

## FERGUSON TOWNSHIP BOARD OF SUPERVISORS

Regular Meeting  
Monday, May 7, 2012  
7:00 pm

### I. ATTENDANCE

The Board of Supervisors held its second regular meeting of the month on Monday, May 7<sup>th</sup>, 2012 at the Ferguson Township Municipal Building. In attendance were:

**Board:** George Pytel, Chairman  
William Keough  
Elliott Killian  
Andrew Clemson  
Richard Mascolo

**Staff:** Mark Kunkle, Township Manager  
Trish Lang, Director of Planning & Zoning  
Dave Modricker, Director of Public Works  
Diane Conrad, Chief of Police  
Ron Seybert, Township Engineer

Others in attendance included: Barbara Donnini, Recording Secretary; Dorothy Evensen; Mary Ellen Kelly; Robert Santoro; Marianne Garlicki; Bond Reinhardt; Barb Gleim; Mark Kozac; John MacDonnell; Carl Evensen; Kathy Henry; Gary Schell; Richard Killian; Charlie Courtney; Dan Wallace; Jon Dietz; Tom Knell; Eric Vorwald; Nicole West; Cathy DeSanto; Kate Haris; Mike Mudvy; Rich Shore.

### II. CALL TO ORDER

Mr. Pytel, Chairman, called the May 7, 2012 Regular Meeting to order at 7:00 pm.

### III. CITIZEN'S INPUT

- Ms. Evensen said that she is concerned about the proposal for the new Park Hills Park. She said that some park equipment has been removed and there is a proposal to bring it up to higher ground. She said that the lower ground is in the flood plain and that her property is above the wooded area. She said that she received a letter on January 18, 2012 about the construction, and said that she was concerned about the placement of some of the equipment, since it was very close to the road. Ms. Evensen said that there was tree removal that was not in keeping with the plan that she was sent. She said the whole middle section of trees was removed. Ms. Evensen continued to say that she read in the Ferguson Township newsletter that a path was going to be put in and she was confused as to how this would work. She then contacted Ron Seybert, Township Engineer, who told her that the area where the play equipment was to be put would be staked. Ms. Evensen said that she was shocked to see that the stakes were right on Park Hills Avenue. She said that the closest one was about 8 yards back from the road the furthest one was about 20 feet back from the road. Then, she said she met with Ron Seybert and David Modricker, and was shown a catalog for the proposed equipment.

Ms. Evensen continued, saying that she has three major issues with the proposal. Her first issue is safety. She does not agree with the proximity to the road. Ms. Evensen said that her second issue was regarding design. She felt that the play equipment selected resembles those found in a McDonald's play area. She continued, saying that there are issues regarding environmental compatibility and aesthetics for the neighborhood. Ms. Evensen said that her third issue is regarding community involvement. Ms. Evensen said that there are many people including herself that have ideas about what would be best and most compatible for the neighborhood. Ms. Evensen asked of the Board that the Supervisors revisit the idea of development. She also asked that they allow the community to volunteer and get involved.

Ms. Kelly stated that she lives directly across the road from Ms. Evensen and that she agrees with everything Ms. Evensen said. She said that her biggest concern is safety.

Mr. Santoro said that he is familiar with the playground because he takes his grandchildren there. Mr.

Santoro said that he saw the letter being passed around to the community and that he wishes for a playground to remain in that area because it is a convenient place. He said it is easily accessible from the Park Hills area near Cherry Hill Road, and along Park Hills Avenue, which leads to Circleville Road. Mr. Santoro said that he generally agrees with the concerns raised about the traffic.

Ms. Garlicki said that her property finds the park in its background. She said that she has lived in Park Hills for 10 years and that Park Hills Park was a selling point for her. Ms. Garlicki said that she has four children between the ages of 4 and 14 and that the park has been integral to how she enjoys her neighborhood. She said that there should be a citizens group that would meet and offer insights together to ensure it is a safe place.

Ms. Haris said that she lives two doors down from Ms. Garlicki and that she concurs with everything that Ms. Garlicki said. She said the park has been and is integral to the neighborhood since she moved there in 2001. Ms. Haris said that she thinks it would be nice to have a group, and that there are people who have concerns on Park Hills Avenue West as they are adjacent to the park.

Mr. Pytel asked Mr. Modricker to explain why the park stands as it is with regards to the structures in the flood plain, the public safety of the roads, and the equipment.

