

**SPRINGETTSBURY TOWNSHIP
CONDITIONAL USE HEARING**

**MAY 8, 2014
VERBATIM APPROVED**

The Board of Supervisors of Springettsbury Township held a Conditional Use Hearing, on Thursday, May 8, 2014 at 6:00 p.m. at the Township Offices located at 1501 Mt. Zion Road, York, PA.

MEMBERS IN

ATTENDANCE: George Dvoryak, Chairman
Julie Landis, Vice Chairman
Bill Schenck
Mark Swomley

MEMBERS NOT

IN ATTENDANCE: Kathleen Phan

ALSO IN

ATTENDANCE: Charles Rausch, Solicitor
John Luciani, Civil Engineer
Patricia Lang, Community Development Director
Jack Hadge, Finance Director
Gail D. McLucas, Filius McLucas Reporting LLC
Jean Abreght, Stenographer

1. CALL TO ORDER

DVORYAK Okay. Good evening ladies and gentlemen and welcome to this Springettsbury Township Board of Supervisors Conditional Use Hearing scheduled for this evening. I'll call this meeting to order and I will first open up Conditional Use Hearing 13-03, First Capital Credit Union.

2. NEW BUSINESS

A. CU-13-03 – First Capital Federal Credit Union (Action 4/21/14)

BARNES Good evening. My name's Jim Barnes. I'm a landscape architect with Holly & Associates. I'm here this evening with the application for First Capital Credit Union. I apologize. I thought we were going to have the visuals.

RAUSCH Jim, before we start, just as a technical matter, we'll need to get you sworn in.

BARNES Oh, okay.

RAUSCH Because this is a Conditional Use Hearing.

BARNES Oh, very good.

RAUSCH Do you think there's going to be anybody else testifying on behalf of the applicant?

BARNES Unless there's questions, Dennis Flickinger, the CEO is here. Dennis, do you want to...?

RAUSCH Why don't you stand up just in case?

BARNES Yeah, just in case.

RAUSCH Just raise your right hand. Do you swear or affirm that the testimony you are about to give will be the truth?

BARNES I do.

FLINKINGER I do.

RAUSCH Thank you.

BARNES You're welcome. Let me just give you a little overview of the project. The site is listed as 2801 Eastern Boulevard. It's the former IRS building. It's located at the intersection of Northern Way and Eastern Boulevard. The property is 6/10ths of an acre in size. It has been purchased by First Capital Federal Capital Credit Union. What they want to do is move their existing branch bank, which is located at 161 Kent Road to this particular location. Our site is bounded on the north side by the car wash and the Wendy's and on the east by an existing office building. What's being proposed is the construction of a 3860, or 3680 square foot branch. It will have a drive through, and that drive through is actually going to be a remote drive through even though the canopy is attached to the building, it's, the aisles are to the east and there's an ATM, a separate ATM driveway as well. The property will have sufficient space for 18 on-site parking spaces. What we are providing as a part of the overlay district is a five-foot grass strip along Northern Way and an eight-foot wide multi-use path on the Eastern Boulevard frontage. We provide an eight-foot wide grass strip and an eight-foot wide sidewalk as required by the overlay ordinance. We have a public plaza area at the northeast, northwest corner of the building entranceway. That plaza area is about 800

square feet. The requirement in the ordinance is for 500 square feet. We'll have new benches, trash receptacle, flag pole in that particular area plus a fairly large planter area that extends between the sidewalk and the parking lot. There will be two sidewalk benches for the perimeter sidewalk, one on Eastern Boulevard and one on Northern Way. We are providing new street trees within the grass strip on Northern Way and then behind the sidewalk on Eastern Boulevard, and the reason for that is the fact that this property is encumbered by a 15-foot wide sanitary sewer easement that extends along the frontages of the property on the north side of Eastern Boulevard. That's the area that provides sanitary sewer services for those properties along Eastern Boulevard. We also provide these screen plantings for the parking lot on both the north side and the east side of the properties.

We do have two – we have three modification requests with this application. One of the requirements of the Zoning Ordinance is that all non-residential uses are required to provide a loading space for the use, and the Ordinance requires that loading space to be 12 feet wide by 50 feet long. In this particular case the credit union gets all their deliveries done by their own vehicles so for this branch, with those deliveries being done by vans, they can use the existing parking spaces as their loading spaces. One of the requirements in the overlay district is that all loading spaces have to be screened so because that 12 by 50 space has to be provided somewhere on the property and in this particular location is off the north east corner of the building; we're requesting that we do not have to screen that particular space.

The other thing is because of the – the second request is the street tree location along Eastern Boulevard. Because of the encumbered frontage with the sanitary sewer line, we're requesting that the street trees be out of the easement and behind the sidewalk because of the fact that street trees, for the most part, are supposed to provide shade for the pedestrians in the walk but not provide shade for the cars in the street.

The last thing is that the Ordinance, Overlay Ordinance also requires for the perimeter screening of the parking lot for the breaks in the screening that you have to have a hard surface for pedestrian access. On the north side of this particular property on the adjacent lands, there's an existing grass area that provides surface water drainage for the lands to the north and also the office building to the east and that runs into a grass swale to an existing inlet along Northern Way. And the existing topography along our land is about a three-foot drop so we're asking that we don't have to provide paved access, but we will provide the gaps for access because of that, actually the three to one slopes in that

short area. So those are the modifications that are being requested with this application. So that's the overview. Does the board have any questions?

