

MEMORANDUM
DEPARTMENT OF COMMUNITY DEVELOPMENT
City of Kent

Date: August 7, 2013

To: Dave Ruller, City Manager

From: Jennifer Barone, Development Engineer *JKB*

Re: Planning Commission Recommendation –
Zoning Text Amendment – temporary structure

Copy: Bridget Susel, Director of Community Development
Linda Jordan, Clerk of Council
Jim Silver, Law Director
Eric Fink, Assistant Law Director
file

I hereby respectfully request City Council agenda time to consider an amendment to the zoning code (Part 11 of the Codified Ordinances).

On August 6, 2013 the Kent Planning Commission conducted a public hearing to consider an amendment to the zoning text. The amendment proposes changing language to KCO Section 1103 and 1161 to update the definition and provide criteria for temporary structures.

After concluding the public hearing, the Planning Commission voted 5-0 to recommend to City Council to amend zoning code Section 1103.03 to update the definition and to 1161.28 to include criteria.

A copy of the proposed amendment is attached. Since this is a text amendment and not an amendment to the Zoning Map, only a newspaper advertisement of City Council's public hearing is required by Chapter 1111 of the Kent Zoning Code. As such, this item will need to be scheduled for a public hearing and Land Use Committee review by Kent City Council.

CITY OF KENT, OHIO ZONING CODE
CHAPTER 1103
DEFINITIONS

Page 1103 - 41

Telecommunication and Data Transfer Facilities: Any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of telecommunications as authorized by the FCC which a person seeks to locate or has installed upon a tower or antenna support structure.

Telecommunication Antenna, Facade Mounted: A telecommunication antenna mounted on the facade of a structure such as a building, water tower, steeple, stack, existing light pole or communication tower.

Telecommunication -- Co-location: The use of a telecommunication and data transfer facility by more than one telecommunications provider.

Telecommunication Equipment Shelter: The structure in which the electronic receiving and relay equipment for a telecommunication and data transfer facility is housed.

Telecommunication – Monopole: A support structure constructed of a single, self-supporting hollow metal tube securely anchored to a foundation.

Telecommunication - Support Structure: Any building or other structure other than a tower which can be used for location of telecommunication facilities.

Temporary Shelter: A building operated, and under the full-time supervision of a public service agency, in which lodging and/or meals are provided for a period not to exceed seven (7) thirty (30) calendar days.

~~Temporary Structure: A structure without any foundation or footings and which is removed when the designated time period, activity or use for which the temporary structure was erected has ceased. The time limit of all temporary structures shall be limited to no longer than a seven (7) calendar day period. This provision does not pertain to include the provisions addressing temporary signage, which is herein separately defined.~~ **A structure without any foundation or footings and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased. The time limit of all temporary structures shall be limited to no more than fourteen (14) days (regardless of whether the days are consecutive or not) over ANY sixty (60) consecutive day calendar period. This provision does not pertain to include the provisions addressing temporary signage, which is herein separately defined.**

Thoroughfare, Street or Road: The full width between property lines bounding every public way of whatever nature, with a part thereof to be used for vehicular traffic and designated as follows:

- A. Alley: A minor street used primarily for vehicular service access to the back or side of properties abutting on another street.

1161.27 Temporary Structures

- (a) Prior to erecting a Temporary Structure that exceeds this length of time, the applicant may obtain a permit from the Community Development Director (or Zoning Official). The Director's decision will be based upon the Temporary Structure's impact upon the community and concerns regarding any potential safety hazards. A Temporary Structure (such as a tent or canopy) erected in the back yard of a residence that complies with all required setbacks and is not being used for any business purpose is not subject to the fourteen (14) day time limits.

- (b) At the discretion of the Building Official, any structure in place for more than sixty (60) days may be deemed a permanent structure, subject to all the rules and requirements of a permanent structure, including a site plan and permits.



City of Kent, Ohio

Office of the City Manager

To: Mayor and Members of Council
From: ^{SJS} Suzanne Stemnock, Executive Assistant
Date: September 27, 2013
RE: New Event Road Closure

The City Manager's Office has obtained an application for a special event that requires a street closure not previously approved by Council. The application is for the event, "Kent Central Gateway Veterans Memorial Dedication" sponsored by PARTA on November 11, 2013. This will be for the official dedication of the veterans memorial.

Staff is respectfully requesting Council time to discuss the proposed road closures and seek Council's approval.

Thank you.

APPLICATION FOR SPECIAL EVENT
PARADES, FESTIVALS, CARNIVALS, PUBLIC ASSEMBLIES, ETC.
City of Kent, 215 E. Summit Street, Kent, OH 44240

NAME OF EVENT KENT CENTRAL GATEWAY VETERANS MEMORIAL DEDICATION
ORGANIZATION SPONSORING EVENT PARTA (PORTAGE AREA REGIONAL TRANSPORTATION AUTHORITY)
APPLICANT NAME BRYAN D. SMITH PHONE (330) 678-7745
ADDRESS 2000 SUMMIT ROAD, KENT, OH 44240

NAMES AND PHONE NUMBERS OF ALL PERSONS WHO ARE IN CHARGE AND/OR WILL BE IN A RESPONSIBLE POSITION DURING THE EVENT:

BRYAN D. SMITH (330) 351-3981

DATE OF EVENT 11-11-2013 NO. OF PARTICIPANTS _____

REQUESTED PERMIT TIME: Start Set up 12:00 Start Event 2:00
End Event 3:00 End Cleanup 5:00

IF PARADE: STARTING POINT _____ ENDING POINT _____

In addition to the application please submit the following information:

- Attach map to application showing proposed streets to be blocked off for event, and route of parade or race. (May be hand drawn.)
- Proof of Insurance is required before permit can be issued.
- Please attach list of possible vendors/booths to be part of event (food, retail, etc.).

Please submit application for permit at least 30 days in advance, but no sooner than one year in advance. For additional requirements please review Chapter 316 of The Codified Ordinance of the City of Kent. Please be advised that the use of marking paint on City pavement, curbs, sidewalks or other property is prohibited except if purchased at cost from Service Department (330-578-8165).

By signing this application, I am certifying that I have received a copy of the rules and regulations of Chapter 316 of the Codified Ordinances of the City of Kent, and I fully understand that should the permit be approved, it can be revoked if any of the provisions of this Chapter are violated.

[Signature]
Name of Applicant

Bryan D. Smith
Signature of Applicant

Office Use. Do not write below this line.

Sent to: Safety, Service, Fire, Police, and Health Departments for review and approval via EMAIL on 9/20/13.

MEMORANDUM AGREEMENT _____ YES _____ NO _____
APPLICATION APPROVED _____ APPLICATION DISAPPROVED _____

PROOF OF INSURANCE REQUIRED BY ORDINANCE 316.04 HAS BEEN REVIEWED AND APPROVED.

[Signature] 9-16-13
Law Director Date

IF APPLICATION IS APPROVED, PERMIT WILL BE ISSUED BY THE CITY MANAGER.

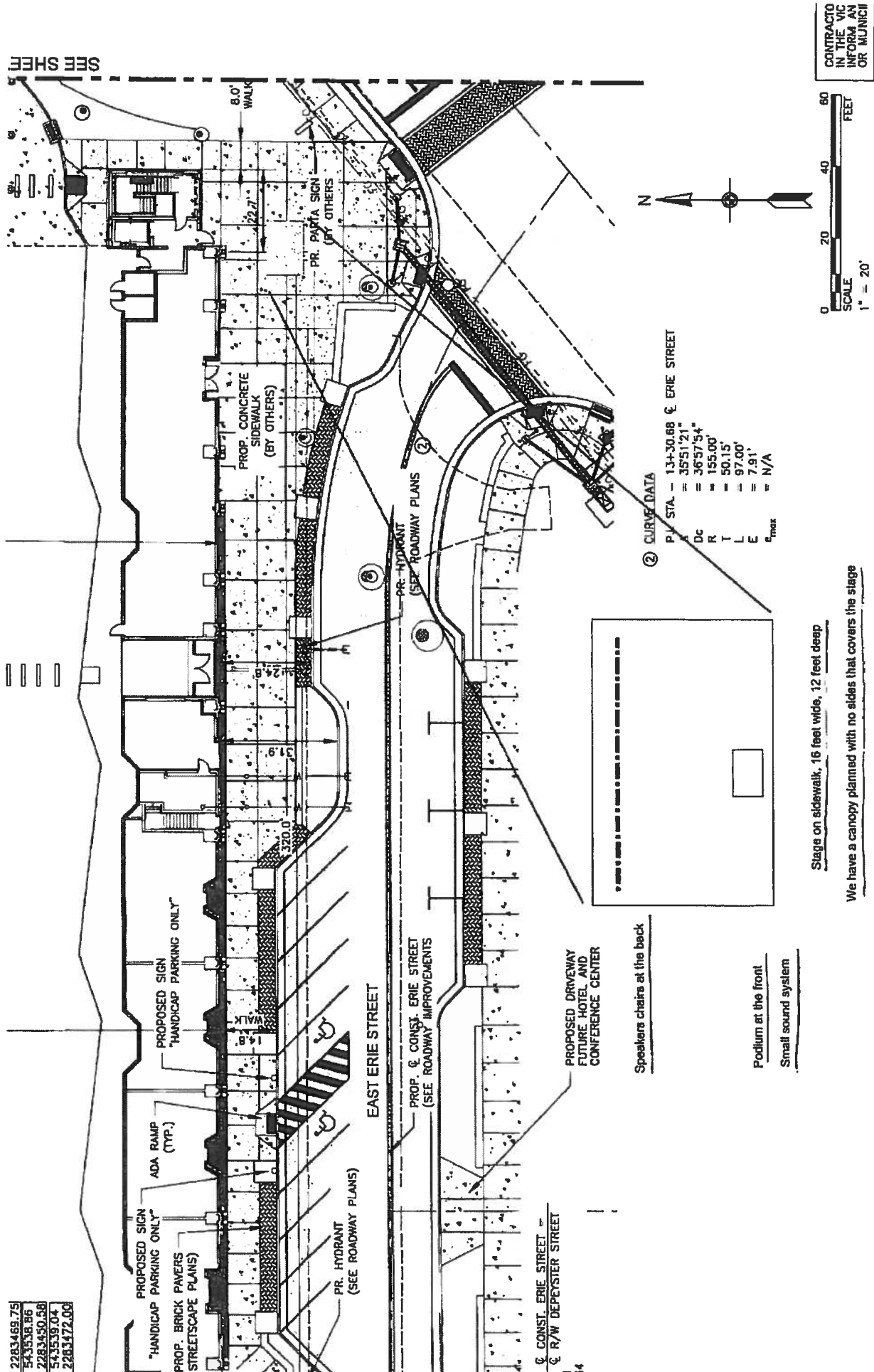
2283469.75
 543538.86
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3
 7

3306768310

PART 8

Sep 20 13 04:58p



Stage on sidewalk, 16 feet wide, 12 feet deep

We have a canopy planned with no sides that covers the stage

IF THIS DRAWING IS LESS THAN 24" X 36" IT IS A REDUCED SIZE DRAWING

Speakers chairs at the back

Podium at the front
 Small sound system

Road Closure/Special Event Petition

Kent Central Gateway Veterans Memorial Dedication

Monday, November 11, 12:00 p.m. – Monday, November 11, 5:00 p.m.