Mr. Modricker said that the primary reason for the proposed new location is to be out of the flood plain. Mr. Modricker said that there is a riparian buffer that exists between the equipment and the flood plain. Mr. Modricker said that the nearest structure to the road is a swing set on the top left part of the map, and it measures 90 feet from the center of the structure to the curb line. He said it is about 50 or 60 feet from the edge of the fall material to the curb, and that he is not aware of any guidelines or rules regarding a minimum distance from the equipment to the road. Mr. Modricker said that in more urban areas, a park is right up against the road and there is a chain link fence that separates the play equipment from the road. He said that typically in Ferguson Township, because of a more rural setting, this is not seen as often. He said that there is discussion for consideration of a fence if the community is interested in this. Mr. Modricker said that when this was discussed for public safety concerns, less shrubs and undergrowth between the equipment and the road was preferred for visibility purposes. He said that there could be a balance between landscaping and a fence, but that at this point there is nothing on the plan for a fence.

Regarding the old equipment, Mr. Modricker said that it was examined by a certified playground inspector and was deemed unsafe, so new equipment was ordered. He said that prior to installation, the certified inspector, who is also the zoning officer who also administers floodplain ordinance, informed the Township that the structures are in the floodplain and needed to be moved. Mr. Modricker said that this project was really was an effort to replace equipment that needed to be upgraded but because of the floodplain a new location was proposed. Mr. Mascolo asked if this was the only location that is out of the floodplain and suitable. Mr. Modricker said that most of the remainder of the parcel that the Township was offered when the land was developed was floodplain and drainage way. Mr. Modricker said that most of the soccer field is in the drainage way. He said that the new proposed location is on higher ground and pointed to the map. He said he did not do an exhaustive search. Mr. Mascolo commented that the park floods all the time.

Mr. Evensen said that on the edge of his property and the park property, there is a large drainage pipe that collects water through the street inlets. He said that it pours out water just a few feet from where this equipment will be. Mr. Evensen said that whether it is on a floodplain or not is irrelevant because there is a lot of extra water being deposited there. Mr. Modricker said that he is not sure of the exact location that is being discussed, and that the drainage way reaches up as far as Patton Township. Mr. Evensen pointed to the map to demonstrate where the pipe is. Mr. Keough said that there is a lot of brush in that area and it may be difficult to see it. Mr. Modricker said that if it does exist there is no

defined drainage way from it. Mr. Modricker said that they can take this into consideration and report back to the Board about it.

Ms. Evensen asked the Board to consider putting together a committee of community people, and that the people represented tonight are all willing to serve.

Mr. Mascolo said that the proposal at hand is to set up a committee with Dave Modricker and Ron Seybert that Mr. Kunkle would put together. Also Mr. Ressler and Mr. Mascolo would be part of the committee. Mr. Clemson said that someone from the committee should report back to the Board. He also said that part of the committee process will be educational and that once everyone is on the same page decisions can be made.

Mr. Kunkle announced that Mr. Seybert would be taking names of people interested in serving on the committee.

- Mr. Killian said that he and Dr. Gary Schell appeared at a previous meeting and would like to provide the Board with an update on a park owned by the school district in the Overlook Heights neighborhood. He said that at the School Board's April 23<sup>rd</sup> meeting, the school voted to subject the park to sale through a public bid. Mr. Killian said that a private sale is possible and the district can reject any or all bids, but a judge must concur. The district's bid package fully disclosed the deed restriction to keep the land a park. Mr. Killian said that the residents living adjacent to the park and most of the residents he has spoken to would like it to remain a public park without taxpayer expense. Mr. Killian said that losing the park could have the potential to significantly alter the character and stability of the neighborhood and community. Mr. Killian said that the neighborhood is already under pressure when considering the number of rentals versus the number of single family units. He said that families and young professionals have moved into the neighborhood for a variety of reasons, with the promise of parks being an exciting factor. Mr. Killian said there are several possible outcomes to the School Board's action. He said that his neighborhood is moving forward with creating a legal neighborhood association as quickly as possible. He said that they are creating bylaws and incorporating it as a nonprofit in Pennsylvania. Mr. Killian said that they are also seeking quotes for having a private contractor maintain the area which would include mowing the lawn of the park. Mr. Killian said they would like to create a public-private partnership to maintain the park without taxpayer support. Dr. Schell thanked the Board for their encouragement and advice. He said it was very helpful for them and that they have made progress. Dr. Schell said that it is difficult to think about the public school district selling a public property in a private sale. Dr. Schell said that they will probably step up as a neighborhood and arrange for the private purchase of the public park. He said that he would hope that the leadership and administration of Ferguson Township to continue to support them.

Mr. Pytel said that he has no problem with staff working with Mr. Killian and Dr. Schell.

