

**Planning Board Meeting**  
**Special Meeting of September 30, 2009 at 7:00 pm**

The regular meeting of the Planning Board took place on the above date. Chairman McCabe read the Open Public Meeting Act and requested Mrs. Citterbart called the roll. Board Secretary Citterbart stated there was a quorum.

**Members Present:** Mr. Caffrey, Mr. Flaherty, Mrs. Fowler, Mr. Ricciardo, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

**EXCUSED:** Mr. Elvidge

**ALSO PRESENT:** Mr. David Soloway, Esq., of Vogel, Chait, Collins and Schneider, Cory Stoner, Board Engineer, Debra Millikin, Deputy Town Manager.

**FLAG SALUTE**

**OLD BUSINESS**

**#PB-07-26 – Able Energy Company – Block 1301, Lot 8 – 38 Diller Avenue. Applicant proposing to replace building and resume home heating oil sales and distribution on said property. David Panella, Esq. represented the applicant. Kenneth Fox, Fox Architectural Design, 546 Route 10, Ledgewood, NJ**

**SWORN: Mr. Louis Ponte, 2 Show Court, Flemington, NJ 07822**

Mr. Soloway stated: Neil Flaherty a new member of the Planning Board and Richard White who has been on the Planning have both signed certifications and listened to all the tapes of the three prior hearings on this matter and are eligible to vote.

Mr. Panella stated: Thank you very much for having a special meeting. A big issue at the last meeting was truck circulation and truck traffic. I spoke to Ken Fox our expert about that and I understand that there was a demonstration on site where Chairwoman McCabe was present as well as other representatives of the Town. I will show you a report on that to the balance of the Board. There were also a number of changes made to the plans by Mr. Fox. He talked about the fence on Diller Avenue where he dealt with that. Realignment of the new entry gate to Railroad Avenue like the engineer requested at the last hearing. The issue of a rack agreed to be repaired. We added a trench drain and oil separator at the left exit of the roadway. There is added landscaping which Mr. Fox will go over. There was recently submitted the drainage for that area we added the trench and separator. That was sent over by the engineer. Mrs. Citterbart received it two days ago. Chairwoman McCabe stated: It was received today. Mr. Panella stated: One other question that Mr. Stoner that may be brought up tonight that dealt with the website from the DEP on the status of the underground storage tanks. The new present of the company, Mr. Ponte, will speak about that issue. Mr. Westad has been replaced by Mr. Ponte. If

there are other things I will put them on my list and try to answer them tonight so we can move forward to the resolution of this application.

Chairwoman McCabe questioned the Board if they had anything outstanding that they would like to address. Mr. Ricciardo stated: The right of way on Diller Avenue has never been agreed to. Mr. Panella stated: Originally the Town has asked for a 33 foot dedication. It was agreed to do 20 feet. Mr. Stoner stated: We never agreed to that. According to the return map illustrate that Diller Avenue has a 66 foot right of way. Now 33 feet from the center of the roadway would be the houses, the garage, the building and almost every other dwelling on that side of the street is a very large right of way. There are a lot of encroachments inside that. Even though the Town has a right of way in place, an old historic right of way, they have some rights to those areas but you cannot legally make them move their structures, buildings, or dwellings without some kind of due compensation. Mr. Ricciardo questioned: What about fencing? Mr. Stoner stated: No, I don't think so. That is why in the last couple of hearings we have been pushing to have them move it back so they can get sidewalks and border in. If Mr. Fox would go through every page of the plan, there are at least a dozen changes in that plan. One of the changes is with the sidewalk. They moved the fence so it is parallel to the sidewalk and back by the building. Today if you go in front the fence is in front of the building. It is nice they have moved it back. They have proposed a 20 foot wide right of way, which would make the sidewalks and the border areas to do you, have a formal dedication to the Town in those areas? This is fine as long as we don't give away any other rights.

Mr. Ricciardo stated: We have not seen a verification of that the rear entrance right of way was ever approved by this Board or any Board that preceded us. Mr. Soloway stated: In my notes from the last meeting indicate there was a site plan approval from 1980 or 1981 which was the newest site plan in the Town files. Mr. Ricciardo stated: There was always the right of way, but never a permitted exit. It said there was a retaining wall where the gate is presently.

Mr. Ricciardo stated: There also was a question on thru-putting. We asked for a compromise on thru-putting. We were told there was no thru-putting. Mr. Stoner stated: I thought they agreed not to do thru-putting. Chairwoman McCabe stated: That was our understanding that they agreed not to but the testimony at the last meeting said they never agreed to it. Mr. Panella stated: I am trying to figure out what regulation that comes under that the Board is seeking to enforce. Chairwoman McCabe stated: We asked Able to utilize because it is a densely populated neighborhood to utilize the property themselves but by allowing other companies to come in and utilize the facility would be a burden on the neighborhood. By law they are allowed and court order to conduct their business there but we wanted to compromise from the thru-putting for the neighbor. Mr. Ricciardo stated: Nowhere in this court order or the testimony was thru-putting discussed. Chairwoman McCabe stated: It was only discussed here, not in the court.

Mr. Ricciardo stated: The early morning deliveries where the trucks are going to wait. We were supposed to get some verification from a property owner in town or out of town that was going to permit the tankers to wait prior to 7:00 am which we never received. We don't want a truck sitting out on Diller Avenue prior to 7:00 am when the facility opens. We were told by Mr. Westad that arrangements were being made for the trucks to wait in another location. We asked

for written verification from the property owner where this was going to occur. We need to know two things: One that it was going to happen and two that it was a permitted use. Who is going to operate this? Is it going to be Able or are they going to lease it out as we have evidenced before to North Jersey? Mr. Ponte stated: No. Able will operate it. Mr. Ricciardo questioned: Where are your service bands being stored? We have asked for black vinyl fencing and it still shows a painted fence.