SWOMLEY The first one is that I see four modifications.

LANG I can try and clarify.

MCLUCAS I don't know who that is.

LANG The one they didn't talk about was...

MCLUCAS I don't know who she is.

ABREGHT Patricia Lang.

MCLUCAS Thank you.

LANG There's a

RAUSCH I'm going to need to swear you in. Do you swear or affirm that the testimony you are about to give will be the truth.

LANG Yes. There's a requirement in the Ordinance that there will be an agreement for use of the public plaza. One of the modifications talks about allowing that agreement to be submitted with the Final Land Development Plan. So in a sense it's not a modification. They're not not going to do it; it's they're going to do it later in the process instead of having it now. The other one is described on here a little bit differently than what Mr. Barnes described to you. The general design requirements that's on your list is Zoning Modification #4, which I thought was brought up at the Planning Commission was moving the planting that's supposed to be at the edge of the surface parking lot. We talked about moving that to the property boundaries so that it wouldn't create any kind of security issues with the use of the ATM, which is at the edge of the parking lot.

BARNES Okay, yeah. That, I think that had to do with the interpretation that Patricia had versus the interpretation I had because I had always shown the perimeter plantings for the parking lot on the east side adjacent to the property line, not over here, not necessarily following the delineation of the curb line of the parking lot, and I believe it – the Planning Commission was fine with the location here because of security purposes since Dunbar, because this is a remote ATM, Dunbar does the

filling of the cash machines so any screening that would actually follow the curb line of the parking lot and drive through would actually screen the ATM and become a security issue. So if that's how it's listed, then --

LANG It was in here, that view (inaudible) that land, the modification for that. (inaudible).

BARNES Yes, that would be correct.

SWOMLEY So that doesn't change the modification request. Okay.

LANDIS That was my other question about the Dunbar. You stated that all deliveries were made by the credit union itself with respect to the...

BARNES Well the supply deliveries.

LANDIS Correct.

BARNES The supplies to the credit union are delivered by the credit union personnel; however, the credit union personnel do not service the remote ATM.

LANDIS Okay.

BARNES Okay, that is done by Dunbar.

LANDIS Okay. Separately.

BARNES Yes.

LANDIS So just so I understand the tree line, one more time. It is going to be not where it's stating on here, correct, Patricia?

LANG Well, there is two landscaping issues. One is street trees being moved back behind the sidewalk.

LANDIS Correct.

LANG The other is what's called perimeter screening of the surface parking lot, which is being shown not at the perimeter of the parking lot but across the parking lot.

LANDIS Okay.

DVORYAK Is there anyone here from the public this evening who would like to comment on this particular item? Hearing no one.

RAUSCH I think we will just have you maybe mark that drawing as Exhibit 1 for the record so that we have it as part of the record, Jim.

BARNES Let me get permanent ink.

RAUSCH Okay.

MR. SWOMLEY MOVED WITH REFERENCE TO CONDITIONAL USE CU-13-03 – FIRST CAPITAL FEDERAL CREDIT UNION, TO RECOMMEND APPROVAL WITH THE FOUR MODIFICATIONS AS LISTED. MS. LANDIS WAS SECOND. MOTION UNANIMOUSLY CARRIED.

DVORYAK Thanks for that presentation Jim.

BARNES Thank you.

DVORYAK I'll close the Conditional Use Hearing 13-03 and formally open Conditional Use Hearing 13-01 – Springetts Commons.

B. CU-13-01 – Springetts Commons (Action 12/24/13)
(Note: Continued from December 12, 2013, January 23, 2014, February 27, 2014, March 27, 2014 and April 24, 2014)

RAUSCH Just for the record on Springetts Commons, I'm stepping down, and Attorney Amanda Sundquist will be advising on this.

DVORYAK Good evening. Amanda I assume you're going to do the swearing in?

SUNDQUIST I'll do the swearing in, and there's a few points that I submit we address as well before they start their presentation.

RAUSCH You can mark them A 1-4.

SUNDQUIST K1-4?

RAUSCH A1-4, A – apple.

SUNDQUIST Good evening everyone. My name is Amanda Sundquist and I want to remind everyone we are opening a Continued Hearing right now. This Conditional Use Application of Vienna York, LLC, it was originally opened on December 12, 2013 and it has been continually, it has been continually continued and re-opened most recently on April 24, 2014 where it was continued to this date, time and place. The application is for the Conditional Use Application for the parcel located at the intersection of Industrial Highway and Northern Way known as parcel number 46-000-J1-004-00-0000, and it is located in the Town Center Overlay District, and the application/applicant is seeking to utilize the property under that overlay for two restaurant pads, a small retail center and an assisted living facility. Before we let the applicant get to their presentation, I wanted to ask if there was anyone here who would be interested in being a party to this Hearing. Anyone in attendance, any resident of the township can attend a Conditional Use Hearing, offer comment, but sometimes there's a resident who has a special interest in a project. Normally it's because they're located next to the parcel or something like that. Is there anyone here this evening interested in becoming a party? Okay, hearing no one, we'll add no parties. The next issue I have is we have a number of Board Exhibits we wanted to enter into the record. The first is – I have a packet of them for the applicant's attorney.

