

**KENT CITY PLANNING COMMISSION
REGULAR BUSINESS MEETING
JUNE 16, 2009**

**COUNCIL CHAMBERS
KENT CITY HALL
325 S. DEPEYSTER STREET
7:00 P.M.**

AGENDA

- I. **CALL TO ORDER**
- II. **ROLL CALL**
- III. **READING OF PREAMBLE**
- IV. **ADMINISTRATION OF OATH BY ASSISTANT LAW DIRECTOR**
- V. **CORRESPONDENCE**
- VI. **MEETING MINUTES:** June 2, 2009
Joint Summary Report – April 21, 2009 (no action required)
- VI. **OLD BUSINESS**
- VII. **NEW BUSINESS**
 - A. **PC09-006 WEST RIVER MEDICAL CENTER**
307 W. Main Street
Site Plan Review

The applicant is seeking Site Plan Review and Approval in order to expand the parking lot to the west of the existing parking lot located in the rear of the medical building and behind (north) of Wild Goats restaurant parking lot. The subject property is zoned N-C: Neighborhood Commercial District.
 - 1. **Public Comment**
 - 2. **Planning Commission Discussion/Action**
- VIII. **OTHER BUSINESS**
- IX. **ADJOURNMENT**



CITY OF KENT, OHIO

DEPARTMENT OF COMMUNITY DEVELOPMENT

DATE: June 9, 2009
TO: Kent City Planning Commission
FROM: Jennifer Barone, PE
Development Engineer
RE: Staff Report for the June 16, 2009 Planning Commission Meeting

The following items appear on the agenda for the June 16, 2009 Planning Commission meeting:

NEW BUSINESS:

CASE NO: PC09-006
APPLICANT: West River Medical Parking Lot Expansion
SITE LOCATION: 307 West Main Street
STATUS OF APPLICANT: The applicant is the agent for the owner(s) of the medical complex.
REQUESTED ACTION: Site Plan Review & Approval
ZONING: N-C: Neighborhood – Commercial District
TRAFFIC: The property is accessible from West Main Street & North Mantua Street.
SURROUNDING LAND USES: The property is surrounded by other commercial uses on all sides.
APPLICABLE CODE SECTIONS: Chapter 1119, 1139 and 1167 of the Kent Codified Ordinance

ANALYSIS:

The applicant is requesting Site Plan Review and Approval to expand the parking lot serving the West River Medical complex located at 307 West Main Street. The site plan was originally approved September 18, 2001 when the vacant building was renovated for its current use. Although the parking was deemed adequate at the time,

the tenants have found a need for additional parking spaces. The expansion area is located on an adjacent parcel owned by Shawn Martin Family Limited Partnership. The applicant has a tentative agreement with Shawn Martin which should be finalized in the near future.

The proposed parking lot expansion will be constructed to the west of the existing parking lot located in the rear medical building and behind (north) of Wild Goats restaurant's parking lot.

The existing parking was originally approved for 15 angled spaces. These spaces will be restriped to become 90° parking. The parking lot addition will also be 90° parking adding 15 more spaces for a total of 30 parking stalls. The traffic flow will remain essentially the same as the current patterns which is entering from North Mantua Street and exiting via Wild Goats parking lot. Signage currently exists for this traffic pattern.

The parking lot lighting that currently exists is wall pack lighting fixtures. No additional lighting is proposed at this time.

This site is less than 1 acre in size and does not require post construction storm water measures. The storm water runoff will be directed to the existing catch basin located in the existing parking lot.

RECOMMENDATION:

Staff recommends approval of the site plan submitted.

Should Planning Commission wish to approve this project, the following language may be used:

I move that in Case PC09-006, the Planning Commission approve the Site Plan and to construct a parking lot additional subject to the following:

1. Finalized agreement with Shawn Martin Family Limited Partnership
2. Technical Plan Review and Approval

List of Enclosures for This Project:

1. Cover letter dated May 5, 2009 and site plan dated March 11, 2009
2. Legal Ad and Property Owner Notice
3. Aerial Topo and Zoning Map



CITY OF KENT, OHIO

DEPARTMENT OF LAW



TO: KENT CITY COUNCIL
FROM: JAMES R. SILVER, LAW DIRECTOR
DATE: JUNE 12, 2009
RE: REVIEW BOARD MEMBERS SPEAKING AT OTHER MEETINGS

Legislation had recently been proposed by John Thomas to restrict Board of Zoning Appeals and Planning Commission members from speaking at other meetings on topics/issues that would later come before their own Board.