Mr. Fox stated: We have done a number of things. We kept the fence parallel with the front of the building. The north side abuts the building on the second side. We have relocated the new black vinyl fence along the entire front so that the gate on the south side has been moved back from previously. The folding gate was made 6 foot wider and will fold up against the fence. Mr. Ricciardo questioned: Is that an automatic gate or manual gate. Mr. Fox stated: A manual gate. Mr. Stoner stated: Can you explain what you changed in that entrance and you eliminated a parking space? Mr. Fox stated: We eliminated one of the parking spaces to make it look better on the south and on the edge of the apron. We showed the apron being closed up before and made a little wider on the south side. On the north side we elongated and widened the entire apron. We proposed sidewalk and grass area along Diller Avenue. On the south side we had shown a parking space on the side of the maintenance building, we have now striped it and will not be using it for car parking.

Mr. Fox stated: The truck demonstration showed it would be very tight if a car was parked there. We will allow that for overnight truck parking but not during the day. For the truck demonstration we had the tanker trucks do numerous movements on and off the site. On the site we had used paint and cones in areas that were parking spaces and fencing. We also analyzed where truck movements would go by marking archways.

Mr. Ricciardo questioned: To the south end of the building on Diller Avenue is a patched area, what occurs in that area? Mr. Fox stated: That is paved. That is an area that we will utilize for truck parking. Mr. Ricciardo questioned: Underneath that area there is a 500 gallon fuel tank listed on Sheet PB 2, 2 of 14? Where is the vent and fuel intake system? Mr. Fox stated: That is in the paved area. It is presently there now. If that became a concern we would be able to move our landscaping or curb back behind that and keep that from being parked on. In the same area we have provided a trench drain and oil separator in connection to the catch basin in front on Diller Avenue with same details as previously provided. One of the sheets that were not submitted previously was the engineers follow up with calculations related to the size of the tanker to make sure the size of the trench is correct. Along the front we pushed the planter back to coincide with the edge of the end of the gate. As we observed trucks coming out, trucks could make the right hand turn out and would come close to the curb on the outside and would not go over the curb and have plenty of room in the back. We have given them an extra three feet from what we demonstrated and it worked with the way the gate was presently. Mr. Ricciardo questioned: The oil separator that you have adjacent to the trench drain on Diller Avenue on the south entrance. At the bottom of PB 3 you indicate there is a pipe going from the oil separator to the catch drain and the note says over flow outlet for oil water separator between existing catch basin trench as required. If the oil separator overflows is that going to allow oil to flow into the catch basin storm system? Mr. Stoner stated: No. They have to plan the design for the oil water separator. There are different types. A standard oil water separator has a carved metal chamber

that has different chambers where as the water level rise it has to fill up before the water goes over the baffle series and out the structure. The oils will float and the water will continue but the oil will stay. Mr. Ricciardo questioned: If we had a lot of rain and enough water going into the trench drain in the oil separator and the water is strong enough it would never push oil out of the separator and into the catch basin? Mr. Stoner stated: It won't push what is in there but if there is enough rain that it overloads the unit it will bypass any new water. It won't wash out what it lets in. That is how it is set up. Mr. Ricciardo questioned: You are telling me that the oil will never flow into the catch basin? Mr. Stoner stated: I can't say never but that is how they are designed.

Chairwoman McCabe questioned: What is your recommendation on this type of system? Would you recommend it handle a 100 year storm? Mr. Stoner stated: No, these will never handle a 100 year storm. There is too much volume.

Mr. White questioned: Would it be necessary to have a maintenance schedule for the trench drains? Mr. Stoner stated: One of my comments is that they will have to provide a maintenance plan. I was going to request a maintenance schedule. They should have one in place so we can try to follow up on it to make sure they are clean, especially the chambers. Like any commercial property, we don't get too much in town where you have storm water quality issues. We are pushing this issue because it is a gas service station because it has a higher potential of having this oil and water problem. Mr. Ponte stated: We have no problem with the maintenance plan being part of this and accepted by Mr. Stoner. Chairwoman McCabe questioned: Storm water maintenance and trench drains would that be incorporated into you SPPC? Mr. Ponte stated: Yes. Chairwoman McCabe questioned: They will have a maintenance plan with the DEP on how the plant is run? Mr. Ponte stated: Yes that will part of the plan.

Mr. Fox stated: Minor details on the north side we have shown a grassy area we talked about with Mr. Stoner which is not easily maintained. In the area of the racks we are going to recondition those and how the water flows. We are going to recondition those and put concrete on top of those. Mr. Ricciardo questioned: How are you going to recondition them? Mr. Fox stated: We are going to recondition with concrete mixture that will be made to specification. They will be made to look close to new. Mr. Ricciardo questioned: You are not going to put any poxy on top of the existing concrete to smooth it out? Mr. Fox stated: No. Mr. Ricciardo questioned: What is the spill capacity of the area right there? Mr. Fox stated: Our spill container is the site. In this area there is about a three inch hump going into it. So it would be about 60 cubic feet. It would take any small spills could be contained in that area. Mr. Ricciardo questioned: Could a major spill be contained in that area? Mr. Fox stated: Would it be contained in the concrete area? The answer is no. Mr. Ricciardo questioned: If you had a major spill where would it go? Mr. Fox stated: It would go towards the two trench drains. Mr. Ricciardo stated: You are telling me that none of that would go onto this curb and onto Diller Avenue (Sheet PB 6)? Mr. Fox stated: As far as creating a flow on there that would be for storm water similar for any other liquid. Mr. Stoner stated: At Diller Avenue the top of the curb is a foot higher than it is at the front of that apron, the three sides of the filing apron that is 102/80 and the top at Diller Avenue is 104. It should flow back toward their building.

Chairwoman McCabe questioned: Mr. Ponte what is the capacity of the chamber? Mr. Ponte stated: About 2500 to 2800 gallon. Chairwoman McCabe questioned: Can a trench drain hold

2800 gallons? Mr. Ponte stated: It would be anticipated that the oil separator will be switched manually so that the spill would be contained at the site. Mr. Stoner stated: What they can do is use drains. They have a valve that can be turned off. It will drain at the back entrance where the trench drain is in the rear. On the other side of the trench drain they have an asphalt burm. It would drain into the trench. I would recommend a safety measure so it does not go down the drain at Railroad Avenue. Mr. Ponte stated: We can make sure that detail is provided on the oil trench drain separator. Mr. Stoner stated: That should be part of their plan. Chairwoman McCabe stated: There should be a burm in the other exhibits as well. Mr. Stoner stated: They did have one. Mr. Ponte stated: We removed it and we should have added it. It will be added.

