

314-A-7

599 Warren Ave.

Dunkin Donuts

Kimco Realty

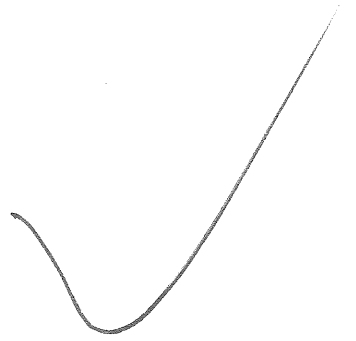


EXHIBIT C
(Legal Description of Easement Area)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 2, 314-A-7" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E along the northerly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached) a distance of Eighty-One and 00/100 (81.00) feet to a point;

thence S 41° 02' 56" W a distance of Ninety-Four and 78/100 (94.78) feet to a point;

thence S 05° 39' 10" E a distance of Eighty-Four and 11/100 (84.11) feet to a point;

thence S 22° 37' 24" E a distance of Forty-One and 11/100 (41.11) feet to a point;

thence southerly, along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Twenty-Eight and 60/100 (28.60) feet to the northerly sideline of said Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of said Warren Avenue a distance of Seventy-Three and 45/100 (73.45) feet to the point of beginning.

EXHIBIT D

(Legal Description of Access Easement to Benefit Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-A-3" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning at a point on the northerly sideline of Warren Avenue at the southeasterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 83° 43' 00" E a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 05° 39' 10" W a distance of Sixty and 00/100 (60.00) feet;

thence N 83° 43' 00" E a distance of Seventy-Eight and 27/100 (78.27) feet;

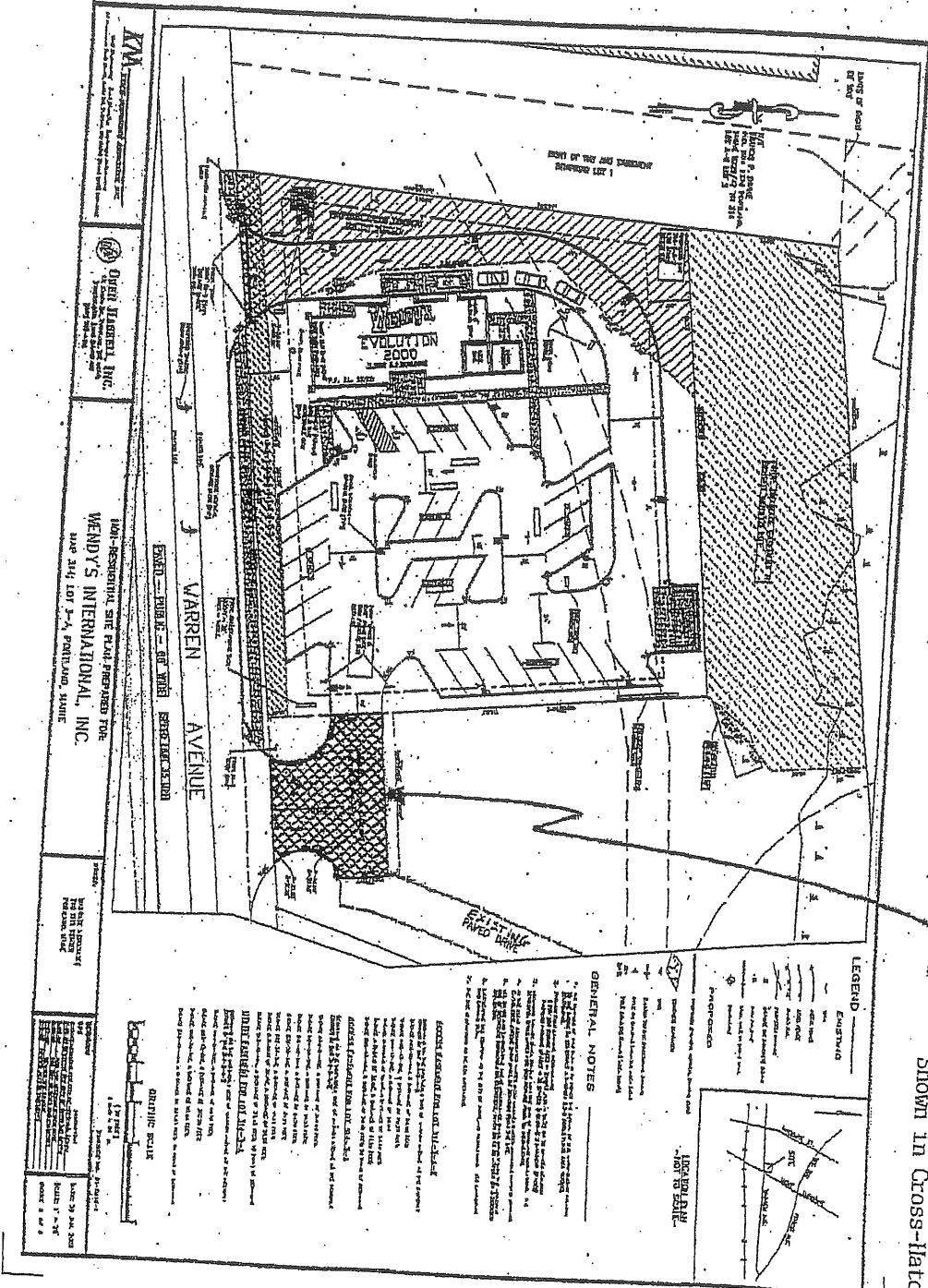
thence S 06° 17' 00" E a distance of Thirty and 04/100 (30.04) feet;