Mr. Elliott Killian is in support. Mr. Keough asked if there is public access. Mr. Richard Killian said that there are two access points. Ms. Lang said that she is not certain that anyone who purchased it with the idea of developing would be able to provide a street into the lot. She said that although they might have street frontage, they could not build a street that would meet Township standards. Mr. Killian said that if a developer purchased one of the houses they could secure access to Atherton Street.

Mr. Pytel asked if there were objections from the Board to Ferguson Township staff working with this neighborhood to accomplish their goal. There were no objections from any Board members.

#### **IV. ABC REPORTS**

- Mr. Reinhardt said that in 2011, there were 59 connections for the Water Authority with 2 of them being in Ferguson Township. He said that to date are 36 connections with 10 in Ferguson Township. Mr. Reinhardt said that there was thought to be an issue with Circleville Farm capacity for the water authority. He said that it was discussed that there are about 890 units in the master plan, but that they are only at 1/10 capacity so there is no issue. Mr. Reinhardt said that West College Avenue from Atherton Street to Buckhout Street will be closed but will at most times have one lane remaining open. He said that there will be times that both lanes are closed. Mr. Reinhardt said that Max Gill wanted him to mention that customers can now pay online at scbwa.org. Mr. Keough asked about the handout that Mr. Reinhardt provided to the Board and said it is rather impressive. Mr. Reinhardt said that State College Water Authority has the lowest price in the area, including Harrisburg, at under \$60/quarter.
- Mr. Dietz said that the number of hookups described by Mr. Reinhardt ties in with the number of hookups for UAJA as well. Mr. Dietz said that UAJA is operating normally with no violations with their NPDS permit. He said that flows are higher than before, by about 1,000,000 gallons to date. Mr. Dietz said that this is due to the amount of rain and brown water going into the sewage collection system. Mr. Dietz said that one wouldn't expect to see a million gallon per day increase given the growth in the community, so UAJA anticipates that the average flow is decreasing. He said that UAJA will see the decrease until they are back to the long term average of 4.7 MGDs. He said that this is important because UAJA has an effluent flow that they are allowed to discharge into Spring Creek of 6.4 million gallons per day. Mr. Dietz mentioned that UAJA has a beneficial reuse program that is currently at a capacity of 1,000,000 gallons per day and can be expanded to 3,000,000 gallons per day. He said that this was put into place so there wouldn't be any limitations on growth in the community with regard to Spring Creek. Mr. Dietz said that at this point, those facilities consist of a beneficial reuse line that provides water primarily to Centre Hills Country Club but also to commercial facilities such as Red Line Speed Shine. He said that UAJA is always looking for more customers for their water because the more beneficial reuse water that is used, the more capacity there is for growth in the community.

Mr. Keough asked about the West College Avenue construction, how Ferguson Township will be impacted, and what the Township's plan is if they are impacted. Mr. Kunkle said that the Township has not developed any alternative routes. Mr. Keough asked if the Township is anticipating that the project will be completed by the end of the summer. Mr. Modricker said that he has not been active in any discussions because he knows it is in the Borough and the Water Authority's project. He offered to get more information on it.

#### **V. PUBLIC HEARING ON A LIQUOR LICENSE TRANSFER FROM EUTAW HOUSE, INC. 124 OLD FORT ROAD, SPRING MILLS, PA POTTER TOWNSHIP TO GIANT FOOD STORES, LLC, 255 NORTHLAND CENTER, STATE COLLEGE, PA FERGUSON TOWNSHIP**

Mr. Kunkle said that under the current commonwealth law, there can be an inter-county transfer between the host municipality and another municipality in the same county. He said that Ferguson Township received this application on March 27 and that the 45 day time period for a public hearing would normally expire May 11, so the hearing tonight is within the established time limitations. Mr. Kunkle said that in 2001 the Township adopted an ordinance that provided guidance for liquor license transfers between counties. He said that the Township set up 9 criteria that the applicants were asked to address during their application process. Mr. Kunkle said that included with the Board's agenda are 13 proposed conditions that the Board may attach in considering approval of the license transfer. Mr. Kunkle said that Giant legal counsel has been discussing with the Township staff 3 of the conditions in

particular. Mr. Kunkle explained that in the past, quarterly sales information was required on a dollar volume basis. He said that Giant requested this be provided to the Township on a percentage basis. Mr. Kunkle said that the Township has requested that Giant keep a ledger that would be available for the liquor control enforcement agency so they can quickly determine if the required 50/50 sales ratio exists. Mr. Kunkle said that staff had suggested a limitation on the time period during day that Giant could sell their malt or brewed beverages. He said that staff suggested 10am to 10pm. Mr. Kunkle said that Giant, however, has requested the opening time be moved to 7am, since this is when they begin serving food. Mr. Kunkle said that Giant also felt that this may accommodate individuals shopping at nontraditional hours, but have agreed that a 10pm closing is reasonable.