- The first is a June 26, 2013 letter from the township to the applicant's engineer.
- The second is a July 18, 2013 letter which includes the application.
- The second is, I'm sorry, the third board exhibit is the July 30, 2013 letter from the township to the applicant.
- Board exhibit number four is an August 13, 2013 applicant/application supplement.
- Board exhibit five is an August 15, 2013 Conditional Use Case Summary.
- Board exhibit six is a September 19, 2013 Conditional Use Case Summary Addendum.
- Board exhibit seven is an October 11, 2013 Application Supplement.
- Board exhibit eight is 2014, I'm sorry October 24, 2013 Application Supplement.
- Board exhibit nine is a November 20, 2013 letter from the township to the applicant setting the December 12, 2013 Hearing.
- We're reserving board exhibit 10 – it's supposed to be the Proof of Publication from the York Daily Record and York Dispatch that the December Hearing was advertised on November 27, 2013 and December 4, 2013, but it did not arrive yet from the newspaper.

- Board exhibit 11 is an Affidavit of Posting.
- Board exhibit 12 is a December 12, 2013 letter from the applicant's attorney to the township agreeing to continue the December 12, 2013 Hearing to January 23, 2014 Hearing.
- Board exhibit 13 is a January 12, 2014 email from the applicant's attorney to the township's special counsel agreeing to continue the January meeting to the February Hearing.
- Board exhibit 14 is the February 26, 2014 letter from the applicant's attorney to the township continuing to the March meeting and setting forth a plan for continuances going forward.
- Board exhibit 15 is the April 11, 2014 Applicant Supplement.
- Board exhibit 16 is the April 17, 2014 Conditional Use Case Summary Revised.
- Board exhibit 17 is the April 17, 2014 draft Planning Commission minutes but just the portion that are applicable to this project.
- Board exhibit 18 is the April 29, 2014 revised application which includes a plan.

SUNDQUIST Does anyone have any objections to any of these exhibits?

DVORYAK No.

SUNDQUIST Okay. Hearing no objections they will all be entered into evidence. At this point we should go ahead I guess and get you guys sworn in. Do you swear or affirm that you will tell the truth, the whole truth, nothing but the truth?

GEORGE I do.

SUNDQUIST And who did we just swear in for the record?

GEORGE My name is Joshua George. I'm with Site Design Concepts.

SUNDQUIST Okay, we'll hand it over to the applicant at this point.

CRÈME Thank you Ms. Sundquist. Good evening members of the board. My name is Matt Crème (Nikolaus & Hohenadel). I'm counsel for the applicant, and I have a business card for you. Members of the board we have also marked some exhibits marked as Applicants A1, a copy of the application. Previously we gave you a ring binder so that things can come and go, but when we got it to a permanent state, we bound it, so you should have copies of these. This is exactly what we

delivered to the township earlier last month. We've marked it as Applicant's exhibit 2 and 3, two different iterations of the drawing. I'll have Josh describe that for you and then Applicant's exhibit number 4 is something that we will present as we wrap up the Hearing. Josh has been sworn and he has introduced himself to the board. I'm going to ask him to review the plans with the board and describe what's being proposed.

GEORGE Thank you Matt. I'll start with exhibit A3 simply for clarity because it shows color and it might be a little bit easier to see. The property is located at the corner of Industrial Highway and Northern Way. It's adjacent to Sam's Club, Wolf Furniture, Giambalvo Motors, and then the railroad tracks are in the rear. The property contains approximately 14 acres and is dissected by the stream channel that runs diagonally from the north east to the south west. Our intention with the project is to develop what will be a mixed use project. Those uses would include an assisted living facility which is considered for the purposes of Zoning an Institutional Use; a restaurant of approximately 6,000 square feet; a retail strip center and then a second restaurant. So there are four proposed total uses: assisted living, two restaurants and a strip center. The overall design was intended to comply with as many of the requirements in the Town Center Overlay Ordinance as possible understanding that a project on a 14-acre parcel may not be able to comply with every single one of those requirements, and has several modifications that we have before you this evening that we can talk about. Before I go into those, are there any questions from the board regarding the layout of the project? Would you have me talk about anything more specifically that you might have?

SWOMLEY I guess the first one that I had is that building does not look like the drawings that I had seen in the Planning Commission previously.

GEORGE Which drawings or which building do you --?

SWOMLEY The assisted living.

GEORGE The most recent plan submitted reflects this particular layout but prior to that the assisted living facility was a little bit smaller and there was a proposed medical office building over on this corner of the property. That was changed several weeks ago, and what would be most current in the package of information that you received would've been this particular layout with the larger assisted living facility.

CRÈME That would be Tab 11 and 12. Correct?

GEORGE Yes, that's correct.

SWOMLEY Okay, and just for the rest of the board, if you take a look at Tab 14 about halfway into the packet of the traffic study, is the layout that the Planning Commission, I believe, had last seen.