Chairwoman McCabe stated: Since we are on drainage, when I was on the site I noted that the site was ball shaped and will need to be repaved so it will conform to the drainage pattern. The way it is now any fluids on the site are just going to sit in the middle. Mr. Ponte stated: We have no problem with adding that to the plan to make sure that occurs. With regard to some of the grades, I extended the trench drain well beyond the edge of the gate and all the way to the corner so when we rebuild that corner wall we repave that grading from here and made sure the low spot is caught in the trench drain. Chairwoman McCabe questioned: So this drainage plan is not quite accurate according to the site right now? Mr. Ponte stated: I think it is. We are going to rebuild that corner. We will have to take the walls down to rebuild the wall. When the pavement has settled we will raise it up toward the gate. Mr. Stoner questioned: Your issue there is that the pavement on the site so there is no ponding of water. Chairwoman McCabe stated: Exactly. Right now the topography on the back of the site is higher than the center of the site. Saying that it is going to drain toward that trench drain is not going to happen. Mr. Ricciardo questioned: The grades 102.35 and 102.33 are proposed grades or the existing grades? Mr. Ponte stated: All the grades that are shown there are existing grades. Mr. Ricciardo questioned: On Sheet PB 6, go to the right of way entrance proposed at Railroad Avenue and go to the trench drain in one of the boxes says 102.9. The next box says 102.82, 102.70, and 102.12. Mr. Stoner stated: Those are the corners of the concrete pads. Mr. Ponte stated: If you go to the left of that between the arrow of 102.35 the water comes down around the left of the concrete pads. We moved it over to the concrete pads because those are a few inches higher than the existing grades. I extended the trench drain to make sure that however they end up we will collect any water that goes to that corner. We are going to try and build it up a few inches so it goes towards the gate. Chairwoman McCabe stated: My point being every time a truck comes in there it is going to drive through and bring it out of the site. Mr. Stoner stated: The bowl area is Lot 8. If you have problems getting it out you might have to put a drain or something. Chairwoman McCabe stated: If you are going to repave the site and fill in where it is caved in there in the center it should be fine.

Mr. Ponte stated: In the rear of the site along Railroad Avenue at the public right of way where we have the gate we have shown the gate moved. I have aligned it with the center of Railroad Avenue where the trucks exit the site. The trucks will be able to be on the right side of the road. Mr. Ricciardo questioned: From the time of the incident to the present, the traffic flow on Railroad Avenue has changed drastically. Whether we want tanker trucks riding up and down Railroad Avenue, tanker trucks that cannot make turns onto Newton Sparta Road in either direction without crossing the yellow line is a question this Board has to resolve. Mr. Ponte

stated: I agree that the turn movement from Railroad Avenue onto Newton Sparta Road is not optimal. If the tanker stays in his lane in order to make the right hand turn he hit the turn by about one foot or 18 inches. Making a left I feel is typical standard acceptable on any of the streets in Newton. It does not mount the curb. It does not come close to the curb on the opposite side. Yes, traffic patterns changed here. I think it is more controlled than before. It would be preferable than having the traffic going down Diller Avenue where the residents are close to the street. We have the ability to make the turning radius here at Railroad Avenue by maintaining Railroad Avenue for us allows us to make simple movements on the site. If we have our tanker come up and fill the truck out toward the Railroad Avenue site that tanker would then be able to exit Railroad Avenue make a left and go towards Rockaway and be able to do that in a safe manner. Mr. Ricciardo stated: My concern is public safety and the fact that you have to cross into oncoming traffic. It is a potential for disaster.

Chairwoman McCabe stated: We had this conversation on site. When a tanker enters the site and exits on Diller Avenue and goes to the light there is no way they can make a right turn. It is an obtuse angle. The only way for them to get out of the site is and go north would be to go out Railroad Avenue. If Railroad Avenue was utilized it would eliminate as many tankers on Diller Avenue. Mr. Stoner stated: The easiest access for movement of the trucks from Diller Avenue and make a left into the site was a very smooth and quick movement. They can't make the whole turn movement without taking out the vehicles in front of the building. He came in and gets the whole truck inside the site and does a small movement of the cab a little bit and goes to the side. He had a very long unit. Making a right out of the site they do cross over Diller Avenue and blocks the whole side of Diller Avenue. No vehicles can get by. The exit at Diller Avenue was a very nice and easy movement. He stays to the right side to make a left. They are not in any opposite traffic. Mr. Ricciardo questioned: How about a right hand turn? Mr. Stoner stated: Right turn is the operable. He would have to be in the wrong lane of Railroad Avenue. Mr. Ricciardo questioned: He still crosses into the oncoming traffic? Mr. Stoner stated: Yes. Mr. Ponte stated: It is not our desire to make right turns onto Newton Sparta Road. We access the site coming north and exit coming south. Mr. Soloway stated: Based on the discussion, you can't make a right on Diller Avenue or Newton Sparta Road. Chairwoman McCabe stated: It is difficult from Railroad Avenue and impossible from Diller Avenue. Mr. Stoner stated: You cannot come out and make a left onto Diller Avenue. Discussion ensued.

Mr. Ponte stated: We have not shown a stop sign. We do have controlled access at that intersection where the apartments are on the left. It is a 180 degree perpendicular access. All the movements are typical and standard. The traffic light is favorable because you don't have cars stopping here. He has to wait for all the cars to go by. The traffic light provides enough open space for him to wait for his opening and make the left on Newton Sparta Road. I think this is a safe control to exit the site to the south. Mr. Stoner stated: It was about 9:00 am in the morning and the truck didn't sit there more than a couple of seconds before he made the turn. He went out really fast. Mr. Elvidge questioned: Was that a school day? Chairwoman McCabe stated: No, it was summer. The DMV was open. Mr. Ricciardo stated: They were all waiting to get inside at 9:00 am but at peak hours when they expect deliveries at 7:00 am when it is the heaviest traffic on Newton Sparta Road and Diller Avenue just waiting to get in. They want to be first in line at Motor Vehicle. Mr. Stoner stated: Your question might not be limited to tankers. It is a lot less number than the service. Mr. Ricciardo stated: Any tanker that has to cross the double

yellow line is a concern. It is a concern for public safety. Mr. Vandyk stated: If you are taking a right turn they are going to be sitting in the opposite lane for how long and that is going to obstruct people from coming in the road. Mr. Ponte stated: We are trying to find if there is enforcement. Mr. Soloway questioned: I thought it was Able's intention not to have anybody make a right on Newton Sparta Road to go north. How do you enforce that? Mr. Ponte stated: In many places there is a no truck right turn sign that is enforceable by police. At least then it would be enforceable by ticket. Chairwoman McCabe questioned: Would a tanker have any reason to go north? Mr. Ponte stated: No. We are going back to Rockaway or another facility right now. We cannot control every movement of the drivers. Mr. Caffrey stated: If we put a sign in place that says "trucks no right hand turn" it would not be any different than a "no turn on red" on a lot of the streets that are currently. They would just enforcement.