thence southwesterly a long a curve concave to the left having a radius of Fifteen and 00/100 (15.00) feet, and an arc distance of Twenty-Eight and 99/100 (28.99) feet;

thence southerly along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Eleven and 17/100 (11.17) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along said northerly sideline of Warren Avenue a distance of Seventy and 44/100 (70.44) feet to the point of beginning.

EXHIBIT E



Easement for Portion
Of Existing Paved Drive Is
Relocated To This Area
Shown in Cross-Hatching

David H. Hargrett, Inc.
Professional Engineer
No. 10000
10000
10000

High Residential Site Plan Prepared For:
WENDY'S INTERNATIONAL, INC.
Site 244 Lot 3-4, Portland, Maine

Scale: 1/4" = 1'-0"

DATE: 02/28/03
BY: [Signature]
CHECKED: [Signature]

DATE: 02/28/03
BY: [Signature]
CHECKED: [Signature]

Doc# 79444 Bk#13133 Pg# 191
SEWER JOINT USE AGREEMENT

This Agreement is made by and between **OLDER BROTHER LLC**, a Maine limited liability company and **YOUNGER BROTHER LLC** a Maine limited liability company, both of which have a mailing address of c/o CB Richard Ellis-The Boulos Company, One Canal Plaza, Portland, Maine 04101, as parties of the first part (collectively "Owner"), and **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation ("Wendy's"), whose mailing address is P.O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017, as party of the second part.

WITNESSETH:

WHEREAS, Owner has conveyed to Wendy's by deed of even or near even date a certain parcel of land situated on the northerly side of Warren Avenue, in the City of Portland, County of Cumberland and State of Maine as more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Parcel A");

WHEREAS, Owner is retaining a parcel of land abutting Parcel A, which retained parcel is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as "Parcel B");

WHEREAS, Parcel A and Parcel B, along with other parcels, are to be serviced by an existing private sewer line owned by Owner which runs along, across, and in Warren Avenue in Portland, Maine, approximately as shown with reference to Note 8 on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through September 12, 2002, (hereinafter referred to as the "Sewer Line") and which Sewer Line enters into the public sewers of the City of Portland;

WHEREAS, Owner, in its deed to Wendy's conveying Parcel A reserved, among other things, an easement over Parcel A for Parcel B to connect to the Sewer Line;

WHEREAS, the parties wish to provide for joint use and maintenance of the Sewer Line.

