

**JUNE 15, 2011 MINUTES**

A regular meeting of the Township of Roxbury Planning Board was held on June 15, 2011, at 7:30 p.m. in the Municipal Building at 1715 Rt. 46, Ledgewood, N.J. After a Salute to the Flag the Chairman read the Open Public Meetings Act.

**ROLL CALL:**

**PRESENT:** Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer.  
**ABSENT:** Mayor Rilee and Mr. DeFillippo.  
**STAFF:** Mr. Ferriero, Mr. Germinario, Mr. Stern and Mrs. Wiss

Mr. Sweeney was thanked by the Chairman for his 12 years of service to the Planning Board as this was his last meeting.

**MINUTES:** June 1, 2011

Motioned by Councilman Zoschak and seconded by Mr. Shadiack to approve.

Ayes: Mr. Shadiack, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

Abstain: Mr. Sweeney, Mr. Carey and Mr. Bautz,

MOTION APPROVED.

**COMPLETENESS:**

**PBA-11-08 KBC PROPERTIES, LLC, (Kuiken Brothers) Block 1905, Lots 11 & 13 33 Route 10**

Final Site Plan Approval

Motioned by Councilman Zoschak and seconded by Mr. Bautz to deem complete.

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**PBA-11-05 TACO BELL (EIPCO FOODS CORP. OF ROXBURY AND WEST CALDWELL) Block 5104, Lot 2 268 Route 10**

Minor Site Plan application to add a 193 sf area to existing building.

Motioned by Mr. Bautz and seconded by Mr. Sweeney to deem complete

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**PBA-11-07 SILCOX, WILLIAM Block 4001, Lots 7 & 8 86 North Hillside Avenue**

Minor Subdivision/Lot Line Adjustment Application

Motioned by Mr. Bautz and seconded by Councilman Zoschak to deem complete.

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**RESOLUTIONS: none**

**APPLICATIONS:**

**PBA-11-08 KBC PROPERTIES, LLC, (Kuiken Brothers) Block 1905, Lots 11 & 13  
33 Route 10**

Final Site Plan Approval

Attorney Jason Rittie represented the applicant. They received preliminary major site plan approval on 6/6/2007 and a small amendment was approved on 12/2/2009.

Engineer Robert Foley was sworn in and qualified and will summarize responses to the reports received. The June 7, 2011 report from Mr. Stern was addressed. The change in impervious coverage for four additional parking spaces was explained with reference to Exhibit A-1 titled Asbuilt Impervious Site Calculation dated 6/10/11. There is an end result of 59.0% impervious coverage so they are compliant with the maximum in the zone. He testified to the adequacy of the illumination. They will comply with a closed lid dumpster inside the building; outside is for recyclables.

Henry Kuiken, Vice President of Kuiken Bros., was sworn in. They will address every item except one in three weeks in order to get a Certificate of Occupancy so it was not practical to bond outstanding items.

The two flood lights have been removed and the building has sprinklers. There were two rain garden areas on the approved plans that were supposed to capture sheet flow from the impervious coverage. Special plantings in these areas were required by the DEP. The DEP permit requiring planting of the rain gardens is valid until November of 2012. The rain gardens have not been planted because the weather was not conducive to planting. Mr. Foley referred to Exhibit A-2, a landscape plan which was a colorized plan of the landscaping as it is installed on site. These rain garden areas have been stabilized with grass and they will plant them in the fall or next spring. The Board waived the rain garden planting if the DEP waived it. They are not counting on relief from the DEP and it will be a violation of the DEP permit if it is not planted. This is an expensive, high maintenance planting.

They agreed to remove the tree stakes in one year, the freestanding light along the access drive will be relocated and they will put in five hose bibs in lieu of irrigation yard hydrants. They will comply with the rest of the items in the report including the non residential development application fee prior to the issuance of the C.O. The merger of lots 11 & 13 had been done in 2008 although that was not shown on the final site plan.

Mr. Ferriero's June 13, 2011 report was addressed. They will repair the cracked sidewalk panel and the intermediate step will be provided to the personnel door.

The Board felt the site looks great. The stacking of lumber was discussed but this will be remedied.