Signatures of all affected parties:

Kent State Hotel and Conference Center

Name: Michelle Krew Title: GM

Address: 215 S. Depewstr St. Kent OH 44240

Signature: [Signature] Date: 9/22/13

OTHER _____

Name: _____ Title: _____

Address: _____

Signature: _____ Date: _____

OTHER _____

Name: _____ Title: _____

Address: _____

Signature: _____ Date: _____

OTHER _____

Name: _____ Title: _____

Address: _____

Signature: _____ Date: _____

PARTA

Portage Area Regional Transportation Authority
2000 Summit Road • Kent, Ohio 44240

Administrative Offices
(330) 678-7745
Fax (330) 676-6310

Customer Service
(330) 676-6701

TTY (Hearing Impaired)
(330) 676-5100

Scheduling & Operations
(330) 678-1287 or 1-877- RIDE RTA
Fax (330) 678-7751

September 20, 2013

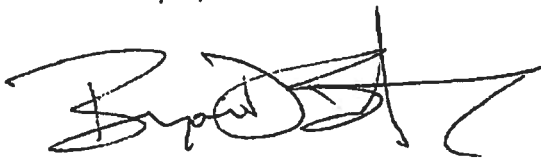
Dave Ruller
City Manager
City of Kent
215 East Summit Street
Kent, OH 44240

Dear Mr. Ruller:

As you know, PARTA is holding a dedication ceremony for the Kent Central Gateway Veterans' Memorial this November 11th, 2013 at 2 PM.

As part of a request to close Erie St for this event, please accept this letter as confirmation that PARTA will not be having any vendors participate in the ceremony or provide food/drink as part of this event.

Thank you,



Bryan D. Smith
Director of Planning

PARTA does not discriminate in provision of services or employment because of handicap, race, color, creed, national origin, sex or age.

www.PARTAonline.org



CERTIFICATE OF COVERAGE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE COVERAGE DOCUMENT BELOW

COMPANY AFFORDING COVERAGE:

Ohio Transit Risk Pool
 One Park Centre Dr., #300
 Wadsworth, OH 44281
 Phone: 330-334-6877 Fax: 330-336-7130

MEMBER:

Portage Area Regional Transportation Authority
 2000 Summit Rd.
 Kent, OH 44240

KEN-2013-06

THE COVERAGE DOCUMENTS LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT, WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE DOCUMENTS DESCRIBED HEREIN ARE SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH DOCUMENTS. LIMITS OF COVERAGE: OTRP WILL NOT PAY MORE THAN THE APPLICABLE LIMITS OF COVERAGE SHOWN IN THE DECLARATIONS THAT RESULT FROM ANY ONE OCCURRENCE IN THE EVENT OF A MULTIPLE LINES LOSS OTRP'S OCCURRENCE LIMIT STATED IN THE DECLARATION PAGE SHALL APPLY.

TYPE OF COVERAGE	COVERAGE DOCUMENT #	EFFECTIVE DATE	EXPIRATION DATE	LIMITS
GENERAL LIABILITY Commercial General Liability	2013-MOC[L]	12/01/12	11/30/13	Each Occurrence \$1,000,000.00
AUTOMOBILE LIABILITY	2013-MOC[L]	12/01/12	11/30/13	Each Occurrence \$1,000,000.00
PROPERTY ___ A/PD ___ Commercial	OTRP-MOC[P]- 2013	12/01/12	11/30/13	Each Occurrence \$1,000,000.00 Various Sub Limits Apply
EMPLOYER'S LIABILITY ANY PROPRIETOR/PARTNER/ EXECUTIVE/OFFICER/MEMBER EXCLUDED? _____ If yes, describe below.				
EXCESS/UMBRELLA LIABILITY ___ Occurrence ___ Deductible ___ Retention				
OTHER				

DESCRIPTION:

Closure of Erie Street for Veterans' Memorial Dedication

CERTIFICATE HOLDER:

City of Kent
 215 E. Summit Street
 Kent, OH 44240

AUTHORIZED SIGNATURE:

[Handwritten Signature]


9-11-13

(Date)



City of Kent, Ohio

Office of the City Manager

To: Mayor and Members of Council
From:  Suzanne Stemnock, Executive Assistant
Date: September 27, 2013
RE: New Event Road Closure

The City Manager's Office has obtained an application for a special event that requires a street closure not previously approved by Council. The application is for the event, "Kent Fall Fest" sponsored by College Town Kent, LLC on October 19, 2013. Proceeds from this event will go to the Ben Curtis Family Foundation.

Staff is respectfully requesting Council time to discuss the proposed road closures and seek Council's approval.

Thank you.

APPLICATION FOR SPECIAL EVENT
PARADES, FESTIVALS, CARNIVALS, PUBLIC ASSEMBLIES, ETC.
City of Kent, 215 E. Summit Street, Kent, OH 44240

NAME OF EVENT Kent Fall Fest
ORGANIZATION SPONSORING EVENT College Town Kent, LLC
APPLICANT NAME Regan Gettens / Debra Sherman PHONE 330 256 8704
ADDRESS 1138 W. 9th Street Cleveland OH 44113

NAMES AND PHONE NUMBERS OF ALL PERSONS WHO ARE IN CHARGE AND/OR WILL BE IN A RESPONSIBLE POSITION DURING THE EVENT:

Regan Gettens 216 470 9020 Adam Branscomb ~~216~~ 440 413 7088
Debra Sherman 330 256 8704

DATE OF EVENT October 19, 2013 NO. OF PARTICIPANTS 300-500

REQUESTED PERMIT TIME: Start Set up 9:00 am Start Event 2:00 pm
End Event 9:00 pm End Cleanup 9:00 am 10/20

IF PARADE: STARTING POINT n/a ENDING POINT n/a

USE OF CITY ELECTRIC NEEDED? yes - tent/event area lighting if possible - otherwise
(IF YES, PLEASE EXPLAIN) a generator will be utilized.

In addition to the application please submit the following information:

- Attach map to application showing proposed streets to be blocked off for event, and route of parade or race. (May be hand drawn.)
- Proof of Insurance is required before permit can be issued.
- Please attach list of possible vendors/booths to be part of event (food, retail, etc.).

Please submit application for permit at least 30 days in advance, but no sooner than one year in advance. For additional requirements please review Chapter 316 of The Codified Ordinance of the City of Kent. Please be advised that the use of marking paint on City pavement, curbs, sidewalks or other property is prohibited except if purchased at cost from Service Department (330-678-8105).

By signing this application, I am certifying that I have received a copy of the rules and regulations of Chapter 316 of the Codified Ordinances of the City of Kent, and I fully understand that should the permit be approved, it can be revoked if any of the provisions of this Chapter are violated.

Debra Sherman
Name of Applicant

Debra Sherman
Signature of Applicant

Office Use. Do not write below this line.

Sent to: Safety, Service, Fire, Police, and Health Departments for review and approval
via _____ on _____.

MEMORANDUM AGREEMENT YES NO
APPLICATION APPROVED _____ APPLICATION DISAPPROVED _____

PROOF OF INSURANCE REQUIRED BY ORDINANCE 316.04 HAS BEEN REVIEWED AND APPROVED.

Law Director Date

IF APPLICATION IS APPROVED, PERMIT WILL BE ISSUED BY THE CITY MANAGER.



September 24, 2013

Bridget Susel
Director, Community Development – City of Kent
930 Overholt Road
Kent, OH 44240

Dear Bridget,

Pursuant to my voice mail message, College Town Kent would like to request a partial road closure of E. Erie Street for a special event to be held on Saturday, October 19th from 2 – 9 p.m. The road closure would be effective from 9 a.m. Saturday to 10 a.m. Sunday to allow for set up and tear down of the event elements.

City services needed outside of the road closure are limited to one uniformed police officer on site for the event in the proposed liquor area and possible access to electrical outlets in the street lamps along E. Erie if available. College Town Kent would cover these expenses entirely. We do not believe we need fire department nor EMS on site for this event but would review our event plans with them prior so they are aware of the access limitations.

Temporary signage would be erected within the event site only in the form of banners on the stage, sales tent and at the entrance. Additionally, the proposed beer garden would have a fenced perimeter at all times with not only the Kent police officer but also event staff assisting with perimeter management.

Please find attached additional details on the proposed event along with a completed special event application and a certificate of insurance from both College Town Kent, LLC and Connecting For A Cause, who would be managing the event and pulling the liquor permit for this event alongside College Town Kent.

I look forward to speaking with you once you have had a chance to review the attached information. I can be best reached via phone at 330-256-8704 or you may also contact Regan Gettens at 216-470-9020.

Warm Regards,

A handwritten signature in cursive script that reads "Debra".

