

BEFORE THE BOARD OF SUPERVISORS OF FINDLAY TOWNSHIP

IN RE: :
 :
Conditional Use Applications filed by :
CNX Gas Company LLC for Oil and Gas :
Drilling on Property Owned by the :
County of Allegheny :

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

I. FINDINGS OF FACT

1. Pursuant to Section 913.2 of the Pennsylvania Municipalities Planning Code, 53 P.S. § 10913.2, a governing body which sets forth in its zoning ordinance “conditional uses to be granted or denied by the governing body pursuant to express standards and criteria...shall hold hearings on and decide requests for such conditional uses in accordance with such standards and criteria.”

2. The Zoning Ordinance (hereinafter the “Ordinance”) adopted by the Board of Supervisors of the Township of Findlay (hereinafter the “Township”) contains Article VI, which article governs conditional uses and the specific standards and criteria applicable to conditional uses.

3. By the adoption of Township Ordinance 370 on January 12, 2011, the Township added “Oil and Gas Development” to the list of permissible conditional uses within the Township and set forth the relevant criteria for evaluation of such use at Ordinance Sections 117.604.69.1 through 117.604.69.20.

4. Pursuant to the Ordinance’s Table of Authorized Uses, Ordinance Section 117.402, oil and gas development is a permissible conditional use in five (5) zoning districts: AG (Agricultural), LDR (Low Density Residential), BPK (Business Park), LI (Light Industrial) and HI (Heavy Industrial).

5. The present matter concerns two applications (hereinafter usually referred to collectively as the “Application”) filed on behalf of CNX Gas Company LLC (hereinafter “CNX” or “Applicant”) for conditional use approval for oil and gas development on property (hereinafter usually the “Property”) owned by Allegheny County (hereinafter the “County” or the “Property owner”), the surface of which is leased to the Allegheny County Airport Authority (hereinafter usually the “ACAA”).

6. The Property is located in the HI zoning district.

7. The first portion of the Application, with supporting materials, was filed on December 3, 2013 in the Township's offices and concerned the construction and development of Well Pads #1, 2, 3 and 4, while the second portion of the Application, with supporting materials, was filed on January 13, 2014 in the Township's offices and concerned the construction and development of Well Pads #5 and 6.

8. The collective Application seeks conditional use approval for six (6) natural gas well pads, upon which Applicant proposes to drill up to sixty (60) unconventional natural gas wells (forty-five (45) in the Marcellus shale layer and up to fifteen (15) in the Upper Devonian shale layer), one freshwater and two produced water impoundments, and the natural gas and water pipelines associated with the same, in accordance with the permits granted by the Pennsylvania Department of Environmental Protection. Township Exhibits 1 and 2.

9. The Application also includes a request for modification of a provision in the conditional use criteria of the Ordinance (Section 117.604.69.19) in order to permit on-site housing of workers during development, which modification would be applicable to all six (6) proposed Well Pad sites.

10. At a public meeting held on December 17, 2013, the Township Planning Commission ("Planning Commission") reviewed the first portion of the Application associated with Well Pad Nos. 1, 2, 3 and 4, centralized water impoundments CI1 and CI2, and the pipelines associated with those pads and impoundments, and at the conclusion of that meeting recommended to the Board of Supervisors approval of those portions of the Application, subject to the condition that Applicant arrange for third party air monitoring in the residential area of the Township known as Imperial Pointe. At that same meeting, the Planning Commission also recommended approval of Applicant's request for a modification from Ordinance Section 117.604.69.19 to permit on-site housing of workers. Tr. 2/20/2014, pages 13 - 14, 18 - 19 and 46.

11. At a public meeting held on January 28, 2014, the Planning Commission reviewed the balance of the Application, specifically Well Pads #5 and #6, freshwater impoundment FI3 and the pipelines associated with those pads and impoundment, and recommended approval of those portions of the Application without condition, and further recommended approval of the requested modification from Ordinance Section 117.604.69.19 to permit on-site housing of workers. Tr. 2/20/2014, pages 13, 15 and 18.

12. By correspondence dated January, 8, 2014, Applicant agreed to an extension of time until February 20, 2014 for the Township Board of Supervisors ("Board") to commence a public hearing on the Application pursuant to Section 908 of the Municipalities Planning Code. Township Exhibit 3; Tr. 2/20/2014, pages 8 - 9.

13. The February 20, 2014 public hearing was duly advertised in accordance with the requirements of Pennsylvania law, and was convened at the Township's Activity Center at 310 Main Street, Imperial.

14. At the February 20, 2014 public hearing, Applicant was given the opportunity to present several witnesses and exhibits in support of the Application.