NOW, THEREFORE, the parties agree as follows:

- 1) Right to Connect. Wendy's, its successors and assigns, shall have the right, in common with others, to connect to the Sewer Line for up to 2,500 gallons per day of usage, based on metered use of water for Parcel A, for purposes of operation of a restaurant on Parcel A.
- 2) Cost of Connection. The cost of connecting to the Sewer Line, including, but not limited to, the costs of installing such pump stations, lateral connections, and any other reasonably required appurtenances, shall be solely the responsibility of Wendy's, and Wendy's shall indemnify and hold harmless Owner from any claims, liabilities, damages or costs arising out of its connecting to the Sewer Line, including the cost of any repairs to the Sewer Line necessitated by damage caused by Wendy's connection thereto. All pump stations to serve Parcel A's use of the Sewer Line shall be located on Parcel A.

3) Permits and Approvals. The right of connection and installation shall be subject to Wendy's obtaining, at its sole cost and expense, all permits and approvals required for such connection under local, state or federal law, and shall further be subject to Wendy's compliance with any and all applicable laws, regulations and ordinances regarding the discharge of materials into the Sewer Line; and, in connection with any of the foregoing permits, approvals, licenses, laws, regulations and ordinances mentioned or referred to herein, Wendy's hereby covenants and agrees to comply with all of the terms, conditions and provisions thereof.

4) Review of Plans. Prior to undertaking installation and connection pursuant to this Agreement, Wendy's shall provide Owner (i) such drawings and specifications with respect to such installation and connection as Owner may reasonably require, to be approved by Owner, which approval Owner shall not unreasonably delay, condition, or deny; and (ii) an affidavit of Wendy's licensed engineer stating that the proposed installation or connection will not impair the flows of sewage in the Sewer Line or detract from the discharge capacity of the Sewer Line.

5) Maintenance and Repair. Wendy's covenants and agrees to pay its pro rata share of any cost of maintenance and repair for that portion of the Sewer Line which runs from the point Wendy's ties into the Sewer Line to and including the point the Sewer Line connects to the public sewer beginning five (5) years from the date it takes title to Parcel A. Wendy's pro rata share shall be a fraction, the numerator of which is the number of gallons of water used each day at Parcel A, and the denominator of which is the number of gallons of water used each day at all properties (including Parcel A) serviced by the Sewer Line.

6) Notices. Whenever notice shall be permitted to required to be given to either party pursuant to the terms of this Agreement, it shall be deemed duly delivered if sent by certified mail, return receipt requested, addressed to the party at such address as shall have been last designated in writing by such party to the other. Pending such future designation, the following addresses are hereby designated:

Older Brother LLC and Younger Brother LLC
c/o CB Richard Ellis-Boulos Property Management
One Canal Plaza, 5th Floor
Portland, ME 04101

Wendy's Old Fashioned Hamburgers of New York, Inc.
P.O. Box 256
4288 West Dublin-Granite Road
Dublin, Ohio 43017
ATTN: Legal Department

The covenants contained herein are intended to be real covenants, the benefits and burdens of which shall run with Parcel A and Parcel B and be binding on, enforceable against, and inure to the benefit of, the successors and assigns of the parties, in law and in equity.

IN WITNESS WHEREOF, Owner and Wendy's have caused this instrument to be executed on their behalf by their duly authorized undersigned representatives on this 24th day of September, 2002.

Witness:

[Signature]

OLDER BROTHER LLC

By: [Signature]
Joseph F. Boulos
Its Manager

Witness:

[Signature]

YOUNGER BROTHER LLC

By: [Signature]
Gregory W. Boulos
Its Manager

WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.

[Signature]
JOANNE B. KRIMM

By: [Signature]
Printed Name: RONALD F. WALLACE
Its Vice President

and

[Signature]
CAROLYN A. LOEFFLER

By: [Signature]
Printed Name: RAYMOND W. BAKER
Its Vice President

WWS
Legal

STATE OF MAINE
County of Cumberland, SS.

September 24, 2002

Then personally appeared the above-named Joseph F. Boulos, Manager of Older Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Older Brother LLC.

Before me,

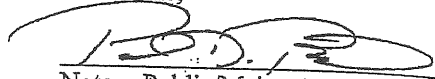
[Signature]
Notary Public/Maine Attorney-at-Law
Printed Name: PAUL D. PIETROMALI

STATE OF MAINE
County of Cumberland, SS.

