

**Franklin Borough Planning Board**  
**Meeting Minutes for**  
**May 18, 2009**

The meeting was called to order at 7:36 PM by acting Chairman, Mr. John Christiano, who then led the assembly in the flag salute.

Mr. Christiano read the Statement of Compliance pursuant to the "Open Public Meetings Act, Chapter 231, PL 1975."

ROLL CALL OF MEMBERS PRESENT: Mr. Christiano, Mr. Suckey  
Mayor Crowley, Mr. Maugeri

ABSENT: Mr. Zschack (Arrived at 7:43), Mr. Lermond  
Mr. Oleksy, Mr. Cholminski

ALSO PRESENT: Mr. David Brady, Esq.  
Mr. Thomas G. Knutelsky, P.E.  
Mr. Ken Nelson, P.P.  
Mr. James Kilduff, Director

Mr. Christiano stated application PB-12-08-1 Braen Aggregates has asked to carry until the next meeting.

**APPROVAL OF MINUTES:**

Mr. Christiano asked if anyone had any comments on the April 20 minutes. Mr. Suckey suggested on the first page, the sentence "he would want to add to provide testimony" be changed to "he would want the applicant to provide testimony". Mr. Knutelsky said on page six first paragraph "forum based code" should be "form based code".

Mayor Crowley made a motion to approve the **Franklin Borough Planning Board Meeting Minutes for April 20, 2009**, with the corrections. Seconded by Mr. Suckey.

Upon Roll Call Vote:

AYES: Suckey, Crowley, Christiano

NAYS: None                      ABSTENTIONS: None

(Motion Approved)

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**APPROVAL OF RESOLUTIONS:**

There were no resolutions to be approved.

**APPLICATIONS FOR COMPLETENESS:**

**PB-03-09-1 Franklin Village LLC. Amended Preliminary and Final Site Plan, "C" Variances, Block 3 Lots 4, 7, 10 &14.03.**

Mr. Zschack joined the meeting at 7:43.

Mr. Kilduff said, under administrative matters he would like the Board to be aware that on the application form there is a site inspection authorization form and an affidavit of ownership form. Mr. Kilduff said there are three different property owners involved and we had asked that they provide that information; we don't have that as of yet.

Mr. Patrick Dwyer, attorney for the applicant, stepped forward. Mr. Dwyer said Mr. Kilduff is right; there are three owners. Mr. Dwyer said there is Mr. Grant and his associated entities; there is lot 7 and 10. Mr. Dwyer said we have contracts to purchase those two lots and we have obtained from those owners permission and authority to act on their behalf with the land use application. Mr. Dwyer said we have supplied copies of those portions of the contract that refer to that as well as power of attorney. Mr. Dwyer said he spoke to Mr. Kilduff and Mr. Brady and they have asked us to clarify and provide additional signatures from the applicant's entities to ensure we are acting on behalf of those other third parties. Mr. Dwyer said we will do that in time for the actual application to be heard. Mr. Dwyer said for completeness we hope to have that temporarily waived. Mr. Brady said he looked over the power of attorney and contracts of sale. Mr. Brady said he is satisfied that the right person that is making the application has authority. Mr. Brady said his office drafted up what it (the form) should look like and if Mr. Dwyer gives that to him before the next meeting that will satisfy him.

Mr. Dwyer said he received a letter from Mr. Kilduff which they responded to regarding administrative completeness. Mr. Dwyer said he believes he has satisfied

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the other concerns he (Mr. Kilduff) had for completeness purposes. Mr. Christiano asked Mr. Kilduff if he agreed with that. Mr. Kilduff said yes.

Mr. Knutelsky referred to his May 12, 2009, completeness report, section B, checklist item #19, in regards to the grading plan at a scale of 1 inch equals to 30 foot. The applicant is requesting a waiver to provide the grading plan at 1 inch is equal to 40. Mr. Knutelsky said he believes that this checklist was waived originally, a 40 scale drawing shows it all on one sheet and he believes this is appropriate.

Mr. Knutelsky referred to checklist item #24, stormwater management plan, indicating that the original plan was reviewed and approved. Mr. Knutelsky said in the original application the applicant came in with a large plan, (with) basins and stormwater management on the plan. Mr. Knutelsky said that plan was changed. However, the stormwater management plan was never changed to accommodate that new development. Mr. Knutelsky said that stormwater management plan was to be required as a condition of approval. As far as this amendment and site plan application the applicant has changed the plan again. Mr. Knutelsky said he recommends the waiver not be granted until the stormwater management issues are addressed with this new plan.

