Harrison – Wants to offer a testimonial about the quality of Kensington’s elementary school, Franklin Elementary School. He sat in on a class and found it was the best behaved class he had ever witnessed.

Sean Harrison - Introduced the principal of the local elementary school in Kensington, Jean Small. She explained that she has been principal for 2 years. Their API score has gone from 773 to 822 in the time frame. Last year’s increase was +54. She said they will have a public tour on January 20<sup>th</sup>, 2011.

Edith Frampton - spoke about the need to keep dogs on leashes in the community.

Don Taylor – spoke about the results of the survey mailer on utility undergrounding. According to their survey, Kensington overwhelmingly voted to take more time and try to get better undergrounding, rather than settling for having utility boxes located above ground. Don said, “The overwhelming majority (85.6%) of homeowners expressed a preference for attempting to negotiate in an effort to greatly reduce the number of above-ground components”.

Secretary’s note: This survey was conducted by a private group of residents. KTPG has not yet taken an official position on the undergrounding project, but is serving to collect and distribute information to the community. Information on utility undergrounding is available on the KTPG website:

<http://www.ktpg.org/projects/undergrounding/index.htm>

Joan Fitzsimons – asked about the September meeting minutes. Sean Harrison took those minutes. He apologized for the fact that the minutes are currently located in a file cabinet that he can’t currently access due to a home improvement project. Sean says he should be able to get access to the minutes and KTPG will get them handed off to the secretary, John M. Garrison, for posting to the website as soon as possible. The secretary pointed out that those will be the draft minutes until they are approved at a subsequent meeting of the KTPG.

Joan Fitzsimons – concerned about access to canyons, and what can be done to lower the amount of people accessing the canyons.

Roger Utt – concerned about the August 2010 meeting. He believes more information should be presented from the KTPG HRB liaison.

Tom Hebrank – said that we have tended to get a quarterly presentation from that liaison and he will look into scheduling another report.

Roger Utt – It is good to have our Kensington sign back up; however, the community got short-changed on input to the process. The KTPG voted a tentative approval of the compromise sign design \*conditional\* on it going through the city planning offices for their reports, and then brought back to the KTPG. The matter never came back to the KTPG. In addition, the Burger Lounger permit was conditional on potentially changing their railing if needed to accommodate the placement of the sign. The code specifies 8’ between obstacles, the current distance is only 6.5 feet. The current poles are oversized and aesthetically unappealing because they were designed purely by engineers without the proper design input. A better job could have been done if there had been more community input. Also, the last time this group considered the Aldine Slope Restoration project, there were a lot of



conditions/stipulations made. Those stipulations have not been met. The KTPG is not doing a good enough job at providing a forum for information or community input.

Secretary's note: Information on the projects mentioned by Roger Utt can be found at the KTPG website:

- Kensington Sign: <http://www.ktpg.org/projects/kensingtonsign/index.htm>
- Burger Lounge Sidewalk Enclosure: <http://www.ktpg.org/projects/183415-BL/burger1.htm>
- Aldine Slope Restoration Project: <http://www.ktpg.org/projects/Aldine-slope/Aldine1.htm>

## NON-SUBCOMMITTEE ITEMS

### INFORMATION ITEMS

#### INFORMATION ITEM: HORTON PLAZA REDISIGN

There could be additional open space as a result of the demolition of the Robinson May building. Westfield, the company which runs the mall has agreed to maintain this plaza (landscaping, etc.) for a period of 25 years.

#### INFORMATION ITEM: CONSIDERATION OF ALTERNATE MEETING SPACE

David Moty – the Kensington Community Church has proposed increasing our rent to \$100 per month for the main meeting hall, and \$50 per month for access to the conference room for subcommittee meetings, from the current \$25 per month rent for both rooms combined. There are about 7 locations I have investigated, among these are Hoover High School, Franklin Elementary, Talmadge Senior Center, Wesleyan Methodist Church, and the Normal Heights Community Center. My recommendation is to move to Hoover High, which is free and has plentiful parking, although there may be an issue with the janitorial staff leaving in the evening, which may curtail the length of some meetings. Also, we may have trouble during the summer when the school is closed. David Moty suggested that for the summer months we could go dark in August, and hold our July meeting either at the Talmadge Senior Center which has air conditioning, or the Normal Heights Community Center.

