

November 1, 2011

A Regular Meeting of the Township Council of the Township of Roxbury was held on November 1, 2011 in the Municipal Building located at 1715 Route 46 in Ledgewood, New Jersey at 7:30 PM.

PLEDGE OF ALLEGIANCE

OPEN PUBLIC MEETING STATEMENT

Adequate notice of this Regular Meeting of the Township Council of the Township of Roxbury was given as required by the Open Public Meetings Act as follows: Notice was published in the Daily Record on December 23, 2010; Notice was faxed to the Daily Record, the Newark Star Ledger, The Roxbury Register, and was posted on the bulletin board in the main hallway of the Municipal Building, on December 20, 2010.

ROLL CALL: Councilman Gary Behrens
(Present) Councilwoman Kathy DeFillippo
Deputy Mayor Fred Hall
Councilman Martin Schmidt
Councilman Richard Zoschak
Mayor Jim Rilee

Absent: None

Also Present: Christopher Raths, Township Manager
James Bryce, Esq., Associate Township Attorney (10:00PM departure)
Anthony Bucco, Esq., Township Attorney (7:40PM arrival)
Amy Rhead, Acting Township Clerk
Kathy Florio, Administrative Aide

Staff: Richard Blood, Director of Public Works
Valarie Wyble, Purchasing Agent
Michael Kobylarz, Township Engineer/Director of Utilities
Russell Stern, Township Planner

APPROVAL OF MINUTES

July 26, 2011 – Regular Meeting

Mayor Rilee announced that the minutes from the Regular Meeting of July 26, 2011 had been provided to all Council members in the previous Communications packet, but had inadvertently been omitted from the printed agenda. Council members confirmed that they had all received and reviewed the minutes and agreed to add them to the agenda.

Councilman Schmidt made a motion to approve the July 26, 2011 Regular Meeting Minutes. Councilwoman DeFillippo seconded the motion.

Roll Call: Councilman Behrens – Yes Councilwoman DeFillippo – Yes
Deputy Mayor Hall – Yes Councilman Schmidt – Yes
Councilman Zoschak – Yes Mayor Rilee – Yes

Motion carried 6 to 0.

REPORTS OF COUNCIL LIAISON REPRESENTATIVES, COUNCIL COMMITTEES AND NEW BUSINESS/OLD BUSINESS

Councilman Schmidt spoke about JCP&L's handling of the recent electrical outages and asked the Council to consider relaying the Township's dissatisfaction to the Board of Public Utilities.

Councilman Zoschak spoke of the recent unprecedented snow storms.

Councilman Behrens said that he had attended the previous week's Economic Development Committee meeting and that Councilwoman DeFillippo would provide the report.

Councilwoman DeFillippo said that her power had not yet been restored. She said she had received numerous complaints from residents because they had not seen any JCP&L trucks out trying to rectify the power outages.

Councilwoman DeFillippo reported on the recent Economic Development Committee meeting and a proposal from a company that is considering moving into Roxbury. She said that vacancies on the Committee would be addressed at the Reorganization Meeting. She also reported that the Committee had discussed possibly posting a list of local businesses on the Township website (similar to Randolph's). Councilwoman DeFillippo announced that the next EDC meeting had been rescheduled to take place on December 1st at 7:00 p.m.

Deputy Mayor Hall announced that Horseshoe Lake had received the Daily Record's "Readers Choice Award" for being Morris County's Best Family Attraction site. He expressed gratitude to all the volunteers that contributed to the Township receiving the award and for recently being chosen as one of the "100 Best Communities for Young People" by America's Promise. All United States communities are eligible to apply for the America's Promise award, but Roxbury is the first and only New Jersey community that has ever received it.

Mayor Rilee spoke of Deputy Mayor Hall's many contributions to the community and thanked him for his participation on the Recreation Committee.

Deputy Mayor Hall reported that he had appeared before the County the previous week to express the need for them to extend the time frame for the funding to acquire the property for the Landing Recreation project.

Deputy Mayor Hall reported on the previous week's COAH meeting.