The matter was open to public. No one from the public commented. The meeting was closed to the public.

Motioned by Mr. Bautz and seconded by Councilman Zoschak to approve.

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**PBA-11-05 TACO BELL (EIPCO FOODS CORP. OF ROXBURY AND WEST CALDWELL) Block 5104, Lot 2 268 Route 10**

Minor Site Plan application to add a 193 sf area to existing building.

Attorney Edward Dunne represented the applicant. The 193 sf addition was an additional pass through window for collection of money. They are asking for a parking waiver, 45 spaces including two handicapped are provided and 54 are required since the ordinance changed. There is no room for additional parking and the addition won't promote an increased need for parking.

The "bump out" increases the impervious coverage by .3%, the total impervious coverage will be 64.2%, 60% is allowed. When the site was constructed there were no impervious coverage restrictions at all.

Mr. Ricardo Davila and Peter Gluszko were sworn in. The architect, Mr. Glusko, was qualified. The 20'9" x 9'9" x 17'4" tall addition is located on north elevation of the building and there are no other changes proposed on the site. The proposed seven modifications on the site plans were read. One tree will be removed and a replacement tree will be planted, a flowering cherry tree. The parking spaces are identical; they will restripe two areas to meet the current regulations resulting in 45, 9' x 18' parking spaces.

Mr. Ferriero's letter of June 13, 2011 was addressed. The future installation of a canopy above the drive through for customer and employee protection was proposed. No graphics will be on the canopy and it is now included in this application. The detail will be added to the final plan.

The stacking issue also referred to in Mr. Stern's letter of June 1, 2011 was addressed. Mr. Davila is the President of Eipco Foods Corp., Taco Bell and the principal of the Roxbury Realty Corp., the owner of the property. He is familiar with the site, its original

construction and business operation. He visits the business frequently. They have never used all the parking spaces even during peak hours, lunch, dinner, weekends or weekdays. More than half of the parking spaces were empty. The reason for adding the pay window is to separate the delivery of food and collection of money. The employees will not touching food and money at the same time and separate windows help the efficiency of the flow through. The queue line was not backed up since the grand opening. The addition of the window will help with the stacking.

There are 13-14 employees now during peak times and they might add maybe one more employee. There is another parking area on the site that was part of the application of an adjoining use on a separate lot. They have a parking lot rights easement but haven't found the easement but they agree to provide cross easements to fix this oversight. The rooftop mechanical equipment is not exposed, it is hidden. The cabinet meters will be painted to match the wall color. A wall mounted light is proposed above the rear service wall and they will provide the detail and also the bollard detail. The tree size and specifications will be shown on the plans. They will provide as built drawings. The COAH fee as applicable will be paid and no off site improvements are required.

The Police Dept. memo was discussed; the stop sign is already there although it is not indicated on the site plan. They will fix that on the final map.

Regarding Mr. Kobylarz's comment in his June 13, 2011 memo on an additional handicap space, there are only 45 spaces for this use so two were required. They objected to reducing the level of all concrete and stone sidewalks to accommodate a change in the ADA requirement. This application does not increase the use and the upgrade that would cost \$15,000 for these improvements was not warranted and is an excessive burden.

Mr. Ferriero said the DOT is going to require upgrading sidewalks for AHA compliance, nothing is "grandfathered" and they can be sued. Either the Township or they will have to take care of this.

Mr. Dunne did not think it was applicable and the AHA has made exceptions. Mr. Geminario confirmed that observing this health and safety standard was obligatory when site plan approval is granted. The State is requiring the upgrade for the ramps for all repaving projects if state or municipal money is used to comply with ADA standards with no exceptions. The applicant was not aware of this coming in to this application. This is all new within the last 60 days. Mr. Dunne agreed they will have to comply if necessary either with bonding or a cash deposit or by making the improvements but felt that Route 10 should not be done. They agreed to do specific sidewalks, the three on St. Therese Terrace, two on the driveway and one on the corner, not the two on Route 10. They will reach an agreement with the Township Engineer and Mr. Ferriero.

The awning will be on one window and meet the setback.