15. At the February 20, 2014 public hearing, after the Applicant presented its evidence in favor of the conditional use application, the Board received public comment from all individuals who desired to address the Board regarding the Application. Specifically, public comment was received from Robert Sterner of 822 Ponderosa Avenue, Ernie Leopold of 795 Route 30, Peter Loria, the owner of a business located at 759 Route 30, Jim McConnelly, an attorney representing Chuck and Judy Oravetz of 106 Springside Drive, Lori Dindak of 1262 McCaslin Road, Tracey Cutri of 150 Calkridge Lane (North Fayette), Mark Bollman of 474 Pinion Drive, Jared Roscard of 2311 Hookstown Grade Road, David Wood of 712 Tamarack Drive, Stacey Faulk of 574 Engelman Drive, Nancy Volk of 335 Birch Street, Marilyn Barron of 350 Birch Street, Richard Kelly, an attorney representing the Fiedlers of 480 Pinion Drive, Tom McLellan of 710 Tamarack Drive, Vicki McClellan of 710 Tamarack Drive, Russell Dudolino of Moon Township, Craig Lalama of 148 Valleyview Drive, Mark Ujevich of 839 Ponderosa Drive, Bill Stout of 832 Birch Street and Shawn Mundis of 652 Cedar Drive. Following the receipt of public comment, Applicant was provided an opportunity to respond to the questions and concerns raised by members of the public during public comment.

16. At the conclusion of the proceedings before the Board on February 20, 2014, the Board continued the public hearing and requested that Applicant provide copies of the following documents to the Township:

- (A) “The Final Environmental Assessment for Oil and Gas Drilling at Pittsburgh International Airport”, prepared for Pittsburgh International Airport (“PIA”), ACAA and Applicant (hereinafter the “Environmental Assessment”); and
- (B) The CONSOL Energy Inc. Emergency Response Plan for the Pittsburgh International Airport (hereinafter the “Emergency Response Plan”).

Tr. 2/20/14, pages 131-132.

17. As requested by the Board, Applicant submitted the Environmental Assessment to the Board on February 21, 2014, and submitted the Emergency Response Plan to the Township on March 7, 2014. Township Exhibit 11; CNX Exh. 11; Tr. 3/12/2014, pages 4 - 5.

18. On March 12, 2014, the Board resumed the public hearing on the Application, at which time Applicant presented a number of witnesses primarily addressing safety and emergency response issues related to the Emergency Response Plan.

19. Following the Applicant’s presentation of witnesses and exhibits, the Board received additional comments from the public related to safety issues and the Emergency Response Plan. Specifically, public comment was received from Dave Vollmer of 706 Tamarack Drive, Marilyn Barron of 350 Birch Street, Bill Stout of 392 Birch Street, Stacey Faulk of 574 Engelman Drive, Nancy Volk of 335 Birch Street, Richard Kelly, an attorney representing the Fiedlers of 480 Pinion Drive, Mike Flanagan of 820 Ponderosa Drive, Linda Rouch, Bob Arnold of 380 Birch Street, David Wood of 712 Tamarack Drive and, briefly, Marilyn Barron a second time.

20. At the conclusion of the proceedings on March 12, 2014, the Board closed the public hearing. Tr. 3/12/2014 at pages 137-138.

21. In general, the residents who spoke during public comment expressed their concerns and opinions regarding the Application and potential impacts on health, safety and welfare, with particular emphasis on the proximity of Well Pad #2 to the Imperial Pointe development.

22. The Board heard and evaluated each public comment offered regarding the Application and the location of Well Pad #2, and is appreciative that the Township's public is engaged and informed on matters of public concern occurring throughout the Township.

23. The Property which is the subject of the Application consists of approximately 8,800 acres located partially in the Township and partially in adjacent Moon Township. The County/Property owner has leased the property to ACAA, which in turn operates PIA. Township Exhibit 11; Tr. 2/20/2014 at page 17.

24. ACAA entered into a lease with Applicant for extraction of oil, gas and other liquid and gaseous hydrocarbons that may be produced from well bores on the Property. Township Exhibits 1 and 2; Township Exhibit 11.

25. Beginning in early 2013, ACAA and Applicant began to collect information for the required Environmental Assessment, which Assessment examined various alternatives for the Property's oil and gas resources, including the "No Action Alternative" and the "Action Alternative" and concluded that the "Action Alternative" (the development of oil and gas resources on the Property) was the "Preferred Alternative". The Environmental Assessment evaluated a wide variety of environmental factors, including air quality, land use, construction impacts, transportation resources, farmlands, fish wildlife and plants, floodplains, hazardous materials, pollution prevention and solid waste, historical, architectural, archeological, and cultural resources, light emissions and visual impacts, natural resources and energy supply, noise, secondary (induced) impacts, socioeconomic impacts, environmental justice, children's health and safety risk, water quality, wetlands and streams, wild and scenic rivers, and cumulative impact. With respect to these factors, the Environmental Assessment found that there would not be any significant adverse impacts attributable to the "Preferred Alternative" of developing the Property's oil and gas resources. Twp. Exh. 11.