For instance, it would have restricted a BZA member from speaking for or against a topic/issue that would later come before the BZA in the form of variance requests.

Allegations were raised from members of the Boards and City Council that this legislation would be a violation of the BZA member's first amendment right to free speech. It was also alleged that this behavior does not fit the ethic's causes for recusing oneself from a hearing because of a financial or familial relationship.

It is not an ethical issue. Nor is it a free speech issue.

The explanation of why a BZA member, in that situation, should not speak begins with the following. A person coming before a review board regarding a property right is "entitled to protection under the Fourteenth Amendment to the United State Constitution, and that any deprivation of that right cannot occur without due process of law" *Board of Regents v. Roth* (1972) 408 U.S. 564, 92 S.Ct. 2701. (This is a United States Supreme Court decision).

Any person that comes before the BZA or Planning Commission with plans to change or modify a parcel of real estate has a property right at stake. Even a person whose profession would be affected by a decision of the BZA or Planning Commission has a vested property right at stake. *Board of Regents v. Roth* (Ib id).

So, people, companies, partnerships or the like that come before BZA and Planning Commission are entitled to due process of law in their hearings.

What does this mean? The next step in answering this question is to decide what the BZA or Planning Commission's role is in this situation. The Boards and Commissions, in determining property rights are quasi judicial boards. The Board or Commission is making a decision, or adjudicating the issue before them. They are normally granting or taking away property rights. Courts have stated the following about adjudicatory hearings before public boards like BZA and Planning Commission:

"The Tenth District Court of Appeals has distinguished a public hearing from an adjudicative hearing by stating that "[a] public hearing is one where members of the public may speak and express their views on the question of governmental, political and policy considerations as to whether certain legislation should be adopted. Adjudication hearings, however, are not subject to public comment, but, instead, involve the determination of rights of specific persons and whether such rights should be granted based upon evidence (not public opinion) presented at the hearing. Therefore, different procedures are necessary and different rules apply," *In re Rocky Point Plaza Corp.* (1993), 86 Ohio App. 3d 486, 491-92, 621 N.E. 2d 566."

The role of the BZA and Planning Commission in these cases is therefore similar to a Judge. The decision of the Board or Commission is made upon the evidence presented at the hearing before that Board – under oath. It is why we swear in witnesses.

This also calls for the Board or Commission to be fair and impartial in hearing any case. Just as a Judge must be fair and impartial until they have heard the evidence presented to them in a trial or hearing. None of us want to go before a Judge as a party in a lawsuit if that Judge has already expressed an opinion about our case – particularly if they have spoken against our position. Judges in that situation recuse themselves and let someone else hear the case that is going to be fair and impartial.

As applied to BZA's and Planning Commissions, the Court's in Ohio have said the following:

"In its first assignment of error, appellant contends that it was denied procedural due process in that the members of the Board had preconceived judgments about the merits of the claim before it and, therefore, appellant was denied an opportunity to a full and fair hearing before an impartial tribunal. The rule of law governing the issue raised by the appellant may be simply stated. Thus, it is axiomatic that a hearing conducted before a biased tribunal does not fulfill a requisite element of fundamental fairness that must predominate in all quasi judicial proceedings. *Ward v. Village of Monroeville* (1972), 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 [61 O.O.2d 292]; *Goldberg v. Kelly* 287; *Ohio Bell Telephone Co. v. Pub. Util. Comm.* (1937), 301 U.S. 292, 57 S.Ct. 724, 81 L.Ed. 1093; *State, ex rel. Wright v. Morrison* (1947), 80 Ohio App. 135, 75 N.E.2d 106 [35 O.O. 479]. See, also, *Smith v. Mayfield Heights* (1955), 99 Ohio App. 501, 124 N.E.2d 761 [59 O.O. 339]. As the United States Supreme Court noted in *Ohio Bell, supra*, 301 U.S. at pages 304-305, 57 S.Ct. at 730.