Mr. Christiano asked Mr. Knutelsky what was the ultimate destination of all that stormwater. Mr. Knutelsky said the ultimate destination would be the Walkkill River which he believes is a C-1 stream. Mr. Knutelsky said the issue that concerns him the most is expansion and needed improvement to the stormwater management facilities, which might not be able to be accomplished without significant changes due to the permitting process that the applicant has gone through. Mr. Tessier explained the different permits that they received. Mr. Tessier said to make these changes and do the stormwater plan we have to go in and do all the piping and basin changes. Mr. Tessier said he believes the applicant is concerned that he could do this again when he finalizes his tenants. There was a discussion on the stormwater management plan and a stormwater management plan report.

Mr. Ron Grant, applicant, stepped forward. Mr. Grant said he would like to bring to the Board's attention that he doesn't have any real tenants. Mr. Grant said he wants to do this once. Mr. Christiano said what we are looking for here really doesn't depend on a tenant; this is water management that is based on how much asphalt that you have, how much roofing surface you have on the ground and how much sidewalk surface is on the ground.

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Mr. Knutelsky said his concern is the drainage that they are providing is not adequate on site. Mr. Knutelsky said if the drainage doesn't work then the site isn't in compliance with the stormwater management rules; that is his concern and they are at the cusp enough for me to request it.

Mr. Knutelsky referred to checklist item #26, tree save plan. Mr. Knutelsky said the applicant has requested a waiver for this checklist item. Mr. Knutelsky recommends that the waiver be granted. Mr. Knutelsky referred to checklist item #28, plans and profiles of proposed potable water and sanitary sewer. Mr. Knutelsky said the applicant has to make an application to the Borough for those items. Mr. Knutelsky recommends a temporary waiver for completeness only be granted with the appropriate information provided as a condition of any approval.

Mr. Knutelsky referred to checklist item #33, in regards to architectural preliminary floor plans and building elevations. Mr. Knutelsky said originally he recommended a waiver not be granted. Mr. Knutelsky said the applicant does not need a waiver; the applicant did provide that. Mr. Knutelsky referred to checklist item #38, environmental impact statement, the applicant has requested a waiver, the only environmental concern generated by this amended plan is stormwater related. Mr. Knutelsky said the proposed amendment is up towards Rte 23 and is really stormwater related. Mr. Knutelsky said he recommends a full waiver for the environmental impact statement. Mr. Christiano asked if some other agency like DEP would be looking for an EIS. Mr. Knutelsky said the DEP is going to rely on the LOI as long as it is within 5 years or at least continued up to 10 years.

Mr. Knutelsky referred to checklist item #39, traffic impact statement. Mr. Knutelsky said a traffic impact report and testimony was provided during the original application and was conditioned upon submitting and receiving DOT approval. Mr. Knutelsky said he would recommend a temporary waiver for completeness only but we would like to hear testimony on that issue.

Mr. Knutelsky said checklist items #43-47 are for final site plan only; they can be waived but the appropriate items should be made a condition of approval. Mr. Knutelsky said, going back to that original approval, there were conditions of that approval requiring plan changes that have not yet been completed. Mr. Knutelsky said now we have a new application before the Board, an amendment of that originally approved plan and final site plan that is going to have its own resolution

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and its own plan. Mr. Knutelsky said as the reviewing agent you are taking two resolutions and two sets of plans and trying to figure out what was done and what was not done. Mr. Knutelsky said it would have been an easier process if all those changes had been made to the original plan set. Mr. Knutelsky strongly recommended to the Board that these changes be made on the plans.

Mayor Crowley asked Mr. Knutelsky if he had brought up his concerns to the engineers from Dykstra. Mr. Knutelsky said he spoke with Mr. Tessier today about the drainage report, driveway access and the intersection. Mr. Knutelsky said he believes that the plan change recommendation, to get the plans in order was discussed with the engineers prior to the application being made.

Mr. Knutelsky said for completeness, the only thing the Board has to be concerned about is stormwater management. Mr. Knutelsky said he recommends, if the stormwater management plan is submitted before the next meeting we could entertain completeness and go into the public hearing on that matter on the same day. The Board members gave their opinions, backing Mr. Knutelsky's recommendation.