Deputy Mayor Hall spoke about the recent natural disasters, which included an earthquake, water main breaks, and winter blizzard in October causing widespread and unprecedented power outages. He thanked Mr. Rath and the entire staff for their efforts and commitment to the Township.

Mayor Rilee spoke about the hardships endured by residents and the municipality. He reminded everyone that the County and the State were also trying to recover from the disasters.

Mayor Rilee announced that Mark Crowley, Chris Rogers and Richard Keir had been nominated by the Roxbury Municipal Committee as candidates for consideration to fill the position which became available due to the recent resignation of Tim Smith. The Council will choose one of the three candidates at the November 29th meeting.

Mayor Rilee spoke about the recent retirements of Beth McGarry and Carmen Stadelman. He thanked them for their many years of service to the Township and wished them well.

Councilman Zoschak added that he had represented the Council by attending the retirement party of Beth McGarry and Carmen Stadelman.

Mr. Rath reminded the Council that a Budget Kick-Off Meeting still needed to be scheduled. He said that he would email members some possible dates to consider.

In regard to a request for the NJDEP to meet with residents about the former Fenimore Landfill site, Mr. Rath reported that the NJDEP had responded that they were unavailable on any of the dates that had been provided. Mr. Rath said that he had

been trying to schedule a meeting for the past six weeks and was frustrated that his attempts have been unsuccessful.

Mr. Rath stated, for the record, that the developer may be on sight and working at the location before residents even have a chance to meet with the NJDEP. He stated that he was of the opinion that the New Jersey Department of Environmental Protection was doing a disservice to the residents of the Roxbury community by not finding time to communicate with them. Council members suggested offering some weekend dates for the NJDEP to consider.

Mr. Rath spoke about the chaos caused by the recent snow storm. In an effort to keep residents as informed as possible, Mr. Rath said that the reverse 911 system had been utilized and the website was being continually updated with the most recent information available.

Mr. Rath said that the collection of brush and debris left over from the storm could potentially take several weeks. He noted that the Township has one hundred and two miles of roadway and asked the community for patience and understanding.

He applauded the staff for handling the volume of phone calls that came in. He said that many of the questions were in regard to Halloween Trick-or-Treating. He recognized Lynn Mahoney in particular for doing a tremendous job answering all the phone calls and attending to the questions and concerns of the residents.

Mr. Rath reminded everyone to sign up for the emergency notification system via the Township's website.

Councilwoman DeFillippo asked if the recycling center was open for brush disposal. Mr. Rath replied affirmatively.

A. New Business – none

B. Old Business

1. ROMAC Committee Appointment – no recommendations

C. Presentations – none

**MATTERS REQUESTED/REFERRED BY COUNCIL MEMBERS,
MANAGER, ATTORNEY OR CLERK**

1. McNear Soil Moving Permit

Mayor Rilee asked Mr. Bucco to explain why the request to continue the McNear Soil Moving Permit was being heard in front of the Council as opposed to the Planning Board. Mr. Bucco said that the guidelines set forth in the original Developer's Agreement require hearings to take place in front of the Governing Body every five years in order to continue soil moving operations.

The following exhibits were introduced at the hearing:

- **Exhibit A-1**
Existing Conditions Plan prepared by Dykstra Walker Design Group dated August 17, 2010 under the signature of Thomas F. Graham, P.E.;
- **Exhibit A-2**
Clayton Proposed Blast Location Plan prepared by Dykstra Walker Design Group dated August 17, 2010, revised October 11, 2011, under the signature of Thomas F. Graham, P.E.;
- **Exhibit A-3**
Concept Final Grade Plan prepared by Dykstra Walker Design Group dated August 17, 2010 under the signature of Thomas F. Graham, P.E.