Atty. Marc Kozar said Giant is requesting that Ferguson Township approve a resolution permitting the inter-municipal transfer, which is section 461 B3, of a liquor license for Giant's new café. He said that the liquor code permits the PLCB to approve the transfer of a license from any municipality in Centre County to any other municipality as long as the receiving municipality issues a resolution approving the transfer. Kozar said that the PLCB approved liquor licenses for over 75 grocery store restaurants, including Weis in Bellefonte and Wegman's on Atherton Street. He gestured to the floor plans and artist renderings saying the new idea will be tastefully and discretely in the store. Mr. Kozar said that customers will have the option of single servings to eat in or take out from the café kitchen. He said that Giant will offer breakfast, lunch and dinner, from 7am – 10pm and from 9am – 10pm on Sundays. He said that there will be a dedicated café manager who will be manager-owner, and trained in addition to Giant's typical process. Mr. Kozar said that managers and servers will be RAMP certified, and that Giant as a store will be RAMP certified, which requires five steps:

- 1) Managers Certified
- 2) Servers Certified
- 3) RAMP Designation
- 4) New Employee Orientation Package
- 5) A final inspection by RAMP personnel to see that Giant has completed the first four steps.

He said that single serving beer will be available for in store consumption and up to 192 fluid ounces will be available to take out. Mr. Kozar claimed that Giant is creating a self-imposed two beer limit for on premise for consumption and that Giant requires a food purchase for all alcohol purchases. Mr. Mascolo asked if the surveillance will begin at opening. Mr. Kozar said the outside cameras are currently in operation and that the inside cameras will be operational upon opening. Mr. Keough said that he does not have a problem with item 4, which are the times they would sell the beverages. He said that there are many people in the community that work multiple shifts. Mr. Killian asked if they will open at 7am also on Saturday. Mr. Kozar said that the only day that will be different is Sunday, when they will open at 9am.

Mr. Pytel asked if the 50/50 rule is for items throughout the store. Mr. Kozar responded that it is only applicable to items prepared in the licensed cafe kitchen. He clarified that someone cannot purchase a gallon of milk and counts it as a food item when purchasing an alcoholic beverage. Mr. Richard Shore leases a property near the entrance to Northland Center, and said that he sees an alcohol issue. He said that the Township set up criteria of a 2,500 ft. distance between licenses, and that this proposal breaks the criteria in four places. Mr. Shore did not hear a benefit to the community. He said that he thinks the Board should consider community benefit and that this is just generating another place for people to buy beer and is only benefiting Giant. He said that there are a lot of drinking establishments on North Atherton and that they are approaching the number of banks. Mr. Shore said that he isn't sure he sees the benefit to the community and it seems like a café with 32 seats is just being established so that there can be sale of alcohol. He reiterated that it is already breaking the 2,500 ft. criterion that was made because this is what the Board thought was best for the community.

Mr. Kunkle said that staff recommendation was to conduct a public hearing for community feedback

and have the Board consider conditions for a final resolution on May 21. He said that the formal resolution will be prepared with the modified conditions and the Board would then take action on May 21 to approve or disapprove the request.

Mr. Mascolo made motion to continue the public hearing to consider the potential conditions for approval of the liquor license transfer to May 21 2012. Mr. Keough seconded the motion.

## **VI. COMMUNICATIONS TO THE BOARD**

Mr. Mascolo said there were two inquiries about the license transfer. Mr. Killian said that a resident was concerned about Penn State's sale of land along Whitehall Road. Mr. Clemson asked where this parcel is and Mr. Kunkle clarified that is near the State College/Ferguson Township boundary directly across from Blue Course Drive. The entire subdivided tract was sold. Mr. Keough said that he had several calls about Park Hills Park.

## **VII. ACTION ITEMS**

### **1. Discussion of 2012-2013 CATA Budget**

Mr. Kunkle said that the budget has been reviewed by the COG Finance Committee and has been referred by the General Forum to the municipalities for comment. It will be back to the COG Finance Committee by Tuesday, May 15. He said that Ferguson Township's share of the operating budget will increase by 5.96% from \$77,502 to \$82,118. He said that the township currently contributes about 16.9% of the local share that is part of the CATA budget. Mr. Kunkle said that CATA also has a capital budget component and Ferguson's share of that would increase by .91% from \$10,449 to \$10,544. He said that Ferguson contributes currently 16.9% of that total capital budget as well. Mr. Kunkle said that staff's recommendation is that the Board provides comments.