### ACTION ITEMS

#### ACTION ITEM: FORMATION OF AN ELECTION SUBCOMMITTEE

Tom Hebrank – Gail Greer and Sean Harrison are 2 board members not up for election in March, 2011. Sean Harrison agrees to be chair. Jonathan Tibbitts is a community member who has also agreed to serve. Tom Hebrank moved to form the election subcommittee as per the bylaws, with Sean Harrison as chair and Gail Greer and Jonathan Tibbitts as members. Daniel Laman seconded the motion. The motion was approved 14-0. Pam Hubbell and Tom Hoyt were not present for the vote.

#### ACTION ITEM: NEW BANK ACCOUNT

Sherry Hopwood - Washington Mutual was bought out by Chase, and the type of account we have is no longer available. They now want a minimum balance, which we can't meet. Perhaps a credit union would be more generous with us, or perhaps we can talk Chase into something more favorable to us.



Tom Hebrank asked for a motion to allow the Chair and the Treasurer to open a new bank account if they find one with favorable terms.

David Moty made a motion to allow the Chair and the Treasurer to open a new bank account if they find one with favorable terms. Tom Adam seconded the motion. The motion passed 14-0. (Pam Hubbell and Tom Hoyt were not present for the vote.)

## SUBCOMMITTEE REPORTS

### TRANSPORTATION AND SAFETY – BOB COFFIN

Because the meeting ran over-time, the KTPG did not hear a report from this subcommittee.

### PROJECT REVIEW – TOM ADAM

#### ACTION ITEM: MAC ILVAINE NEIGHBORHOOD USE PERMIT (PROJECT #222206)

##### SECRETARY NOTES:

The minutes are not an exact transcription of the conversation. They only aim to capture the general themes of conversation pertaining to an item. It is hoped that someone reading the minutes a month or a decade later would at least get some sense of the discussion.

KTPG minutes are not official until approved at the next meeting of the KTPG. Please see the KTPG website at [www.ktpg.org](http://www.ktpg.org) for more information on KTPG, including the official bylaws and links to other applicable governance regulations. Please see <http://www.ktpg.org/projects/222206/> for more information about this specific project.

Tom Hebrank - Since there are a lot of new faces here, I would like to explain how this is going to work. The subcommittee voted 4-3 to deny the permit. So, the motion pending before the KTPG is a motion to deny. If that motion fails, then I will entertain a motion to approve the permit. It is 7:40pm now and I am going to allow 1 hour for this item. You must fill in a blue speaker slip to be recognized. I am not going to allow back-and-forth or questions shouted out from the floor. The applicant will speak first. Then we will go down those who have presented speaker slips. If there is a short factual question, I may allow the applicant to address that briefly. At the end, I will give the applicant a chance to make a short final response.

Tom Adam – Chair of the Project Review subcommittee presented the motion passed by the subcommittee. I would like to give a summary not of the project, but of the process, and what we are asked to consider here. The neighborhood is zoned to allow this type of home use, but certain conditions must be met, and a permit must be received from the city. The city has signed off on the conditions being met.

##### APPLICANT PRESENTATION



The applicant, Mary Lou MacIlvane was present and accompanied by her attorney Charles V. Berwanger, and her contractor R.L. Houk. Two stenographers were also present.

Charles V. Berwanger - I would like to give a description of Dr. MacIlvane's house and practice. Her practice is minimally intrusive to the neighborhood. This is not about changing the zoning; the zoning has permitted this very use for 50 years. Some people at the subcommittee meeting were concerned about sexual predators attending therapy at Dr. MacIlvane's office, but her patients are not sexual predators. She does not now, nor does she ever plan to treat these types of patients. Also, it takes special training to treat those types of patients; she does not have that training, and she is not going to commit malpractice by treating those patients without the proper training. At the subcommittee meeting, there were some concerns about traffic, but city staff has concluded that there is no impact on traffic. She sees a maximum of 4 clients a day and does not herself drive out of the neighborhood to work. So, she produces less traffic than many residents. Some people at the subcommittee meeting expressed concerns about the fact that the office has been in use for 4 years, but that only shows that the business operated for 4 years with no complaints at all.