In another Ohio BZA case, the Court in Jennings v. Xenia Township Board of Zoning Appeals, 2007 WL 145 4331 stated:

"In Brooks v. Dayton (Jan. 25, 1991), Montgomery App. No. 12179, 1991 WL 6304, we stated that the fundamental requisite of due process is the opportunity to be heard. *Id* at *2 (citations omitted). However, it has also been noted that "a hearing conducted before a biased tribunal does not fulfill a requisite element of fundamental fairness that must predominate in all quasi-judicial proceedings." Gibraltar Mausoleum Corp. v. Cincinnati (1981), 1 Ohio App. 3d 107, 109, 439 N.E. 2d 922."

The Federal District Court in Hostetler v. City of Perrysburg, 998 F Supp. 820 (1998) summed this up pretty succinctly as follows:

"A fair trial in a fair tribunal is a basic requirement of due process." In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 99 L.Ed 942 (1955). This applies to administrative agencies that adjudicate as well as to courts. Withrow v. Larkin, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed 2d 712 (1975) (citing Gibson v. Berryhill, 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed 2d 488 (1973). A biased decision maker is constitutionally unacceptable."

When the City's Board and Commission Members take their oath of office, they swear or affirm to uphold the laws of the City, the State of Ohio and the Federal government. Parts of those laws are set out above. If a person cannot abide by the above laws, they should probably not be a member of their particular Board or Commission. The consequences of not following the law could get expensive.

As a Board, Commission or City Council member, people have the right to say and do as they please within legal guidelines. When the City Law Director or Assistant Law Director tell a Board or Commission member that they can say or do whatever it is legally, should you get sued for that specific behavior, you are protected under the City's umbrella from any personal liability. However, if that same Board, Commission or Council members is told by the Law Director and/or Assistant Law Director to not say or do a specific action, and they do it anyway, that person loses their umbrella of liability protection and can be held personally liable for any damage they cause.

For instance, let's suppose you were told not to vote on an issue with the Sheetz project by the Law Director or Assistant Law Director because of the above law. You decide to vote anyway. Sheetz could potentially have a basis for a personal lawsuit against you for violating their 14th amendment property rights. If Sheetz could show that your vote caused them to spend thousands of dollars in appeal costs, it's possible they could ask you to pay those costs. Because you acted contrary to the law department's advice, you would have no City coverage or immunity.

The law department does not make up the rules as we go along. We try very hard to protect City employees and members of our Boards and Commissions based upon the law as we know it. The decisions to follow or not follow the legal advice given is still each person's right. However, you need to understand the potential consequences of your actions.

So, the free speech issue has been determined to be a conflict between one person's free speech and another's property rights. The Court's have said the property rights prevail – a fair and impartial hearing is required, in situations involving the BZA or Planning Commission.

As to a conflict of interest, there are times that a Board, Commission or Council member may have a conflict of interest with a particular topic. We have attached a copy of a pamphlet from the Ohio Ethic's Commission which describes conflict issues. If you have a conflict with a particular issue, you need to step down from your position as a Board, Commission or Council member for the entire discussion on that topic and sit with the audience. Once that topic is completed, you may return to your seat as a Board, Commission or Council member.

Please let Eric or I know if you have any questions on these topics.

OFFICE OF THE UNIVERSITY ARCHITECT

SUMMER CONSTRUCTION BULLETIN

To the University Community:

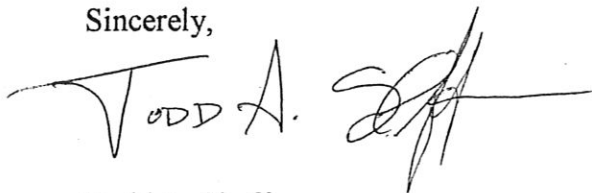
With the conclusion of Spring Semester 2009 graduation ceremonies, the decreased campus population signals the Office of the University Architect to launch new construction activities across Kent State University. In response to the general aging of campus buildings and infrastructure, multiple construction projects are underway involving everything from parking lot and walkway improvements, interior renovations, and system upgrades to building rehabilitation.

To assist in navigating around campus during this intense summer construction period, please utilize - and share with others - the attached Kent Campus map which identifies impacted areas. At each construction zone, pedestrian-only walkways will be clearly marked with signage and delineated with fencing. Emergency vehicle access around and through each construction site will be maintained at all times. As project conditions change, updates will be provided to you by the Office of the University Architect.