### **2. Gerald Brown Sewage Planning Module**

Mr. Kunkle said that in the agenda packet, there is a reduced copy of the subdivision of two acres of land from the total property of 445.34 acres. He said that the two acre subdivision lies only within Halfmoon Township. Mr. Kunkle said that because a sewer planning module was required, DEP requested that both SEO's for Halfmoon and Ferguson Townships review and approve it and each approve a submission of the sewer planning module. He said that staff recommendation is that the Board authorizes the execution of the planning module for Gerald J. Brown and Shirley P. Brown preliminary final subdivision plan, last dated April 25, 2012.

Mr. Mascolo made motion to authorize the execution of the sewer planning module for Gerald J. Brown and Shirley P. Brown preliminary final subdivision plan. Mr. Keough seconded the motion. It passed unanimously.

### **3. Draft Zoning Ordinance Text Amendment**

Ms. Lang said that in January, CATA made a request to consider changing the building coverage requirements in the IRD zoning district. She said that the Board forwarded the request to the Planning Commission for consideration. Ms. Lang said that in discussion, which was focused on CATA's needs, staff thought it would be best to take a look at all zoning districts and determine needs across all zoning districts. She said that the Planning Commission chose to consider how this applies only in nonresidential zoning districts, as the TSD and TTD have their own set of criteria. Ms. Lang said that only commercial, office commercial, industrial, and IRD were therefore considered. She said that currently there is both a maximum coverage and a max impervious coverage. The maximum coverage is intended to apply to the percentage of the lot covered by the ground floor of all buildings.

Ms. Lang said that this was particularly difficult for CATA because they are expanding and they have unique opportunities to use their site in ways other people have not, such as aboveground parking, deck parking, and green roofs. Ms. Lang said that staff began to question why the Township governs both building and impervious coverage. A list of options was presented to the Planning Commission who selected item B which essentially eliminates maximum coverage restriction and leaves all maximum impervious coverage limits as they stand. She clarified that this is 80% in the commercial district, 80% in the office district, 90% in the industrial district, and 60% in the IRD.

Ms. Lang said that the Planning Commission was interested in item F, which is similar to what was used in the Terrace Streetscape District which would provide incentive for utilizing approaches CATA is already thinking about. She said that there is a zoning ordinance update schedule in the near future as soon as a comprehensive plan is adopted, so more difficult changes will be adopted at that time. She said that the change being proposed now is to revise the tables in 501, 502, 601, and 602 which correspond with four nonresidential zoning districts and eliminate the listing of max coverage and leaving maximum impervious coverage as it stands. Mr. Mascolo said that he thinks it's a great move. Mr. Clemson said that the more redundancy that is eliminated is best.

Ms. Lang said staff would need authorization to advertise for a public hearing to adopt change. Mr. Mascolo made a motion to revise impervious requirements through what's discussed in the narrative and authorize a public hearing. Mr. Clemson seconded the motion. It passed unanimously.

#### **4. Variances & Appeals – JC Bar Properties; Minitab Conference Center; Russell & Phyllis Smith; United Rentals**

- Atty. Charles Courtney said that this project, presented last month will be for the lot where the former Blockbuster store site was on North Atherton Street. The developers are proposing to create an 11,000 square foot CVS store. He said that there are two variances being requested. The first is for an access to North Atherton Street. Zoning currently restricts corner lots to have an access on the street of lesser classification, which in this case is Cherry Lane. The second variance is for the required 12 foot buffer between the street right away and parking spaces to be reduced to a 6.5 foot buffer due to the tightness of the property. He claimed that this is still more than 20 feet away from the cartway. Mr. Courtney said that with the application CVS submitted a traffic analysis which has been reviewed by staff. Mr. Courtney said that one of the benefits they received from the last meeting was comments from the Board members. He said that there was particular concern about the left in and right in and needing to have a deceleration lane. Mr. Courtney said that JC Bar Properties is willing to work with the Board on this and modify their access to come up with a different access, and that they don't need to go to the ZHB at their next meeting but it is preferred. Mr. Courtney said that although his firm understands the access management ordinances, he feels there are practical limitations to the site. He said he does not believe they can redevelop the site without having access onto North Atherton.