- **Exhibit A-4**

Overall Grade Plan dated January 15, 2003 revised through November 1, 2011

The following documents were introduced at the hearing:

- Application for Major Soil Movement Permit by McNear;
- Grading Plan Prepared by Dykstra Walker Design Group dated July 6, 2011 under the signature of Thomas F. Graham, P.E.;
- Resolution of the William H. McNear Irrevocable Trust Agreement of July 30, 1993;
- Plan entitled “Clayton Proposed Blast Location” prepared by Dykstra Walker Design Group, dated August 17, 2010, revised through October 11, 2011, under the signature of Thomas F. Graham, P.E.;
- Memorandum of Michael A. Kobylarz, P.E., P.P., C.M.E., Township Engineer and Russell Stern, P.P., A.I.C.P., L.L.A., dated October 14, 2011
- Memorandum of Russell Stern, P.P., A.I.C.P., L.L.A., Township Planner, dated October 20, 2011;
- Memorandum of Michael A. Kobylarz, P.E., P.P., C.M.E., Township Engineer, dated October 21, 2011;
- Correspondence of Thomas F. Graham, P.E., of Dykstra Walker Design Group, dated October 18, 2011;
- Correspondence of Peter A. Messina, P.E., P.P., dated October 21, 2011;
- Project Summary prepared by Dykstra Walker Design Group, dated May 28, 2010, under the signature of Thomas F. Graham, P.E; and
- Amended and Restated Developer’s Agreement last executed December 3, 1997

After identifying themselves and being sworn with declarations being administered by James Bryce, Esq., the following testimony was introduced at the hearing:

James Gregory, Esq.

Attorney representing McNear Excavating, Inc.

Mr. Gregory categorized the current application for a soil moving permit as relatively minor and requiring only three more blasts. He said the blasts were needed to facilitate the beginning of the restoration process of the quarry and that the site plan was currently pending before the Planning Board.

Edward Wacks, Esq.

3rd Trustee of the William H. McNear Irrevocable Trust

Mr. Wacks stated he was appointed by the Court as a “deadlock” trustee to break any tie votes of the Trust. Mr. Wacks explained that the Subject Property is currently under control of McNear Excavation, Inc. as a tenant, however, such tenancy will terminate at the conclusion of 2013, at which time the control over the Subject Property will revert to the Trust. Mr. Wacks testified that it is in the best interest of the Trust to proceed with the Application and with two trustees approving same, it is binding. It was indicated that Clayton’s operations and sub-tenancy shall terminate by December 31, 2013 by contract. Mr. Gregory and Mr. Heymann represented that it is the intention that all major soil movement and excavation shall be completed by December 31, 2013 and that McNear shall be seeking Planning Board approval of a Final Site and Restoration Plan.

Ron Heymann, Esq.

Attorney representing Clayton Sand Company

Due to weather constraints, Mr. Heymann said that Clayton needed to have three more blasts before closing for the winter; otherwise, they would have to wait until they resumed operations in March of 2012.

Thomas Graham, P.E., P.P.

Dykstra Walker Design Group on behalf of Clayton Sand Company

Mr. Graham testified that he was hired by Clayton to provide engineering guidance, site plan design, and obtain appropriate Letters of Interpretation from the New Jersey Department of Environmental Protection. Mr. Graham stated that he has also performed work on behalf of the McNear Trust and McNear Excavation, Inc. Mr. Graham testified that this is the twelfth permit sought. In this regard, Mr. Graham stated the Applicant could not conform to the strict interpretation of the Developer's Agreement currently in effect due to an over-excavation of material that changed the contours of the site. He said that there were originally four phases of site clearing projected and that the contour line established by a 1982 Developer's Agreement had been altered due to over-excavation. Mr. Graham testified that the over-excavated area requires some back filling and surrounding areas require further blasting so as to achieve an appropriate grade. In this regard, Mr. Graham testified that three large blasts within three blast areas plus approximately five trim blasts were required. Mr. Graham testified that the proposed blasting and material removal is limited to those areas already disturbed and described the need and purpose of each primary blast. In this regard, Mr. Graham testified Blast Area 1 will be at a depth of 45 feet, Blast Area 2 will be 30 feet deep, and Blast Area 3 will vary, but be approximately 30 feet deep, bringing the general contour of the Blast Area 1 to 985 feet above sea level and Blast Areas 2 and 3 to an elevation 1035 feet above sea level. The over-excavated area is to be filled and compacted with suitable material to bring its elevation to 1035 feet above sea level. Mr. Graham described the preexisting varying slopes of the property and the originally projected grades and what is now being proposed in the various phase areas of the property and indicated that a drainage swale will be placed. Mr. Graham testified that the remaining truck loads of material yet to be mined and stock piled is equivalent to 14,000 truck loads, or 45 trucks per day, which is less volume than has historically been coming from the site. Mr. Graham further acknowledged that the Applicants are nonetheless required to further seek Planning Board approval for a Restoration Plan.