September 24, 2002

Then personally appeared the above-named Gregory W. Boulos, Manager of Younger Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Younger Brother LLC.

Before me,


Notary Public/Maine Attorney-at-Law
Printed Name: Paul D. Petrosian

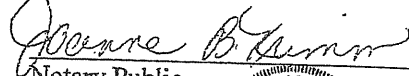
STATE OF Ohio
County of Franklin, SS.

September 20, 2002

Then personally appeared the above-named _____ of Wendy's Old Fashioned Hamburgers of New York, Inc., and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of said Wendy's Old Fashioned Hamburgers of New York, Inc..

RONALD E. WALLACE
Vice President

Before me,


Notary Public
Printed Name: JOANNE B. KRIMM
Commission Expires MY COMMISSION EXPIRES JULY 23, 2004




STATE OF Ohio
County of Franklin, SS.

September 20, 2002

Then personally appeared the above-named _____ of Wendy's Old Fashioned Hamburgers of New York, Inc., and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of said Wendy's Old Fashioned Hamburgers of New York, Inc..

RAYMOND W. BAKER
Vice President

Before me,


Notary Public
Printed Name: JOANNE B. KRIMM
Commission Expires MY COMMISSION EXPIRES JULY 23, 2004

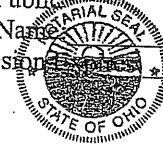


EXHIBIT A

(Legal Description of Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Lot, 52,173 S.F., 1.1977 Acres" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through September 12, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E through land of the Grantor a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to a point;

thence S 05° 39' 10" E through land of the Grantor a distance of Two Hundred Eleven and 71/100 (211.71) feet to the northerly sideline of Warren Avenue;

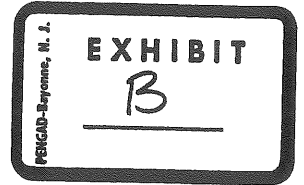
thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

EXHIBIT B

(Legal Description of Parcel B)

A certain lot or parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, being all of the premises described in a deed from Bridgeside Associates to Wargate Associates dated December 1, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11750, Page 307, as further conveyed by Wargate Associates to Older Brother LLC and Younger Brother LLC, as tenants in common, EXCEPTING, HOWEVER, that portion thereof that is described in Exhibit A to this instrument.

Received
Recorded Register of Deeds
Sep 25 2002 02:30:45P
Cumberland County
John E. O'Brien



TRANSFER INSTRUMENT


KNOW ALL BY THESE PRESENTS, THAT **OLDER BROTHER LLC**, a Maine limited liability company, and **YOUNGER BROTHER LLC**, a Maine limited liability company (collectively, "Grantor"), for good and sufficient consideration, the receipt whereof is hereby acknowledged, hereby **RELEASE** to **KIMCO REALTY, LLC**, a Maine limited liability company, its successors, and assigns ("Grantee"), all of Grantor's right, title, and interest in and to the following property:

The "Sanitary Sewer System" more particularly described in a certain Affidavit (including the exhibits thereto) of Gregory W. Boulos, dated April 29, 1988, and recorded in the Cumberland County Registry of Deeds in Book 8272, Page 211-212.

Reference is hereby made to a Transfer Instrument dated September 20, 2002, and recorded in said Registry of Deeds in Book 20650, Page 13.

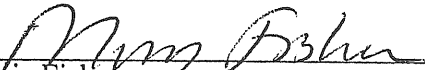
Grantee hereby accepts the assignment of the above-described Sanitary Sewer System and hereby assumes and agrees to perform all agreements relating to the use and/or maintenance thereof, as listed on Exhibit A, attached hereto and made a part hereof.

IN WITNESS WHEREOF, Older Brother LLC has caused this instrument to be executed by Morris Fisher, its Vice President, and Younger Brother LLC has caused this instrument to be executed by Gregory W. Boulos, its President, hereunto duly authorized, this 7th day of January, 2005.