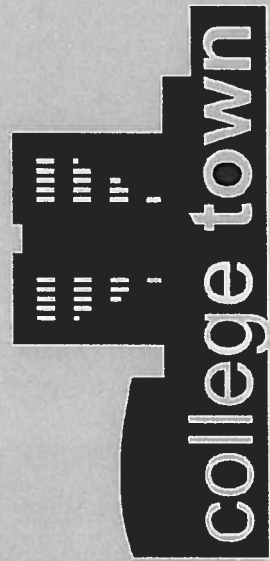
Debra Sherman
Marketing & Event Consultant – College Town Kent / Fairmount Properties

Kent Fall Fest

A benefit for the Ben Curtis Family
Foundation



HOSTED BY:



KENT

Event Overview

- **Saturday, October 19, 2013**
 - 2:00 – 9:00 p.m.
- **Event Elements:**
 - Sidewalk Sale with local merchants / restaurants
 - Face Painter
 - Balloon Artist
 - Make & Take Craft Area (pumpkin painting, etc.)
 - Musical Entertainment
 - Beer Garden
 - Donation Drop Off Points

Event Overview

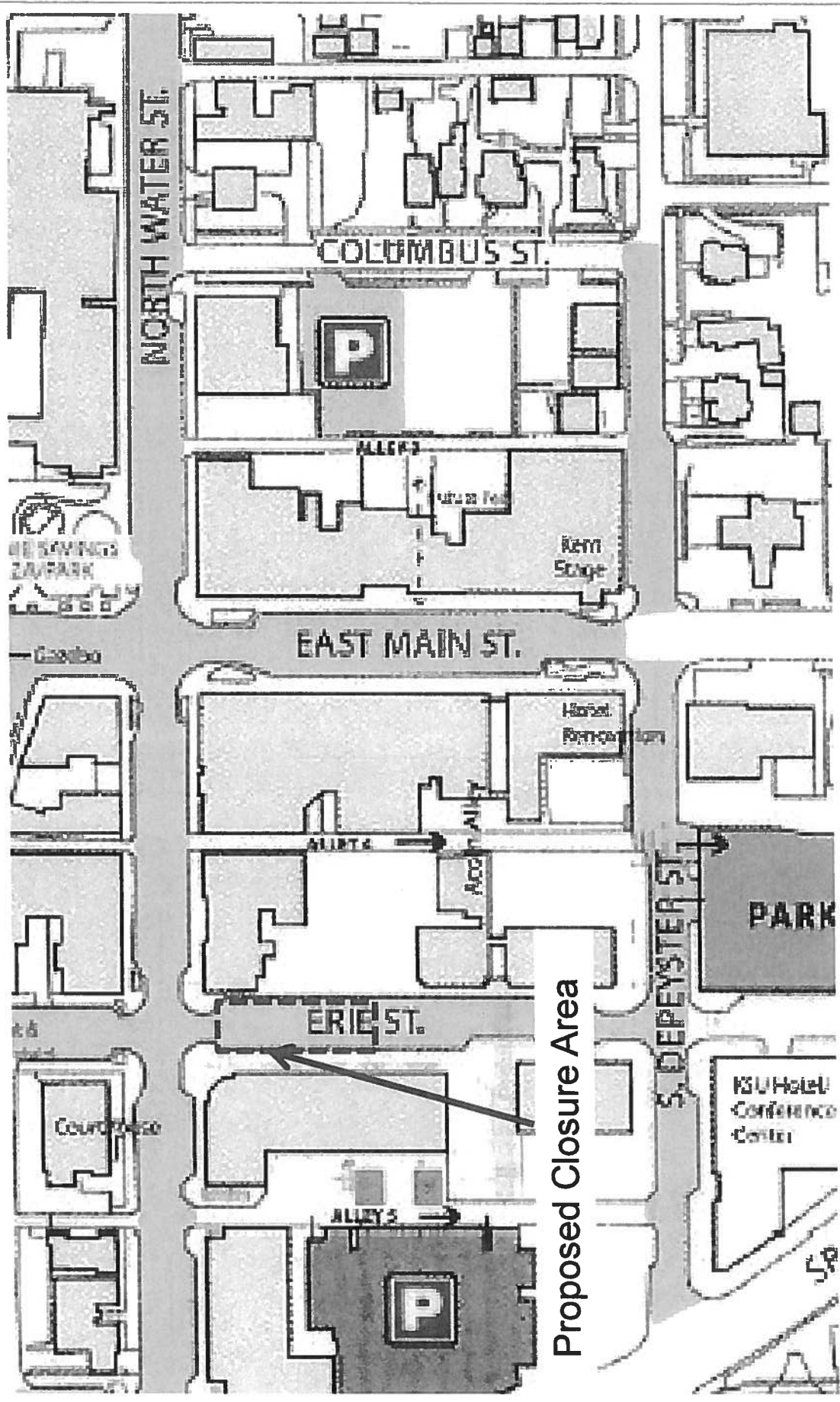


- Family friendly event catering to all ages
- Complimentary to the Cider Festival at Hometown Bank Plaza (1-4pm)
- Opportunity to showcase local businesses
- Tie in with local charity to give back to area students

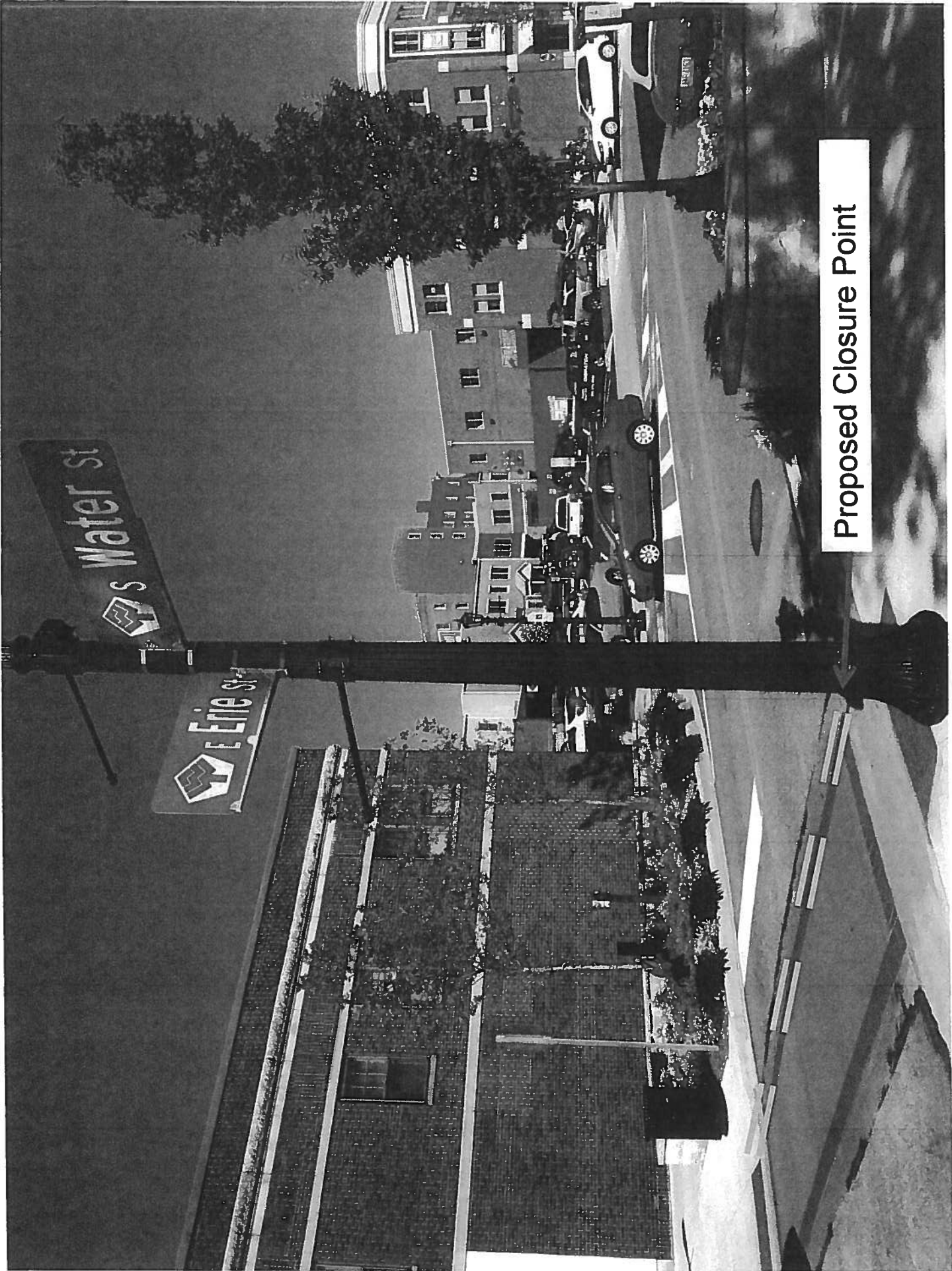
Event Logistics

- **Location:** E. Erie Street from N. Water to west of Tree City Coffee
 - Stage / Tent for Musical Entertainment
 - Beer Garden – tables / umbrellas for patrons
 - Opportunity for merchant tables within event site
 - On site charity presence
 - Merchants / Restaurants welcome to set up sidewalk sale tables outside store fronts