Mr. Christiano said we need a motion to deem this application incomplete based on the information required in checklist item #24 in Mr. Knutelsky's May 12, 2009 letter. Mr. Brady said also granting the waivers otherwise as listed in Mr. Knutelsky's letter. Mr. Knutelsky said at the next meeting we will address one issue, stormwater management, if the Board so wishes the waiver will carry until next month. Mr. Brady said right.

Mr. Kilduff said all that information has to be supplied 14 days prior to the meeting and if the applicant so chooses they can notice at their own risk and if it is satisfactory to the attorney and the Board and if the application is deemed complete at the next hearing and if the Board chooses, they can then go into a hearing. Mr. Christiano said if we can fit it into the agenda that evening we will do our best.

Mr. Zschack made a motion to deem incomplete application **PB-03-09-1 Franklin Village LLC. Amended Preliminary and Final site Plan, "C" Variances, Block 3 Lots 4, 7, 10 & 14.03.** Seconded by Mr. Maugeri.

Upon Roll Call Vote:

AYES: Zschack, Suckey, Crowley, Maugeri, Christiano

NAYS: None                      ABSTENTIONS: None

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(Motion Approved)

**ADJOURNED CASES:**

**PB-10-08-1a Wal-Mart, Amended Preliminary and Final Site Plan, "C" Variances, Block 70 Lots 1.01 and 1.04.**

Mr. Christiano said Mr. Maugeri left the room for a moment. Mr. Maugeri returned.

Mr. Mark Solomon, attorney for the applicant, stepped forward. Mr. Solomon said we appeared before you on February 17, there was a memo prepared by Mr. Knutelsky dated February 12, that we had worked through. Mr. Solomon said the sole remaining issue had to do with the requirements regarding COAH, with respect to the development fee and possibly growth share. Mr. Solomon went over the items that were to be taken care of by May 31, referring to Mr. Knutelsky's report dated February 12, 2009. Mr. Suckey asked what items he was referring to. Mr. Solomon said item# 13 A-E.

Mr. Solomon said the recommendation (was) to require, as a condition of approval, imposition of the developer's fee in the amount of 2.5%, consistent with a statute known as A-500. Mr. Solomon said the position of Wal-Mart was that the fee is not proper; Wal-Mart has had a certificate of occupancy, although temporary, since October 1999, open for a decade. Mr. Solomon said they had adjourned to find out more about this issue. Mr. Solomon said he has had conversations with The Council on Affordable Housing. Mr. Solomon said that COAH takes the position, we had a temporary CO a decade ago, and their position is if a final CO is issued, the fee is due. Mr. Solomon said we do maintain and retain our right of appeal and that right of appeal is to the director of the division of taxation and then from the director to the tax court. Mr. Solomon said for the record, (they) object to the imposition of such a fee should the Board impose it. Mr. Solomon said we would intend to pursue our rights of appeal; that right of appeal is not a direct appeal against Franklin Borough, it is through the director of division in taxation to the tax court. Mr. Solomon said we think that fee is inappropriate and we object.

Mr. Solomon said there was a second issue that was raised with respect to Growth Share, that is an obligation that is imposed not on the developer but on the municipality. Mr. Solomon said A-500 specifically says, with the imposition of the fee the municipality is prohibited from imposing other obligations with respect to

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Affordable Housing. Mr. Solomon said again he has to put on the record that should the Board seek to impose growth share and in this case he thinks it is about 10 or 11 units, his client would strongly object to that.

Mr. Solomon said it appears that the Borough in 1999 did report two COAH the issuance of a certificate of occupancy for about 100,000 square feet of retail. Mr. Solomon said by reporting that square footage then it is quite possible that there is no further obligation to report the final CO so there would not be any growth share because there would not be a reporting of that final CO. Mr. Solomon said we are working together to get conformation on that. Mr. Solomon said if that issue comes back then the issue of growth share goes away completely. Mr. Solomon said the last piece of this is that you may have heard there is legislation that has been pending some time that would impose a moratorium on the developer's fee and also take care of any question on growth share. Mr. Solomon said it has passed the Senate and is hung up in the assembly but hopefully in the next 30 to 45 days that legislation may in fact pass. Mr. Solomon said if that happens the whole issue goes away for both the Borough and Wal-Mart.