26. Through a Finding of No Significant Impact/Record of Decision issued March 25, 2014, the U.S. Department of Transportation Federal Aviation Administration completed the Environmental Assessment of the oil and gas development proposed by the Application and concluded that approval "... is consistent with existing national environmental policies and objectives as set forth in section 101 of the [National Environmental Policy Act of 1969, or NEPA] and other applicable environmental requirements and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(c) of NEPA" and entered the following specific findings:

- A. The Proposed Project is reasonably consistent with existing plans of public agencies for development of areas surrounding the airport. (49 U.S.C. §47106(a)(1)).
- B. The interest of the communities in or near where the Proposed Project may be located were given fair consideration. (49 U.S.C. §47106(b)(2)).
- C. The FAA is satisfied that consistent with 49 U.S.C. §47107(a)(10), the airport sponsor has, and will continue to take all necessary actions, including the adoption of zoning laws, to ensure the land uses in the airport vicinity are compatible with airport operations.
- D. The FAA has given this Proposed Project the independent and objective evaluation required by the Council on Environmental Quality (40 C.F.R. Section 1506.5).
- E. The Proposed Project does not include a physical or constructive use of any resources protected under 49 U.S.C. §303(c) (Section 4(f) of the DOT Act), including any resources subject to the requirements of Section 106 of the National Historic Preservation Act.
- F. The project will conform to the State Implementation Plan (SIP) in accordance with Section 176 of the Clean Air Act (CAA) Amendments (42 U.S.C. §7506(c)).
- G. The FAA finds that Executive Order 11988, which directs federal agencies to reduce the risk of flood loss, minimize the impacts of floods on human safety, health and welfare, and restore and preserve the natural and beneficial values served by floodplains, has been followed and as required, complied with appropriately.
- H. The Proposed Project does not result in any harm to Federal or state threatened and endangered species or their habitat. (Section 7(c) of the Endangered Species Act of 1974, U.S.C. § 1531, as amended).
- I. The FAA finds that the Proposed Project conforms to the Avoidance, Minimization, and/or Compensation of Harm to Wetlands in Accordance with Executive Order 11990 and the Clean Water Act.

27. The Ordinance requires that any proposed oil and gas development comply with the requirements contained in Ordinance Sections 604.69.1 through 604.69.20.

28. Applicant submitted a document entitled "Compliance Comments," which reproduced the relevant conditional use criteria sections of the Ordinance and provided

Applicant's responses to the same. Those Compliance Comments are attached and incorporated as Exhibit A. CNX Exh. 5; Tr. 2/20/2014 at pages 42-43.

29. As a conditional use, Applicant's Application is also subject to the generally applicable conditional use criteria set forth in Sections 603.1 through 603.5 of the Zoning Ordinance. During the public hearing, Applicant submitted a document entitled "Supplemental Compliance Comments," which reproduced these sections of the Ordinance and provided Applicant's responses to the same. Applicant's Supplemental Compliance comments are attached and incorporated by reference as Exhibit B. CNX Exh. 6; Tr. 2/20/2014 at pages 42-43.

30. With the exception of the requested modification for temporary on-site housing of workers under Ordinance Section 117.604.69.19, Applicant has met the other applicable stated conditional use criteria, though the Board finds that the imposition of additional reasonable conditions is appropriate to carry out the purpose of the Pennsylvania Municipalities Planning Code as set forth in the Ordinance.

31. Section 604.69.17 of the Ordinance sets forth limits on the permissible noise levels generated by oil and gas development and provides that an operator cannot exceed predevelopment ambient decibel levels by more than specified amounts. Specifically, an operator cannot exceed those ambient levels during drilling activities by more than seven decibels between the hours of 6:00 A.M. to 10:00 P.M., or by more than five decibels during the hours of 10:00 P.M. to 6:00 A.M. Noise levels during "construction hydraulic fracturing operations" cannot exceed ambient levels by more than 10 decibels. With regard to the baseline ambient levels, an operator can either undertake a 72-hour predevelopment ambient noise level measurement, or rely upon a 55 dBA "default". The Ordinance further provides for additional increases in dBA for shorter time periods, ranging from an increase of five dBA for a duration not exceeding 15 minutes per hour to an increase of 20 dBA for a duration not exceeding one minute per hour.

32. The requirements of Section 604.69.17 of Zoning Ordinance are measured with respect to noise levels at the nearest "Protected Structure property line or one hundred (100) feet from the nearest Protected Structure (as measured to the closest exterior point of the building), whichever is closer to the Protected Structure". Zoning Ordinance, Section 604.69.17.a. The Ordinance defines "Protected Structure" in Section 202 as "[a]ny occupied residence, commercial business, school, religious institution or other public building located within 1,000 feet of the surface location of a well that may be impacted by noise generated from drilling or hydraulic fracturing activity at a Well Site."

33. The Board finds that the use of the defined term "Protected Structure" was intended to be used as a unit of measurement and not as the criterion for applicability of the noise level conditional use criteria, and accordingly, the Board finds that the noise limitations of Section 604.69.17 of the Zoning Ordinance are applicable to the oil and gas development proposed by the Application regardless of the actual existence of any structure meeting the above-quoted definition of "protected structure."