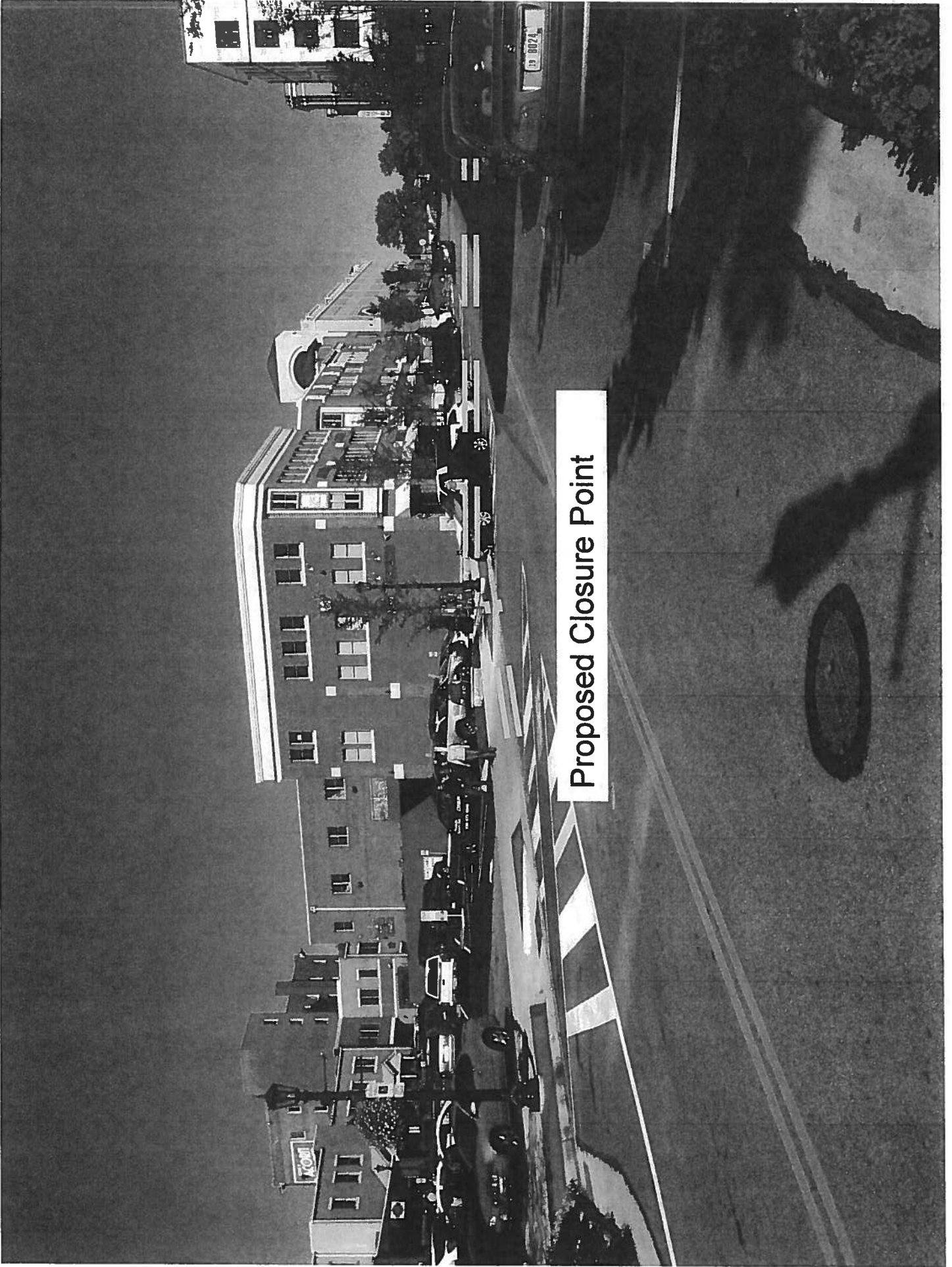
Proposed Event Site



Proposed Closure Area



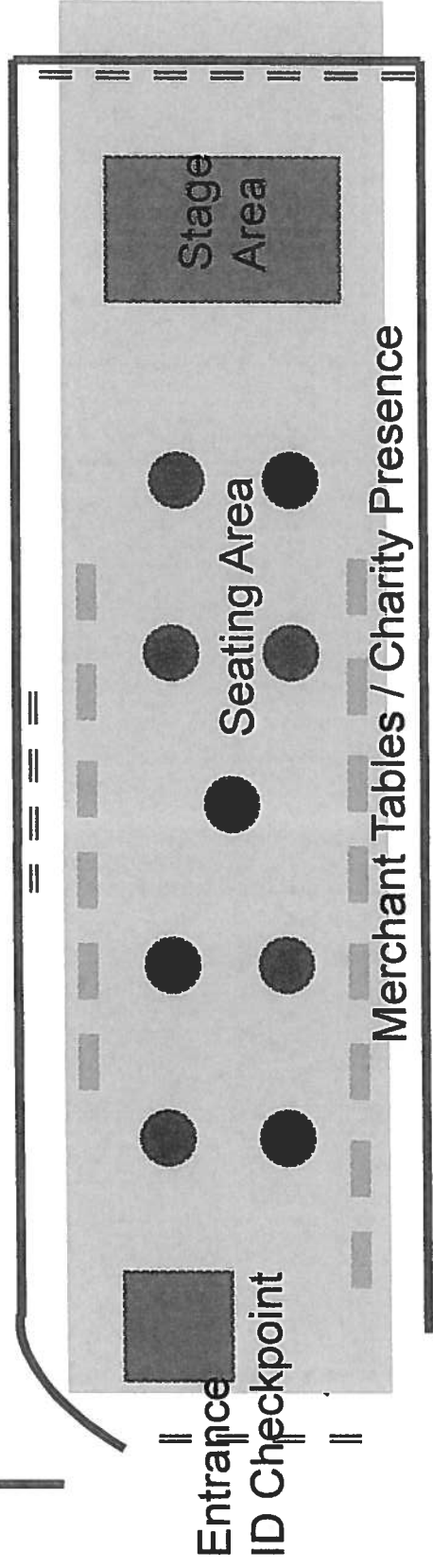
Proposed Closure Point



Proposed Closure Point

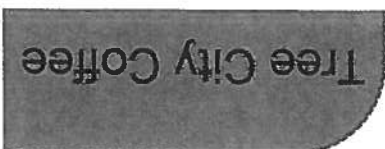
E Erie Street

N Water Street



Frescso

Proposed Event Area: E. Erie Street from N. Water St. crosswalk to west of the Tree City Coffee driveway. Street would be utilized for fenced perimeter beer garden / gathering area with security present at the main entrance as well as event staff throughout for perimeter control.



Beer Garden

- **Liquor Permit – To be filed by Connecting For A Cause (a registered Ohio 501c3)**
- **Beer, water and pop sales on site**
- **Proceeds of event to go to Ben Curtis Family Foundation**
- **Utilize a cash for ticket based system**
- **Wristbands utilized to ID those of drinking age**
- **Mandatory ID check point at entrance to beer garden**
- **Trained staff to handle all pouring**
- **On site security (1 Kent police officer)**

Road Closure

- Requested closure of E. Erie from Water to just west of drive thru lane of Tree City Coffee
- Affects approximately 12 parking spaces on street
- Lot access is maintained as well as drive thru access with Alley 4 off of North Water St.

Other

- Insurance – General Liability covered by College Town Kent as well as Connecting For A Cause
- Sanitation – to be handled by CTK team
- Tent / Stage – supplied by A&B Tent Rental
- Portalets and hand wash stations will be on site for duration of event; supplied by Superior Speedie

Other



- **There will be no on site food sales within the main event site therefore health permits will not be required**
 - Area restaurants are invited to sample and sell from their establishments only
- **Public parking areas will be publicized as part of this event**

Contact Information



- **Regan Gettens**
 - 216-470-9020
 - rgettens@fairmountproperties.com
- **Debra Sherman**
 - 330-256-8704
 - debra@debrasherman.com



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: September 26, 2013
TO: Dave Ruller, City Manager
FROM: Bridget Susel, Community Development Director *B.S.*
RE: NRP Easement & Right-of-Way Agreement

In March of 2013, the Community Development Department presented a draft easement agreement for a shared use path which was to extend along Sunnybrook Road on the site where NRP Properties, LLC, is constructing the senior housing complex known as Maplebrook. Members of Council questioned the scope of activities that were encompassed in the term "maintenance" listed in the agreement and approval of the agreement was delayed until the matter could be clarified.

Since the March Committee session, the plans for the construction of the shared use path have been modified in order to address design specification issues associated with the path. The design issues have been finalized and staff has incorporated additional language into the agreement that more clearly delineates the maintenance responsibilities that will need to be addressed by NRP Properties and the repair and restoration activities which will fall under the purview of the City.

I am respectfully requesting time at the October 2, 2013 Committee session to discuss the changes to the easement and right-of-way agreement and to request authorization, with emergency, for the City Manager to sign the agreement on behalf of the City.

If you need any additional information in order to add this item to the agenda, please let me know.

Thank you.

Cc: Jim Silver, Law Director
Linda Jordan, Clerk of Council
Easement/Right-of-Way Agreements file

EASEMENT AND RIGHT-OF-WAY AGREEMENT

GRANTING EASEMENT FOR SHARED USE FACILITY Affecting Parcel ID 43-003-0-00-014-006 & Parcel ID 43-003-0-00-014-037

FOR AND IN CONSIDERATION of the sum of One Dollar (\$1.00), the receipt of which is acknowledged, and such other consideration as is herein below set forth, the undersigned **FOUR SEASONS AT GOLDEN POND LLC, an Ohio limited liability company ("Four Seasons") and NRP PROPERTIES LLC, an Ohio limited liability company ("NRP")** (collectively, **Four Seasons and NRP** are referred to herein as "**Grantor**"), who claim title to certain real estate by deed recorded in Indexed Number 201222583 of the Portage County records, do (or does) for their heirs, successors, and assigns, hereby give, devise, grant and convey to the City of Kent, Ohio, a municipal corporation, which is hereinafter referred to as "Grantee," its successors and assigns, the perpetual right to a permanent exclusive easement and right-of-way to lay, restore, operate, repair, remove and replace shared use facility, waterlines, sewers and other utility lines, including gas, electric, telephone, cable TV and related necessary appurtenances over and through said real estate situated in the City of Kent, County of Portage, State of Ohio and known as being a part of Lot 3 of original Brimfield Township, said easement being more fully described as follows:

Situated in the City of Kent, County of Portage, State of Ohio, and known as being part of Original Brimfield Township Lot Number 3, and being more fully bounded and described as follows:

Beginning at a 5/8" iron pin found at a southeasterly corner of land now or formerly owned by Golden Pond LLC, said land also being known as lot C-1 per a "Lot Split Plat" P-17123 as recorded with the Portage County Recorder, said corner also being the westerly Right Of Way line of Sunnybrook Road, 60 feet wide, said point also being the Principal Place of Beginning for the easement herein described;

Course No.1: thence North 58°24'07" West along a Southerly line of said parcel C-1, a distance of 20.67 feet to a point;

Course No.2: thence North 17°00'00" East running parallel to said Sunnybrook Road, a distance of 538.95 feet to a point;

Course No.3: thence South 00°27'45" East along said Easterly line of parcel C-1, a distance of 66.65 feet to a point on the westerly Right Of Way line of said Sunnybrook Road;

Course No.4: thence South 17°00'00" West along said westerly Right of Way line of Sunnybrook Road, a distance of 480.58 feet to a point, said point also being the Principal Place of Beginning, containing 0.2340 acres 10,195 square feet of land according to a survey by Anthony Maione, Atwell, LLC., dated November, 2012, and being the same more or less and being subject to all legal highways and easements.

Together with the right of the City of Kent, its agents or employees, to store earth and materials during the period of construction, repair or replacement of said shared use facility, waterlines, sewers and other utility lines upon the premises of the Grantor on an additional strip of land ten (10) feet wide along the east and south sides of the above described easement.

And grantor(s) do agree to keep said easement free of all permanent structures and to maintain said shared use facility in a manner that keeps it free of obstruction and/or abates any natural or man-made nuisance that impedes use, providing that the City of Kent, Portage County, Ohio shall operate and maintain said improvement as a public facility in accordance with the standards, policies and procedures of other similar public facilities within the City of Kent and shall properly backfill and restore the ground surface and ground cover vegetation to the condition existing immediately prior to such construction, reconstruction, restoration or repair; except that said City shall not be required to repair any structures, such as buildings, driveways, light poles and appurtenances, catch basins, storm sewers, utility service lines, pavement, curbing or landscape islands belonging to Grantor and located within the easement and right-of-way, unless such damage was caused by an intentional act of negligence of the City of Kent, its agents, employees, contractors, licensees, or invitees.

IN WITNESS WHEREOF, the Grantor has hereunto set its signature this ____ day of _____, 2013.

WITNESS:

WITNESS:

GRANTOR: FOUR SEASONS AT
GOLDEN POND LLC, an Ohio limited
liability company

By: _____

Print Name: _____

Title: _____
NRP PROPERTIES LLC, an Ohio limited
liability company

By: NRP Partners LLC, an Ohio limited
liability company

Its: Sole Member

By: _____

Print Name: _____

Title: _____

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

Before me, a Notary Public in and for said County and State, personally appeared the above-named FOUR SEASONS AT GOLDEN POND LLC, an Ohio limited liability company, by _____, in her/his capacity as _____ of such limited liability company, who acknowledged that he/she did sign the foregoing instrument on behalf of said limited liability company and that the same is his/her free act and deed as such officer and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 2013.