For general reference, the construction detour map, as well as a complete listing and status of design and construction projects administered by the Office of the University Architect, can be accessed via the Internet at the URL: www.kent.edu/universityarchitect.

Please refer any questions or concerns regarding these summer construction activities to the Office of the University Architect by calling 330-672-3880. Thank you in advance for your patience and cooperation while these improvement projects are underway.

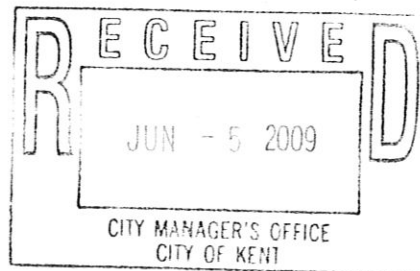
Sincerely,



Todd A. Shaffer
Construction Manager

TAS/jsm

Enclosures



334 LOWRY HALL • P.O. BOX 5190 • KENT, OHIO 44242-0001

V: 330-672-3880 • F: 330-672-2648 • WEB SITE: <http://www.kent.edu/universityarchitect>

OFFICE OF THE UNIVERSITY ARCHITECT

SUMMER 2009 CONSTRUCTION PROJECT LIST

- O N T H E K E N T C A M P U S -

Beall Hall Toilet and Shower Room Rehabilitation

Due to aging infrastructure, plumbing systems and fixtures in the bathrooms of Beall Hall are being rehabilitated. Architectural finishes, electrical and HVAC work in these areas are also being replaced. On-site construction commenced on May 18 and continues through August 10.

CE&O Fleet Services Relocation

Last fall, Fleet Services moved out of its original location in order to make more space available for potential tenants of Centennial Research Park. An addition to house Fleet Services is being built on the north end of Campus Environment and Operations. The foundation for the addition is complete; the shell will be delivered on June 21. Contract awards are pending for construction bids for the interior build-out package that were opened on May 29.

Demolition of Selected Small Group Buildings

Seven former residence halls that comprised Small Group housing were demolished; out of the original, eleven buildings, only Van Campen, Heer, Harbourt and Stewart halls remain. Site grading work should be completed by the end of June.

District Chilled Water Expansion

The Kent Campus' chilled water system is being extended to Taylor Hall and the Gym Annex and future connections to Dunbar and Prentice halls are being set up. All associated controls, valving and hardware are being modified. Work commenced May 12 and continues until July 27.

Electrical Distribution System Upgrades - Medium Voltage Loop 8B

The medium voltage loop 8B (Nixson, Terrace and Verder halls) and the electrical power metering system are being upgraded and connected to the Power Plant. The project proceeded on May 26 and continues until March 22, 2010.

Kent Campus 2009 Parking Lot Resurfacing

This summer, selected parking lots will be resurfaced on the Kent Campus. Work commenced on June 1 and continues until July 30.

Kent Campus Landscape and Environmental Enhancements

Campuswide and site specific landscape enhancement needs were evaluated. Within the next few years, Summit Street will be improved through use of ODOT funds in conjunction with the city of Kent. The university is involved to ensure that improvements implemented will include safe means for pedestrian and vehicular movement around this section of campus.

Kent Campus Wayfinding Signage Replacement

Wayfinding signs around the Kent Campus are being repaired and/or replaced. Additional wayfinding signs for campus visitors, and building identification signs for the Student Center, Library, KIVA, Williams Hall, MAC Center, and MACC Annex are being installed. This project continues this summer.

MACC Annex Partial Roof Replacement

Portions of the MACC Annex roof are being removed and replaced. Work commenced on May 12 and continues through July 31.

McDowell Hall Toilet and Shower Room Rehabilitation

Due to aging infrastructure, plumbing systems and fixtures in the bathrooms of McDowell Hall will be rehabilitated. Architectural finishes, electrical and HVAC work in these areas will also be replaced. Bidding and construction will be scheduled for completion during the summer of 2010.

Music and Speech Center Renovations and Additions - Roe Green Center

The Music and Speech Center is being renovated and additions built to address space and program needs for the School of Theatre and Dance. One addition will provide a new lobby and black box experimental theatre on the Theatre Drive face of the building; this will also provide an enhanced entry area for students and event patrons. On the west side of the building, another addition is being constructed to provide three new dance studios and support space to relocate the Dance Program out of the MACC Annex. Installation of structural steel continues, masonry work has commenced, and plumbing and electrical systems are being roughed-in.