Charles V. Berwanger – introduced Ross C. Bouman

Ross C. Bouman – I am a professional real estate appraiser. I have not encountered exactly this type of use before, but I have encountered numerous other professional uses permitted in private houses. Some of them are much more intensive, including day care, nursing care, etc. I spent time in front of this property and noticed no traffic coming to the property, no blight, no noise problems, no smells, no nuisance whatsoever. I see no problem with the usage and in my professional opinion I believe this usage and the requested permit do not affect home values in the community.

Mary Lou MacIlvane – presented a petition with 77 Kensington residents and approximately 20 non-resident signatures. She also gave a description of some of the types of people she sees, and the problems they face. Dr. MacIlvane said that some people have the idea that sexual therapy is pretty far “out there” but the reality is that these people “are people like you and me”.

Charles V. Berwanger – poses 3 questions that he asserts the objectors cannot address:

1. How does the proposed permit violate the zoning?
2. Has there been any incident in 4 years?
3. Is there a nuisance by Civil Code §3479?

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## PUBLIC COMMENT

Approximately 30 members of the community submitted speaker slips on this item:

Milton Lessner – I came here to support my colleague Mary Lou MacIlvane, who is a psychotherapist. For almost 40 years, I have been a psychotherapist myself, as has my wife. For a long time, we practiced just 3 doors away from Mary Lou. I understand that psychotherapy has to do primarily personality problems and impairment. These issues need to be treated. She has all the training to do this and she is very well equipped to do this. Unfortunately, the moment anyone hears anything about sex, they immediately think about degeneration or perversion. But that is not the type of problems she is treating. I feel she is being condemned for doing something wrong, but she is not doing anything wrong. If this condemnation continues, it reminds me of a witch hunt.



Andy Inveiss – I want to ask about the appraisal saying this is not a problem. Historically there may not have been a problem, but what about the future, given that the nature of the business is now known. Also, I object to comparing this to a day care. A sex therapy practice and a day care center are not comparable. My second question is about the petition. It doesn't state that the therapy is sexual in nature, so I wonder if people signed that petition with full knowledge of the type of business.

Kellie Inveiss – I would like to speak to the point that she says she does not treat sex offenders. A big concern for me is that she can't really check on that. She mentioned that in the subcommittee meeting, that it would be unethical to even Google her patients. Today her attorney says she does check a sex offender website, but that was not mentioned at the subcommittee meeting. Also, I don't think the statement about traffic is completely accurate. She may not drive to work but she does run errands, she does have an employee, and then the patients coming also. The neighbor next to her said they had to build a wall to get more privacy.

Joan Copenrath – My concerns are similar to those raised by Kellie Inveiss. I do believe that Dr. MacIvane is ethical and has a helpful practice. I'm concerned about her being able to check on her patients. She may be able to check on what they have done in the past but that is no guarantee about what they can do in the future. She said at the subcommittee meeting that some of her patients have emotional issues and so in my opinion it is not easy to say what they may do.

Ira Hecht – I have known Dr. MacIvane for about 2.5 years (not as a patient). I have been to her house and I know the neighborhood very well. I know the cul-de-sac can be crowded when someone is holding an event. I was shocked when I heard about this. She has had a business permit registered at this address and then one person complained, and suddenly the city says there is a problem. Any psychologist can see people with sexual problems. Dr. MacIvane has special training to do so. She is the only one in this area to have such training. Here is zip code 92116 (shows map) with the Megan's list offenders listed. There are several in the area already. The more sexual therapy there is to help people, the fewer sexual predators there will be.

Bruce King – I am here in support of the planning group granting a conditional use permit to Dr. Mary Lou MacIvane for a home based business of psychological services. She has a very professional practice. There is nothing sexy or intimate in a sexual way about it. Sometimes people have issues in their lives and these issues bleed over into areas of sexual performance etc. I think we should be thrilled to have someone with these skills in the community and I recommend approval of the permit.

Kathy Mitchell – I have lived in the neighborhood for 20 years and I am against the permit because it brings a patient-based business into the area. When I bought my home, if I wanted to be near businesses, I could have chose another neighborhood and paid a lot less money. It does increase traffic, if she sees 20 people a week, that is 1,400 per year, and that does not include her employee. It could potentially open a floodgate of people wanting to have a business out of their home.