Mr. Ricciardo questioned: You said the tankers will be going back to the Able Distribution Center in Rockaway. Let's say we don't come to an agreement for thru-putting and you insist you want to do thru-putting and it is part of what you have been doing for years and the court says you can do it. If somebody comes in for thru-putting and they want to go right on Newton Sparta Road. Mr. Ponte stated: We will not be thru-putting.

Mr. Panella stated: Can you tell us more about the trucks, the direction of trucks and the operation. Mr. Ponte stated: Even that morning that we were there he said we could not make that right. It was impossible for him to make that right. Even in his right judgment he was not going to make the right, he was going to make the left. He would be our driver for Newton. Mr. Stoner questioned: Where is he getting the supply? Mr. Ponte stated: From Rockaway. Discussion ensued.

Chairwoman McCabe asked the Board how they felt about a left hand turn there. The Board agreed that it was fine.

Mr. Aponte stated: No service vans at the site. I opened another facility in Easton, PA so all the service comes out of that office.

Mr. Panella stated: We do want to use Railroad Avenue. I would like to get a consensus from the Board. There is a consensus that Railroad Avenue would be available to us provided we don't make a right. Mr. Soloway questioned: Is there any issue about coming in Railroad Avenue? Mr. Ricciardo stated: They said they would not use it as an entry, only an exit. Mr. Panella stated: We are tanker trucks only. Mr. Stoner stated: A tanker truck would not make that right turn without coming across the lane.

Mr. Ricciardo stated: I want to be assured that he said that the only tanker truck that would come here would be an Able truck delivered by that one individual. He would know he would not be able to come in Railroad Avenue. Mr. Ponte stated: Yes. Mr. Soloway stated: For the purpose of site plan you can't assume that one individual would be the only driver. I don't think he is telling you that for an approval on this guy being the driver. Mr. Ricciardo questioned: Now we are going to say that this is a permitted entrance even though it was never permitted before? This Board is granting them the right to install curbing and this entrance into our right of way? Chairwoman McCabe stated: That is what the Board is saying.

Mr. Fox stated: I added a little bit more landscaping and fencing. We had talked about the fence in the rear of the property being the existing fence. The other fence on two sides are being replaced with new. Across the front we are putting black vinyl. Chairwoman McCabe questioned: Does the Board have any issues with the fencing? Mr. Ricciardo questioned: Are they going to take the existing fence and paint it black? Chairwoman McCabe stated: Only in the back. The sides will be stockade and the front will be new black vinyl. Mr. Soloway stated: It is only the rear that you are going to paint the existing and maintain for chipping is what you said last time. Mr. Stoner stated: That was my concern is that when you use spray paint on a fence like that it will chip off in years.

Chairwoman McCabe questioned: How does the Board feel about that? Mr. Caffrey stated: Vinyl would be more desirable. Mr. Russo stated: I agree with Mr. Ricciardo. Mr. Flaherty stated: I agree with vinyl. The Board determined the fence should be vinyl.

Chairwoman McCabe stated: Something outstanding is the off-site truck storage. Mr. Fox stated: It is our desire to have off-site location. We will provide a location. Today we can make it a condition that is part of the resolution and we will be able to work with that.

Mr. Panella questioned: The parking we are talking about off-site is the tractor trailer? Chairwoman McCabe stated: Correct. When the tankers come in the morning. Mr. Ricciardo stated: We were assured by Mr. Westad that no truck will be there before 7:00 am. If he gets there at 6:30 am, where does he stay? The history has been that they park on Diller Avenue waiting for someone to open the gate. We don't want that to concur. He said he was going to make arrangements with an off-site facility where the tanker trucks could wait until 7:00 am when they open and then they would come to the site. Mr. Panella stated: The way you have to address that is through the municipality passing a no parking ordinance before such and such a time. We have no intention of parking the tractor trailer at the site at any time other than off loading product. Chairwoman McCabe stated: History would indicate different. Mr. Panella stated: To tell you that we rent a space over at Joe Blows garage. That is still not going to stop the driver from not going over there and stopping. What I am suggesting is that wouldn't be the better course of action be to say to the municipality to don't have parking there before 7:00 am. If someone complains to the police department, they give a ticket. That is the way to enforce it. I don't know if it is a good mechanism to rent off site because why can't we just tell the trucker to pull over in Sparta and wait until 7:00 am. Mr. Ricciardo stated: It is not us that brought it up and made that reply. We expressed our concern that we did not want the trucks there prior to 7:00 am idling. Mr. Panella stated: We are agreeing with you. That is a very reasonable request. Mr. Ricciardo stated: Mr. Westad indicated that he would provide us evidence that he was making arrangements to park off-site. Mrs. Millikin stated: The Town Ordinance does not allow any parking on Diller Avenue. Also we have a no parking ordinance for all Town streets from 4:00 am to 7:00 am. Mr. Ricciardo questioned: That is not going to be provided to us. Mr. Panella stated: Correct.

Mr. Fox stated: I don't recall any other changes I have made on here. Mr. Ricciardo questioned: Over by existing dispensing system to remain when we are talking about kerosene and diesel fuel you have a containment area. Is there any way we can put a metal containment there that can

hold five gallons of kerosene? Something more stable. Mr. Fox stated: Yes, we can do that. Chairwoman McCabe stated: When we did the site walk you indicated that you would line that area for no parking at the right of the entrance because we were concerned that cars were going to pull up and a tanker does not come in at the same time. Mr. Fox stated: Yes.