Mr. John Speers from Langan Engineering was present. Mr. Knutelsky referred to his May 12, 2009 report, which indicates that the applicant found all the approvals required. Mr. Knutelsky said the only outstanding approval would be the final site plan from Sussex County Planning Board. Mr. Knutelsky said that is something that is being applied for in the near future. Mr. Speers said it is being applied for. Mr. Speers said first we have to file our subdivision and set the lot then go forward with our final site plan approval. Mr. Christiano asked if there was anything at the County level that would affect our proceedings here. Mr. Knutelsky said he doesn't believe so. Mr. Christiano asked Mr. Knutelsky, you are satisfied from an engineering point of view. Mr. Knutelsky said correct.

Mr. Brady gave a little history of Wal-Mart. Mr. Brady said Wal-Mart was approved prior to the adoption of a development fee ordinance by the Borough and prior to COAH's third round rules, which deals with growth share. Mr. Brady explained the process of the 2.5 developer's fee. Mr. Brady said that Wal-Mart would go to the division of taxation and seek an appeal. Mr. Brady said if the division of taxation doesn't agree then they would go up to the tax court. Mr. Brady said at the same time COAH, which is not the division of taxation is busy imposing growth share. Mr. Brady said there is a possibility that COAH could say that growth share is triggered

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by the reporting of the permanent CO, hence a growth share obligation of about 10.6 units that could be imposed on the town.

Mr. Brady said Mr. Nelson was looking on the DCA website and he found that in 1999, Franklin Borough reported a little over 100,000 sq. ft. retail space having received a certificate of occupancy. Mr. Brady said we strongly suspect that is the Wal-Mart building and it was reported in the list of certificates of occupancy from 1999, which lead him to say they can't do this to us twice. Mr. Brady explained a conversation that he and Mr. Solomon had with Melissa Orson who is the chief council from COAH. Mr. Brady said his concern is if Wal-Mart seeks a refund of the development fee and wins but somehow COAH, in its own track, imposes the growth share then we have really gotten hit here. Mr. Brady said it has been occupied for so long and those arguments are not being won at the COAH level. Mr. Brady said they told her they believe the certificate of occupancy was already reported in 1999. Mr. Brady said her response was that she was going to talk to the codes and standards people to confirm if this had in fact been reported in 1999. Mr. Brady said she (Ms. Orson) said if that was the case then her position as chief council was going to be you can't count this twice, and that it already was reported under the old rules; therefore would not generate a growth share obligation. Mr. Brady said his response was he would like that in writing. Mr. Brady said she (Ms. Orson) said she would put it in writing.

Mayor Crowley asked if Wal-Mart was going to pay the 2.5 percent with the attempt to get the money back. Mr. Solomon said the Board would have to adopt the resolution and we would have to do any last minute plans. Mr. Solomon said when the plans are ready to be signed off on the last step is payment of the fee. Mr. Solomon said we would pay under protest. Mr. Brady said you can't get the CO until you pay the fee. Mr. Brady said you can't spend it; he thinks if there is an appeal pending they would get interest on it. Mr. Solomon said pending legislation, if the applicant paid the fee, they would be entitled to a reimbursement. There was a discussion on the legislation in the assembly and what was found on the DCA website and what the construction official might do if the Board doesn't act on this application.

Mr. Maugeri made a motion to authorize Mr. Brady to draft a resolution for application **PB-10-08-1a Wal-Mart Amended Preliminary and Final Site Plan, "C" Variances, Block 70 Lot 1.01 and 1.04**. Mr. Brady said what we need is to draft a resolution of approval including a draft with alternatives to deal with COAH issues.

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Mr. Solomon said this is very difficult because of the inconsistency in the statute and the regulations. Mr. Solomon said Wal-Mart appreciates the Board working with Wal-Mart on this issue. Mr. Solomon said he would ask this Board for the indulgence of the construction official while we work through this. We would greatly appreciate this. Mr. Kilduff said he would convey that to the construction official. Mr. Zschack seconded the motion made by Mr. Maugeri.

Upon Roll Call Vote:

AYES: Zschack, Suckey, Crowley, Maugeri, Christiano

NAYS: None                    ABSTENTIONS: None

(Motion Approved)

The Board took at break at 8:55 PM

The Board reconvened at 9.01 PM

**APPLICATIONS TO BE HEARD:**

There were no applications to be heard.

**OTHER BUSINESS:**

**PAYMENT OF BILLS:**

Mr. Suckey made a motion to approve the **Franklin Borough Planning Board Escrow Report for May 18, 2009**. Seconded by Mr. Maugeri.