34. The Applicant submitted into evidence a Noise Study at the public hearing and the author of that study, John Keeling, testified as to its findings. The Noise Study analyzed

existing ambient and projected noise levels at the nearest residence on Pinion Drive, the edge of the Pinion Drive cul-de-sac, the nearest residence on Engelman Drive, the nearest point of the Engelman Drive cul-de-sac, the nearest residence on Tamarack Drive, and the nearest point on Tamarack Drive, during the following three phases of oil and gas development: (1) vertical drilling; (2) horizontal drilling; and (3) hydraulic fracturing.

35. In summary, the Noise Study concluded that with respect to all of the above-referenced locations during vertical and horizontal drilling the projected noise from Well Pad # 2 would not exceed the limits set forth in the Ordinance.

36. Furthermore, in its Compliance Comments, CNX has committed to implement strategies to minimize noise impacts on nearby communities and is willing to develop a protocol with the Township to respond to any noise complaints that may be received.

37. Accordingly, the Board finds that the noise levels projected to be generated by the Proposed Development will not violate the Ordinance and will not adversely impact the public.

38. On December 17, 2013, the Planning Commission recommended as a condition of approval for the first portion of the Application that off-site third-party air monitoring be conducted in the Imperial Pointe neighborhood. Tr. 2/20/2014 at page 14.

39. Subsequently, on January 20, 2014, the Allegheny County Health Department (hereinafter the "ACHD") announced that it would begin an air monitoring study in the Imperial Pointe neighborhood. CNX Exh. 8. Mr. James Thompson, Deputy Director of Environmental Health at ACHD, testified that this air monitoring has already commenced, and further said in response to a question regarding the intended duration of the air quality monitoring: "'Well, actually, the time period really depends on what we actually measure. So our plan is to continue it throughout the plan of the drilling and at a minimum of at least one year after the well pad 2 is put into production. That's the minimum point. Certainly if—depending on what we find, we may extend that period.'" Tr. 3/12/2014 at page 113-114.

40. The Board finds that the off-site air monitoring to be undertaken by ACHD as outlined above adequately protects the public interest and renders unnecessary independent air quality monitoring on the part of the Township.

41. As requested by the Board, Applicant provided to the Township an Emergency Response Plan. CNX Exh. 11.

42. Lou Barletta, CONSOL Vice President, Safety, Craig Hunter, CONSOL Gas Safety Supervisor, Joseph Zoka, CONSOL General Manager, Central Pennsylvania Operations, Alvin Henderson, Allegheny County, Department of Emergency Services, Chief/County Fire Marshall, Richard Wilson, ACAA Fire Chief, and Nino Sapone, ACAA Director of Airfield Operations, testified with regard to various aspects of the Emergency Response Plan and other safety issues. Tr. 3/12/2014 at pages 9-57.

43. Applicant's testimony regarding the Emergency Response Plan included the following:

- a. If any time any employee, contractor or visitor to a site feels that a situation is unsafe, he or she has the right and responsibility to stop the activity immediately.
- b. All employees, contractors and subcontractors working on site have varying levels of safety and environmental training, including CONSOL Energy hazard training, CONSOL Energy Absolute Zero training, OSHA 10/30 hour training, Wild Well Control – well control training, first aid/CPR/AED/EMR training, hazardous materials training, fire school, FEMA Incident Command System 100, environmental spill response training, weekly safety meetings on various topics, and other safety protocols.
- c. Employee selection focuses on the hiring of degreed professionals, such as engineers and safety professionals. Complete background checks are undertaken and drug and alcohol testing is required.
- d. Contractors are selected using a third party evaluation system. They must have an A rating for safety.
- e. Applicant's employees have surpassed 7,000,000 hours worked without a lost time incident. There has not been a lost time accident since 1994.
- f. CNX Gas's 2013 contractor safety incident rate was 0.50 (.50 recordable incidents/100 employees/year).
- g. During all drilling, completion and flowback operations, Applicant will have gas engineers on site at all hours and safety personnel on site seven days a week.
- h. Site personnel are required to use extensive personal protective equipment and personal and area gas monitors will be utilized.
- i. Prominent site safety signage will be provided.
- j. A multitude of redundant safety systems will be employed, including, but not limited to, double valves on all well heads, double burst disks, closed loop drilling mud systems resulting in no open pits on the pads, three different pressure set points on pressure relief valves all set below the maximum allowable operating pressure of the iron being utilized, restraints placed on all frac and flowback iron, gas monitoring equipment and containment systems.
- k. Drill rigs have been converted from diesel powered engines to electrical. In addition to reducing noise and emissions, this will reduce the potential hazard of storing large amounts of diesel fuel on site.
- l. Blowout preventers are used on all drilling operations.