Notary Public
My commission expires:

STATE OF OHIO)
) SS:
COUNTY OF PORTAGE)

Before me, a Notary Public in and for said County and State, personally appeared the above-named NRP PROPERTIES LLC, an Ohio limited liability company, by NRP Partners LLC, an Ohio limited liability company, its sole member, by _____, in her/his capacity as _____ of such limited liability company, who acknowledged that he/she did sign the foregoing instrument on behalf of said limited liability company and that the same is his/her free act and deed as such officer and the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this _____ day of _____, 2013.

Notary Public
My commission expires:

Accepted by Kent City Council, _____, 2013

THIS INSTRUMENT PREPARED BY: James R. Silver

MEMORANDUM
DEPARTMENT OF COMMUNITY DEVELOPMENT
City of Kent

Date: September 5, 2013

To: Dave Ruller, City Manager

From: Jennifer Barone, Development Engineer 

Re: Revisions to Chapter 1201, Riparian and Wetland Buffers

Copy: Linda Jordan, Clerk of Council
Jim Silver, Law Director
Gene Roberts, Service Director
James Bowling, City Engineer
Bridget Susel, Director of Community Development
file

I respectfully request City Council agenda time on October 2, 2013 to consider modification of Chapter 1201, Riparian and Wetland Buffers section of the code. The code language for the Water Resource Management section was changed last March to come into compliance with OEPA requirements. Some previous changes to this section were inadvertently omitted, such as the change from the Board of Zoning Appeals to the Board of Building Appeals for variance requests. I am requesting that emergency declaration action be taken.

**CHAPTER 1201
RIPARIAN AND WETLAND BUFFERS**

- 1201.01 Riparian and Wetland Buffers Required**
- 1201.02 Designated Watercourses and Riparian Setbacks**
- 1201.03 Riparian and Wetland Setbacks**
- 1201.04 Variances**
- 1201.05 Conflicts**

1201.01 RIPARIAN AND WETLAND BUFFERS REQUIRED

- (a) It is hereby determined that the system of wetlands, Riparian Areas, rivers, streams, and other natural watercourses within the City contributes to the health, safety, and general welfare of the residents. The specific purpose and intent of these regulations is to regulate future uses and Developments within riparian and wetland setbacks that would impair the ability of riparian and wetland areas to:
 - (1) Reduce flood impacts by absorbing peak flows, slowing the velocity of floodwaters, and regulating base flow.
 - (2) Assist in stabilizing the banks of watercourses to reduce bank erosion and the downstream transport of sediments eroded from watercourse banks.
 - (3) Reduce pollutants in watercourses during periods of high flows by filtering, settling, and transforming pollutants already present in watercourses.
 - (4) Reduce pollutants in watercourses by filtering, settling, and transforming pollutants in runoff before they enter watercourses.
 - (5) Provide watercourse habitats with shade and food.
 - (6) Provide habitat to aquatic organisms and wildlife, by maintaining diverse and connected riparian and wetland vegetation.
 - (7) Benefit the City economically by minimizing encroachment on wetlands and watercourse channels and the need for costly engineering solutions such as dams, retention basins, and rip rap to protect structures and reduce property damage and threats to the safety of residents; and by contributing to the scenic beauty and environment of the City, and thereby preserving the character of the City, the quality of life of the residents of the City, and corresponding property values.

1201.02 DESIGNATED WATERCOURSES AND RIPARIAN SETBACKS

- (a) Designated watercourses shall include those watercourses meeting any one of the following criteria:
 - (1) All watercourses draining an area greater than ½ square mile, or
 - (2) All watercourses draining an area less than ½ square mile and having a defined bed and bank.
 - (3) In determining if watercourses have a defined bed and bank, the City may consult with a representative of the Portage County Soil and Water Conservation District or other technical experts as necessary.
- (b) Riparian setbacks on designated watercourses are established as follows:
 - (1) A minimum of 200 feet on both sides of all watercourses draining an area greater than 300 square miles. (Cuyahoga River)

- (2) A minimum of 100 feet on both sides of all watercourses draining an area greater than 20 square miles and up to and including 300 square miles. (Breakneck Creek)
 - (3) A minimum of 50 feet on both sides of all watercourses draining an area greater than one half square mile and up to and including 20 square miles. (Plum Creek and Fish Creek)
 - (4) A minimum of 25 feet on both sides of all watercourses draining an area less than one half square mile and having a defined bed and bank as determined above.
- (c) The reach of the Cuyahoga River from the point where Standing Rock Avenue if extended would intersect with the river to the Stow Street bridge is exempt from the setback requirements of this section.

1201.03 RIPARIAN AND WETLAND SETBACKS

- (a) Riparian Setback Map:
- (1) The City shall use the latest edition of the official soil survey of Portage County Soil and Water Conservation District, as the map identifying designated watercourses and their riparian setbacks. The drainage features identified on the paper maps in the official soil survey and the information contained therein shall be believed to be accurate.
 - (2) At the time of application of this regulation, if any discrepancy is found between the Riparian Setback Map and the criteria for designated watercourses or riparian setbacks as set forth in these regulations, the most restrictive criteria shall prevail.
 - (3) In reviewing and interpreting such maps the City may consult with a representative of the Portage County Soil and Water Conservation District or other technical experts as necessary.
- (b) The following conditions shall apply in riparian and wetland setbacks:
- (1) Riparian and wetland setbacks shall be measured in a perpendicular and horizontal direction outward from the Ordinary High Water Mark of each designated watercourse and defined wetland boundary.
 - (2) Except as otherwise provided in this regulation, riparian and wetland setbacks shall be preserved in their natural state and shall be established prior to any soil disturbing or land clearing activities.
 - (3) Where the 100-year floodplain is wider than a riparian setback on either or both sides of a designated watercourse, the riparian setback shall be extended to the outer edge of the 100-year floodplain.
 - (4) Where wetlands are identified within a riparian setback, the minimum riparian setback width shall be extended to the outer boundary of the wetland. In addition, wetlands shall be protected to the extent detailed in these regulations.
 - (5) Wetlands shall be delineated by a site survey approved by the City using delineation protocols accepted by the U.S. Army Corps of Engineers and the Ohio EPA at the time of application of this regulation. If a conflict exists between the delineation protocols of these two agencies, the delineation protocol that results in the most inclusive area of wetland shall apply.
 - (6) The developer shall be responsible for delineating riparian and wetland setbacks, including any expansions or modifications as required by these regulations, and identifying these setbacks on all Site Plans, Development Plans, and/or applicable permit applications submitted to the City. This delineation may be done by a metes and bounds survey and shall be subject to review and approval by the **Community Development Director**.

- (7) Prior to any soil-disturbing activity, riparian and wetland setbacks shall be clearly delineated on site by the developer, and such delineation shall be maintained throughout soil disturbing activities.
 - (8) No approvals or permits shall be issued prior to on-site delineation of riparian and wetland setbacks in conformance with these regulations.
 - (9) Upon completion of a Development or other improvement, riparian and wetland setbacks shall be permanently recorded on the final plat, pursuant to Article IV: Permits and Approval Processes.
- (c) Wetland setbacks are established as follows:
- (1) A minimum of 75 feet surrounding all Ohio EPA Category 3 Wetlands, or current equivalent Ohio EPA classification.
 - (2) A minimum of 50 feet surrounding all Ohio EPA Category 2 Wetlands, or current equivalent Ohio EPA classification.
- (d) Procedure for wetland setbacks:
- (1) Upon filing a Site Plan or Preliminary Development Plan, the developer shall retain a qualified professional to survey the proposed Development site for wetlands. If no wetlands are found, the developer shall submit a letter with the Site Plan or Preliminary Development Plan verifying that a qualified professional has surveyed the site and found no wetlands. If wetlands are found, the following procedures shall be followed:
 - (i) A qualified professional, acceptable to the **Community Development** Director, shall determine the presence of Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) on the proposed Development site using the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of this regulation. Acceptance of this determination shall be subject to approval by the **Community Development** Director.
 - (ii) If Ohio EPA Category 2 or 3 wetlands (or current equivalent Ohio EPA classification) are located on the proposed Development site, the developer shall delineate these wetlands and the wetland setback in conformance with these regulations. The developer shall identify all delineated wetlands and their associated setbacks on all Site Plans or Preliminary Development Plans, and/or applicable permit applications submitted to the Community Development Department.
- (e) Uses permitted in riparian and wetland setbacks:
- (1) By-Right Uses Without A Permit:
 - (i) Open space uses that are passive in character shall be permitted in riparian and wetland setbacks, including, but not limited to, those listed in these regulations. No use permitted under these regulations shall be construed as allowing trespass on privately held lands.
 - (ii) Recreational Activity. Passive recreational uses, as permitted by federal, state, and local laws, such as hiking, fishing, hunting, picnicking, and similar uses.
 - (iii) Removal of Damaged or Diseased Trees. Damaged or diseased trees may be removed.
 - (iv) Revegetation and/or Reforestation. Riparian and wetland setbacks may be revegetated with non-invasive plant species.
 - (2) By-Right Uses With A Permit:

- (i) Selective Harvesting of Timber. Selective harvesting of timber may be allowed upon presentation of a Forest Management Plan pursuant to **Section 1193.054** (Forest Management Plans) prepared by a Qualified Forester and approved by the Director.
 - a. Any landowner harvesting timber for sale shall post a \$5,000 performance guarantee with the City. This performance guarantee shall be in the form of a Security Bond, Escrow Account, Certified Check or Cash, and it shall be held until completion of the timber-harvesting operation.
 - b. Due to the potential for felled logs and branches to damage downstream properties and/or to block ditches or otherwise exacerbate flooding, logs or branches resulting from permitted selective harvesting that are greater than 6 inches in diameter at the cut end shall be cut into sections no longer than 6 feet or removed from the 100-year floodplain. Harvested trees or felled logs/branches that are part of a designed and approved Streambank Stabilization and/or Erosion Control Measure shall be allowed to remain in a designated watercourse.
- (ii) Streambank Stabilization and Erosion Control Measures. Streambank stabilization and erosion control measures designed to protect existing structures or uses may be allowed provided that such measures are ecologically compatible and substantially utilize natural materials and native plant species where practical. The streambank stabilization and erosion control measures shall only be undertaken upon approval of a Storm Water Management Plan by the **Community Development** Director.
- (iii) Crossings. Crossings of designated watercourses and through riparian setbacks by **easements, bridges, culverts, boardwalks, bike and hike pathways (paved or unpaved)**, publicly and privately owned sewer and/or water lines and public and private utility transmission lines shall only be allowed upon approval of a Utilities Plan by the **Community Development** Director, pursuant to Chapters 1187 (Design Standards), 11896 (Improvements) and 1339 (Technical Plan Review and Conformance). Such crossings shall minimize Disturbance in riparian setbacks and shall mitigate any necessary Disturbances.