John Wall

Manager, Clayton Sand Company

Mr. Wall testified that the purpose of the continued excavation was required to bring the site to a flat contour and maximize the material yield of better quality rock. It was his opinion that the best result would be a plan where all parties receive a benefit and that through the proposed excavation, the end site contour and available volume would be preferable. Mr. Wall estimated that approximately 320,000 tons of material would be removed by this Application. Mr. Wall noted that truck traffic from the site has significantly decreased to approximately 45 trucks per day. Mr. Wall testified that the blasting would conform in all respects with New Jersey Department of Labor regulations. He said that Blast 1 was expected to be completed in 2011 and the second and third blasts would be conducted in 2012. Mr. Wall confirmed that all Clayton activities on site would cease on or before December 31, 2013. Mr. Wall was of the opinion that this final activity would represent the end of all quarrying on site as the cost of removing any remaining material would not be economically feasible due to the ratio of overburden to quality rock on the balance of the property. He also stated that the blasting would not occur closer to existing residences than previous blasts and would not be any more significant than they had been in the past. He said that extra money was being spent and the newest laser technology was being used so that the blasts are "community friendly". Mr. Wall again stated that there would be less than ten blasts before Clayton leaves the site. He said that the remaining slopes would be at a 3:1 ratio.

Michael Kobylarz, P.E., P.P., C.M.E

Roxbury Township Engineer

Mr. Kobylarz stated the existing bond covers the filling, seeding and restoration of the site, including slope stabilization and re-grading. Mr. Kobylarz testified that this plan would satisfy future development and is preferable in comparison to the current condition of the site.

Russell Stern, P.P., A.I.C.P, L.L.A

Roxbury Township Planner

Mr. Stern questioned the Applicant's professionals about the proposed final appearance of the site once completed. Mr. Wall responded that it would be restored back to the area of the slopes and stabilized; the flat area would be either left alone or covered with top soil and seeded.

Mayor Rilee opened the meeting for Public Comment on the soil moving permit application. The following individuals were sworn and comments were received:

Robin Bourlier, Trustee, William H. McNear

Succasunna

Ms. Bourlier stated she is a trustee of the William H. McNear Irrevocable Trust and that she usually does not receive information from the Trust concerning operations on the Subject Property. She said that she had no objection to the plan being proposed.

Ernest Gefert

1 Riggs Avenue, Landing

Mr. Gefert stated that this mining operation has been going on for thirty years and hopes that it would soon end.

Ralph Nappi

29 Ford Road, Landing

Mr. Nappi asked about the decibel levels emanating from the site especially as related to blasting. Mr. Kobylarz said that the state determines the levels and monitors compliance.

Edward Biron

168 Kings Highway, Landing

Mr. Biron stated that he felt Clayton is a good company. However, he said that the blasting has become more powerful and expressed concern about damage to his property and the effects on the aquifer. Mr. Wall responded that the first blast proposed would be the largest and would be fully compliant with State law. He also said that prior aquifer studies had been performed. Mr. Biron pointed out that the number of holes at the quarry exceeded the permitted number of blasts. Mr. Wall responded that the number of blasts would never equal the number of resulting holes because one blast could produce as many as fifty nine holes in the ground.

Paul Solondz

Lenel Road, Landing

Mr. Solondz asked about the proposed truck route. Mr. Wall confirmed that the route would remain the same as it had been and that Mr. Solondz' street, Lenel Road, would not be impacted by the truck traffic.

Mayor Rilee closed the public hearing.

At 9:55PM, Deputy Mayor Hall made a motion to approve the findings of fact and conclusions of law based upon the testimony, reports and plans submitted regarding the McNear Soil Removal and Relocation application. Councilman Schmidt seconded the motion.