Mr. Mudvy said that initially, the document they submitted was looking at a left in and right in and out. He said that there are three main points for an access on Atherton Street, which include truck access, traffic flow on Atherton Street, and pedestrian accessibility. He said regarding truck access, the skew of the intersection of Cherry Lane with Atherton Street makes it difficult for tractor trailers to make the maneuver into the site. He claimed that a right in from Atherton Street would resolve this. Mr. Mudvy said that CVS does get deliveries and that tractor trailers could be coming from any direction on Atherton Street.

Mr. Courtney said that in terms of access, his firm would consider eliminating the left in. He said that when they proposed it, they thought it could be supported, but they didn't want to propose an arrangement that PennDOT would never approve. He said that his firm believed that they had a good chance of getting the access through PennDOT but that they understand the Township's concerns.

Mr. Courtney said that they do need right in and right out however. From a deceleration standpoint, there are challenges with the grade of the land but they are willing to work with the Township. He said that for a right away, a retaining wall would be necessary, and that they would be willing to consider installing the fairly challenging deceleration lane if PennDOT approves it.

Mr. Kunkle said that absent the discussion this evening and proceeding based upon the plan submitted with the application, Township staff is not recommending support of a variance because car carriers and tractor trailers previously came to this site and were served by the minor street. He said that the notion of truck deliveries only coming Northbound from State College and Park Avenue does not recognize the desire of delivery drivers to avoid Atherton congestion or a very tight left turn from Park Ave onto North Atherton. Staff noted that the lot in question is larger than the area proposed to be leased and includes a carwash/detailing business, a parking area, and additional access from Cherry Lane are also included. Mr. Kunkle said that since the entire 2 acre lot is available to meet the developer's desires, access to and circulation within the entire lot should be explored by the developer. He said that creating another access creates more points of vehicle conflict and more potential for accidents. The developer has requested the right in and right out, and in staff's experience similar limited access driveways in other locations have not functioned as intended due to motorists ignore the requirements.

Mr. Kunkle continued, saying that staff has found both of these to be self-created hardships and they don't meet the strict requirements of the Township. If the developers decide to move forward with both variances for the May 15 ZHB meeting, the Board would request both the Township engineer and appropriate staff and legal counsel to represent Board in opposition.

Mr. Kunkle asked they are proposing to request a postponement for the May 15 ZHB to further work on this. Mr. Courtney confirmed that they will do this and will send a letter to Mr. Kunkle the next day.

Ms. Lang said it would help to see a planting plan since they are going to plant in the smaller space, and that one has not been presented. Mr. Kunkle said that they can modify their application and have it considered at the ZHB June 15<sup>th</sup> meeting and will be before the Board before that. He said that their plan as modified can be considered on June 15. Mr. Kunkle said that if Mr. Courtney and the developers do not request the delay, this would go to the Zoning Hearing Board but he has faith that they will send the letter requesting a continuance.

Mr. Kunkle said that Minitab, Inc. located at 1829 Pine Hall Road has requested a conditional variance to construct their new conference center of approximately 16,000 square feet, which requires 64 parking spaces. They requested a reduction of 24 parking spaces, leaving a number they'd be willing to construct up to the full amount if in the Township's sole discretion, decides they are needed. Mr. Kunkle said that they believe that the number they are providing in addition to the main office facility is sufficient to accommodate use of conference center. Staff has indicated that they would support granting conditional variance allowing Minitab to construct the conference facility with 29 parking spaces reserving right of Township in its sole determination to require more up to max of 64 should Township determine they are needed to accommodate visitors and staff parking at conference center. Staff recommends supporting buffer variance with conditions. Mr. Kunkle said that they would move the yard plantings from the side yard to the front yard since they have tree row between existing properties.

Ms. Lang said that they own properties on both sides of the lot, and the properties are uphill from the main office. She said that this site is also the subject of a previous parking variance. She said they eliminated an entire parking lot that is conditional upon them needing it. They have flex hours and alternate transit so they have not ever needed additional parking on upper lot and are proposing to do something similar with this lot given it's in walking distance of their offices. She said that there is a significant tree mass that straddles the rear boundary of the lot being proposed for development, and



is located on their office lot. Ms. Lang said that given that all the vegetation is already there they would be enhancing it with additional landscaping but they were already going to spend money so staff suggested putting it somewhere else. The variance would have the vegetation be by the roadway instead.