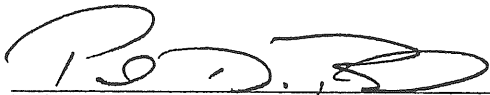


Witness

GRANTOR:
OLDER BROTHER LLC

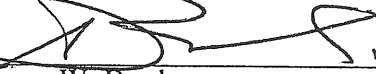
By: 

Morris Fisher
Its Vice President



Witness

YOUNGER BROTHER LLC

By: 

Gregory W. Boulos
Its President

STATE OF MAINE
County of Cumberland, SS.

January 7, 2005

Then personally appeared the above-named **MORRIS FISHER**, Vice President of **OLDER BROTHER LLC**, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said limited liability company.

Before me,



Notary Public/Maine Attorney-at-Law

Printed Name: PAUL D. PIETROPOLI

Commission Expires: _____

STATE OF MAINE
County of Cumberland, SS.

January 7, 2005

Then personally appeared the above-named **GREGORY W. BOULOS**, President of **YOUNGER BROTHER LLC**, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said limited liability company.

Before me,



Notary Public/Maine Attorney-at-Law

Printed Name: PAUL D. PIETROPOLI

Commission Expires: _____

EXHIBIT A

(Agreements relating to use and/or maintenance of sewer line)

1. Affidavit (including the exhibits thereto) of Gregory W. Boulos, dated April 29, 1988, and recorded in the Cumberland County Registry of Deeds in Book 8272, Page 211 (including rights of the owner of Lot 2 on a plan recorded in the Cumberland County Registry of Deeds, in Plan Book 170, Page 38, as referenced in Section 3 of said Affidavit), as affected by Transfer Instrument from Wargate Associates and Bridgeside Associates to Seller, dated September 20, 2002, and recorded in said Registry of Deeds in Book 20650, Page 13;
2. Agreement with Northern General Services, as evidenced by letter from Boulos Property Management to Northern General Services dated June 11, 1992, letter from Northern General Services to Boulos Property Management dated September 8, 1992, letter from October 29, 1992, from Northern General Services to Boulos Property Management, and related correspondence referred to in the foregoing letters, copies of which are on file with Grantee;
3. Letter from Boulos Property Management to the City of Portland dated June 12, 2002, a copy of which is on file with Grantee; and
4. Sewer Joint Use Agreement between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 191.

Received
Recorded Register of Deeds
Jan 07, 2005 12:52:36P
Cumberland County
John B OBrien

RECORDED
INDEXED
TOWN CLERK
JAN 10 2005

2176-301 d. 3-29-54

R. 5-25-54

301

Know all Men by these Presents, That

Ye, Frederick T. Knowles, George Wilson, Adam W. Wilson, Alice Hannah Palmer, all of Portland in the County of Cumberland and State of Maine

In consideration of One Dollar (\$1.00) and other valuable considerations (being less than One Hundred Dollars (\$100.00) paid by Central Maine Power Company, a corporation organized and existing under the laws of the State of Maine and located at Augusta in the County of Kennebec and State of Maine the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said Central Maine Power Company its Successors and Assigns forever, The right perpetually to enter at any and all times upon so much of our respective lands situated in said Portland as lies within a strip of land one hundred thirty-five (135) feet in width, Portland as lies within Southwesterly and Northwesterly of and eighty-five (85) feet Northeasterly and South-easterly of the following described survey line and its projection at both ends. Beginning at a stake set in the northwesterly side line of land of Kenneth H. and Anne T. Corliss, said stake being Northeasterly five (5) feet along said dividing line from an iron pipe set at the most Northerly corner of land conveyed to this Grantee by Everett F. Chapman by deed dated December 20, 1953 and recorded in Cumberland County Registry of Deeds in Book 2166, Page 70; thence North 60° 8' West, three hundred and four hundred eighty (1480) feet to a stake and angle; thence North 17° 10' East, one thousand three hundred forty-eight (348) feet to a stake set in the Southerly side line of land of George Wilson, said last named stake being Easterly along said dividing line, ninety-two (92) feet from the Southeasterly corner of land of Richard F. Chase.