If work will occur below the ordinary high water mark of the designated watercourse, proof of compliance with the applicable conditions of the U.S. Army Corps of Engineers Section 404 Permit shall also be provided to the City of Kent. Proof of compliance shall be the following:

- a. A site plan showing that any proposed crossing conforms to the general and special conditions of the applicable Nationwide Permit, or
 - b. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under the applicable Nationwide Permit, or
 - c. A copy of the authorization letter from the U.S. Army Corps of Engineers approving activities under an Individual Permit.
- (iv) Conservation Easements. Placing permanent conservation easements on riparian and wetland setback areas is encouraged by the City.
- (f) Uses prohibited in riparian and wetland setbacks:
- (1) Any use not authorized under these regulations shall be prohibited in riparian and wetland setbacks. The following uses are specifically prohibited; however, prohibited uses are not limited to those uses listed here.
 - (2) Construction. There shall be no structures of any kind.
 - (3) Dredging or Dumping. There shall be no drilling, filling, dredging, or dumping of soil, spoils, liquid, or solid materials, except for non-commercial composting of uncontaminated natural materials, and except as permitted under Subsection ~~(b)~~ (e).

- (4) Roads or Driveways. There shall be no roads or driveways permitted in riparian and/or wetland setback area, except as permitted under Subsection (b) (e). There shall be no roads or driveways permitted in wetlands or watercourses without a permit issued by the US Army Corps of Engineers and/or the Ohio EPA.
 - (5) Motorized Vehicles. There shall be no use of motorized vehicles, except as permitted under Subsection (b) (e).
 - (6) Disturbance of Natural Vegetation. There shall be no Disturbance of the natural vegetation, except for such conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with this regulation; for such Disturbances as are approved under Subsection (b) (e); and for the passive enjoyment, access, and maintenance of landscaping or lawns existing at the time of passage of this regulation. Nothing in this regulation shall be construed as requiring a landowner to plant or undertake any other activities in riparian and wetland setbacks.
 - (7) Parking Lots. There shall be no impervious parking lots or other human-made impervious cover, except as permitted under Subsection (b) (e).
 - (8) New Surface and/or Subsurface Sewage Disposal or Treatment Areas. Riparian and wetland setbacks shall not be used for the disposal or treatment of sewage except in accordance with local county Board of Health regulations in effect at the time of application of this regulation.
 - (9) Crossings. Crossings of designated wetland setbacks by publicly and privately owned sewer and/or water lines and public and private utility transmission lines without a permit issued by the US Army Corps of Engineers and/or the Ohio EPA.
- (g) Nonconforming structures or uses in riparian and wetland setbacks:
- (1) A nonresidential, nonconforming use within a riparian and wetland setback which is in existence at the time of passage of this regulation, and which is not otherwise permitted under these regulations, may be continued. However, the use shall not be changed or enlarged unless it is changed to a use permitted under these regulations.
 - (2) A nonconforming structure within a riparian and wetland setback which is in existence at the time of passage of this regulation, and which is not otherwise permitted under these regulations, may be continued. However, the existing building footprint or roof line may not be expanded or enlarged in such a way that would move the structure closer to the stream or wetland.
 - (3) A nonconforming use or deteriorated structure within a riparian and wetland setback which is in existence at the time of passage of this regulation, and which is discontinued, terminated, or abandoned for a period of two (2) years or more may not be revived, restored, or re-established.

1201.04 VARIANCES

- (a) The Board of ~~Zoning~~ **Building** Appeals may grant a variance from these regulations as provided in ~~Chapter 1409~~ **1309** (Board of ~~Zoning~~ **Building** Appeals). In determining whether there is unnecessary hardship or practical difficulty such as to justify the granting of a variance, the Board of ~~Zoning~~ **Building** Appeals shall consider the potential harm or reduction in riparian and/or wetland area functions that may be caused by a proposed structure or use.
- (b) In making a variance determination, the Board of ~~Zoning~~ **Building** Appeals shall consider the following:
 - (1) The soil type natural vegetation of the parcel, as well as the percentage of the parcel that is in the 100-year floodplain. The provisions of the City's flood hazard reduction regulations, pursuant to Chapter 1337.04, may be used as guidance when granting variances in the 100-year floodplain.

- (2) The extent to which the requested variance impairs the flood control, erosion control, sediment control, water quality protection, or other functions of the riparian and/or wetland area. This determination shall be based on sufficient technical and scientific data.
 - (3) The degree of hardship this regulation places on the landowner, and the availability of alternatives to the proposed activity.
 - (4) Soil disturbing activities permitted in a riparian and/or wetland setback through variances should be implemented in order to minimize clearing to the extent possible, and to include Best Management Practices necessary to minimize erosion and maximize sediment control.
 - (5) The presence of significant impervious cover or smooth vegetation, such as maintained lawns, in riparian setback areas compromising benefits to the City.
 - (6) A parcel existing at the time of passage of this ordinance is made unbuildable.
 - (7) Varying the front, rear and side yard setback before the riparian and wetland setbacks are varied.
- (c) Variances shall not be granted for asphalt or concrete paving in the riparian and wetland setbacks. Variances may be granted for gravel driveways in riparian setbacks when necessary.

1201.05 CONFLICTS

If there are any conflicts between provisions of Chapter 1201 and other sections of the Kent Codified Ordinances, then sections of 1201 shall control.



CITY OF KENT, OHIO

DEPARTMENT OF FINANCE

To: Dave Ruller, City Manager
From: David A. Coffee, Director of Budget and Finance
Date: September 27, 2013
Re: FY2013 Appropriation Amendments, Transfers, and Advances

The following appropriation amendments for the October Council Agenda are hereby requested:

Fund 001 – General

Increase \$ 9,000 Engineering / Other (O&M) – Increase in appropriation for additional inspection services for the Raising Hike&Bike Bridge Over CSX Tracks Project per J. Bowling memo of 8/23/13.

Fund 128 – Fire & EMS

Decrease \$ 30,000 Fire / Capital – Reduction in appropriation to reflect deletion of West Side Generator capital plan purchase per Chief Manthey memo of 9/18/13.

Increase \$ 11,750 Fire / Capital – Addt'l appropriation for Replacement of In-house Paging System for Main Fire Station per Chief Manthey memo of 9/18/13.

Fund 131 – Justice Assistance Grant (JAG)

Decrease \$ 2,323 JAG/Police / Personnel – Reduction in appropriations that shifts funding to O&M lines in order to facilitate Grant close-out for Police Department expenditures.

Increase \$ 3,025 JAG/Police / Other (O&M) – Increase funding and shift expenses from Personnel lines to facilitate Grant close-out for Police Department expenditures.

Fund 201 – Water

Decrease \$ 8,550 Contingency / Transfer to Capital/Service/Cap Facilities per R. Boyd 9/17/13 memo.

Increase \$ 8,550 Service-Cap Facilities / Capital – Addt'l appropriation for Water Line Survey / KSU Booster Station Easement per Rhonda Boyd memo dated 9/17/13.

Decrease \$ 25,000 Service / Vehicle Maint. / Capital – Decrease appropriation for Water Fund share of Refueling Station Replacement Project deferred to 2018.

Decrease \$ 260,000 Service / WTP / Capital – Decrease appropriation for Fairchild Water Tank Painting including Lead Abatement - Project deferred to 2014.

Increase \$ 31,450 Service / WTP / Capital - Addt'l for KSU Water Tank Painting including Lead Abatement Project per G. Roberts.

9/27/2013 Memo Continued -

The following appropriation amendments for the October Council Agenda are hereby requested:

Fund 202 – Sewer

Decrease \$ 25,000 Service / Vehicle Maint. / Capital – Decrease appropriation for Sewer Fund share of Refueling Station Replacement Project deferred to 2018.

Decrease \$ 6,500 Service / WRF Lab / Capital – Decrease funding for UV Spectrophotometer purchased in prior fiscal year per G. Roberts 9/23/13 memo.

Increase \$ 3,500 Service / WRF Lab / Capital – Addt'l funding to advance Portable Automatic Sampling Unit from 2014 CIP Plan per G. Roberts 9/23/13 memo.

Fund 301 – Capital

Decrease \$ 100,000 Service / Vehicle Maint. / Capital – Decrease appropriation for SCMR Fund share of Refueling Station Replacement Project deferred to 2018.

Decrease \$ 22,000 Service / Central Maint. / Capital – Decrease appropriation for Carpenter Van Replacement per 2013 CIP Plan Update – City repurposed Police Van to meet need.

CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE
DIVISION OF ENGINEERING

MEMO

TO: Dave Coffee

FROM: Jim Bowling

DATE: August 23, 2013

RE: Professional Services - Appropriations Request

As part of the city-wide direction to reduce our budgets, we have been trying to manage our professional services budget at lower levels this year. However with the significant amount of construction ongoing, we will need additional funds to complete the critical work required from the Engineering Division this year.

Therefore, we are requesting an additional \$9,000 in professional services. This money will be reimbursed by CSX Transportation for inspection services related to the raising of the Portage Hike and Bike Trail Bridge over CSX. I've attached a summary of the appropriations and encumbrances current and expected from professional services for your information.

We do not lightly request additional funds and appreciate your consideration of the request.

c: Gene Roberts, Service Director
Dave Ruller, City Manager
file

MEMORANDUM
DIVISION OF ENGINEERING
City of Kent Department of Public Service

DATE: September 17, 2013

TO: Dave Coffee, Director Budget and Finance

FROM: Rhonda Boyd, P.E., P.S. Senior Engineer *R. Boyd*

SUBJECT: KSU Booster Station Easement

The Division of Engineering desires to use water contingency funds to provide for an unexpected expenditure. This task involves providing an updated waterline survey and exhibit for easements that will expire in 2013 granted to the City by The State of Ohio.

We are requesting to use \$ 8,550.00 from water contingency funds because this document is needed to correct a water only related issue.

