

**MINUTES**  
**BYRAM TOWNSHIP PLANNING BOARD**  
**July 15<sup>th</sup>, 2010**

**CALL TO ORDER**

Chairman Shivas called the meeting to order at 8:00 p.m.

**ROLL CALL**

	<i>Mr. Chozick</i>	<i>Mr. Kaufhold</i>	<i>Mr. McElroy</i>	<i>Mrs. Raffay</i>	<i>Mr. Valentine</i>	<i>Mrs. Segal</i>	<i>Mr. Walsh</i>	<i>Mayor Oscovitch</i>	<i>Mr. Gonzalez</i>	<i>Ms. Shimamoto</i>	<i>Mr. Shivas</i>	
Roll Call	A	P	P	P	P	P	P	P	P	A	P	
	Attorney	Engineer	Secretary							Kurt Senesky	Lou Slaby	Cheryl White

**STATEMENT BY CLERK**

Adequate notice of this meeting has been published specifying the time and place in compliance with the provisions of the Open Public Meeting Act.

**FLAG SALUTE** led by Chairman Shivas.

Planning Board Member Lisa Shimamoto arrived at meeting at 8:20P.M.

**REORGANIZATION:**

- Nomination of Chairman  
Mr. George Shivas was nominated by Mr. Ken Kaufhold and second by Mrs. Caryn Segal. There were no other nominations. All were in favor
- Nomination of Vice-Chairman  
Mr. Ken Kaufhold was nominated by Mr. Andrew Mc Elroy and second by Mr., Wayne Valentine. There were no other nominations. All were in favor.
- Nomination of Attorney  
Kurt Senesky was nominated by Mrs. Segal and second by Mr. Gonzalez. There were no other nominations. All were in favor.
- Nomination of Engineer  
Mr. Louis Slaby was nominated by Mr. Walsh and second by Mr. Kaufhold. There were no other nominations. All were in favor.
- Nomination of Planning Consultant  
Heyer ,Gruel & Associates was nominated by Mr. Ken Kaufhold and second by Mayor Jim Oscovitch. There were no other nominations. All were in favor.
- Nomination of Secretary/Administrative Officer  
Mrs. Cheryl White was nominated by Mrs. Lisa Shimamoto and second by Mr. Wayne Valentine. There were no other nominations. All were in favor.
- Nomination of Newspaper  
The New Jersey Herald was nominated by Mr. Wayne Valentine and second by Mayor Jim Oscovitch. There were no other nominations. All were in favor
- Adoption of 2010/2011 Calendar  
A motion to adopt the annual calendar was made by Mr. Ken Kaufhold and second Mr. Wayne Valentine. All were in favor

**APPOINTMENT FOR COMMITTEES:**

- Site Plan Sub-Division Committee  
Chairman George Shivas appointed Mr. Wayne Valentine, Mr. Andrew Mc Elroy, Mr. Mike Walsh and Mrs. Caryn Segal
- Ordinance Sub-Committee  
Chairman Shivas appointed Mr. Ken Kaufhold, Mr. Robert Chozick, Mrs. Lisa Shimamoto and Mr. George Shivas.

- Master Plan Sub-Committee

Chairman George Shivas appointed Mr. Frank Gonzalez, Ms Marie Raffay, Mr. Ken Kaufhold and Mr. George Shivas.

**MINUTES:**

**June 3, 2010:**

A motion was made by Mr. Kaufhold and seconded by Mrs. Segal to approve the minutes with minor correction to indicate feet and inches to page 2 and page 4 where necessary. The following vote was taken:

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mayor Oscovitch	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion		X									
Second					X						
Aye		X	X	X	X	X	X	X			X
Nay											
Abstain							X				
Absent	X										

**May 17<sup>th</sup> Joint Meeting with Council and Planning Board:**

A motion was made by Mr. Walsh and seconded by Mr. Valentine as present. The following vote was taken:

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mayor Oscovitch	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion		X									
Second						X					
Aye			X	X	X			X			X
Nay											
Abstain						X	X				
Absent	X										