DVORYAK What page are you on?

SWOMLEY There are no page numbers on it, but there's a figure past the map in the Tab Section, where the traffic planning design.

GEORGE That layout represents the initial layout that I described and is what the basis of the initial traffic work was based around. It's also has been revised, but the traffic work has not been revised.

CRÈME Well it would be if we were to go to Land Development.

MCLUCAS I'm sorry Mr. Crème. I can't hear you. It would be --

CRÈME A new traffic study would be required if we are permitted to go to the Land Development process.

GEORGE That's correct. If the board would approve this Conditional Use we would intend to make sure that it is part of the Land Development process. The current layout would be utilized for traffic purposes.

DVORYAK So if my understanding is correct then, from the time you originally submitted to today there have been changes to the plan?

GEORGE Absolutely. Yeah. We've been working closely with the township staff and tried to revise the plan to meet as many of the requirements as possible and so there has absolutely been an evolution of the design. The basic design has been similar to this throughout the project. The most significant change is this change we just talked about.

CRÈME And those revisions would be reflected in the board exhibits 1 through 17 back and forth between the applicant and township staff.

GEORGE That's correct.

SWOMLEY So one of the most significant changes that jumped out at me is that originally I think we were talking about 175 units in the assisted living, and with this current design there are 288 units which is greater than a 60% increase in the amount of residents.

GEORGE That's correct.

SWOMLEY And then some other notable changes, it appears that the two portions of the plan have been segregated by the stream, where originally there was a bridge and a connection between the two parking lots.

GEORGE That's correct. As the plan evolved over time and the assisted living facility became larger, we decided it would make a lot of sense in our view to segregate the sides, one side being strictly commercial uses and the other side being largely the assisted living facility so that there wasn't traffic conflicts between people wanting to use the commercial part and then exiting the site through the residential part. That said, we have provided a pedestrian connection as part of this knowing that folks who live in the assisted living facility would have interest in going and using the commercial facilities that are in very close proximity.

SWOMLEY Was any of this presented to the Planning Commission at the last Planning Commission meeting, which would've been the Thursday before Easter?

SUNDQUIST The April 17th meeting?

SWOMLEY Yes.

SUNDQUIST Yes, they did attend the April 17th meeting.

CRÈME And presented this plan.

SUNDQUIST Yes.

SWOMLEY This was the plan that was presented?

GEORGE Yes.

SWOMLEY Okay. Unfortunately I couldn't be at that meeting as I was traveling so that is a (inaudible) for the change.

LANDIS Okay so I have a question. I'm sorry Mark. Were you finished?

SWOMLEY Go ahead.

LANDIS I have a question to follow up with that with these changes. Because in our book it states here 175 dwellings, okay. I was unaware of that, if it wouldn't have been for – unless you were going to present that in your presentation. I didn't see that anywhere. Are you telling me the medical/dental office building is no longer going to be on that site?

GEORGE That's correct.

LANDIS Okay, so we're taking that away from that 4,000 square foot and that's where the additional units will be going for the assisted living?

GEORGE The evolution of the plan was that the medical office building was removed. The assisted living facility was elongated...

LANDIS Right.

GEORGE ...and also made taller. So largely the number of units changed from about 175 to about 280 and it was a result of the increase in the footprint, as well as a taller building.

LANDIS Okay. And also on that side there's a restaurant, correct?

GEORGE Correct, along Industrial Highway we proposed a restaurant.

LANDIS And then there's another restaurant there?

GEORGE Yes.

LANDIS So with 6,000 square feet for each restaurant?

GEORGE That's correct.

LANDIS And then a strip mall, which will include what vendors?

GEORGE At this point in time we do not have any specific vendors. We are proposing the strip center with future tenants in mind.

LANDIS With 21,000, with over 21,000 square feet?

GEORGE That's about correct, yes.

LANDIS Personally, I'm just thinking here, if I'm a senior and I'm living in one of those assisted areas, I'm not sure if I'm really inclined to having a restaurant. I see the vision as to being able to use the whole enclosed living, if you will, enclosed community, if you will. That's just what it reminds me of basically, but as far as the restaurant, people coming and going, how far is the distance from this restaurant that's on the same side as the apartment buildings because it doesn't seem like there's a whole lot of screening or noise, I guess, protection if you will with respect to the units where the people will be staying.

GEORGE From the restaurant right here you are talking?

LANDIS Yes.

GEORGE That's right. There's not a specific buffer or barrier between those uses. And you are 100% right. When we laid this project out we were thinking about the drivers in terms of who would use these restaurants and the strip center and how one would come in to the assisted living facility, and we do view and hope and expect that the folks who live here are a large part of the customer base for the uses that we are proposing on the commercial end.

LANDIS At this point in time you said you didn't have vendors. Do you have any idea what restaurants?

GEORGE We do not. I wish we did.

CRÈME It's one of the realities of marketing these to tenants is that until we have zoning approval, they're not interested in talking. So it's between the time of zoning approval on that development planning that tenants are willing to talk and commit. So we built some flexibility into it in order to accommodate the tenants that we're hoping to attract.