Mr. Fox stated: I left all the sheets for the turning radiuses in the set. I put a note on there that puts a date on our field observation and we did not make adjustments for field observations on the turning radiuses. I do not want to pull them out of the set and create confusion.

Mr. Ricciardo stated: If they are not going to be used mark them void. Mr. Soloway stated: I'm not sure they are a part of the approved site plan. Mr. Stoner stated: If they are going to be revised, take them out.

Mr. Stoner stated: You mentioned they did the trench drains and the storm water has to be revised and they have that they are tying the drain across Railroad Avenue. The trench water crossing Railroad Avenue detail has to be added to the plans. I assume we are going to need some kind of Developer's Agreement for them coming across a town roadway. Mr. Soloway stated: I think you would have the standard Developer's Agreement anyway, but that item was on my list.

Mr. Stoner stated: Your landscaping shows on that plan and on your landscaping plan and you left the landscaping off. Everything else site wise have been addressed. I have some issues about the environmental issues. We can talk about them next time.

Chairwoman McCabe opened the floor to the public.

Steve Kelmer, 21 Diller Avenue. Chairwoman McCabe questioned: Where is your house? Mr. Kelmer stated: In the cross street and 5 houses closer to here. Right on the curve on Diller Avenue. In the past six years since the incident the traffic is approaching 8,000 vehicles a day. It is employees and deliveries to and from the Brooks Company who closed in Newark and combined everything off Diller Avenue. The Amerigas Company has the bulk propane storage facility off the entrance to the Brooks Company. They have a fleet of delivery trucks that deliver everyday full of propane, plus the tractor trailers that deliver to that site. We have customers for Home Depot along with their tractor trailer deliveries. Applebee's, Kohl's, Marshalls, Lowe's their customers and tractor trailer deliveries, Walmart and another half a dozen stores in construction in the area. The traffic to and from Sussex County College. In the middle of all that Mr. Westad stated he was going to introduce a minimum of 24 fuel oil trucks to Diller Avenue and Newton Sparta Road twice a day. Those trucks will also be coming back along with Able's tractor trailers coming in and out for deliveries. Sussex County also has plans to put in a right turn lane off Sparta Avenue onto Diller Avenue which will increase the traffic flow. For the safety of everyone I just mentioned including the drivers from Able I am requesting one off-site improvement and that is the installation of two speed tables on Diller Avenue as you approach number 38 from either direction so there is a set speed on Diller Avenue. There are no surprises from Able pulling out and other cars approaching from either direction.

Chairwoman McCabe stated: How does something like that work putting speed tables on Diller Avenue? Mr. Stoner stated: Speed tables are elongated and three or four inches high and the top of the table is about 10 feet long and you have a taper that goes in about 10 feet long at the top and taper back down. You normally do two or three in a series to get the full affect of it. The idea is that they are shallow enough not to really slow down or impede emergency vehicles but they are enough to slow down normal traffic. It is not a speed bump where you are going hit your head. It will have a calming effect to slow the traffic down. You have to take existing pavement and mill out a section, pave in the humps, they have signage, there is striping that lead you up to them. They do work. The volume of traffic will not go away but it will slow them down. Chairwoman McCabe questioned: Does slowing it down defer people from taking a route that has those installed? Mr. Stoner stated: It depends. What is your other route? If you have another route that is easy to get to, maybe they will. If you are looking at the traffic that is using Diller Avenue what are they doing? Are they trying to bypass the center of town. I don't think it will slow them down enough to divert a lot of traffic. Chairwoman McCabe questioned: Will it make more noise like a speed bump? Mr. Stoner stated: I have not heard much on the noise because it is gradual. It has to be so people notice it. It can't be flat so people just drive over it. You will still get people that will come flying over these things. The normal traffic will slow down before each one. You do need more than one. You need two or three. It has to be a nice straight away. It has to be an area where you have good visibility. We talked about it in our circulation plan. Chairwoman McCabe questioned: Is there a safety factor involved considering the tanker trucks will be entering that side on Diller and going into the opposite lane? Is there a safety benefit there? Mr. Stoner stated: The traffic will be going slower. If the trucks are turning into the opposite lane or they are not moving as quickly yes.

Mr. Flaherty questioned: Is there any issues with snow plowing with the speed tables? Can they be damaged because the plow? Mr. Stoner stated: From what I have heard no because of the way they are designed. They are not a sudden hump. I have not seen them in the winter time. It can't be as clean as a standard roadway there has to be some residual snow. A nice flat roadway I don't think it will hurt. Mr. Russo stated: In Parsippany they installed them on a couple of parallel streets and they had the same discussion and arguments about bumps and tables. The speed tables worked fine. They make you go 25 mph. If you are doing 25 to 30 mph there are no issues for police. If you are cruising at excessive speed just as you would feel it as you would any impediment. There were really no issues with snow plows. At an engineering standpoint it makes sense to do it. Mr. Stoner stated: I think we are going to find a number of areas in town that makes sense.

Mr. Ricciardo questioned: Would your client consider installing these speed tables? Mr. Ponte stated: I think there is a stronger issue that we have to address and that is that I don't believe anyone has jurisdiction over this except for the governing body of this town. I know that the municipality is the one who authorizes them. If they want the traffic calming device they are the ones that have to put it in and maintain it and approve of it. Mr. Soloway stated: I think the Board can say whether they want traffic calming devices off site but I don't think the Board can make it happen without the approval of the governing body. Mr. Ricciardo questioned: If the governing body would approve the traffic calming devices would your client be willing to install it? Mr. Ponte stated: I can't answer that question at this point. I have no idea what the cost would be. It would mushroom into something more expensive than would be warranted by what

we are doing. Do we have to do traffic studies? Do we have to justify it or just the fact that you want it, is that enough? What style? Where are they going to be placed? The engineering work for it? The construction of putting a little concrete on it is not very much at all? Maybe they would consider making a contribution towards it for the materials. I don't know. I can't give you an answer on it right now. It sounds like it would help the speeding. I think it is something to pursue. I think it is more of an order of this Board sending a letter saying we were listening to this application and a resident came up with a good idea. We think it is your jurisdiction. We are passing it along for you to look at and give your consideration to. I think that is the appropriate way rather than to trying to add an additional expense on an off-site matter on this applicant.