**RESOLUTIONS:**

**Trac Contracting, Inc., Waterloo Rd. (Cranberry Ledge), Block 91 Lot 286, Z11-08:**

Resolution for application Z11-08 was approved with correction to page 6, correct date. Kurt Senesky will correct. The following vote was taken:

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mayor Oscovitch	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion		X									
Second						X					
Aye		X		X	X	X	X				
Nay											
Abstain							X				
Absent	X										

**Joseph Shakh, 40 Ash St., B7 L259, Z22-06:** Resolution for application Z22-06 was approved.

The following vote was taken:

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mayor Oscovitch	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion		X									
Second					X						
Aye		X	X	X	X	X	X		X		X
Nay											
Abstain								X			
Absent	X										

**Brian Leahy**, 60 Sherwood Forest Dr., B281 L417.02, Z3-10: Resolution for application was approved. The following vote was taken:

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mayor Oscovitch	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion		X									
Second							X				
Aye		X	X	X	X	X	X		X	X	X
Nay											
Abstain								X			
Absent	X										

**Lutz, John & Jennifer**, 59 Lake Drive, Block 249 Lot 46; Z6-10.

**Joann Smith, 57 Lake Drive**

Mrs. Smith asked about what would be the procedure for demolition of existing (old) shed. Kurt Senesky assumes the Lutz's will voluntarily dismiss the balance of their case. There are still outstanding summons issued to the Lutz's that have not yet been disposed of but Kurt assumes they will be voluntarily be dismissed or have a plea be taken as far as the summons are concerned. It is Kurt's intention that at another case mgmt conference Kurt will inform the judge that this resolution has been approved and will ask the judge for an end date on the demolition of the existing shed. George Shivas wanted to know if a demolition perm is needed to be obtained. Kurt was not sure if he has to demo entire building and does not believe he will. The issuance of a building permit falls under the Building Department.

Mrs. Smith fears are that the Lutz's are granted this new variance and this could be extended for another three years and the existing shed still be standing. Kurt replied he will ask the judge as part of the order he make a date as to when the shed has to be knocked down.

Mrs. Smith asked when the case management conference will take place and Kurt replied within the next month and Kurt will make a report to the Board.

Mrs. Smith asked if the Lutz's could make a plea to tear down existing structure in conjunction with building the new structure. Lisa Shimamoto said the Lutz's stated that at the last June 3<sup>rd</sup> meeting. Mrs. Smith asked if that is the case could this go on for three more years? Kurt said he would be shocked if that could happen and doesn't anticipate that will happen. Mrs. Smith stated she has lived with this for three years and doesn't want to live with it for another three years.

Mrs. Smith asks if they came back one year from now and then came back to the Board next June and request an extension, will it be granted? George answered it would be up to the Board and George feels they could grant an extension with a condition the existing shed be removed within 30 days. Mrs. Smith said she could put her mind at ease that this won't go on for another three years for the shed to come down and George felt the longest shot would be one more year.

Mrs. Smith questioned the enforcement of the no parking condition in the resolution. Kurt stated the zoning officer would have to enforce this. Mrs. Smith asked who would enforce this on weekends and Kurt said if the Zoning Officer's request was ignored a summons would be issued and if it continues they could be fined. Mike reiterated that it is stated very distinctly in

the resolution that the applicants not park any vehicles in front of the shed. Mrs. Smith asked if this resolution goes through, will there be no parking in front of the shed at any time? Kurt answered correct.

Motion made by Mr. Walsh and second by Mr. Valentine. At this time there was discussion between the board and Mr. Walsh asked that Condition # 1 be amended as follows: "There shall be no parking of any vehicles between the shed and the roadway".

**Lutz, John & Jennifer, 59 Lake Drive, Block 249 Lot 46; Z6-10.** Resolution for application was approved. The following vote was taken.

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion							X			
Second						X				
Aye	X	X	X			X	X			X
Nay					X			X	X	
Abstain										
Absent				X						

**COMPLETENESS:**

JTK Associates, LLC BL 226 L16 – 9 Lackawanna Drive – SP2-2010

Requested two waivers –

1. Sewer allocation
2. New Jersey Department of Environmental Protection.

The Board motion to accept the waiver requests.