C: Jim Bowling, P.E., City Engineer
File

CITY OF KENT
DEPARTMENT OF PUBLIC SERVICE

MEMO

September 23, 2013

To: Dave Ruller, City Manager
David Coffee, Budget & Finance Director

From: Gene Roberts, Service Director
Bob Brown, Water Reclamation Facility Manager

RE: Water Reclamation Facility Lab Capital Funds

RECEIVED

SEP 26 2013

BY MB
CITY OF KENT
BUDGET & FINANCE

Included in the City's 2013 Budget for the Water Reclamation Facility the following Lab Capital funds were provided:

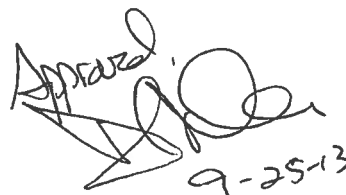
	Org. Funded	Actual Cost
Explosion Proof Refrigerators	\$ 11,000	\$ 10,872.00
UV Spectrophotometer	\$ 6,500	\$ 0.00
Fume Hood Support Cabinet	\$ 3,200	\$ 2,788.95

The 2013 total original capital funds provided for the WRF Lab was \$20,700. The total expenses against the budgeted funds was \$13,690.95 leaving a balance of \$7,039.05. The UV Spectrophotometer was purchased in 2012 when the old equipment failed.

Staff is requesting to reprogram a portion of the balance of capital funding for the above items, and repurpose those funds for a Portable Automatic Sampling Unit for the City's Industrial Pretreatment Program. A Portable Automatic Sampling Unit is placed into the City's waste water collection system to obtain waste water samples over a period of time, typically 24-hours, thus eliminating the need to have staff work overtime to obtain the same sampling regiment. The requested Portable Automatic Sampling Unit will cost less than \$3,500 including shipping.

Consideration of this funding reprogramming is appreciated.

Cc: James Bowling, P.E., Deputy Service Director/Superintendent of Engineering
Bill Schesventer, Chief Operator
file

Approved

9-25-13



City Of Kent Fire Department

David A. Manthey
Fire Chief

RECEIVED

SEP 19 2013

BY [Signature]
CITY OF KENT
BUDGET & FINANCE

To: David Coffee - Budget and Finance Director
From: Dave Manthey
Ref: Re-Allocation of Capital Improvement Funds

September 18, 2013

Dave,

Per our conversation of 9/17/13 I am formally requesting that the Capital Improvement Funds set aside to accommodate the purchase of a generator at our West Side Station be terminated. The sum of \$30,000 had been set aside in 2013 for this purchase. Our recent conversations with Mr. Ruller in regards to these monies echo my thoughts on the issues with Station Two.

I do at this time however face a more critical issue that needs immediate address. I am requesting that a portion of this returned money be allocated on an emergency basis to replace the in house paging system at Station One. This is an antiquated system that has been unreliable for some time and has recently gone down. This is the original system installed when the building was built some ten years ago. The computer system that controls it is now obsolete. We no longer can receive calls from dispatch in our truck rooms or our bunk rooms. This is critical to our response.

I have contacted Ashton Sound in regards to this and I have two options - basically I can put a band aid on the system which will be a quick but unreliable fix or I can replace the system. Again, this system is critical to our service.

I have enclosed a copy of the quote given by Ashton Sound with this letter. I have been told it might take up to four weeks to install this, and with Halloween coming up, time is of the essence. If you have any other concerns or questions please feel free to contact me.

Thank you for your consideration,

Dave Manthey
Fire Chief - City of Kent Fire Department

cc: Dave Ruller - City Manager

Approved,
[Signature]

9-18-13



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: September 26, 2013
TO: Dave Ruller, City Manager
FROM: Bridget Susel, Community Development Director *B.S.*
RE: Tax Credit Agreement: MAC Trailer, Inc.

In July of 2011, Kent City Council approved amending Section 181.21 of the Kent Codified Ordinances which specifies the structure and requirements for the City's "Job Creation Tax Credit Program." The proposed amendment was presented to Council in order to better align the City's job creation tax credit program with changes that had occurred to the State of Ohio's program.

The City had been working with MAC Trailer on the development of a job creation tax credit agreement, which was not anticipated to take effect until the State of Ohio job creation tax credit agreement with the company was also implemented. MAC Trailer is currently finalizing the necessary documentation for submission to the Ohio Development Services Agency (ODSA) for its first year of job creation tax credits so City staff has begun the process of reviewing the project to determine the scope of the needed materials to meet the local reporting requirement. While reviewing the project, staff became aware of the fact that while the needed changes to the KCO section on job creation tax credits was approved, legislation authorizing the specific job creation tax credit agreement with MAC Trailer had not been authorized.

I am respectfully requesting time at the October 2, 2013 Committee session to discuss the City's requirements for the job creation tax credit program and to formally request authorization, with emergency, for the City Manager to sign the agreement on behalf of the City.

If you need any additional information in order to add this item to the agenda, please let me know.

Thank you.

Cc: Jim Silver, Law Director
Dan Smith, Economic Development Director
Linda Jordan, Clerk of Council
MAC trailer-Job Creation tax Credit file

CITY OF KENT

MUNICIPAL TAX CREDIT AGREEMENT

Grantee:	MAC LTT, INC.				
Address:	1400 FAIRCHILD AVE.		Federal Tax Identification Number	45-2966184	
City:	Kent	State:	OH	Zip:	44240
Project Location:	1400 FAIRCHILD AVE. KENT, OHIO 44240		Tax Credit Effective Date:		
Project County:	Portage	Tax Credit End Date:			
Job, Payroll and Investment Commitments					
Full-Time Equivalent Employees to be Created:	200	Full-Time Equivalent Employees to be Retained:	200	New Payroll to be created:	\$ ESTIMATE 6,500,000. ANNUALLY
Baseline Payroll:	\$0 new facility	Pay Increase Factor:		Baseline Income Tax Revenue:	\$0 new facility
Percentage of Minority and Disadvantaged Hiring:	N/A			Investment:	\$5.7 million
Tax Credit Approved by City Council					
Program	Tax Credit Percentage	Number of Years	Approval Date:		
Job Creation Tax Credit	24%	5	2011-54 July 20, 2011		
Grantee Notice					
Grantee Contact Name:	James A. Majorana		Title:	President	
Address:	1400 Fairchild Avenue		State:	OH	
Zip:	44240		Fax Number:	(330) 968-4865	

This Municipal Tax Credit Agreement (this "Agreement") is made and entered into by and between the City of Kent, Ohio ("Grantor" or "City"), located at 215 East Summit Street, Kent, Ohio 44240 and MAC LTT, INC. ("Grantee") with respect to Grantee's operations at the Project Location (the "Project") as further described in Exhibit I, Scope of Work. The Scope of Work, which was attached to the State Tax Credit Agreement referred to directly below, is incorporated by reference into this Agreement as if fully set forth herein.

4. **Excess Income Tax Revenue.**

(a) **Excess Income Tax Revenue Defined.** Subject to the other provisions of Section 3 of this Agreement, Excess Income Tax Revenue shall be calculated as follows: (x) the Municipal Income Tax Revenue attributed to Full-Time Equivalent Employees employed by Grantee in the Project, minus (y) the Baseline Income Tax Revenue, as adjusted annually. For each year during the Term, the Baseline Income Tax Revenue for such year shall be increased from the prior year by an amount equal to the (xx) Baseline Income Tax Revenue for the immediately preceding year, times (yy) the Pay Increase Factor as set forth on the first page of this Agreement.

(b) **Pro-rated Application of the Baseline Income Tax Revenue.** If Grantee becomes eligible for the credit after the first day of Grantee's taxable year or after the first day of the calendar year that includes the tax period, the Baseline Income Tax Revenue shall be reduced for such partial year pursuant to division (A)(2) of Section 122.17 of the O.R.C.

(c) **Failure to Execute Agreement.** If Grantee failed to enter into this Agreement within sixty (60) days after having received this Agreement from the City, then Grantor shall amend the Baseline Income Tax Revenue to reflect the Municipal Income Tax Revenue based on the Full-Time Equivalent Employees during the most recent twelve-month period prior to the execution of this Agreement. The revised Baseline Income Tax Revenue shall be adjusted annually for each calendar year as described in Section 4(a) above.

(d) **Calculation of the Annual Tax Credit.** The Annual Tax Credit shall be the product of the Excess Income Tax Revenue multiplied by the Tax Credit Percentage for the calendar year reporting period set forth on the first page of this Agreement.

5. **Submission of Annual Progress Reports.** During the Term, Grantee shall submit to the Director of Finance an Annual Progress Report. The Annual Progress Report shall specify the number of Full-Time Equivalent Employees (as defined in the State Tax Credit Agreement) first employed by Grantee as a result of the Project, the total number of Full-time Equivalent Employees employed by Grantee at the Project, the total payroll of Grantee at the Project, the total Municipal Income Tax Revenue and the Excess Income Tax Revenue withheld in connection with employees at the Project for the preceding taxable or calendar year, the

10. **Non-Discrimination.**

(a) **Minority Hiring Requirement.** Grantee shall make a good faith effort to hire minority persons in the completion and operation of the Project in the same percentage as the average percentage of minority persons represented in the population of the county in which the Project is located and the contiguous Ohio counties.

(b) **Equal Employment Opportunity.** Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, veteran status, disability or age. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, ancestry, veteran status, disability or age.

11. **Records Maintenance and Access.**

(a) **Maintenance of Records.** Grantee shall establish and maintain for at least four (4) years after the end of the Post-Reporting Period, or such earlier termination of this Agreement, such records as are required by Grantor in Section 5 above and all relevant supporting documentation. The parties further agree that records required by Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between Grantor and Grantee shall be maintained for the time needed for the resolution of such issue and that in the event of early termination of this Agreement, or if for any other reason Grantor shall require a review of the records related to the Project, Grantee shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation. Grantee shall maintain and organize its records in such form so that, in case of a review of its records or an audit, Grantee is able to verify and document the information it provides in its Annual Progress Reports pursuant to Section 5 of this Agreement.

(b) **Inspection and Copying.** At any time during normal business hours upon written notice and as often as Grantor may reasonably deem necessary, Grantee shall make available to Grantor for examination all of its records with respect to matters covered by this Agreement including, but not limited to, records of personnel and terms of employment, and Grantee shall permit Grantor to audit, examine and make excerpts or transcripts from such records.

(b) Outstanding Liabilities. Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State or a political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

(c) Falsification of Information. Grantee represents and warrants to Grantor that Grantee, any parent company of such Grantee, and any other related entity or member have made no false statements to Grantor in the process of obtaining this Grant. If Grantee, any parent company of Grantee, or other related entity, officer, director or equity holder has knowingly made a false statement to Grantor to obtain this Grant, Grantee shall be required to immediately pay to Grantor an amount equal to the aggregate of all Annual Tax Credits and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Section 9.66(C)(1) of the O.R.C. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Section 2921.13(F)(1) of the O.R.C., which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than six months.

(d) Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. If applicable, Grantee must certify compliance with Section 2909.33 of the O.R.C.

(e) Public Records. Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Project, including financial information of Grantee, are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption, such as trade secret exception, applies.

16. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if delivered personally, or by facsimile with confirmation, and regular United States mail, or sent by United States mail, registered or certified, return receipt requested, postage prepaid, or commercial delivery service to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the Grantor, to:

City of Kent, Ohio
215 East Summit Street
Kent, OH 44240
ATTN: Director of Economic Development
Fax No.: (330) 678-8033

In case of any Grantee, to:

(g) Pronouns. The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.

(h) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

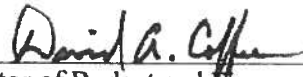
(i) Assignment. Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by Grantee without the prior express written consent of Grantor. Such consent shall not be unreasonably withheld.

(j) Successor in Interest. Where Grantor has consented to an assignment as provided above in division (i) of this Section 17, each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of not only Grantee, but to its respective successors and assigns.

(k) Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

CERTIFICATE OF FISCAL OFFICE

The undersigned, fiscal officer of the City of Kent, hereby certifies that the monies required to meet the obligations of the City for calendar year 2011 under this Agreement have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.



Director of Budget and Finance
City of Kent, Ohio



CITY OF KENT, OHIO

DEPARTMENT OF ECONOMIC DEVELOPMENT

Date: June 22, 2011

To: David Ruller, City Manager
David Coffee, Finance Director

From: Dan Smith, Economic Development Director

Subject: Potential New Kent Manufacturer- MAC Trailer
Request for use of Job Creation Tax Credit

Over the past month, I have been working with the Principals of the MAC Trailer Company to explore a plant expansion at the former site of Fointaine Trailer, 1400 Fairchild Avenue. The company current operates sites in Alliance and Salem, Ohio. They have been in high growth mode the past few years (recently adding over 200 employees). Per our conversations, the Kent location is extremely attractive and the facility is well suited for their operations. To that end, I have been working with Jim Maiorana, Executive V.P. of MAC Trailer and the State of Ohio to help provide assistance to get the new division up and operating.

MAC Trailer has requested assistance with financing (from the State) as well as use of the Job Creation Tax Credit (JCTC), at both the state and local level. Our local JCTC program is summarized by the following:

The City of Kent has created a Job Creation Tax Credit Program designed to provide companies with an incentive to locate, or expand, in the City. Qualifying companies may claim a refundable income tax credit against their City of Kent profit tax or individual income tax. The credit is up to 24% of the municipal income tax withheld on the qualifying new jobs for a term up to five years, or up to the term offered by the State of Ohio Job Creation Tax Credit Program.

Other program requirements:

- The program is restricted to non-retail oriented firms only.
- The program is open to those firms that are new to the City of Kent, or existing companies that are expanding, and who meet the program requirements.

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KentPatch



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Editor **Matt Fredmonsky**: Heard some news you want us to check out? Let me know:
matt.fredmonsky@patch.com

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Government, Business

Relief Over MAC Trailer Move to Kent

Trailer manufacturer's plans to move to Kent are final after weeks of negotiating

By [Matt Fredmonsky](#) [Email the author](#) September 1, 2011

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Related Topics: [Kent Expansion](#) and [MAC Trailer](#)



Officials with both the city of Kent and [MAC Trailer](#) can breathe a sigh of relief today now that the deal is closed to bring 1 Dan Smith, Kent's Economic Development Director, said the firm finalized the deal on Friday to expand into the former Fon Fairchild Ave.

"It feels great to see MAC Trailer setting up operations with plans to hire 200-plus local workers with good-paying jobs," Smith said. "On the opposite happening. Jim Maiorana and the entire Mac Trailer team are to be credited with their successful business plan that enabled them to make this type of investment possible."

Maiorana, MAC's executive vice president, said they had been considering the move to Kent since early May.

Recordpub.com

State OKs \$5.7 million for firm's move into Kent

Marc Kovac
September 27, 2011

By MARC KOVAC | R-C Capital Bureau
COLUMBUS — The state Controlling Board has signed off on more than \$5.7 million in funding for a trailer manufacturer planning a \$6.1 million expansion in the city of Kent.

The lawmaker panel, without comment, OK'd about \$3.2 million from the Ohio Enterprise Bond Fund, \$2.5 million in low-interest financing and a \$75,000 rapid outreach grant to aid to MAC Trailer.

In return, the company would commit to creating 250 full-time jobs with average hourly wages of \$15. MAC was founded in Alliance in the early 1990s, operating initially as a repair facility. The company still houses its corporate offices in the community and has another facility in Salem.

The proposed Kent facility would focus on tank trailers that hold gasoline, liquid asphalt, water and other liquids.

The project would involve MAC's purchase of a 158,000-square-foot manufacturing facility. The company plans to invest about \$2.2 million in machinery and equipment, \$3.8 million in facility costs and \$100,000 in other investments, according to documents.

MAC considered sites in Ohio and Texas for the project.

Staff writer Thomas Gallick contributed to this article.

**City of Kent
Income Tax Division**

August 31, 2013

Income Tax Receipts Comparison - RESTATED - (NET of Refunds)

Monthly Receipts

Total receipts for the month of August, 2013	\$989,007
Total receipts for the month of August, 2012	\$942,880
Total receipts for the month of August, 2011	\$873,559

Year-to-date Receipts and Percent of Total Annual Receipts Collected

	<u>Year-to-date Actual</u>	<u>Percent of Annual</u>
Total receipts January 1 through August 31, 2013	\$8,173,641	71.70%
Total receipts January 1 through August 31, 2012	\$7,783,295	64.52%
Total receipts January 1 through August 31, 2011	\$7,268,988	67.86%

Year-to-date Receipts Through August 31, 2013 - Budget vs. Actual

<u>Year</u>	<u>Annual Budgeted Receipts</u>	<u>Revised Budgeted Receipts</u>	<u>Year-to-date Actual Receipts</u>	<u>Percent Collected</u>	<u>Percent Remaining</u>
2013	\$ 11,400,000	\$ 11,400,000	\$8,173,641	71.70%	28.30%

Comparisons of Total Annual Receipts for Previous Seven Years

<u>Year</u>	<u>Total Receipts</u>	<u>Percent Change From Prior Year</u>
2006	\$ 10,151,202	-0.36%
2007	\$ 10,540,992	3.84%
2008	\$ 10,712,803	1.63%
2009	\$ 10,482,215	-2.15%
2010	\$ 10,453,032	-0.28%
2011	\$ 10,711,766	2.48%
2012	\$ 12,063,299	12.62%

Submitted by



Director of Budget and Finance

2013 CITY OF KENT, OHIO
Comparison of Income Tax Receipts
as of Month Ended August 31, 2013

Monthly Receipts				Comparisons	
Month	2011	2012	2013	Amount	Percent Change
January	\$ 1,026,357	\$ 1,085,253	\$ 897,977	\$ (187,277)	-17.26%
February	788,986	806,227	919,060	112,832	14.00%
March	823,680	860,826	988,906	128,080	14.88%
April	1,057,137	1,239,488	1,330,732	91,244	7.36%
May	1,006,438	972,050	1,021,364	49,314	5.07%
June	844,726	915,138	1,059,172	144,034	15.74%
July	848,105	961,433	967,424	5,991	0.62%
August	873,559	942,880	989,007	46,127	4.89%
September	825,343	980,892			
October	939,121	1,076,141			
November	843,533	890,325			
December	834,781	1,332,645			
Totals	\$ 10,711,766	\$ 12,063,299	\$ 8,173,641		

Year-to-Date Receipts				Comparisons	
Month	2011	2012	2013	Amount	Percent Change
January	\$ 1,026,357	\$ 1,085,253	\$ 897,977	\$ (187,277)	-17.26%
February	1,815,343	1,891,480	1,817,036	(74,444)	-3.94%
March	2,639,023	2,752,306	2,805,942	53,636	1.95%
April	3,696,160	3,991,794	4,136,674	144,880	3.63%
May	4,702,598	4,963,844	5,158,038	194,194	3.91%
June	5,547,324	5,878,982	6,217,210	338,228	5.75%
July	6,395,429	6,840,415	7,184,634	344,219	5.03%
August	7,268,988	7,783,295	8,173,641	390,346	5.02%
September	8,094,331	8,764,187			
October	9,033,453	9,840,328			
November	9,876,985	10,730,653			
December	10,711,766	12,063,299			
Totals	\$ 10,711,766	\$ 12,063,299			

2013 CITY OF KENT, OHIO
Comparison of Income Tax Receipts from Kent State University
as of Month Ended August 31, 2013

Month	Monthly Receipts			Comparisons	
	2011	2012	2013	Amount	Percent Change
January	\$ 406,862	\$ 403,606	\$ 383,688	\$ (19,919)	-4.94%
February	336,710	335,895	353,861	17,966	5.35%
March	362,390	360,114	384,674	24,560	6.82%
April	357,231	362,957	396,905	33,947	9.35%
May	354,925	360,026	379,202	19,176	5.33%
June	349,038	362,330	413,558	51,227	14.14%
July	337,910	379,316	359,357	(19,959)	-5.26%
August	370,933	359,550	375,619	16,068	4.47%
September	298,038	328,283			
October	352,815	376,474			
November	358,685	384,179			
December	360,837	423,935			
Totals	\$ 4,246,372	\$ 4,436,666	\$ 3,046,863		

Month	Year-to-Date Receipts			Comparisons	
	2011	2012	2013	Amount	Percent Change
January	\$ 406,862	\$ 403,606	\$ 383,688	\$ (19,919)	-4.94%
February	743,572	739,501	737,549	(1,952)	-0.26%
March	1,105,962	1,099,615	1,122,223	22,607	2.06%
April	1,463,193	1,462,573	1,519,127	56,554	3.87%
May	1,818,117	1,822,598	1,898,329	75,731	4.16%
June	2,167,155	2,184,929	2,311,886	126,958	5.81%
July	2,505,065	2,564,245	2,671,244	106,999	4.17%
August	2,875,997	2,923,795	3,046,863	123,068	4.21%
September	3,174,035	3,252,078			
October	3,526,851	3,628,552			
November	3,885,535	4,012,731			
December	4,246,372	4,436,666			
Totals	\$ 4,246,372	\$ 4,436,666			

2013 CITY OF KENT, OHIO
Comparison of Income Tax Receipts from Kent State University
as of Month Ended August 31, 2013

Comparisons of Total Annual Receipts for Previous Seven Years

<u>Year</u>	<u>Total Receipts</u>	<u>Percent Change</u>
2006	\$ 3,542,080	2.59%
2007	\$ 3,707,931	4.68%
2008	\$ 3,919,539	5.71%
2009	\$ 4,090,788	4.37%
2010	\$ 4,267,465	4.32%
2011	\$ 4,246,372	-0.49%
2012	\$ 4,436,666	4.48%