Robert Gershon – I live on the border with Normal Heights. It seems to me the main issue is whether the business is appropriate for the community. She has been there 4 years. In those 4 years, has anyone ever asked her what is going on? Apparently someone walks past and hears some sort of sound and then learns it is a sex therapy business and gets freaked out and jumps to who knows what sort of conclusions. I don't think 1,400 trips per year is a relevant statistic. You can multiply anything out but that doesn't change that is only 4 trips per day. If you find out someone who is operating a knife sharpening shop out of their house, is that bringing in dangerous people?



You might try to argue that but you are not arguing based on the facts or the law. Your argument is like a rope of sand.

Joseph Cloren – As I sit here and listen, I know the issue is, should we permit this business in our neighborhood? And it is strictly as a business in our neighborhood. I respect the business and the professionalism and even the patients, but that is not the issue. The issue is should there be this type of business in our neighborhood. What if another doctor like a radiologist wanted to practice in the neighborhood? Would you approve it or deny it? I would have to say, “No, I don’t think so.” I am a neighbor on Ridgeway myself.

Tom Hebrank – there have been several questions on traffic. I would like to ask the applicant if she has an employee and how many people are on site at one time.

Mary Lou MacIlvane - I have 1 employee 3 days a week. Since I have been informed of the rules by the city that I may only have 1 patient on the premises at a time, I have declined to do couple’s therapy and I have spaced out my appointments by an extra 15 minutes to make sure that there is only one patient there at a time.

Randy Sinclair – I cede my time to my wife, Lisa Sinclair

Caroline Wohl – I also cede my time to Lisa Sinclair.

Lisa Sinclair – Read a letter from Rex Downing, realtor, who could not be present at the meeting. Quoting from the letter, Rex originally told Mary Lou, “No home seller is required to disclose that the City has allowed any particular usage of any particular property.” Rex wanted to clarify that “Now that I have a more complete picture of the kinds of issues Mary Lou’s clients have, I think it is very understandable that neighbors would consider this to be a neighborhood nuisance... But here’s the real point: the fact of the nuisance is now a matter of public record, which means that any seller who knows about it would be required to disclose that there is a neighborhood nuisance even if that seller doesn’t feel that it is a nuisance!” It is my understanding that the KTPG can consider factors beyond those narrowly considered by the city. I urge KTPG to deny the permit.

Diane McWhorter – I wish to speak in support of MacIlvane home use permit. Dr. MacIlvane is courageous and of the utmost character, and has devoted her life to helping others.

Carolyn Rentto – I cede my time to Sara Gros-Cloren

Sara Gros-Cloren – I am a neighbor on Ridgeway. The overwhelming majority of people nearest to this house are opposed to the use. Some of the people speaking here in favor of the permit are friends or colleagues. I would like to speak to Mr. Bouman’s report about property values. With all due respect, I think his report is irrelevant to this discussion because I don’t think it is property values that are the problem; it is a problem of being able to sell if we have to disclose this neighborhood condition. If neighbors who are already here are against the practice, then I think that will have the same impact on people who would buy it. I think the definition of a nuisance is something that would affect your ability to sell your home for its real value.

Roger Utt – I would like to move into the subject of process. I want to talk to you about permitted use in RS-1-7, which is what we are looking at. You are allowed to have golf courses, doctor’s offices, mobile homes, guest houses, all sorts of uses. I think it is very unusual that the applicant is even here being keel-hauled like this. There are these businesses all over and you never hear about them. I also want to refer to the structure. I think this is a converted garage, and there are restrictions on use of such a space. It can’t be more than a certain size; there are



restrictions on bathroom facilities, etc. I don't think this is a legal structure and I ask the KTPG to inquire about that.

Mary Lou MacIvane – the conversion of the garage was permitted by the city.

Tom Hebrank – The time is 8:40, and judging by the number of speaker slips left, I think we need another hour. Moved by Sean Harrison and seconded by John M. Garrison to extend discussion by 1 hour. Motion passed 14-0 (Pam Hubbell and Tom Hoyt were not present for the vote).

Dan Regin – I don't put weight into the appraisal report. I don't think a short sit in front of the property tells one anything. I believe that anything that drives traffic into our neighborhood is a bad thing. I've heard comments about her being highly trained and her patients being highly functional, but I think there are a lot of highly functional people in prison. There is no way she can guarantee sexual predators are not coming to her practice. The highly intelligent ones may be the ones who can fool her.