Upon Roll Call Vote:

AYES: Suckey, Maugeri, Christiano

NAYS: None                    ABSTENTIONS: Zschack, Crowley

(Motion Approved)

**DISCUSSION:**

**Master Plan Re-examination**

Section 5

Mr. Nelson said he wanted to focus tonight on the circulation plan. Mr. Nelson said in section five there will be an 8 or 9 page section that replaces the Circulation Plan Element contained in the 2003 Master Plan. Mr. Nelson said the Corridor Study will also be part of the Circulation Plan Element but will remain as a separate stand alone document and be referenced in the new Circulation Plan summary. Mr. Nelson explained why he decided to do the Circulation Plan this way.

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Mr. Kilduff suggested a subcommittee to review the Corridor Study to make changes and act on that and then to send it back to Urban (Engineering). Mr. Kilduff said if we wait until the next meeting we will be in the middle of June. Urban Engineering contract with DOT is up the end of June. Mr. Kilduff said, if the Board is comfortable to form a subcommittee to meet with Mr. Nelson and himself, and try to formulate what ever changes you might have. There was a discussion on adopting the corridor study as part of the Master Plan. The subcommittee would look over the corridor study.

Mr. Nelson said section five will have an eight or nine page Circulation Plan Element summary and in that summary this document (Corridor Study) will also be referenced and adopted as part of the Master Plan. Mr. Nelson said so we would want to get this (Corridor Study) into a format that we are comfortable with. The subcommittee volunteers are Mr. Zschack and Mr. Christiano. Mr. Kilduff said for the record this (Corridor Study) is a product of many meetings with the public, a lot of discussion over a long period of time and there are signatures in the back to show who was at those meetings.

Mr. Kilduff said the subcommittee will get together and make recommendations that the Board will back. Mr. Kilduff said we may have to take those recommendations and ship them off directly. Mr. Kilduff said if there is more time available he would ask for it but the grant money is running out. The subcommittee meeting was scheduled for Wednesday, May 27, 2009 at 10:00AM. Mr. Kilduff said we are not taking formal action but this is our chance to get this document to look the way we want it to look and add it as an appendices.

Mr. Nelson said when he sends out section five he will also send out the previous sections which you have already given me your input and he will make those revisions accordingly. Mr. Nelson said the next document that you will get from me will almost be a completed re-examination report.

Mr. Nelson referred to Main Street and the Main Street revitalization plan. Mr. Nelson said he thought that the Main Street Revitalization Plan had been adopted by the Board as part of the Master Plan, but based on Mr. Kilduff's research it hasn't. Mayor Crowley asked if he was talking about the Heyer and Gruel Plan. Mr. Kilduff said yes the Main Street Revitalization Plan. Mr. Kilduff said we have this adopted plan but it hasn't been incorporated into the Master Plan. Mr. Kilduff said this would

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be the appropriate time to do this but at the same time there may be other changes to this or a future amendment to our Main Street Plan as a result of this Redevelopment Study. Mr. Nelson said if you want to have a Main Street Revitalization Plan that has weight then it should be part of your Master Plan.

**Visioning**

Mr. Nelson said he had prepared a draft vision statement which he thought we should get input from the Plan Endorsement Committee before the Board takes any action. Mr. Nelson said that vision statement will be incorporated into the Master Plan re-examination report. Mr. Nelson said we should be prepared at the next meeting to try and finalize that.

**CORRESPONDENCE:**

Mr. Kilduff said there is an updated inventory of subdivisions pending and approved land use projects in Franklin Borough. Mr. Kilduff said that is a document that shows the status of everything going on in the Borough.

**OPEN PUBLIC SESSION:**

Mr. Suckey made a motion to Open to the Public. Seconded by Mayor Crowley. All were in favor.

No one from the public stepped forward.

Mayor Crowley made a motion to Close to the Public. Seconded by Mr. Zschack. All were in favor.

Mr. Christiano said there are a number of projects in town that have started off with the best intentions and have stalled, (one of the projects is the) two houses on Maple across from the horse farm. There was a discussion on that property, other properties that have stalled in town and what the Borough can do about it. Mr. Kilduff said we don't have signed plans in the office and this can go for a couple of years. Mr. Kilduff suggested to put a condition in the resolution that revised plans, acceptable to the Board engineer, must be submitted within a reasonable time frame, say 90 days from the memorialization of the resolution, to bring some closure so you have in the file an approved set of plans.

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**ADJOURNMENT:**

There being no further business to come before the Board, the meeting was adjourned at 9:47PM on a motion by Mr. Zschack. Seconded by Mayor Crowley. All were in favor.

Respectfully Submitted,

Robin Hough  
Secretary