LANDIS Well, I am hoping that if this does go through, that you would also attract the same vendors that would basically market the age range of the people that are living there, because I don't believe – it's just my opinion, but if I am in an assisted living, I don't think I am going to perhaps want to go to go to a Banana Max if you will. I'm just using them as an example. You know, they are not a restaurant, but you understand what I am saying?

GEORGE Yeah, I know that –

LANDIS It is appropriate if we are going to do this as a collective, enclosed community that we –

GEORGE I know exactly what you mean and of course that is part of our marketing. I am smiling because I just got back from visiting my son in Boulder, Colorado and he took me to a Blues Club.

LANDIS Uh-huh.

GEORGE Other than my son, I was the youngest person in that club. So you never know.

LANDIS Yeah.

GEORGE Yeah. And so –

LANDIS Okay. Well, those are all the questions that I have then.

SCHENCK Well, procedurally will this – if this were approved, the Conditional Use Hearing, does this go back to the Planning Commission or is it –

SUNDQUIST Well, if this is approved at the Conditional Use Level, their next step would be Subdivision and Land Development and when they submit a Preliminary Subdivision Plan, it certainly would go to the Planning Commission, probably multiple times.

GEORGE That's what we anticipate.

SWOMLEY So the question I have is I am understanding from some of the exhibits that were entered, that there is a question as to timing for review of some of these drawings. Is that correct?

GEORGE I'm not sure I am understanding your question.

SWOMLEY In the past, is the applicant claiming that they need approved?

GEORGE We have raised that issue with the township. We believe we've resolved it with the township staff by having a proposed decision for the board that would eliminate that issue.

SWOMLEY And that proposal, so maybe between John and Tricia, are we understanding that we are okay with what is going on in staff or are there more issues to be resolved?

LANG If the decision is made tonight as proposed by Counsel, there will be no further negotiations about the design of this until it reaches Land Development stage. From my perspective, I have done several planning reviews of the project. I think some of the exhibits that were given to you show what my thought is from a planning perspective. That's about as much as I have. That's my presentation of my professional opinion.

SWOMLEY So I guess I'm torn right now between whether we should have the discussion about what some of this means or –

SUNDQUIST Well, that really would be more appropriate for an Executive Session and if you have more questions about the plan, I will say one of the Board Exhibit B-16 is an updated Conditional Use Case Summary that was from Township staff, which pointed out a number of items that were still outstanding on this plan. And one thing, you had a proposed motion in your packet and what that proposed motion does is moves the outstanding items, as the applicant still has to comply with those items, but they have to comply with those items when they submit their Preliminary Plan during the Subdivision Process. So those missing items will be addressed, but they would be addressed on this site layout.

SWOMLEY So by granting conditional use, we are actually granting them all of the additions and changes that they had made in the process.

SUNDQUIST You mean granting them the plan?

SWOMLEY Including ingress and egress and connection between parking lots, the number of units without having a traffic study and all of that. Is that –

SUNDQUIST For the traffic layout and the access points, there is a proposed condition that they would complete a traffic study involving this new layout and the – if the traffic study showed that the access points were not merited, they would have to be adjusted.

CREME Correct.

SUNDQUIST In that regard, it does – it would approve the beds in the assisted living facility.

SWOMLEY Would this be an appropriate time to break and go over that?

DVORYAK Can I ask two questions first before we do that?

CREME Right. We do have a little bit of a presentation left, so I would ask that before you break on this, let us complete the presentation certainly.

DVORYAK Okay. Go ahead. I do have two questions then.

CREME Okay. Josh, would you review – and the members of the Board, I would refer you to Tab 15, the Modification Requests. Why don't you come to the front?

GEORGE In Tab 15 there are five modification requests as part of the Conditional Use. I'm just going to read down through these quickly. Number 1 relates to parking facilities shall be only the rear side of the structure. No parking should be permitted in the front. We've asked for a modification to permit the restaurant to be involved in front, parking would be at the side and the rear. The assisted living facility, because of the layout in the property and the configuration of the existing conditions with the stream primarily, really only fits in one spot and that would be back in the rear. And so it is essentially impossible to have that in the front. The retail building has frontage directly on Industrial Highway at the end here. And then this other restaurant has direct frontage on Northern Way. So we have an area in which a portion of the parking is potentially in the front yard, depending on the interpretation in the Ordinance.

We've worked under the premise that if it was at or behind, the projection of the front wall, that is not front, that's side. So we've utilized that both on the retail center here and the restaurant here. For the purposes of the assisted living, it's not possible to do so. So we've asked for a modification based upon our interpretation perhaps being slightly different than Tricia's interpretation about how the front yard is quantified or set up.

Number 2 is the principal entrance of each principal structure showing direct pedestrian access through a network of sidewalks or pedestrian pathways and crosswalks. This again in our view is a difference of interpretation. We've shown direct pedestrian access from sidewalks along Northern Way into the restaurant and from sidewalks along Industrial Highway into the retail strip center, and from sidewalks along Industrial Highway to the restaurant. We have provided sidewalks that also provide direct pedestrian access to the front of the assisted living facility. However, those are internal sidewalks. They are not out along the street frontage. So we believe again a difference of interpretation between our perspective on the Ordinance and the Township's status.