Mr. Stoner stated: Yes it would have to be laid out. Where are you going to put it? We have all the traffic data for the roadway. You would have to justify the cost of range, private entity, and you would have to notify people that they are coming up so there will be cost in doing signage and stripes. Chairwoman McCabe stated: I agree with Mr. Panella that the cost getting ready to put them in is what is really high. The traffic study, the engineering study, where do you put them and when all of them are studied that is when we add them. It would be a very good thing as well. Taking into consideration Mr. Soloway's statement that they do not have any jurisdiction of the roads what would the Board like to do? Would the Board like to make a recommendation to the Town Council that we think this is a good option for that street? The Board agreed to recommend it to Town Council. Mrs. Citterbart would you do a letter on behalf of the Board to the Town Council to that affect?

Mr. White stated: The traffic study has already been done. Mr. Stoner stated: We have all the traffic data. The study is not a true traffic study. It is more like an engineer design. There are some areas that it can work.

Chairwoman McCabe stated: Mr. Kelmer an excellent idea. Thank you.

Mr. Ricciardo questioned: Mr. Ponte let's say I am a customer of Able Oil and I am on a regular scheduled delivery and someone at your facility looks at my usage and determines that it is time for a delivery. They generate a delivery order which is given to the truck driver. He takes the order and delivers to my house. He takes the ticket back and in the office they generate an invoice. Is that the normal way things are operated? Mr. Ponte stated: Yes. Mr. Ricciardo stated: I am slightly confused. In your court transcript it states that none of that is done on this facility. It states that all that is done in Rockaway. If there is no need for an office there then there is no need for the tanks, the rack and a kiosk that you can operate. Why do you need that second office building? If none of that is going to be done, either the situation has changed or this is not an accurate copy. Mr. Ponte questioned: What document are you referring to? Mr. Ricciardo stated: The actual transcript. Mr. Ricciardo stated: It states that the building is not necessary and that no ordering, no phone calls and no billing is done at this facility. It is all done at Rockaway all you need is the tanks, a rack and a kiosk. Mr. Aponte stated: You could run it that way. Mr. Ricciardo stated: So the situation has changed. So the information in that court document which is how the judge made his decision has changed drastically. Mr. Aponte stated: You are editorializing from this. Thank you. Mr. Ponte questioned: Wouldn't you want someone there is there is a live body there? Mr. Ricciardo stated: I appreciate the fact that you

are interested in customer service and yes if it were me I would want someone there. In my opinion in that court document and what has been testified there has changed drastically. They said none of this was occurring here. That is part of why the judge made the decision he made. The big argument was that the tanks are the primary structure and everything else on that site is secondary. You can operate totally without anything but the tanks and the kiosk. Mr. Ponte stated: Which you could. Mr. Ricciardo stated: All I am saying is that there is a difference in what is in those documents and what is being presented tonight. There is a big difference on how this facility is going to operate. Mr. Ponte stated: If I have to go based on what was presented and I have to go to where that facility runs as a standalone, I can do it that way. The way I had taken your statement initially was that we are sneaking a second building that was not there before. Mr. Ricciardo stated: No, not at all. That is how it was presented to the Board. That is part of the testimony that was presented to the court or the facts that were presented to the judge who based the decision partly on the fact that we were told that nothing else but the tanks are the primary structure and everything else is secondary and they could operate without anything but those tanks.

Mr. Russo stated: I want to thank Mr. Ponte, the new attorney, for being a lot more candid and open minded than the previous group. Sunday hours – Able would be amendable to not having Sunday hours at this facility. Snow removal – please describe to the Board that process. The number of office employees and trucks coming in and out. There was some disagreement between your comments, Mr. Fox, the attorney and your processors. Mr. Aponte stated: As far as the snow, I don't know what was presented before. Mr. Fox stated: We can adequately remove the snow from the site or move it on site enough to make our operation work. On regular snow storms we have an area around the entire truck area that snow can be piled up very high and very deep. There is an area over behind the rack that we can get areas that snow can be piled up. We can have it physically moved off site.

Mr. Panella stated: There is an exception to what Mr. Ponte said and I would like him to clarify it. Mr. Ponte stated: If there are any emergencies on a Sunday, we would bring somebody in to fill that tank. Mr. Russo questioned: How about the number of employees and number of trucks? Mr. Ponte stated: The amount of employees is four. A manager, yard guy and two customer representatives is what I see coming out of that facility. Mr. Fox stated: When we talked about the truck circulation we talked about the maximum number of trucks and employees. Our previous testimony still stands on the maximum number of employees on the site. I cannot recite all of them. We tried to show how we can accommodate those trucks, drivers and employees on a maximum day. Mr. Stoner questioned: What was the maximum number of trucks 12? Mr. Fox stated: Yes. Mr. Stoner questioned: Do you have an overnight parking plan in the set? Mr. Fox stated: In the last meeting we had some submitting issues but I did not submit a set of plans. There are quite a number of changes to the plan. We have had this on here since March 31, 2009. We made minor changes to coordinate it with this. There have been changes to the gates and everything.

Mr. Ricciardo questioned: You did state there would be no tankers parked here overnight, correct? Mr. Fox stated: Correct.

Chairwoman McCabe questioned if the Board had any other questions.