New Facilities for the College of Technology - Programming / Site Selection

Constructed in 1951 and in need of complete rehabilitation, Van Deusen Hall houses the College of Technology and portions of the School of Art. The current configuration and needs of the building will be assessed and rehabilitation or the construction of a new facility for the College of Technology will be investigated. The project design should achieve LEED Silver Certification and comply with House Bill 251 reduced energy consumption requirements. The Office of the University Architect recently selected an architectural firm to assist with planning this project.

Porthouse Theatre Parking Lot Expansion

At Porthouse Theatre, the existing site and parking area were evaluated in effort to maximize spaces within the paved area. A new, gravel parking area, accommodating 46 additional spaces, and new walkway will be constructed. Also, a new retention basin is being planned for future development when the new lot is expanded and paved. A new gravel walking path with site lighting is being installed and landscaped.

Prentice Hall Elevator Replacement

Prentice Hall's original elevator is being removed and a new, roped, hydraulic elevator in a new hoistway shaft on the exterior of the building is being constructed. On-site construction commenced on May 18 and continues until August 24.

Satterfield Hall Roof Replacement and Masonry Restoration

The roof on Satterfield Hall is being replaced and the parapet is being repaired. Work continues until August 14.

Satterfield Hall Replacement of Unit Ventilators

Twenty-three unit ventilators on the east wing of Satterfield Hall are being removed and replaced with new units. On-site construction commenced on May 18 and continues until July 20.

Steam Line Repair Between DeWeese and Eastway Tunnel

The large, steam expansion loop from DeWeese Health Center to the Eastway tunnel needs to be repaired. A 16 inch line will be excavated, sidewalks, curbs, and roadway will be removed in order to replace the existing steam line insulation with a different material. The construction site will be fenced in during construction and then restored after work is completed. Contractors' bids for construction will be opened on June 17.

Student Center Emergency Generator Replacement

The emergency generator for the Kent Student Center is being replaced. This project includes installation of a new 180 kw natural gas generator and a closed transition transfer switch. Construction should be completed by July 6.

Summit Street Sidewalk Extension

The campus sidewalk along Summit Street will be extended from the C-Science Parking Lot southeast to the Bus Stop in front of Parking Maintenance to provide safe access to the campus for Off-Campus Students. Included will be alternates to extend the sidewalk to Sieberling Drive, Summit East Parking Lot, and provide lighting. An architectural firm was recently selected to assist with designing this project.

Taylor Hall Fire Alarm Upgrades

The fire alarm system in Taylor Hall will be upgraded this summer. The contract award is pending the release of construction funds from the Controlling Board.

Van Campen Hall Renovations

The residential wing and public areas of Van Campen Hall are being renovated. Residence rooms and public areas (lounges, classrooms, lobby, corridors) are being refreshed, toilet and shower rooms will be renovated, and the HVAC, electrical distribution, telecommunications, fire alarm and fire suppression systems are being upgraded/replaced. Interior work is progressing and continues until July 27.

White Hall AHU Coil Replacement

The existing heating and cooling coils located on the penthouse of White Hall are being removed and replaced with new units. The existing piping, valving and controls are being modified for the new units. On-site construction commenced on May 18 and continues until July 20.

WKSU Renovations and Additions

The WKSU Broadcast Center is comprised of offices, broadcast studios, and broadcast support areas, including a media library, computer areas, and recording studio. This project will renovate spaces and new space will be added to the existing building to address changes in media, technology and the broadcast field. The level of funds raised will determine the schedule for proceeding with further development of the design and construction of this project.



FEMA

April 2, 2009

Media Contact: 256-847-2316

LOCAL RESPONDER RECOGNIZED AS BRONZE LEVEL AUTHORIZED TRAINER

Emergency Responder, James A. Williams from The City of Kent Fire Department has been recognized as a Bronze Level Indirect Authorized Trainer by demonstrating proficiency in providing indirect training of Center for Domestic Preparedness (CDP) courses. This award was made in recognition of James's dedication to national preparedness, as demonstrated in the provision of training services.