- m. Emergency shutdown devices (“ESDs”) are installed on production sites and can immediately shut down the flow from a well or an entire site. ESDs can be activated automatically by production equipment, manually by on-site personnel and remotely by monitoring personnel from off-site locations. Any company employee, contractor or visitor has the responsibility and the authorization to declare that an emergency situation exists and initiate an ESD.
- n. Spill kits and spill trailers are provided.
- o. There are a variety of site safety requirements related to cell phones, seat belts, and vehicle parking and idling.
- p. There will be on site daily safety meetings attended by ACAA Fire Department personnel.
- q. Site security includes fencing around all well pads, fencing surrounding and netting over all impoundments, guard check points at the driveway entrances to all impoundments and well pads, a second security check point at the entrance to each well pad and impoundment, and a remotely observed CyberGuard video surveillance system.
- r. Safety preparation started over a year ago and has included bi-weekly meetings between ACAA officials and Applicant, and regular meetings between the ACAA Fire Department, ACAA Emergency Preparedness, Allegheny County Emergency Services and CNX. Training sessions have been held for the ACAA Fire Department, local volunteer fire departments, local emergency medical services, county and local emergency management agencies and local police to learn the well drilling, completion and production operations and hazards that could be present. These training sessions have included classes conducted by the ACAA Fire Department, Applicant, Wild Well Control, and the Pennsylvania State Fire Academy. Additional training is planned with local and County fire departments and police departments. Once operations have commenced, Applicant will arrange visits with local volunteer fire departments and police departments to familiarize them with operations and layouts.
- s. Emergency drills are conducted routinely and are established for specific emergency scenarios that could occur during a specific phase of operation.
- t. This emergency preparedness cooperative effort has included representatives of Applicant, Airport Communications (“AIRCOM”), the ACAA Fire Department, the Allegheny County Police, Wild Well Control, the Pennsylvania State Fire Academy, Allegheny County Emergency Services, the American Red Cross, Findlay Township Emergency Management, the Findlay Township Police Department, the Imperial Fire

Department, Moon Township Emergency Management, the Moon Township Police Department, the Moon Township Volunteer Fire Department, Valley Ambulance, the Crescent Township Volunteer Fire Department, the North Fayette Volunteer Fire Department and the Robinson Emergency Medical Services.

- u. A phase specific risk assessment has been completed, looking at all potential hazards at each phase of operations, including construction, top hole drilling, horizontal drilling, completions operations, down hole services and production operations.
- v. Applicant has entered into a service agreement with Wild Well Control, which has handled 80% of all well control events internationally, and 85% of all well control events in the United States.

See CNX Exhibits 11 and 12; Tr. 3/12/2014 at pages 9-57.

44. The Applicant presented testimony and evidence in support of its request for a modification from Section 604.69.19 of the Zoning Ordinance regarding temporary housing, including (a) that the requested modification to permit on-site housing will reduce traffic on and off the Property, and, as a result, reduce emissions from the same; (b) that permitting on-site housing will eliminate security issues attendant with workers travelling on and off location; (c) that the use of on-site housing is consistent with standard oil and gas industry practice; (d) that having employees reside at the well pads will enable them to be on call at all hours in order to react to emergencies in a much more timely fashion; and (e) that worker safety will be enhanced by permitting on-site housing, as those individuals will exit their trailers with full personal protective equipment, as required for work on site.

45. The Board finds the Applicant's evidence and testimony on the topic of on-site housing to be credible and persuasive, and finds that the requested modification to Section 604.69.19 of the Ordinance does not constitute a change in authorized uses, but instead represents a modification of construction practices or an accessory use.

46. On February 14, 2012, the Governor of Pennsylvania signed into law Act 13 of 2012, which amended the Pennsylvania Oil and Gas Act.

47. A legal challenge to Act 13 was immediately filed by several municipalities.

48. On December 19, 2013, following the submission of the December 3, 2014 portion of the Application but prior to the commandment of the public hearing on the Application, the Pennsylvania Supreme Court issued its Opinion in the matter of Robinson Township, et al. v. Commonwealth of Pennsylvania, et al., 83 A.3d 901 (Pa. 2013) (hereinafter the "Robinson Township Opinion").

49. In the Robinson Township Opinion, the Court affirmed in part and reversed in part the decision of the Commonwealth Court, and the Court specifically struck down Sections

3215(b)(4), 3215(d), 3303 and 3304 of Act 13 and enjoined enforcement of Sections 3215(b), (c) and (e) and 3303 through 3309 of Act 13.

50. The Robinson Township Opinion did not affect the lawfulness of any provisions of the Township's Ordinance (other than validating the Board's limitation of conditional use approval for oil and gas development to discrete and appropriate zoning districts) and thus did not impact the Board's evaluation of the Application.

II. CONCLUSIONS OF LAW

1. Oil and gas development and any related accessory uses are permitted by conditional use in the HI Zoning District. Zoning Ordinance, Section 402.

2. Sections 604.69.1 through 604.69.20 of the Zoning Ordinance set forth twenty (20) procedural and substantive requirements with which oil and gas developments must comply. As previously stated in the Findings of Fact, with the exception of the requested modification for temporary on-site housing of workers under Ordinance Section 117.604.69.19, the Board concludes that Applicant has met the other applicable stated conditional use criteria, though the Board also concludes that the imposition of additional reasonable conditions is appropriate to carry out the purpose of the Pennsylvania Municipalities Planning Code as set forth in the Ordinance.