Robert P. Sedlock – I'm against it and I give the balance of my time to Shirley Kelly.

Shirley Kelly – Mary Lou is a very nice lady, very well educated, and in no way is this personal attack. Many of those on Ridgeway are concerned about a business being there, not just her business specifically. If you look at the letters that have been submitted to you, the majority of the people on Ridgeway are against the permit. If you support this when the majority of the residents on the street are against it, you are setting a precedent for lots of other lovely streets to have a business like this.

Gretchen Pattengill – I believe that approving the MacIvane home business sets a precedent for the future in the community – anyone's home can become a retail store. I concur with the comments made by Shirley Kelly.

Bob Rentte – We live at the end of Ridgeway, the only way our grandchildren can get to our house is to go past her house. Nothing here is against Mary Lou. This is about her patients. I'm concerned about the nature of her practice. If my grand-children are going to ride their bikes past her house, I will have to convoy them. Let's look at the questions her attorney posed: Question Number two asks "has there been a problem in 4 years?" – my answer is, "No, but it only takes one problem to be a big problem".

Sheryl W. Chaffee – I am opposed to the NUP for Mary Lou MacIvane on Ridgeway Dr. for all the same reasons that have been enumerated by others. I hope you will consider the opinions of those of us on Ridgeway. I hope that you will oppose the permit.

David Hunt – Keep zoning codes in place re: waiver for therapy license. When I chose this area, I chose it because of the strong aesthetic and the community sense. We just had a big fight about the Kensington Terrace building. I was at the subcommittee meeting. I think there is some distrust. She says she has removed the address from her website but I Googled it this week and it was lower down but it is still there. There are appropriate places for this type of work. A dentist's office should be in an office, not someone's garage, and that is the same for this business.

Don Wall – A Kensington resident for 25 years. I've known Mary Lou for more than a year and I know that she would not do anything to put the community at risk. I live on Marlborough Drive. Even way down at the end we have a yellow stripe on the road. There is a lot of traffic. Most of it is gardeners roaring down the street at 40 miles an hour in the morning and again at night.



Alex Scheingross – I sense a lot of emotions here, and the biggest one is fear. It is an irrational fear. If you make this decision based on fear, what other decisions will you make based on fear? Who will be next? Why do you think a sexual predator would seek out Mary Lou? Why would they come and pay her all this money to see her? She meets the requirements under the law. You have to make your decision based on the law.

Frank Denman – I've known Mary Lou for a long time, 65 years in fact. I have absolute confidence in her ethics, her character, and her professionalism. Full disclosure – I am her brother. I have a 16-year old daughter who worships Mary Lou and visits her several weeks a year. I have absolutely no concern about having her visit Mary Lou, nor do I have any concern for any other children. The question has been raised about not being able to know what a patient might do in the future, but all of you have gardeners', plumbers, and landscapers coming into your home and into the neighborhood. I bet none of you even do a cursory examination on their background.

Joanna Zadra – I am Mary Lou's sister and I would like to second the statement about landscapers and other people coming into the neighborhood. You can't know who is coming into the neighborhood and it is unfair to single out Mary Lou or her patients. Sexual predators don't voluntarily seek out expensive private practice like this. They may be mandated to seek therapy, but those people are then known offenders and they are not part of the practice.

Nancy Parton – I am in support of Mary Lou MacIlvaine's permit, and I cede my time to Ron Morebello.

Ron Morebello – Mary Lou is a good friend and neighbor. She has hosted several community events in her home such as community concerts. She is a great asset to the community. In terms of parking, 1 car at a time should be no problem given how much space she has there. It is a great environment to see patients and help them feel comfortable in a peaceful and quiet environment. Sexual perverts or molesters do not pay the big fees that someone like Mary Lou would charge. If they are known offenders then they are referred to specialists for that type of problem.

Tom Hebrank – it is 9:02pm. We are going to take a 5 minute break and then I will give the applicant a few minutes to respond to these points and then we will go to the board.

Tom Hebrank – called the meeting back to order at 9:12pm. At this time I will give the applicant a few minutes to respond.