Mr. Keough made a motion that the Board of Supervisors support a conditional variance to allow Minitab to construct a facility with 29 spaces, reserving the right of the Township in its sole determination to require spaces up to a total of 64 if needed to accommodate visitors and guests parking at the conference center. Further he recommended supporting the request for a buffer yard variance with the condition of moving the buffer to the front of the lot. Mr. Killian seconded the motion. Mr. Pytel requested adding to the variance that if invasive species exist they be removed. Mr. Keough amended his motion to include the condition that Minitab removes invasive species from the property if they exist. Mr. Killian seconded the motion. It passed unanimously.

- Russell and Phyllis Smith at 2305 Bristol Avenue have requested a variance for the Zoning Hearing Board to reduce their rear yard setback by 3.5 feet, from its current 30 feet to 26.5 feet, to allow for construction of an 8x12 sunroom. Staff recommended that the Board remain neutral.

Mr. Mascolo made motion to remain neutral. Mr. Clemson seconded the motion. It passed unanimously.

- Mr. Kunkle said that there is an appeal to a lighting violation at United Rentals. The company installed lighting that exceeds the spillover lighting permitted onto adjacent properties. Most recently they placed approximately 7 light fixtures without a zoning permit, but they did get code permit. He said that United Rentals is making an effort to get into compliance. Ms. Lang said that none of the information was deemed appropriate in the report received by the Township. She believes they will be asking for a continuance of the hearing.

Mr. Mascolo asked why this wasn't grandfathered. Mr. Kunkle said that it is because it was a new fixture added to the structure. Mr. Keough asked if noise issue has been dealt with. Ms. Lang said they did not receive additional complaints. There were one or two people that had mentioned a problem and the Township has not heard from them. She said that since United Rental has been advised, they changed their hours slightly. Mr. Kunkle said they are serving the Marcellus Shale, so there are times that they show up at 3am which is annoying to residents. Mr. Keough asked if this has subsided. Ms. Lang said yes. Mr. Kunkle clarified that no action is required on this request because they are asking for a continuance.

## **5. Fire Hydrant Exonerations**

Mr. Kunkle said that in the packet is a list of properties that the tax administrator is requesting exonerations for regarding the fire hydrant assessments.

Mr. Mascolo made motion that the Board of Supervisors approve the exoneration of fire hydrants assessment for properties listed on the May 1 2012 Memorandum from the Tax Administrator. Mr. Killian seconded the motion. It passed unanimously

## **6. Consent Agenda**

Mr. Killian made a motion to approve the Consent Agenda which includes an authorization for payment to Landscape II of \$10,480, Landscape II in the amount of 11,230 and Reiff Concrete in the amount of 36,315.65 Mr. Clemson seconded the motion. It passed unanimously.

## **VIII. REPORTS**

### **1. Manager**

Mr. Kunkle noted that upcoming agenda items for the next meeting are included in the packet. Mr. Kunkle said that this includes a CNET report and Mr. Mascolo said there will be a Parks and Recreation report.

There will be a public hearing for the FoxPointe PRD plan revisions. This evening the Board passed on to have a resolution prepared for the liquor license transfer for Giant Food Stores. Mr. Kunkle said that as a reminder, the presentations by Centre Regional Planning Agency Staff on portions of the Centre Region Comprehensive Plan will occur on May 14, May 29, and June 11 before the Planning Commission. Mr. Kunkle said that there is a correction to his report. When the comprehensive plan components are referred back to the governing bodies, there will be an opportunity to invite Centre Regional Planning Agency staff to make presentations on any portions of the comprehensive plan that the Board wants to have further dialogue about. He had indicated in his narrative that they were not going to be available to do that, but received an email that they would make themselves available prior to those comments being referred back to general forum. Mr. Kunkle said the meeting will be 7pm in Ferguson Township. The Board members will not be available for the May 29 COG general forum. Mr. Keough asked if each one of the presentation is on a different topic. Ms. Lang said that there are elements or chapters in the comprehensive plan and that usually two elements are covered in each presentation. She said the first presentation is land use and transportation, and the second one (on May 29<sup>th</sup>) is open space, parks, natural areas, an agriculture component at some level, and the 11<sup>th</sup> will likely be on housing and community services.

Mr. Kunkle reported a follow up to the April 16th Board meeting regarding to changes to sewer service boundary along W. College Ave. Mr. Kunkle said that the boundary has changed between 1999 and 2006 and that it used to include properties on both sides of West College Avenue. Starting in 2006, most of the area along the west side of West College Avenue was removed from the sewer service area. In addition, two lots on the east side of West College Avenue were also removed. The Russian Church, built in 2003, is an exception, as it is served by the sanitary sewer service but is on the west side of West College Avenue. Now, any properties that come into this area west of West College Avenue are considered outside of the regional growth boundary. Other property owners on the west side of College Avenue have requested to be hooked up to the sewer service but are outside of the boundary.