In order to become an Indirect Authorized Trainer for the CDP, a responder must successfully complete an intense Train-the-Trainer (TtT) course. Upon successful completion of that course, responders return to their home jurisdictions to train state, local, and tribal responders. Every community significantly benefits from the time, talent, and expertise of local trainers. While training materials are provided by the CDP, it is the initiative of each trainer that makes the classes a success.

Jim became an instructor after responding to St. Bernard Parish Louisiana as part of an Incident Management Team. Jim's experience during that disaster made him want to make sure that all agencies were prepared to deal with any emergency situation that may occur in their jurisdiction. Jim believes that by teaching the Incident Command classes that all departments will be better prepared to manage a large incident. In fact, 3 months after teaching a class to a local fire chief, they experienced a fire that lasted 5 days. The chief's response was that while taking the class he thought he would never use what he had learned but after dealing with the fire, the chief was glad that he was prepared to deal with such an incident of that size and have the necessary management tools to effectively manage the incident.

The CDP is operated by the National Preparedness Directorate of the United States Department of Homeland Security's Federal Emergency Management Agency and is the only federally-chartered Weapons of Mass Destruction (WMD) training facility in the nation. The CDP provides federally-funded, interdisciplinary training for emergency responders from across the United States and U.S. Territories, for 10 responder disciplines: Emergency Management, Emergency Medical Service, Fire Service, Governmental Administrative, Hazardous Materials, Healthcare, Law Enforcement, Public Health, Public Safety Communications, and Public Works.

Healthcare and Public Health training is conducted at the CDP's Noble Training Facility, the nation's only hospital facility dedicated to training hospital and healthcare professionals in disaster preparedness and response.

Some training courses culminate at the CDP's Chemical, Ordnance, Biological and Radiological Training Facility, the nation's only facility featuring civilian training exercises in a genuine toxic environment, using chemical agents. The advanced hands-on training enables responders to effectively prevent, respond to, and recover from real-world incidents involving acts of terrorism and other hazardous materials.

Responders attending CDP training are selected from the nation's 11 million emergency responders. Training at the CDP ensures that responders gain critical skills and confidence to be better prepared to effectively respond to local incidents or potential WMD incidents.

Additional information about CDP training programs can be found at <http://cdp.dhs.gov>. For more information or for photograph requests, contact the CDP Public Affairs Office at 256-847-2212/256-847-2316 or by email: arledges@cdpemail.dhs.gov or kathy.wood@dhs.gov.

FEMA coordinates the federal government's role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters, whether natural or man-made, including acts of terror.

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KENT FIRE DEPARTMENT

MAY 2008 MONTHLY INCIDENT REPORT



	CURRENT PERIOD			YEAR TO DATE		
	2009	2008	2007	2009	2008	2007
FIRE RESPONSE INFORMATION						
Summary of Fire Incident Alarms						
City Of Kent	66	57	65	250	258	210
Kent State University	24	22	36	104	102	93
Franklin Township	12	10	15	46	64	47
Sugar Bush Knolls	0	0	0	0	0	2
RESPONSES	102	89	116	400	424	352
Mutual Aid Received by Location						
City Of Kent	3	2	1	8	7	8
Kent State University	0	0	0	0	1	1
Franklin Township	1	1	0	3	4	3
Sugar Bush Knolls	0	0	0	0	0	0
TOTAL	3	3	1	10	15	12
Mutual Aid Given	6	6	6	17	20	23
TOTAL FIRE INCIDENTS	108	95	122	417	444	375
EMERGENCY MEDICAL RESPONSE INFORMATION						
Summary of Medical Responses						
City Of Kent	181	200	201	981	953	890
Franklin Township	26	29	29	155	156	158
Kent State University	26	15	13	142	137	153
Sugar Bush Knolls	2	0	0	3	1	1
Mutual Aid Given	3	3	3	8	15	12
TOTAL RESPONSES	238	247	246	1289	1262	1214
Mutual Aid Received by Location						
City Of Kent	2	2	1	19	6	7
Franklin Township	2	0	1	7	1	3
Kent State University	0	1	0	3	5	0
Sugar Bush Knolls	0	0	0	0	0	0
TOTAL	4	3	2	29	12	10
Total Fire and Emergency Medical Incidents	346	342	368	1706	1706	1589