Mary Lou MacIlvane – I would like to respond to several things:

- I don't like having my address on the website and if you will tell me where it is then I will remove it.
- I don't have any vehicle on the premises for office-related purposes.
- As to the neighbors wall, I paid for that. My neighbor was glad I did so. I did it for the privacy of my patients.
- There are other businesses in the community but they operate under the radar. No doctor's/dentist office could move into the neighborhood and support itself with a total of 4 patients per day,
- 90% of people who are sexually assaulted are assaulted by people they already know, who are close to them, relatives, people you are already letting into your home.
- I never said that Rex Downing said that this was no problem. Whoever said that has misquoted me.
- Nuisance has a legal definition. It has to be something tangible like dust, noise, etc. The city has already ruled that it is not a nuisance. If you are bothered by something about it I am sorry but that does not make it a nuisance.



- The fact that few people on Ridgeway support my business breaks my heart. But I know that Dr. Trotter said he would sign it but he said he would have trouble with the neighbors if he did. I spoke to someone else at the end of the street but due to her schedule I could not get her signature. Someone has been going up and down the street saying I have said that even I can't tell if one of my patients is not a sex offender. I never said that. I said that I can't Google a patient to find out about them. Think of the radiologist that knows how to read an x-ray. I have experience in reading patients. I have 20 years of practice, if you imagine that the only way I can tell if someone is a sexual predator is that tell me, that is not the way the world works. You are expert in your business and you can tell things about your business.

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## KTPG DISCUSSION AND VOTE

Tom Hebrank – At this point I will go to board questions and comments. I will start at Danielle's end of the table and we will just go around the table.

Danielle Laman – I missed the subcommittee meeting because it moved to an alternate Wednesday. Had I been there, I would have voted to approve the permit so it would have been a 4-4 vote. I also think that we have a lot of therapists working out of their houses.

Sean Harrison – I am afraid that someone walking past my house would think I have a sexual therapy practice if they heard me arguing with my wife. I haven't made a decision yet and I want to hear the rest of the board. I think Danielle makes a good point that there are other therapists in the neighborhood. I also think we have massage therapists, etc. I will make my decision ultimately not based on fear or on emotions.

Tom Adam – the applicant has met the city requirements and that is what we are voting on. She is before us because the particulars of her business, with an employee on site, then you have to meet certain conditions and you have to get a permit. She now complies with those conditions. I am sure that there is a caterer here having people come in to taste the food. The neighborhood use permit does not change the zoning for Kensington, for Ridgeway, or even for the property. It goes with the applicant. She has ample parking on the premises. I have been through the house when it was for sale, and it lends itself to this type of use. We are voting on a business use for this type of site.

Sherry Hopwood – I too visited the property at several times a day. I wanted to see if there was a problem or a nuisance. I did not see this. A nuisance requires actual criteria, not just fear or concern. Not one professional therapist spoke out against this. The only thing that would concern me is seminars. That would concern me. Can you confirm for me that you would not have any more seminars? If so then I would have no concerns about it.

Mary Lou MacIvane – I will not be doing any more seminars. The one I advertised got no takers so I will not try that again.

John M. Garrison – the conditions imposed by the city say no more than one customer on the premises at a time, so that would preclude a seminar.

John Garrison – please skip me for a moment as I catch up with typing these minutes, but before I forget I do want to thank everyone here tonight for their input and also for their cordiality and respectfulness they have shown tonight.



David Moty – I was on the subcommittee and I will just explain my vote from that night. Looking at the property, there is no problem with parking, however, she says she has 20 patients per week and to me that does constitute a traffic problem.

Fred Lindahl – I concur with the comments made by Daniele, Sherry, Tom, and John

Guy Hanford – I was quoted in the notes as bringing up the traffic problem, so I thank David for noting that. I do have a problem with a foot traffic or car traffic business. My concern is not about the type of business but I want to be cognizant of the people around who are affected by the business. I try to put myself in a position of having that type of business nearby.

Kevin Kelly – I know that one of our concerns about sexual predators is that many of them look just like us. I believe that once she gets them into her office, she can size them up, but she can't do that until she has them in the practice. For me it is nuts and bolts, parking, traffic. It seems to me that in terms of hard data, that Dr. MacIvane has been engaged in this for 4 years. She has done couples therapy in the past, and I take her at her word that she won't do that. It seems to me that we can reasonably expect a reduction in traffic due to the changes she has agreed to make. Close call for me but I will vote to approve.