Mr. Stoner questioned: Can we go over the environmental issues? If we could just have a frame of where we stand with the Remedial Action Work Plan issue and I want to get into the plan with the underground storage tanks. Mr. Panella stated: There is two issues, one is the underground storage tanks. The question was that there was a change in the status on the DEP website. It was changed from effective to pending. There had been an application for these tanks from Mr. Westad. He filled out the application directly to the DEP. He knew the tanks were there and he wanted to continue to use them so he said they are existing continuing tanks. The DEP has a different definition that if you are not immediately using them and there is stoppage you can't say that they are utilized tanks. That is what the change of status was. We had to change the documentation. When we did that the status is now pending. We are still processing that information and we need DEP permission before we utilize those tanks. In regard to the MOA Agreement, Andrew Drake from Handex attended a few meetings with Mr. Westad. He said we were moving along and we have done a lot of testing and we are still processing the MOA. There is still some additional work they needed to do. Everything is moving along on both of those. There are no outstanding issues that I am aware of. Mr. Ponte stated: We saw that day we did the turning radius the three wells that were installed by Handex. Mr. Stoner stated: There was additional monitoring wells installed on site. That was one of the issues that there were eight or nine items on the work plan that had to be followed up on. With some of the things being proposed like the construction of drainage and a building, our concern was how can you excavate what is there without addressing the DEPs concerns? The underground storage tank the only thing I have about that is the town has an environmental consultant. They understand that the tanks being out of service for more than 12 months was the primary concern. Even though it says pending but it is in non-compliance right now until certain issues are resolved. The DEP told our environmental consultants that they would be having some kind of correspondence with Able Oil on this issue within the next week or two. Able would have to respond and I don't know the steps after that. It is illegal to put fuel oil in those tanks when the status is pending. Right now the tanks cannot have fuel in them until this issue is resolved. Mr. Panella stated: That is our understanding also. Mr. Ponte stated: I met with the DEP inspector. He wanted to make sure the cathodic protection was still working, which it was. He felt more comfortable that the cathodic protection was still working even with no product in the tanks. It is in the report. This is the recertification that is going to get submitted to DEP.

Chairwoman McCabe questioned: Is there any concern because when tanks have a minimal amount of oil in it the condensation builds up in the inside? Is there a concern about that with the DEP? Mr. Ponte stated: He didn't write that up in his report. There was no product on top of the tanks when they tested he felt comfortable that they were still intact. Mr. Stoner questioned: They were out in July? Mr. Ponte stated: Correct. Mr. Stoner stated: They did receive a notice of violation at that time of various items that you had to address for the tanks. Is that part of the pending? Mr. Ponte stated: I am working on it now.

Mr. Ricciardo questioned: Worse case scenario and the tanks have to be removed what is now the primary structure? Mr. Soloway stated: I don't have a definitive answer on that. The question is directed to the underlying litigation. The issue was the non-conforming use and loss because it was destroyed in the fire and explosion. The court answer was no because those were intact. My guess is that this probably would not lose the right because it is not destruction, it is a

replacement. It is new territory for me. Mr. Ricciardo questioned: If it is proven that the tanks have been empty and unusable because of the explosion are they then destroyed because of the explosion? Mr. Soloway stated: I would say no on that because a lot of these cases turn on the issue of content. The non-use here was really caused by the town would not let them use it and thereafter, they have been pending via various approvals with this Board and DEP. I don't see any indication that there is any intent to abandon. Mr. Ricciardo stated: We will have to wait for DEP's decision. Mr. Soloway stated: If this Board approves this application, any approval is going to be dependent on the applicant obtaining approvals and permits required from DEP and any other agency with jurisdiction to operate the business to reopen the facility. If the Board approves this application and as a result of the pending proceedings before DEP directs anything that any way represents any kind of material modification that the Board might approve then the applicant would be required to come back to the Board and seek amended site plan approval.

Chairwoman McCabe asked Mr. Panella if he had anymore testimony. Mr. Panella stated: No I don't. I agree with Mr. Soloway's statements and fully anticipate that there will be a condition in the resolution that we would have to comply with the DEP approvals and obtain them all before we can operate. That is standard and fully expected.

Chairwoman McCabe asked Mr. Stoner what the applicant still needed to supply to us for us to make a clearer decision. Mr. Stoner stated: The drainage issues I can work out with them. I don't know if you talked about signage either.

Mr. Soloway stated: When this application was filed you were seeking a sign variance. I am assuming you no longer are. Mr. Panella stated: In the application there was a request for two signs. Mr. Fox stated: There was a discussion at a previous meeting on what the ordinance allowed as far as signage. Mr. Panella stated: It is 98 square feet. I think the original application did require a variance. Mr. Soloway stated: The initial application requested a variance of one of two signs 24 square feet each. Mr. Fox stated: If you look on our cover sheet PB1 existing conditions. We thought we had provided testimony on the two signs that had been there previously and we were continuing that as oppose to getting the variance. Chairwoman McCabe questioned: Where are they going to be located? Mr. Fox stated: We had shown one on North side of the existing building. Mr. Ricciardo questioned: Once they are removed and have been for over a year or eighteen months does he need a new application? Mr. Soloway stated: If the signs are pre-existing that they wouldn't need a variance for non-conforming structures that I assume were destroyed if they were above ground. Mrs. Millikin stated: Our ordinance stated it would be abandonment if they were not being used after a year they technically have to comply with the current requirements. Mr. Panella questioned: What is the variance required? Mrs. Millikin stated: I believe it is 40 square feet total not for both signs. Mr. Panella questioned: It is up to multiple signs. Mrs. Millikin stated: Up to 5 wall signs. Chairwoman McCabe stated: Not internally illuminated. Mr. Stoner stated: The detail says self illuminated wall sign. Mr. Panella stated: So two 20 square foot signs. Mr. Ricciardo stated: Yes.

Mr. Soloway questioned: How about given the event the Board approves the application all signs must conform to the ordinance. The details should be provided to Mr. Stoner's satisfaction. The Board agreed.

Mr. Stoner questioned: What was the decision on the black vinyl fence? Chairwoman McCabe stated: Black vinyl fence in the back.

Chairwoman McCabe stated: The timing on the lights. Mr. Stoner stated: The timing is enough to light the building and the main portion of the structure where you are going to have customers and employees. It is a good design to keep the lighting in the interior of the site. Chairwoman McCabe questioned: What would be the hours for the lights to be on? Mr. Fox stated: The drawing states that all three light fixtures will be on after dusk during business hours and to be controlled with motion sensors after business hours. On Sheet PB 7 in the lower left hand corner, a wall mounted incandescent fixtures outside the doors will be left on all night. Mr. Stoner questioned: What about the racks will they be turned on? Mr. Fox stated: They work on motion. Chairwoman McCabe questioned: If they work on motion will they keep going on and off? Mr. Elvidge stated: They can be adjusted.

Mr. Ricciardo questioned: Was the smell of kerosene ever addressed? Mr. Vandyk stated: No.