Board voted to deem the application complete. Motion by Mr. Wayne Valentine to set meeting date for September 2, 2010. The Board noted the following items need to be addressed and get the information to our planner at least 10 days prior to meeting date:

- Sewer allocation or design of a plant site.
- Define buffer zones for environmental impact with wetlands in relationship to buildings should be shown on plan.
- Define parameters for stormwater management plan to support the conclusions and calculations.
- Provide a traffic study which should include the quarry at full operational capacity and the proposed site development.
- Items required as of Lou Slaby's report dated, July 6<sup>th</sup>, 2010.

The following vote was taken.

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mayor Oscovitch	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion					X						
Second		X									
Aye		X	X	X	X	X	X	X	X	X	X
Nay											
Abstain											
Absent	X										

**NEW BUSINESS:**

Thomas & Lisa Brennan, BL 365.04 L7, 11 Joan Drive Z07-10 – Variance for left yard setback & maximum lot disturbance to repair, create and modify patio, steps and retaining walls and movement of shed.

Jeff Careaga, Careaga Engineering, testified as an engineer and presented aerial photo of Mr. Brennan's property marked Exhibit A1-7-15-10 which shows layout of Mr. Brennan's property. Applicant hired the contractor to fix the original retaining walls which had moved and some large boulders were actually falling away from the existing walls which were in poor condition, more disturbance of the lot was done than allowed by ordinance. Contractor did extend his driveway to allow for moving the shed and did move the retaining wall back in rear of property to allow for more yard.

Page 3 of drawing illustrates what Mr. Brennan's intent with the property and shows patios being added on side and rear of property and shed being moved. The back yard has a large hill which brings water down the backyard, and they have proposed a patio behind building and a drainage system with stone underneath the patio with a stone drywell added and yard drains tying into existing pipes that cross the driveway. They added buffering in back that is sheer ledge rock; the ledge appeared stable at the point of inspection and doesn't seem to be a problem with long term erosion.

Mr. Careaga inspected the walls and they are built better and are structurally safer than they were. Mr. Careaga has no problem signing off on the construction of the walls. The walls are leaned back and are linked together.

- Mr. Careaga reviewed Mr. Slaby's report and items #1 and #2 require no further comment.
- Item #3 – Mr. Careaga has no problem putting those dimensions on the drawing. Side yard setback should also be depicted. For the shed to be useful applicant would like the shed at end of his driveway.  
The shed is one story, 12x 16 and is 10 feet from the main dwelling.  
Mr. Senesky pointed out that he checked the notice of the application and confirmed the applicant noticed "With any additional variances or waivers that may be deemed necessary".  
Mr. Careaga stated that the shed will be 13' from the sideline which includes a 2' overhang.  
The side yard setback is 13 feet and George indicated 20 feet is required.
- Item # 4 – Some sections of the driveway have a grade of 17.5%, Mr. Careaga agreed.
- Item # 5 – Mr. Careaga agreed to provide all the necessary calculations. There are some rocks that are 6 to 8 feet tall. Mr. Careaga stated it is necessary to "key in" and lock the walls like a puzzle, and they are sloped back so they don't slide back unlike when the walls were originally constructed. Mayor Oscovitch asked about retaining wall calculations. Mr. Careaga said you need to verify that the wall will not rotate the weight and the thickness of the wall to withstand force and the sliding of the wall. Also the friction calculations which are not applicable to this wall.
- Item #6 - Mr. Senesky asked about standard height of fence. There are a lot of walls that are higher than 4 feet and wanted clarification that they put a fence where the wall is higher than 4 feet.  
There should be a fence where there is pedestrian traffic. Mr. Careaga pointed out that should be along driveway and around shed area. Lisa Shimamoto mentioned in keeping with the neighborhood, fences would be so out of character, and asked if the applicant can use landscaping. Lou said the applicant suggested fences but shrubbery would be better. Kurt Senesky added if it is the consensus of the Board, the Board can impose shrubbery vs. fence. Mr. Careaga said by the shed it should be a fence because of the drop. Lou Slaby told the applicant he needed to ensure survival of the plant life.
- Item #7 – Storm water runoff – Mr. Careaga concurred that was his intent and due to shallow rock on property and they designed a shallow dry well to help with water flow and tie into the existing drainage system.
- Item # 8 –
  - Hydrostatic buildup of water pressure against basement wall  
The stone itself is designed to be 6' off of back of house and they will line with plastic to ensure no seepage. Lou asked about the east side patio, Mr. Careaga indicated there is no storm water retention because that is where the septic is. The storm water retention is only on rear patio. Lou wants the plan indicate what type of barrier and how the retaining wall will be protected as well as the basement wall.