Number 3, at least one public entrance of all principal structures shall be oriented towards the street. This again we believe is interpretive. The principal entrance for the restaurant is oriented toward Industrial Highway here. The principal entrance of the assisted living facility is oriented toward Industrial Highway in this direction. The principal entrance of the retail center is oriented toward Industrial Highway. And the principal entrance of this particular restaurant is oriented toward Northern Way.

Number 4, Access: Curbs, driveways or parking facilities shall be a maximum of 24 feet wide for two-way drive aisles. Because of the size of the project and the scope, we thought it was appropriate to have both an entrance point and an ingress point here, but also two egress points, one to turn right and one to turn left. To incorporate that in, we obviously cannot comply with the requirements of the 24 foot maximum. It is approximately 36 minimum. And by incorporating a very small median there, we have approximately 40 feet. So with two lanes out and one lane in, it becomes impossible to do the 24 foot requirement. Some of that will be borne out by the traffic study that becomes part of the Land Development phase, but we've asked for that modification here, knowing that we have a reasonable expectation that this is the way it would work out.

And then last, the main building setbacks along other streets. The minimum setback of 18, the maximum setback of 50. Three of the four buildings in the project comply with that requirement. Both restaurants and the retail center comply. The assisted living facility, as I mentioned earlier, because of its size and the shape of the parcel, cannot comply with that maximum setback requirement of 50 feet. So we've asked for a modification on that.

SWOMLEY Is that again interpretation because a major portion of that assisted living center is not going to be –

CRÈME That has been discussed. The point that we have raised is that that wall and this wall decline according to the definition of front yard and frontage in the Ordinance. There is some interpretation disagrees.

SWOMLEY Just looking at it, it looks to be roughly 10 percent or less of the frontage you are considering the front of the building, and the rest of it we would consider to be side.

CRÈME Side.

SWOMLEY So, I –

SCHENCK Did this plan happen to start prior to us adopting the Town Center Overlay?

CRÈME No, it did not.

SCHENCK The reason I asked that question, to me it doesn't meet, just visually, it doesn't meet the spirit at all, not even close. And I am trying to figure out why we are stretching so far. And maybe that is something we'll learn at the end.

CRÈME Well, I can address that. I don't – unless you have any other questions for Josh, I am prepared to wrap up our presentation with some discussion on that.

DVORYAK I just had one. You actually answered one of the two I had. The other question I had – I wasn't clear to me, is this in a flood plain, this particular property?

GEORGE It's an interesting question you raised. Today it is not.

DVORYAK Okay.

GEORGE FEMA has preliminary maps that you may have seen, that do show a portion of this property in the Flood Plain. We've had discussions with them about those maps. The feedback that we've received from FEMA is that those maps are not official, that we are to follow what is the enacted map at this point, which is the 2009 map until such time as FEMA would enact a new map, most likely 2015.

SCHENCK I did attend a meeting on that very subject because of the maps being drawn. And what I was told is that as a township, the simple fact that those new maps exist, we need to address that. We cannot – we would be amiss if we were to allow development knowing full well that that new map impacted that development. Now it sounds like conflicting information, but this is what I was educated on.

CRÈME But the resolution of the issue is by filling in and raising the site, which we would be permitted to do under your Ordinance.

SCHENCK Would you be willing – would you be able to do that as far as other folks are concerned?

CRÈME We would need to demonstrate that I think on the Land Development Plan.

SCHENCK To FEMA?

CRÈME Correct.

SCHENCK To the DEP?

CRÈME Correct.

SWOMLEY So that is not on the Flood Plain right now?

LANG No. The 2009 maps do not show that as a Flood Plain.

SWOMLEY Then why was there so much problem with the IRS Building, that they had to raise it so high to get it out of the Flood Plain?

LUCIANI We required them to do a (inaudible) to show that they could get the water from the upstream end to the downstream end, which effectively is mapping the Flood Plain. That has not been done. But we believe when it is done, I think what FEMA is showing is there will be Flood Plain area joining the creek.

SWOMLEY And my concern is that that site will be much lower than the IRS Building site and they raised that three feet or more.

LUCIANI And part of that was to get their storm water off. That will be another issue because they're going to have manage in that that area. To be able to discharge the water, they'll have to keep elevating the area of the storm water system below

the floodplain, it will flood when the water comes in. So that will keep raising it. I don't believe that has been contemplated at this point.

SUNDQUIST It's my understanding the applicant had also would be willing to agree with the condition that they will submit a flood study with the Preliminary Plan, which I think will probably give everyone a better picture of what is really going on.

CRÈME And again, we believe that this is a Land Development issue, where this is more of a two-dimensional layout to proceed.

GEORGE Bill, the fact of the situation is that if we would need to do that work and for whatever reason we can't obtain the necessary permits, it doesn't go this way.

SCHENCK Thank you.

LANDIS Where exactly right now – is it the entire project itself in the Flood Plain?

GEORGE As of today, none of it is. But other than potential maps that would be enacted next year –

LANDIS Correct, but the – right.

GEORGE -- this portion of the site, it's actually where the retail building is, would be in the Flood Plain.