Chairwoman McCabe questioned: What is generally done with kerosene distribution? Mr. Stoner stated: They agreed not to allow the fill up of diesel trucks from outside vendors other than their own trucks. Mr. Soloway stated: Diesel is only going to be restricted to your own trucks and walk up and cans. Mr. Fox stated: I will also be installing security cameras. It has fencing and the whole bit. We have to comply with the state in that regard.

Chairwoman McCabe questioned: What kind of locks are going to be on your fencing? Mr. Fox stated: Right now it is pad locks.

Mr. Ricciardo questioned: If you have an emergency on a Sunday not only with a driver who will deliver it but a site manager also? Mr. Panella stated: Yes. Mr. Ricciardo questioned: Could they be the same person? Mr. Panella stated: Yes.

Chairwoman McCabe opened the floor to the public.

Chairwoman McCabe asked Mr. Soloway if he had an issue list. These are the things if you were going to prove this that I would notice possible conditions. First would be standard conditions to pay your fees and taxes, get all other approvals, and comply with all ordinances.

1. All signage to comply with the ordinance details to the satisfaction of Mr. Stoner and Zoning Officer. If there is a dispute between the Engineer and the applicant it should come back to the Board for a resolution.
2. No tankers parked overnight on the site
3. No more than 12 trucks at one time
4. No operation on Sunday work except if filling tanks for emergency
5. Added detail for the trench going across Railroad Avenue to the satisfaction of engineer
6. Removing turning tablets from the plan is not needed
7. No parking to the right of entrance where kerosene containers will be filled
8. Provide improvements for steal containment for kerosene to the satisfaction of engineer in the area where people will be filling hand containers of kerosene

9. New black vinyl fence on rear of property
10. No service vans to be parked on the site
11. No thru-putting
12. No right turns from Railroad Avenue to Sparta Avenue
13. Sign to be placed with prohibiting no right turns from Railroad Avenue to Sparta Avenue (subject to Town Council approval and Developers Agreement)
14. No tractor trailer access from Railroad Avenue
15. Add burm in front trench drain and oil separator
16. Oil separator design details subject to engineer review
17. Maintenance plan on oil separator including drainage calculations to satisfaction of engineer
18. Install check valve on trench drains for spill purposes (manual valve)  
If there is an automatic would this be considered? per Mr. Ricciardo
19. Developers agreement with typical terms and conditions with satisfaction of Town Council
20. Applicant will be obligated to maintain of Railroad Avenue where they are installing improvements  
Chairwoman McCabe questioned if electric is off how is the cathodic protection maintained.
21. Item to be considered about a emergency generator if required need to amend site plan or place inside the structure, which would not require site plan if inside.
22. Generator note to be removed from the plans. If they want interior generator the applicant needs to come back
23. Agreed to gray water per Town policy
24. Deadman feature for manual fill of the tanks on the racks
25. Deadman would be installed on both racks
26. Diesel will not be sold to outside cars. Only to people who walk up to the facility for filling purposes.
27. No propane on site.

Discussion pursued on the speed tables for Diller. It is the recommendation for the Planning Board that the Town Council think about this idea. Mr. Ricciardo would like Able to contribute 50% to the speed tables. Mr. Panella stated: We are not going to agree to that condition.

Mr. Flaherty stated: I would say the slowing down of traffic on Diller is something the town wants to do with residents regardless of this application. I don't know I agree that it should be made a condition of this application. Mr. Ricciardo stated: I think the truck traffic coming and going from this site makes it necessary for some kind of traffic device for public safety. Since they are generating the increase in traffic and a potential hazard by crossing the double yellow line in or out I think it makes it their responsibility to contribute. Mr. Soloway read the statute: The governing body may by ordinance adopt regulations requiring a developer as a condition for approval of a subdivision or site plan. The pro-rata share of the cost providing reasonable and necessary street improvements, water and sewer drainage facilities and easements therefore located off tract but necessitated or required by construction and improvements within such subdivision or development. Under that standard providing you have the ordinance in place. I am not saying that you couldn't get a little bit out of this developer but the pro-rata share is

different than making them pay for it and it is probably different than making them pay 50 percent. That is just the law. Mr. Ricciardo stated: According to that they are responsible for a pro-rata share. Mr. Panella stated: We are a pre-existing non-conforming use. We are not adding anything. We are continuing that of which we did before so we have not brought anything new to the table that would be affected by this statute. The statute is not applicable to our application.

Mr. Ricciardo stated: I can go back to my testimony that I gave you a copy of that is based on one set of criteria and one testimony that is talking about a completely different operation. Mr. Soloway stated: I understand Mr. Panella's argument and that is a gray area. They are a pre-existing non-conforming uses. The statute does not make a distinction between types of site plans. Mr. Ricciardo stated: We have asked it go to the governing body and let's see what happens with the Town Council. Mr. Soloway stated: What you could do is put it over to them. Mr. Ricciardo stated: The Chairwoman asked the secretary to send a letter to the governing body and when it gets to us we will determine what to do with it.

Mr. Ricciardo stated: The Developer's Agreement would have to be approved by the governing body and if the governing body intends on having the speed control devices on Diller Avenue they would attempt to negotiate it into the Developer's Agreement. Mr. Soloway questioned: Is that saying leave it out there? Mr. Ricciardo stated: Leave it out there for the governing body to determine if they should be there. Let us negotiate it into the Developer's Agreement.

Mr. Soloway stated: They are applying for Preliminary and Final Site Plan. It would be limited to Preliminary only.

Chairwoman McCabe opened the meeting to the Public. With no public coming forward Chairwoman McCabe closed this portion of the meeting.

Mr. Ricciardo made a motion to deny based on the testimony. No second motion.

**Mr. Flaherty made a motion for the application with conditions be approved granting Preliminary Site Plan approval. Mr. Caffrey second the motion.**

**AYE:** Mr. Caffrey, Mr. Flaherty, Mr. Russo, Mr. Vandyk, Mr. White, Chairwoman McCabe

**NAY:** Mr. Ricciardo

**ABSTAIN:** Mrs. Fowler

### **ADJOURNMENT**

**Mr. Ricciardo made motion to Adjourn. Mr. Caffrey second the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 9:57 pm.**

**The next regular scheduled meeting will be October 21, 2009 at 7:00 pm in the council chambers of the Municipal Building.**

Respectfully submitted,

Katherine Citterbart  
Planning Board Secretary