Mr. Kunkle said that the State College Babe Ruth that requested a modification to the current license agreement that is a multiple party agreement between Babe Ruth Baseball, Johnson Farm Associates, the Landings Homeowners Association, and Ferguson Township. Babe Ruth Baseball is requesting the ability to utilize the lighting on Spectrum Field on school nights during the week, which is currently prohibited by the license agreement now. Mr. Kunkle said that he spoke with Johnson Farm and the Landings Homeowners Association and they want to look at agreement closer – there may be updates and modifications in the agreement that might be appropriate. Mr. Kunkle said that the Board requested a copy of the draft donation policy as developed earlier in the year, and this is provided in the meeting packet. The Board asked that this draft policy be placed on the May 21 agenda for discussion.

Mr. Kunkle said that as part of Ferguson Township's outreach to community, residents can sign up for E-mail notification on a variety of topics and issues. He said that there has been a 14.5% increase in the service. He said the popular items are the newsletter, the Township police news and then BOS agenda.

## **2. Director of Public Works**

Mr. Modricker said that all of his information can be found in the written report..

## **3. Director of Planning and Zoning**

Ms. Lang said that after the Beaver Avenue Study was accepted by the Board, she developed a timeline for the planning commission's discussion of recommendations. Board said they prefer to consider everything but discussion about not considering student housing as a separate housing status. Ms. Lang said that in putting together the list, two questions needed to be answered before commencing with the timeline. She said the first question was whether the Township should have a definition for student housing. If not, other parts of the list could be eliminated. The Planning Commission was not in favor of identifying something as a "student rental" or student housing as a land use so issues related to proximity for example fall off list.

The second question was whether existing R2 regulations should be revised or whether they should be creating new zoning district. Concern is that this is not the only R2 in the Township, there are other places, and if regulations are changed in one zone it would impact others as well. She said creation of a new zoning district would not do that. The Planning Commission wanted more info on those other areas and concerns about changing the current regulations would be.

Ms. Lang said that another item referred to the Planning Commission was the language in the subdivision ordinance regarding issues related to regional fire protection. She provided them with Steve Behr's report and the previous report for reference. The Planning Commission decided that the 2002 report was based on recognition that there was a lot of development occurring outside growth boundary without proper infrastructure for fire protection. This is not the case in Ferguson Township. The acreage in RA is restricted heavily from development and the Township is not likely to get large lot residential development in the rural areas of Township. Those who live there now were not excited by the prospect of this language applying to their homes and felt that it was creating urban/suburban infrastructure and trying to put it in rural areas of Township. They felt it would change the character and didn't seem necessary. Mr. Bair's report presented the ability, given the right circumstances, to provide services. The Planning Commission wanted to be certain that it wasn't just appropriate for Board to suggest that we don't need the language. She said the notion is that the infrastructure required in rural area is inappropriate in Ferguson Township and the amount of development the Township permits in rural area doesn't really match up with level and cost of improvements required by what is in model ordinance.

## **4. COG Committee Reports**

### **a. Public Services and Environmental**

Mr. Keough attended the meeting for Mr. Killian and the primary item on the agenda was a presentation from the university regarding a concept that is being adopted in a number of university towns around the country. It's called GigU and has to do with the capability of providing super-internet connection. He said that the connections are multiple times faster than we currently have. Mr. Keough said that there is a network around the country that is exploring this, and as part of that network they are encouraging the universities that are in these localities to interact with the community as well as possible service users. He said there are good reasons for the university such as research and distance learning, but there may be use in making that available to the commercial and industrial partners in a community that may have the need to use it. He said it also was being considered for individual homeowners. He said that the university appears to be in early stages of dialogue with this national group, but because they are encouraged to interact with community at large they made a presentation of what is on the table at the moment to the COG committee.

**IX. APPROVAL OF THE APRIL 16, 2012 MINUTES**

Mr. Mascolo made a motion to approve the April 16. Mr. Killian seconded the motion. It passed unanimously.

Mr. Keough said he will be out of town from the 25<sup>th</sup> of May until June 1<sup>st</sup>. He will miss the general forum meeting on May 29th.

**X. ADJOURNMENT**

Mr. Mascolo made a motion to adjourn. It passed unanimously.

With no further business to come before the Board of Supervisors, Mr. Pytel adjourned the meeting at 10:08pm.

RESPECTFULLY SUBMITTED,

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Mark Kunkle, Township Manager  
For the Board of Supervisors

Date approved by the Board: June 4, 2012