Frank Doft – it is hard to go against the petition of the nearby neighbors, but I am leaning toward approving this.

Bob Coffin – I called the city and asked why this got a tentative approval and the answer from the woman at the city was that it complies with the arguments. She said several things that I was not familiar with. One of them is that the city has no way of knowing who has a business like this unless someone files a complaint. She could check address by address but that is not practical. Some of these businesses are issued NUPs in perpetuity. Some of them run with the land, and may not be specific to the land. I would propose a lifetime ownership cap, but also a five-year cap, so that we could re-evaluate whether this has been a problem or not.

Charles V. Berwanger - We would agree to a condition limiting it to the life of the owner, but we really don't want to have her go through this nightmare in 5 more years.

Gail Greer – I have a question about the traffic – it is not just traffic on Ridgeway, it is also traffic getting to Ridgeway, along Marlborough. I have no concerns on the practice, but I do have a concern about the traffic. I am concerned about the precedent it sets.

John Garrison – I have heard 3 concerns mentioned: parking, traffic, and the nature of the patients attending the practice.

- Parking: If you look at this property, it is a fairly unique property since it is a lot and a half and has this big circular drive, which makes parking not a concern.
- Traffic: In general, I am reluctant to approve anything that increases traffic even at all, but the amount of traffic here is small. It is no more than 4 trips a day for patients plus the employee comes 3 days a week, minus perhaps some offsetting trips because the applicant does not have to drive out of the neighborhood to work. So, let's call it 4 trips a day. It is not that many trips per day and as a matter of law that level of traffic is allowed by the zoning, so long as the appropriate permit is received.
- The nature of the practice and the patients: I understand that some people are concerned about the nature of the practice itself. Some of those concerns may be based on emotion but that does not make them any less real. I understand that and I sympathize with that. But no one has shown any evidence or data at all to say that these patients are any more likely to be sexual predators or any problem to this



community than gardeners or plumbers or anyone else entering the community. For that matter, a sexual predator is allowed to move here into the house next door to you or me and we couldn't stop that either. So, I will be voting the same way I did in the subcommittee meeting: to approve the permit.

Tom Hebrank – asked if there were any final comments before moving to the vote process; none were voiced.

#### THE FIRST MOTION:

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Tom Hebrank – we do have a recommendation from the subcommittee and procedurally it is on the floor and does not require a second. The recommendation from the subcommittee is to deny the permit. If that motion passes, the permit is denied. If that motion fails, I will entertain a motion to approve the permit.

In favor of denying the application: David Moty, Gail Greer, Guy Hanford, Bob Coffin

Opposed to denying the application: Daniele Laman, Frank Doft, Fred Lindahl, John M. Garrison, Kevin Kelly, Sean Harrison, Sherry Hopwood, Tom Adam, Tom Hebrank.

The motion to deny the permit failed 10-3 (Tom Hoyt and Pam Hubbell were absent).

#### SECOND MOTION:

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Tom Adam – I move that we approve the permit with the conditions added by the city.

John M. Garrison – I second that motion.

#### AMMENDMENT1:

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Bob Coffin – I would like to add the stipulation that this permit goes with the applicant only, not the property. If the applicant gets out of this business or moves from the property, then the permit expires.

Tom Adam and John Garrison accepted that as a friendly amendment.

#### AMMENDMENT2:

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Kevin Kelly asked to also include a provision that the commercial business conducted on the premises shall not include sexual activities nor is it to involve nudity or sexual demonstrations.

Tom Adam and John Garrison accepted that as a friendly amendment.

#### MOTION AS AMENDED

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The KTPG approves the Neighborhood Use Permit with the following conditions:

- 1) The home occupation shall comply with LDC Sections 141.0308 (a through m) at all times.
  - a) Home occupations are permitted only as accessory uses to a residential use.