3. Section 603.1. of the Ordinance provides that a conditional use must be “[i]n accordance with the comprehensive plan and is consistent with the spirit, purposes, and the intent of this ordinance.” The Board concludes that Applicant met its burden as to Ordinance Section 603.1.

4. Section 603.2 of the Ordinance provides that a proposed conditional use must be “[i]n the best interest of the Township, the convenience of the community, the public welfare, and be a substantial improvement to the property in the immediate vicinity.” The Board concludes that Applicant met its burden as to Ordinance Section 603.2.

5. Section 603.3 of the Ordinance provides that a proposed conditional use must be “[s]uitable for the property in question and designed, constructed, operated and maintained so as to be in harmony with and appropriate in appearance to the existing or intended character of the general vicinity.” The Board concludes that Applicant met its burden as to Ordinance Section 603.3.

6. Section 603.4 of the Ordinance provides that a proposed conditional use must be “[i]n conformance with all applicable requirements of this ordinance, including but not limited to all of the provisions of Articles II, IV and V and all of the Township ordinances.” The Board concludes that Applicant met its burden as to Ordinance Section 603.4.

7. On December 17, 2013, the Planning Commission recommended approval of the Application, subject to the condition that there be third-party air monitoring in the Imperial Pointe neighborhood.

8. The Board concludes that the off-site air monitoring to be undertaken by ACHD will satisfy the recommendation of the Planning Commission and protect the public health, safety and welfare, provided that the ACHD's air quality monitoring extend through the duration of the well site activities undertaken on the Property.

9. Applicant has requested a modification from the conditional use criteria contained at Section 604.69.19 of the Ordinance, which provides that in oil and gas developments "[n]o temporary housing for workers is permitted."

10. Section 602.1.7 of the Ordinance permits modifications from conditional use requirements under certain circumstances. That section provides that:

The SUPERVISORS shall consider whether proposed modifications in any of the requirements of this ORDINANCE for each ZONING DISTRICT (except the provisions of Section 602.1.7.4. and 602.1.7.5.), contained in an APPLICATION FOR DEVELOPMENT for a CONDITIONAL USE will make for a more efficient, attractive and harmonious CONDITIONAL USE. If such modifications, in the judgment of the SUPERVISORS constitute a more beneficial USE of the SITE than provided for under the requirements of the ZONING DISTRICT in which the SITE of the CONDITIONAL USE is located, the SUPERVISORS in its sole discretion, may grant the modifications for less strict requirements.

11. To that end, a modification may be granted where it will result in a "more efficient, attractive and harmonious conditional use" and if it would result in a "more beneficial use of the site." Ordinance Section 602.1.7.

12. In its recommendation to the Board following its two hearings, the Township's Planning Commission recommended the approval of the first and second portions of the Application with a "modification for man-camps as presented."

13. Allen J. Fiedler and Andrea V. Fiedler, residents of the property known as 480 Pinion Drive, Findlay Township, Allegheny County, Pennsylvania, appeared at the public hearings with their counsel, Richard W. Kelly, Jr., Esquire.

14. In addition to providing general comments concerning the location of Well Pad #2, the Fiedlers, through their counsel, stated their opposition to the grant of any modification or waiver of the Conditional Use Criteria contained at 604.69.19 regarding temporary housing of the Applicant's contractor-workers on the Property.

15. Through their counsel, the Fiedlers submitted Proposed Findings of Fact and Conclusions of Law on the issue of the requested modification for temporary housing and urged the Board to refuse the modification.

16. Applicant presented testimony which was not rebutted to indicate that on-site housing would reduce traffic and emissions, keep employees on-call for emergencies, and reduce potential drug and alcohol abuse.

17. The Fiedlers argue, through their counsel, that a modification is not permitted because Section 602.7.3 of the Ordinance provides that “authorized uses shall be limited” to those specified for the HI Zoning District and residential uses are not permitted in that district. However, the applicable use is oil and gas development, and the modification request is not related to primary use but instead related to an accessory use which is permitted as an accessory use customary to oil and gas development under the Table of Accessory Uses in Section 402.2 of the Ordinance.

18. The Board previously granted a modification to Range Resources for temporary housing on-site for the Dalbo pad, and did not interpret the Ordinance as precluding such a modification.

19. On the basis of the above, the Board concludes that the requested modification from Ordinance 117.604.69.20 is within the Board’s power under the Ordinance and appropriate in the present matter.

20. While the Board has found and concluded that Applicant has met the conditional use criteria or produced evidence justifying a modification from those criteria, the Board also concludes based on the record produced that oil and gas development generally, and specifically a proposed development of the magnitude of the Application, brings certain risks and dangers and public hazards and nuisances that justify the imposition of conditions to the conditional use approval.