- Storm water runoff from the yard behind dwelling flows into patio and causes choking of the crushed stone. Mr. Careaga said this can be addressed with a sump inside of the inlet. Lou indicated run off coming off the hill and elevations don't depict that it will be diverted away from the patio. It suggests that the run-off will come off the hill carrying with it dirt onto the patio choking off the stone. Mr. Careaga said they will illustrate appropriate size swales and divert the water away from these inlets so the bulk of the water would not go into those. Lou asked about inlets taking water from lawn areas to protect against choking, and he would like to see inserts for filtration. Mr. Careaga said they can do that. Wayne Valentine asked if applicant has a paved driveway and if the water goes down Joan Drive. Applicant indicated "yes" but they directed it to go against the wall so the water does not cross driveway to prevent icing. Mr. Careaga said he addressed that question further down but wanted to finish addressing Item # 8.
  - Capacity of the proposed Storm water system to accommodate any storm water from the rear of property flowing into the system was discussed. They will swale the water around so the inlets don't take the bulk of the water and they will size those swales properly.
- Item # 9 – They agreed the swale grading will be defined and they agreed to do that.
  - Item # 10 – The driveway was blacktop prior to construction of the project and is currently dirt and will be blacktopped at end of project. They are going to do minor regrading to keep the water on the right side of the driveway as it comes down. Mr. Walsh wanted to clarify that the driveway was once blacktop prior to construction, it is currently gravel, but had been blacktop previously. Mr. Walsh asked when did construction start. The applicant stated the middle of last summer. Mr. Brennan intent is to restore the driveway to black top and regrade to prevent icing. Chairman Shivas asked how much water runs down driveway. Mr. Careaga said just what comes over the walls and there is a storm drain on Joan Drive close to the property. The draining should be better when complete. Mr. Brennan said he was going to put river rock between blacktop and wall to help with drainage.
  - Item # 11 – Mr. Careaga stated that they have been in contact with Sussex County and they are anxious for them to stabilize the site.

Lou Slaby asked if Mr. Careaga wanted to give testimony to support his request for a variance. Mr. Careaga said the applicant had no choice but to disturb steep slope to correct a situation. He had to rebuild the walls due to falling rock and now the walls are safer. Applicant was really fixing an area that was already pre-disturbed. Mr. Senesky pointed out that the zoning chart shows existing disturbed is 64% and proposed 77.9%. There should be a "v" at end of that, not "e".

Mr. Kaufhold asked if the rear of the property was already disturbed. Mr. Careaga indicated the rear was already disturbed, the applicant did move the wall back for more yard.

Mr. Senesky asked if the shed could be relocated so that a variance would not be required. Mr. Careaga indicated it would require additional rock removal. There is no access from other side. Mr. Senesky indicated he meant on the other side of property, and Mr. Careaga said there would be no way to get the shed there. There is no access so they would have to re-build shed.

Mrs. Segal pointed out that the zone table and plan were not the same. The lot area was okay. Mr. Careaga stated the plans are correct, vs. the application, The Front setback should be proposed 45'.3 and the Left side setback for shed should be 13ft. which would be a 7' variance. Mr. Careaga will make sure 10' setback from house also. Max Lot disturbance existing should be 64% not 77.9%. Correction to applications were made as mentioned the application and signed by Mr. Brennan for the file.

Mrs. Raffay asked about septic being under pavers and if they will have access to pump. Mr. Brennan indicated "yes".

Chairman Shivas open the meeting to the public.