LANDIS Okay. And –

GEORGE -- the rest of it would not be in the Flood Plain.

LANDIS Oh, okay. So I thought the assisted living area was also.

GEORGE No, that area sits several feet higher in elevation. Although it is hard to see that when you are out there because of the trees along the creek.

LANDIS Yeah.

GEORGE It does actually sit several feet higher than the area down here. And FEMA's map is very consistent with the work that was done for the IRS building. FEMA has provided us their data up to this point in preliminary format. The feedback that you heard, Bill, was actually not necessarily conflicting with the feedback that we

got. The feedback that we got was that FEMA could not legally process a map revision for a map that is not official. So if we were to submit to them today a map revision request, they could not legally process it until such time as that map became effective. So essentially, their answer is you have got to use what is there today, understanding that there is an impact in the future, and we will have to deal with that in the permitting process.

LANDIS I just have one other question. Is there any – where is the access for any pedestrians to be able to get from one side of the area to the other side?

CRÈME It's shown right on the other side.

GEORGE It's shown here, but it may actually be easier to see by flipping this around. There is a large sidewalk, 8 feet wide across here.

LANDIS Okay. So – okay. But there is no – that's the only point.

GEORGE That's the only one.

LANDIS Okay.

GEORGE Again, because of permitting issues and trying to minimize impacts on the stream channel, we decided that one was the most appropriate way to go. And centering it near this end of the project would allow the folks to come out the end of the building and turn the corridor and come out the end of the building and come right down into this area and cross into the retail area.

SWOMLEY And so I guess a final comment is that here is all of the requests that were made by the Planning Commission and comments that were made about modification of the site that more closely aligned with those in the Township Overlay. I don't see any of them on that.

CRÈME No, and again, you haven't seen everything yet.

SWOMLEY Well –

DVORYAK I'm sorry. I didn't hear that, could you repeat that?

CRÈME You haven't seen everything that we have to present yet. But we [inaudible]

SWOMLEY No, and that was my comment. I know that there were a number of comments made by the Planning Commission and by staff about working at making this a little bit more closely matched to the Township Overlay and recognizing it's a difficult site, I don't see that much effort, if any, has been made to try to mitigate any of the concerns that the Planning Commission presented at this time.

CRÈME Let me hand out Exhibit 4 and I will – Members of the Board, this is a difficult site to design. The waterway, the stream that runs from northeast to southwest is significant. It is not just a dry swale. It is an active stream and whether it is part of the 2009 Flood Plain Mapping, I think we all recognize that with the process that is ongoing, that there is an associated Flood Plain that we are going to need to address, but it is capable of being addressed or if we want to get Land Development approval. I would emphasize that. This is not the last step in the process, it is the first step in the process.

When we presented this plan in the first place and the significant layout features of the plan have not changed. Some of the sizes of the buildings or the number of buildings has changed, but the significant layout has not changed. It has been presented in a layout fashion that we believe was justified by our understanding of the terms of the Ordinance. There has been disagreement on some of that with Township staff. And on the things that we believe we need in order for reasonable use of the property, where we have disagreed with Township staff, as part of the proposed decision, we have asked for modifications. Where we believe that we can meet the terms of the Ordinance, we have included in Exhibit A-4, a proposed set of conditions that would require demonstration of compliance in the Land Development process, principally in the Preliminary Plan process. And one of the things that we have committed to do is a two-step process, which is warranted by the complicated nature of the site, but nevertheless we have agreed to do that as a Preliminary and then to follow by Final. And so this Board and the Planning Commission will see this plan again. And if you were to grant Conditional Use approval, which we are requesting this evening, as a Preliminary Plan with compliance according to the proposed decision with these conditions.

Complicating this as well, is as one of the members of the Supervisors has pointed out, we believe that the process was flawed and that under the terms of the Municipality's Planning Code, the applicant could claim a deemed decision – the Township disagrees. I more or less could have chosen to pick a fight over that issue. Both of us have refused to do that. And that was not something that the applicant was prepared to do and we proposed to the Township a way of working our way through what we believe to be a flawed process, to a process that delivers

a plan that gives the applicant some vesting in a layout but otherwise requires the applicant to strictly comply with the terms of the Ordinance. So what we have worked out with your staff is a proposed decision that doesn't – and as I said, where we believe the layout complies but your staff disagrees, and we think we cannot contain compliance to your staff's satisfaction, we have asked for modifications.

And we've asked for those modifications for two reasons. 1) We believe that the physical circumstances of the site meet the traditional test for a modification. Essentially, the same test of public variance that it would be difficult to put this property or impossible to put this property to a reasonable use with strict compliance to those five points as interpreted by your staff. So we believe that the traditional test for modification is met. But in addition to that, as part of the discussion of how we could approach this in an agreeable way with the proposed decision, on those five items we have not insisted on our interpretation; which means that we have requested a modification. It would be particular to this applicant. It would be particular to this property, that it would not establish any precedent of interpretation for the Township and that recognizing the unique circumstances of this property, those modifications are not necessarily modifications you would be required to give to another applicant on another property that isn't as challenged as this property is.