- b) Any products produced for sale must be manufactured by hand or grown on the premises.
- c) The home occupation shall not result in the elimination or the reduction of required off-street parking.
- d) Signs advertising the home occupation are not permitted. Other advertising shall not include the address of the premises.
- e) Home occupations, except for horticultural users permitted in Chapter 13, Article 1, Division 3 (Agricultural Base Zones) and Division 4 (Residential Base Zones) shall be conducted within an enclosed structure on the premises.
- f) Materials or products associated with the home occupation on the premises must be stored within an enclosed structure.
- g) Indoor storage of materials or products associated with the home occupation shall not exceed 1,000 cubic feet for the entire premises or any more restrictive limitations imposed by the Building and Housing Codes or the County Health Department.
- h) The operation of the home occupation shall be consistent with permitted residential uses, shall not create any conditions that amount to a public nuisance, and shall not be detrimental to the residential neighborhood by causing increased noise, traffic, lighting, odor, or by violating any applicable ordinances or laws.
- i) The resident of the premises shall not rent space to others in association with a home occupation.
- j) Only a resident of the premises may engage in a home occupation on the premises. Nonresident partners, employees, or customers are not permitted on the premises.
- k) All sales of product and the performance of all service or work that requires the presence of a partner, employee, or customer shall take place off the premises.
- l) Only one vehicle for business-related purposes is permitted on the premises or on any adjacent residentially zoned area. This vehicle may not exceed a one-ton carrying capacity and may not be a tow-truck.
- m) The following exceptions to the regulations in Section 141.0303(j), (k), and (l) may be permitted with a Neighborhood User Permit:
  - i) Home offices may have one employee or partner on the premises during the hours between 8:00am and 5:00pm, Monday through Friday;
  - ii) Home offices may have one customer on the premises at a time, by appointment only, between the hours of 8:00am and 5:00pm, Monday through Friday; and
  - iii) Home occupations may have more than one vehicle for business-related purposes.
- 2) Sex offender treatment and counseling is not permitted at any time on the premises.
- 3) The home occupation shall remain an accessory use to the primary residential use on the property.
- 4) The home occupation shall not result in the elimination or the reduction of required off-street parking.
- 5) Signs advertising the home occupation are not permitted. Other advertising shall not include the address of the premises.
- 6) The home occupation shall be conducted within an enclosed structure on the premises.
- 7) The operation of the home occupation shall be consistent with permitted residential uses, shall not create any conditions that amount to a public nuisance, and shall not be detrimental to the residential neighborhood by causing increased noise, traffic, lighting, odor, or by violating any applicable ordinance or laws.
- 8) The resident of the premises shall not rent space to others in association with the home occupation.
- 9) Only a resident of the premises may engage in the home occupation on the premises.
- 10) The home occupation may have one employee or partner on the premises during the hours between 8:00am and 5:00pm Monday through Friday.
- 11) The home occupation may have only one customer on the premises at a time, by appointment only, between the hours of 8:00am and 5:00pm, Monday through Friday.



- 12) This permit goes with the applicant and her current form of business only, not the property. If the applicant gets out of this business or no longer resides at the property, then the permit expires.
- 13) The commercial business conducted on the premises shall not include sexual activities nor is it to involve nudity or sexual demonstrations.

In favor of the motion to approve the application with the additional conditions as written above: Daniele Laman, Frank Doft, Fred Lindahl, John M. Garrison, Kevin Kelly, Sean Harrison, Sherry Hopwood, Tom Adam, Tom Hebrank.

Opposed to the motion: David Moty, Guy Hanford, Bob Coffin, Gail Greer.

Absent: Tom Hoyt, Pam Hubbell.

The motion to approve the application, with the added conditions stated here, was approved 11-2.

#### MEMBERSHIP AND COMMUNICATIONS – JOHN M. GARRISON

Because the meeting ran over-time, the KTPG did not hear a report from this subcommittee.

#### KMAD – TOM HEBRANK

Because the meeting ran over-time, the KTPG did not hear a report from this subcommittee.

#### KTPG LIAISON COMMITTEE REPORTS

Because the meeting ran over-time, the KTPG did not hear a report from any of our liaisons.

#### AGENDA FOR THE NEXT KTPG MEETING

Because the meeting ran over-time, the KTPG did not discuss the agenda for the next meeting, nor did we discuss whether subcommittees would meet. By the regular schedule, subcommittees would meet on Wed, Dec 22<sup>nd</sup>, 2010.

#### ADJOURNMENT

Tom Hebrank adjourned the meeting at 10:02pm. There was neither a motion made nor vote taken on adjournment as time had expired.