21. As to the Application as a whole, Section 913.2 of the Municipalities Planning Code states that “[i]n granting a conditional use, the governing body may attach such reasonable conditions and safeguards, in addition to those expressed in the ordinance, as it may deem necessary to implement the purposes of this act in the zoning ordinance.”

22. Based on the record created through the public hearing process, the Board concludes that in order to implement the purposes of the Municipalities Planning Code in the Township’s Zoning Ordinance it is necessary to attach reasonable conditions and safeguards to the approval granted to the Applicant.

III. DECISION

1. Based on the foregoing, the Board of Supervisors of Findlay Township hereby grants approval to the conditional use applications filed by Applicant CNX Gas Company LLC, with the following specific conditions attached to said approval in order to advance the interests of the Township’s Zoning Ordinance to protect the health, safety and welfare of the Township’s residents.

2. Applicant shall at all times comply fully with all applicable ordinances of the Township, including but not limited to the Township’s Zoning Ordinance, Subdivision and Land Development Ordinance and Township Code, to the extent the same have not been waived by the

Board of Supervisors as part of this Decision. In addition, Applicant shall comply with and adhere to its representations set forth in its Compliance Comments and Supplemental Compliance Comments, entered into the record in the public hearing and attached hereto and incorporated into this Decision by reference.

3. Applicant shall at all times comply fully with all applicable laws and regulations of Allegheny County, the Commonwealth of Pennsylvania and the United States as they relate to any activities conducted by Applicant within the Township. If Applicant receives notice of any non-compliance with any such law or regulation causing a public safety or serious environmental hazard or receives notice in writing of any other alleged non-compliance or violation, it shall give the Township notice by telephone at a number designated by the Township of the alleged non-compliance or violation as soon as possible, but in no event later than 24 hours of Applicant receiving such notice.

4. Applicant shall at all times comply fully with the terms of approval of the oil and gas development permits issued by the Pennsylvania Department of Environmental Protection. In the event of any well control emergency or event of similar magnitude occurring during any drilling activities on the Property, Applicant agrees that it shall grant immediate access to any relevant local, state or federal government official or agency seeking to assist, ascertain or investigate any such incident upon that official or agency's request for access, consistent with Applicant's Emergency Response Plan and Pennsylvania Law. Furthermore, in the event Applicant is cited by the Pennsylvania Department of Environmental Protection for a violation of 58 Pa. C.S.A. § 3258(b) following any well control emergency, all conditional use approvals set forth in this Decision may be immediately revoked by the Township.

5. All operations authorized by this conditional use approval, whether conducted by Applicant or its contractors or subcontractors, shall comply with the noise limitations of Section 604.69.17 of the Township Zoning Ordinance. For purposes of this Decision and the approval granted herein, the definition of "protected structure" as defined by the Zoning Ordinance shall be amended to include any Township residence within 1750 feet of a well on any Well Pad.

6. During the construction, drilling and completion of wells located on the Property, Applicant's representatives shall provide monthly updates to and address questions and concerns from Township residents at meetings to be held in the vicinity of the Village of Imperial, at a location mutually agreeable to Applicant and the Township for the first six (6) months of drilling activities. Thereafter, while drilling and completions operations are taking place on the Property, Applicant shall on a quarterly basis provide such updates, unless the Township requests such updates at a less frequent interval. The costs of any such meeting shall be borne by Applicant.

7. Applicant shall provide the Township with at least twenty-four (24) hours' notice before operating on any Township roads any vehicles in excess of any weight-restrictions on those roads. This notice shall apply to the first equipment in excess of the weight restriction moved onto a well pad or impoundment. In addition, Applicant shall enter into any required excess maintenance agreement and provide bonding as required by applicable law with respect to operation of any over-posted weight vehicles on any weight-restricted Township roads. Specifically, Hookstown Grade Road shall be bonded and an excess maintenance agreement

shall be executed by Applicant. Applicant shall provide a mechanical street broom at Well Site #3 to keep Hookstown Grade Road free of mud and dirt at all times

8. During production, all final pad site equipment located on the Property shall be completely enclosed within an eight (8) foot high chain link fence with barbed wire and a lockable gate.

9. Recognizing that the Property, which is owned by one governmental entity, leased to another and with on-site regulatory oversight exercised by a third governmental entity, is not as accessible to the Township for purposes of investigating and remediating public complaints or concerns as typical oil and gas developments, the Township shall, as a condition of approval, require the Property owner to provide an information/complaint line for citizens to call with any questions, complaints or concerns regarding the drilling activities conducted by Applicant on the Property. This question/complaint line shall be publicized and logs shall be kept to record any calls registering questions, complaints or concerns and listing the name and address of the caller if such information is offered. Noise-related complaints should be referred to the PIA Noise Abatement Officer. The Property owner shall be responsible to ensure that Applicant is notified of any complaints or conditions requiring remediation. The Property owner shall also be responsible to track on the call log any follow-up or resolution of complaints or questions reported by Township residents and to provide the Township with weekly log reports indicating any calls received and actions taken by the Property owner or Applicant to address these calls.