Further Council discussion took place acknowledging that they were approving one blast to occur within the next week.

Deputy Mayor Hall amended his motion to include the requirement to provide prior notification to adjoining properties before the actual blast. Councilman Schmidt seconded the amended motion.

Roll Call: Councilman Behrens – Yes Councilwoman DeFillippo – Yes
Deputy Mayor Hall – Yes Councilman Schmidt – Yes
Councilman Zoschak – Yes Mayor Rilee – Yes

Motion carried 6 to 0.

Mayor Rilee amended the order of the agenda to allow for PUBLIC PORTION.

Ralph Nappi
29 Ford Road, Landing

Mr. Nappi spoke about the fall decorations on the front signage at the entrance to Town Hall. He said the individual(s) responsible deserved to be recognized for their efforts. It was announced that Lynn Mahoney, Administrative Assistant in the Manager’s Office, had taken the initiative to decorate for autumn. Mr. Nappi concluded by thanking Mrs. Mahoney and said it was “great work” and to “keep it up”.

Kent Libby, Boy Scout from Troop 163
2 Kelly Drive, Succasunna

Councilwoman DeFillippo recognized that there was a Boy Scout in attendance during the entire meeting and asked if he had any questions. Kent Libby from Troop 163 spoke and said he was at the meeting to fulfill the requirements for two Eagle Scout badges. Kent spoke about the decision to change the Halloween Trick-or-Treating to a later date. Mayor Rilee said that the decision to recommend the postponement was made earlier in the day due to power lines and branches down from the storm and that safety was the primary reason. Kent Libby asked which department was responsible for cleaning up branches and if scouts could assist with any cleanup efforts. Mayor Rilee responded that the Department of Public Works was in charge and that neighbors in need of assistance would likely appreciate any offers of help.

Hildi Libby
2 Kelly Drive, Succasunna

Ms. Libby thanked the Council for recommending the postponement of Halloween Trick-or-Treating.

Ralph Nappi
29 Ford Road, Landing

Mr. Nappi asked for the names of the three candidates submitted by the Republican Municipal Committee who would be considered to fill the Council vacancy due to the recent resignation of Councilman Smith. Mayor Rilee responded that the Council would be deciding among Mark Crowley, Richard Keir, and Chris Rogers.

Mayor Rilee closed the Public Portion and returned to the order of the agenda.

2. Ordinance Reviews – Chickens

Mr. Rath requested that the review of the Chicken ordinance be postponed.

3. Quarterly Reports – *reviewed/discussed*

4. Proposal dates for Fenimore – *previously discussed*

5. Proposal dates for Budget Meetings – reviewed/discussed
PUBLIC PORTION – previously discussed

DRAFT ORDINANCES FOR DISCUSSION

None

INTRODUCTION OF PROPOSED ORDINANCES

12-11 AN ORDINANCE TO AMEND CHAPTER XII, SEWER AND WATER, OF THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF ROXBURY, COUNTY OF MORRIS, STATE OF NEW JERSEY, TO REVISE WATER RATES

Councilwoman DeFillippo made a motion to introduce Ordinance No.12-11.
Councilman Schmidt seconded the motion.

Roll Call: Councilman Behrens – Yes Councilwoman DeFillippo – Yes
Deputy Mayor Hall – Yes Councilman Schmidt – Yes
Councilman Zoschak – Yes Councilman Rilee – Yes

Motion carried 6 to 0.

HEARING AND ADOPTION OF ORDINANCES ON SECOND READING

None

INTRODUCTION AND ADOPTION OF RESOLUTIONS

11-325 A RESOLUTION INCORPORATING BY REFERENCE HEREIN AND APPROVING THE FOLLOWING NUMBERED RESOLUTIONS LISTED ON THE REGULAR COUNCIL MEETING AGENDA FOR THIS DATE:

11-326, 11-327, 11-328, 11-329, 11-330, 11-331, 11-332

Councilman Schmidt made a motion to adopt incorporating Resolution No.11-325.
Councilwoman DeFillippo seconded the motion.