Robert Siejkowski, 15 Joan Drive

Mr. Siejkowski asked that since the work is complete what remedies are available to the community if this application is not granted. Mr. Senesky stated the Ordinance would have to be enforced and a form of order issued to the applicant to restore the property. If applicant failed or refused to do so it would take the form of a lawsuit in Superior Court.

Mr. Siejkowski recognizes to the Board that this isn't the proper forum for his issue but applicant believes the rock walls were constructed on his property and wants to go on record stating he believes there has been encroachment on his property and is seeking legal remedy to return his property to his original state.

Mr. Senesky stated the Board received signed and sealed plans and the board is required to accept them. If the Board approves the application, it has no effect for Mr. Siejkowski's right to seek legal action.

Mr. Siejkowski also indicated concerns about storm water runoff into phone and electric company boxes. Board asked the applicant if the utilities were notified, applicant indicated "yes". Mr. Careaga indicated that they would be sure storm water is diverted from the utility boxes.

Meeting was closed to the public.

Mr. Slaby indicated the Board may require submittal of asbuilts for construction, and that prior to approval that plan B be submitted.

Mrs. Shimamoto asked if the Environmental Commission has reviewed the plans and stated that they may want trees replaced. Chairman Shivas stated there is no tree Ordinance in Byram but they can add planting of additional trees as a condition. Mrs. Shimamoto asked if they could submit a landscape plan.

Mr. Valentine needs to see additional swales so there is no run off. Mr. Careaga agreed and said on new plans the swales will be big enough to handle runoff. There won't be any major changes to plan other than illustrating to Mr. Slaby that the calculations and that swales are big enough to handle storm water runoff, overload the storm water system and agreed to any of Mr. Slaby's recommendations.

Chairman Shivas would like to see landscaping at back side of property which will help water runoff. Chairman Shivas asked about landscape along ledge rock, maybe in front. Mr. Senesky asked the Board if they want to see a design. Chairman Shivas wants to see an architectural design submitted and added to the application.

Mr., Walsh would like to see landscaping if it is proposed in lieu of fences. Mr. Walsh thought we were waiting for specific depictions of dimensions of shed and or distance of accessory structure and primary residence.

Mr. Careaga asked the Board to take into consideration that they have a disturbed site and Sussex County Soil is waiting on Board's decision. Mr. Careaga stated they would conform to whatever Mr. Slaby and the Board wanted.

Mr. Senesky agrees with Mr. Walsh that they should see these items before making a decision.

Mrs. Raffay feels the property in its current state is a detriment to the community and when it rains, soil will erode.

Mr. Senesky said he can make a resolution with conditions that additional elements be provided to the Board to review, this way the applicant won't lose time.

Chairman Shivas reiterated what is needed for next meeting. If the board requests it, Mr. Senesky can do a favorable resolution.

- Complete landscape design (details on the fence or landscaping to the front).
- Calculations Mr. Slaby requested
- Swales detail
- Distance to shed and primary structure
- Dimensions of shed
- Shed side line
- Detail driveway grading.

Motion made by Mr. Valentine and second by Mr. Kaufhold to authorize Kurt to prepare a favorable resolution and to continue the application on August 19, 2010. The vote was as followed:

Planning Board Member	Mr. Chozick	Mr. Kaufhold	Mr. McElroy	Mrs. Raffay	Mrs. Segal	Mr. Valentine	Mr. Walsh	Mr. Gonzalez	Ms. Shimamoto	Mr. Shivas
Motion					X					
Second	X									
Aye	X	X	X	X	X		X	X	X	
Nay						X				
Abstain										
Absent	X									

**BILLS:**

Lou Slaby Engineering	TOTAL	\$6,009.72
Heyer, Gruel & Associates	TOTAL	\$1,215.00
Kurt Senesky	TOTAL	\$4,650.00
GRAND TOTAL		\$11,874.72

**OTHER BUSINESS:**

**ADJOURNMENT:**

At 10:10 p.m. Mr. Valentine made a motion to adjourn, it was seconded by Mr. Kauffold, all were in favor and Chairman Shivas adjourned the meeting.

Respectively submitted:  
Cheryl E White