The meeting was open to public. Mr. Ron Nash runs a Wendy's in Flanders and said they need to comply with ADA. It is cheaper than being sued. The second window will

pick up the speed by 10 seconds and will reduce stacking. No one else from the public commented. The meeting was closed to the public.

Motioned by Mr. Bautz and seconded by Mr. Sweeney to approve with the sidewalk caveat.

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**PBA-10-016 STS DEVELOPMENT CO. LLC Block 2701, Lot 2 and Block 2702,**

**Lot 19.01**

**Halsey Street**

Major Subdivision Application

This matter was continued from the January 19, 2011, April 6, 2011 and May 4, 2011 meeting. Attorney George Johnson represented the applicant. Since January they had resolved some issues and made minor modifications to plans and the stormwater management report. Mr. Steven Smith explained the revisions. They added spot elevations to the plans and proposed infiltration basin. This infiltration basin meets all the requirements for stormwater management and the only variance is for the sideyard setback of the basin. There would be no overflow into the lake so there would be no need for an easement. Engineer John Gribbins was also present on behalf of the applicant.

Mr. Ferriero reviewed the plan sheet revision but items are still open on the other plan sheets, mostly details, not threshold issues. The infiltration basin is designed for the 100 year storm. An infiltration basin is not the first choice but is probably all that can be done here and is permitted under the DEP Best Management Practices Manual. This area has highly permeable soil.

The basin is designed according to the regulatory standard for a 100 year storm so the Board can't ask for an easement according to Mr. Germinario. They have complied with the design standards for the basin that will result in no direct discharge.

They had previously asked for diminuous exemption for the sidewalk because there is not a 50 foot right of way at the neck; it's a pre-existing condition.

Regarding Mr. Ferriero's letter of March 24, 2011, they will comply with all items. With regard to Mr. Stern's report the outstanding issues were the sidewalk waiver and the determinous of Halsey Street as to whether a drop curb or full height curb was needed. They agreed to other comments in the memos at the meeting in January.

Assistant Township Engineer Melanie Michetti's memo of January 13, 2011 regarding treatment works, water and sewer issues, paving details will be complied with.

The Environmental Commission suggested they will do water quality testing before and after construction in their January 13, 2011 memo. Mr. Ferriero said there were several things to test for and the Board agreed to the testing with Mr. Ferriero's guidance as to what was appropriate to test for.

The sidewalk placement is restricted and in context of the rest of the neighborhood they are not a necessary component of this area. The Board favored no sidewalks in this situation. In lieu of sidewalks, there is no proposal at this time.

The meeting was open to the public. Burt Middlestat, owner of Lake Silver Springs, said the height of the water in the lake is 706.61' and this drainage system is not going to work. Their trees are two feet underwater and so is their beach. The Board has had professional testimony that the design will work. Faith Middlestat referred to the readings that were distributed at the last meeting. The state law says the infiltration basin has to be 2' above the highest water mark and the water has been high in the last years. Their engineer says the system won't work.

Mr. Johnson felt the information was not relevant; there were no standards set for the readings. The rise and fall of the water elevation was done by the Engineering Dept. not a surveyor. Mr. Middlestat said the lake continues to rise and the bottom of their infiltration basin is 706' so the basin is always going to be filled and will be overflowing and fertilizer will contaminate the lake.

This was not professional testimony. The Middlestats would like to postpone so that their engineer can testify that it won't work and they would like their attorney here. Engineer Ken Dykstra had provided a letter dated 5/4/11 and would come before this Board and testify that this basin will not function. The Board needs to look at the lake.

This matter had been before the Board in some manner for a couple of years.

Mr. Bob Borelli lives adjacent to subdivision and asked does the law say the infiltration system has to be 2' above seasonal high water mark? Mr. Ferriero said there is no law but DEP's Best Management Practices Manual gives that standard. The applicant had an analysis done and it was testified to by Mr. Gribbin. Was it done in a seasonal high water mark? The test was first done in 1999 and Steve Smith of Jaman Engineering said the highest elevation was 704.51' and elevations had been taken up to February 2009.