So all in all, we have attempted and we believe that we have succeeded with your special Counsel and with your Township staff in coming up with a proposed decision that takes us out of legal conflict and takes us into an approval as a first step and pushes strict compliance from the Conditional Use stage to the Preliminary Plan stage. And then we move ahead with what we acknowledge is going to be a challenging process, but nevertheless one that we think we can work agreeably through with your staffing consultants. So that's the reason we are requesting approval. That's the reason we are not litigating. That's the reason we are standing here in front of you with a proposed decision that comes to you with a recommendation of acceptance. I am happy to address any questions.

DVORYAK I think I understood most of that. The only question I have is if we assume there was a deemed approval, would that deemed approval not be based on the plan that was originally submitted opposed to all these variations that have now taken place in the past months?

CRÈME Correct. Right, and there is not – the only disagreement I would make is with all of these variations. We think that the modifications and changes have been small

in number, although as pointed out, significant in number of units. But it hasn't changed the nature of use. It hasn't changed the overall layout. And really, the Town Center Overlay District, although not explicitly a form-based ordinance is about appearances more than the specifics of use.

SWOMLEY I would want five minutes with the Counsel.

SCHENCK I wouldn't mind because I'd like to understand the – because my opinion is outside of the legal threat you hold over us, of course, our desire is the same as yours, not to fight. I think that was the word you used. But outside of that, this plan probably wouldn't fly, at least in my eye as complying with the Town Center Overlay. So I need to understand the legal ramifications of you know what is being proposed here on this site. If that's okay.

CRÈME Thank you very much.

The Board of Supervisors excused themselves for an Executive Session at 7 p.m. The Board reconvened at 7:22 p.m.

SUNDQUIST Coming back out of the Executive Session, the Order that you passed out as A-4, I have rebutted you before the meeting with a proposed motion. Was yours in order as a motion format. We are going to go ahead and mark that as Board 19.

CRÈME Okay.

SUNDQUIST If that's acceptable?

CRÈME Yes, it is.

SUNDQUIST Okay. And then I think we are ready probably for public comment.

3. PUBLIC COMMENT

DVORYAK Yes. Do we have anyone here from the public this evening that wants to comment specifically on Conditional Use Hearing 13-01, the Springetts Commons? Anyone from the Board have any further questions?

SCHENCK Amanda, at this time are we at the point where we can act on this?

SUNDQUIST Yes, you can have discussion on this or if you have a proposed motion you want to make, you can do that at this time.

SCHENCK Well, I'll just say it one more time. If this were not done with what I call a gun to our head, this is not a normal Town Center, but with that said, I'll make the motion that we approve or excuse me, grant the Conditional Use for the Springetts Commons Project based on all the conditions listed and what's been described as Board Exhibit #19.

DVORYAK Can we have modifications as well mentioned on that motion?

SUNDQUIST I would mention the modifications. Board Exhibit 19 contains a series of conditions and at the end of it also has the five modifications.

SCHENCK I would include in my motion the five modifications also attached to that diagram.

SWOMLEY I had a hard time with this, but again come to a head and again, gun to head, I'll second.

MR. SCHENCK MOVED TO GRANT THE CONDITIONAL USE FOR THE SPRINGETTS COMMONS PROJECT BASED ON CONDITIONS AND FIVE MODIFICATIONS LISTED IN BOARD EXHIBIT NO. 19. MR. SWOMLEY WAS SECOND.

DVORYAK We've got a motion and a second. Further discussion?

SWOMLEY Yeah. Further discussion is I am extremely disappointed in the way this plan is turning out. I am extremely disappointed in the lack of cooperation with the Township Center. There have been a number of recommendations from the Planning Commission and myself included that have been absolutely discarded. We believe that there is a great potential for the corner of that property to have frontage closer to the road with parking out of the way. It would be much closer to the type of view that we are trying to get and we are looking for that pedestrian traffic coming from the other businesses in the area, including the IRS building across the street. The huge institutional view of the assisted living facility is a lot less than desirable. I just – there is so many ways that you could make this a showcase of what we are trying to accomplish with our Township Center and for whatever reason, you have decided not to cooperate in any way, shape, or form. It is extremely troubling. I've said my piece.

DVORYAK Anyone else? We have a motion and second. All in favor please say aye.

MOTION CARRIED 3/1. MESSRS. SCHENCK, DVORYAK AND SWOMLEY VOTED IN FAVOR; MS. LANDIS VOTED OPPOSED.

SUNDQUIST Before we close the hearing, if I could ask Attorney Crème, would the applicant be willing to waive the time period in the Municipality's Planning Code for the Issuance of Service of the Written Decision?

CRÈME Yes.

SUNDQUIST Okay.

CRÈME And the original exhibits I have placed at your seat then.

SUNDQUIST Okay. Thank you.

CRÈME Thank you, Members of the Board. Good evening.

DVORYAK Hearing that, that will close this Conditional Use Hearing, 13-01. Thank you very much. Okay.

4. ADJOURNMENT

DVORYAK Chairman Dvoryak closed the Conditional Use Hearing at 7:27 p.m.

Respectfully submitted,

John Holman
Secretary

ja

This document is certified as a true and accurate verbatim transcript of a

Conditional Use Hearing

Held

May 8, 2014

At

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