Roll Call: Councilman Behrens – Yes Councilwoman DeFillippo – Yes
Deputy Mayor Hall – Yes Councilman Schmidt – Yes
Councilman Zoschak – Yes Councilman Rilee – Yes

Motion carried 6 to 0.

11-326 A RESOLUTION AUTHORIZING AN EXTENSION OF TIME FOR THE WATER ALLOCATION PERMIT APPROVED BY RESOLUTION NO.08-186 AND PREVIOUSLY EXTENDED BY RESOLUTION NO.11-74 FOR THE FLEXIBLE OFFICE BUILDING LOCATED ON ROUTE 46, LEDGEWOOD, BLOCK 9603 LOTS 3 AND 4

11-327 RESOLUTION AUTHORIZING THE TOWNSHIP TO INCREASE THE BID THRESHOLD FROM \$17,500 TO \$26,000 AS SET FORTH IN N.J.A.C. 5:34-5.4 AND LOCAL FINANCE NOTICE 2011-27

Mr. Bucco responded to a question from Councilwoman DeFillippo and said that passage of this resolution would save the Township time and money. Mr. Bucco also noted grammatical errors within the resolution that needed to be corrected. Council members had no objections to the changes.

11-328 A RESOLUTION AUTHORIZING THE AWARD OF CONTRACT TO COMAX INC. FOR THE INSTALLATION OF A VIDEO SURVEILLANCE SYSTEM AT THE SHORE HILLS PARK

Councilman Schmidt asked why a contract was being awarded when only one bid was received. General discussion ensued about the efforts to try and obtain multiple bids. Mrs. Rhead pointed out spelling errors within the resolution that needed to be corrected. Council members had no objections to the corrections being made.

11-329 RESOLUTION OPPOSING S-2887 AND A-3992, WHICH REVISES STANDARDS FOR WIND GENERATION FACILITIES ON FARMLAND

Council members acknowledged the omission of the year (2011) that needed to be added to the first paragraph of the resolution and authorized Mrs. Rhead to make the correction.

11-330 A RESOLUTION AUTHORIZING THE PURCHASE OF TECHNOLOGY SUPPLIES FOR USE AT TOWN HALL

Councilwoman DeFillippo asked for an explanation regarding the terminology of "network". Mr. Rath responded. Mr. Bucco pointed out grammatical errors within the resolution that needed to be corrected. Council members had no objections to having the corrections made.

11-331 A RESOLUTION APPROVING CHANGE ORDER # 1 TO THE CONTRACT WITH TOMCO CONSTRUCTION, INC. FOR HORSESHOE LAKE FIELD IMPROVEMENTS

Council members had no objections to having the corrections made to the grammatical errors within the resolution.

11-332 A RESOLUTION AMENDING THE MEMBERSHIP OF THE TOWNSHIP FIRE DEPARTMENT

PERSONNEL CHANGES

None

COMMUNICATIONS

October 28, 2011

Councilman Zoschak made a motion to file the Communications of October 28, 2011. Councilman Schmidt seconded the motion.

Voice Vote: All in Favor – Yes

Motion carried unanimously, 6 to 0.

PUBLIC PORTION

None

EXECUTIVE SESSION

11-333 NOT USED - A RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF ROXBURY, IN THE COUNTY OF MORRIS, NEW JERSEY AUTHORIZING CONFERENCE OF THE TOWNSHIP COUNCIL WITH THE PUBLIC EXCLUDED

ADJOURNMENT

At 10:20PM, Deputy Mayor Hall made a motion to adjourn the meeting. Councilman Schmidt seconded the motion.

Voice Vote: All in Favor – Yes

Motion carried unanimously, 6 to 0.

Submitted By:

Amy E. Rhead
Acting Township Clerk

MINUTES APPROVED BY COUNCIL:

DATE: January 8, 2013

ROLL CALL:

Councilman Behrens	-	Yes
Councilman Crowley	-	Yes
Deputy Mayor DeFillippo	-	Yes
Councilman Rilee	-	Yes
Councilman Schmidt	-	Yes
Councilman Zoschak	-	Yes
Mayor Hall	-	Yes