Mr. Borelli said 704.51' doesn't meet the standard and showed a picture of a flooded yard and he said the elevation was 708'. This is the low area is behind his house. This water is coming from Railroad Avenue and Jones Street and down the side and this happens every year. Mr. Smith said this development will not increase this water from the streets. Mr. Borelli has flooding and they need to establish the water table today. Mr. Smith said high water elevations can vary in different locations and there are grade differences. The lake level corresponds to the water elevations; they say it is 704.61' but it is now 706'

Mr. Silcox agreed there is a runoff problem on Mr. Borelli's property and he has talked to the Engineering Dept. and something has to be done to help them with this. Mr. Ferriero met the Township Engineer on site and there is a storm draining system in the road ending at two drywells where the system ends. With no outlet for the system they need an additional drywell but they have a small capacity so it might not solve the problem.

Mr. Borelli said the design has to meet the standards but does it? Faith Middlestat said the old Morris Canal was in this area.

The rainwater that falls on this property is infiltrated under current and proposed conditions. Runoff is a minor portion, most is infiltration, the water will infiltrate, not runoff and it will be the same amount. The actual runoff into the lake is decreased as a result of this design.

Mr. Germinario summarized the letter from Dykstra. According to engineering testimony and the studies the two foot separation is not an absolute standard and the basin will operate at the current design standard.

Mr. Middlestat said the letter states the water elevation is 706 feet at highest point, it won't work, there are safety issues and the lake is rising every year from his 30 years experience.

Mr. Stern felt a full height curb should be installed.

Motioned by Mr. Sweeney and seconded by Mr. Bautz to approve with all the caveats.

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**PBA-11-07 SILCOX, WILLIAM Block 4001, Lots 7 & 8 86 North Hillside Avenue**

Minor Subdivision/Lot Line Adjustment Application

William Silcox was sworn in and represented himself. He wants to move a lot line over so the line goes straight back. Ten years ago they had approved this but he didn't do anything about it then. The existing lot line goes through his garage. He has owned the property since 1966. He is here for variances. He received the reports and agrees with all items.

Mr. Stern said this could be approved administratively if not for the variances. The variances are for lot width, 100 ft. is required and they have 80' and minimum lot frontage of 90, and with the shift will be 80'. He has no objection to design waivers for curbing, sidewalks and street trees. They agree to right of way dedication and the deeds will be reviewed the Board attorney and engineer. Mr. Silcox agreed to remove the existing shed before filing the deeds.

The meeting was open to public. No one from the public commented. The meeting was closed to the public.

Motioned by Mr. Bautz and seconded by Mr. Sweeney to approve.

Ayes: Mr. Shadiack, Mr. Sweeney, Mr. Bautz, Mrs. Lutz, Mr. Verge, Councilman Zoschak, Mr. Carey and Mr. Meyer

Noes: None

MOTION APPROVED.

**OLD BUSINESS:**

**PBA-10-010 ROXBURY ENTERPRISES, LLC. Block 5002, Lot 3 10 Commerce Boulevard**

Minor Subdivision and Preliminary Site Plan Application for bank and retail. Grading plan change

Joe Jaworski, Civil Engineer on the project, answered questions about material found on the site. The site contained two underground storage tanks and lifts from the Chrysler business, they have been removed, the contaminated soil was removed, the appropriate tests were taken and a No Further Action application has been made to the DEP. Those items have been taken care of. Historic fill was brought in the 50's & 60's to build up the site and also the mall and Commerce Boulevard. Low level contaminants are in that fill. The DEP doesn't recommended digging it out. It needs to be capped by pavement, buildings or 12" of topsoil according to the DEP. They will file the non residential Deed restriction so is cannot be used for a residence in the future. This is a common process for widespread contamination. They have provided berms. There were no heavy metals in the fill.

Mr. Ferriero confirmed this is a common practice in redeveloped sites. Mr. Stern said the berms will help with screening. The Board was satisfied with the field changes.

**NEW BUSINESS:**

**CORRESPONDENCE:**

A motion to adjourn was made at 9:59 p.m.

FOR THE PLANNING BOARD  
TOWNSHIP OF ROXBURY

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Eugenia Wiss, Board Secretary