10. During construction, drilling and completions operations, Applicant must provide the Township with detailed and accurate updates no less than monthly as to the current operations/activities at each well site, pipeline and impoundment. These updates must be in electronic format so that the Township can post them on its web site.

11. At the continuation of the public hearing in this matter, representatives from the Allegheny County Health Department stated that their intention was to extend the planned air quality monitoring “throughout the plan of the drilling and at a minimum of at least one year after the well pad 2 is put into production. That’s the minimum point. Certainly if—depending upon what we find, we may extend that period.” Tr. 3/12/14 at p. 114, lines 15-20. In the event that the Allegheny County Health Department fails to continue its air quality monitoring for the duration of the drilling activities on the Property, the Property owner and/or the Applicant through a third party acceptable to the Township shall continue to provide the same or equivalent program for air quality monitoring during the duration of the project.

12. All construction activities, excluding drilling and completions, must take place between the hours of 6:30 am to 8:00 pm., and no construction activities shall take place on Sundays or Holidays. The end time for construction activities shall be extended to 9:00 p.m. when West Allegheny School District is not in session.

13. Open and/or controlled burning on the Property is prohibited, including any clearing and grubbing materials. All such items shall be mulched on site.

14. All Impoundment areas must be reforested as recommended by the Appalachian Regional Reforestation Initiative, Forestry Reclamation Approach in accordance with the Allegheny County Airport Authority Wildlife Hazard Management Plan.

15. Approval is only for gas exploration, production and transmission from the Marcellus and Upper Devonian shale formations. Any other exploration, production and transmission of gas from any other shale layer will require the Applicant to submit a new application for conditional use.

16. Well Pad # 1 and Well Pad # 5 shall be visually screened from public view along Route 376 and Business Route 376 by the construction and maintenance of an opaque fence or wall a minimum of ten (10) feet in height which shall remain during all drilling and completion.

17. During normal hours of school bus operation at all times when school is in session, Applicant shall provide a safety vehicle with a certified flagger at all times at the well site entrances on Hookstown Grade Road and Route 30 for the safety of school buses.

18. The Applicant shall provide emergency response training to the Findlay Township Police Department and Imperial Volunteer Fire Department a minimum of thirty (30) days prior to the commencement of any drilling.

19. Strobe or flashing lights shall be prohibited on all drilling rigs located on the Property. If safety lighting is required on drilling rigs located on the Property by the FAA, continuous illuminated safety lighting shall be used.

20. In the event that Applicant's use of back-up beepers on any well pad site from the hours of dusk to dawn generates complaints from Township residents which, after investigation by the Township, are found by the Township to constitute an unreasonable non-isolated infringement on a Township resident's use and enjoyment of his or her residence, the Township shall require Applicant to use mitigation measures such as installation of noise barriers, use of radar/Doppler equipment or other means to bring the noise generated by the back-up beepers to an acceptable level as evaluated by the Township's staff.

21. Applicant may not engage in deep well injection of wastewater on the Property or within the Township.

22. In accordance with the relevant Findings of Fact and Conclusions of Law, the Applicant is granted a limited waiver from compliance with Township Ordinance 117.604.69.19. The waiver permits the Applicant to have no more than thirty (30) workers in temporary housing per well for periods of no more than three (3) weeks during vertical drilling and three (3) weeks during horizontal drilling, and no more than two (2) workers in temporary housing per well for a period of two (2) weeks during completions operations.

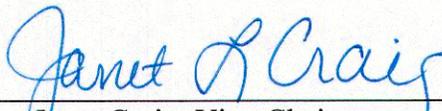
23. The approval granted herein by the Board for the pad construction and drilling activities for Well Pad #5 shall be wholly contingent on the Applicant obtaining all necessary approval from the Board of Supervisors of Moon Township to conduct oil and gas development within that Township, and Applicant agrees that it shall not commence drilling activity on Well Pad #5 within Findlay Township until it has obtained those approvals.

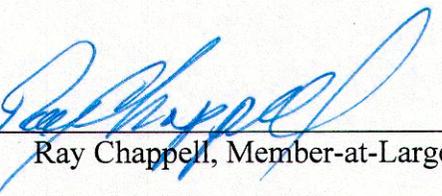
24. The conditions imposed herein by the Board on the Application are imposed as a whole in order to protect the health, safety and welfare of the Township's residents and to advance the interests of the Ordinance and the Pennsylvania Municipalities Planning Code. Each individual condition is integral to this effort by the Township to promote public safety, health and welfare, and to that end, if any of the conditions imposed herein are invalidated or struck down, other than by consent by the Township, the Township reserves the right to revisit this Decision and impose additional conditions in order to ensure that public health, safety and welfare are preserved and advanced.

ADOPTED THIS 23RD DAY OF APRIL, 2014.

FINDLAY TOWNSHIP BOARD OF SUPERVISORS

By: _____
Thomas Gallant, Chairman

By: 
Janet Craig, Vice-Chairman

By: 
Ray Chappell, Member-at-Large