And to erect, construct and maintain on and over said one hundred thirty-five (135) foot strip a power line or lines consisting of poles with wires attached thereto for the transmission of electricity and intelligence and with all necessary foundations, fixtures, anchors, guys, braces, cables, wires and other appurtenances, and to maintain, repair, respace, replace and remove said power line or lines, to stretch wires and convey electricity and intelligence through said wires for all purposes of the Grantee, its successors and assigns, and with the right at all times to trim, cut down and spray trees, timber and bushes growing on said one hundred thirty-five (135) foot strip, and to trim and cut down such tall trees growing outside the limits of said strip, which in falling would in the judgment of the Grantee, its successors and assigns, interfere with the safe and efficient operation of said line or lines, together with the right to enter upon said strip at all times for any or all of the foregoing purposes; reserving to the Grantors, their heirs and assigns, the right to use said strip for such purposes only as do not conflict with or infringe upon said use of said strip by the Grantee, its successors and assigns, for the purposes above mentioned, provided that the Grantors, their heirs and assigns, shall not erect or maintain any structure of any kind on said strip.

This conveyance is made subject to the existing rights of New England Telephone & Telegraph Company in its toll circuit No. 211.

U.S.I.R.
Stamp
Accepted
10/11/54
U.S.I.R.
\$0.55
P.T.K.
et als
3/29/54

Do here and in full the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said Central Maine Power Company, its successors and assigns, to its and

their use and behoof forever. And we do covenant with the said Grantee, its Successors

heirs and assigns, that we are lawfully seized in fee of the premises; that they are free of all incumbrances; except as aforesaid;

that we have good right to sell and convey the same to the said Grantee to hold as aforesaid; and that we and our heirs, shall and will warrant and defend the same to the said Grantee, its successors

except as aforesaid; heirs and assigns forever, against the lawful claims and demands of all persons.

In Witness Whereof, We the said Frederick T. Knowles, George Wilson, Adam Wilson and Alice Hannah Palmer, the said Grantors, and I, Nellie A. Knowles, wife of the said Frederick T. Knowles, and I, Lucy L. Wilson, wife of the said George Wilson, and I, Helen L. Wilson, wife of the said Adam W. Wilson, and I, Charles A. Palmer, husband of the said Alice Hannah Palmer joining in this deed as Grantors, and relinquishing and conveying our rights by descent, and all other rights in the above described premises,

our hands and seals this twenty-ninth day of March in the year of our Lord one thousand nine hundred and fifty-four.

Signed, Sealed and Delivered in presence of

Franklin G. Hinckley
Mary A. Knowles
Clara M. Close
Clara M. Close
Clara M. Close
Clara M. Close
Howard J. Haskell
HOWARD J. HASKELL

Frederick T. Knowles
Nellie A. Knowles
George Wilson
Lucy L. Wilson
Adam W. Wilson
H. L. Wilson
Alice H. Palmer
Charles A. Palmer
Seal
Seal
Seal
Seal
Seal
Seal
Seal
Seal
Seal
Personally appeared

the above named Frederick T. Knowles and acknowledged the above instrument to be his free act and deed.

Before me, Franklin G. Hinckley Justice of the Peace
Received May 25 1954, at 3 o'clock 22 m. p. M., and recorded according to the original.

Att. 16

**Permit Application – Tier 1
Natural Resources Protection Act**

To

Maine Department of Environmental Protection

For:

Dunkin' Donuts Restaurant
597 Warren Avenue
Portland, Maine

On behalf of:

Kimco Realty LLC
65 Gray Road Box 4
Falmouth, Maine 04105

March 14, 2005

APPLICATION FOR A NATURAL RESOURCES PROTECTION ACT PERMIT

→ PLEASE TYPE OR PRINT IN BLACK INK ONLY

→ SEE DETACHABLE INSTRUCTIONS

1. Name of Applicant: KIMCO REALTY LLC		4. Name of Agent: JEFF PERCY C/O (if applicable) SEBALO TECHNICS	
2. Applicant's Mailing Address: 65 GRAY ROAD FALMOUTH, ME 04055		5. Agent's Mailing Address: P.O. BOX 1339 WESTBROOK, ME 04098	
3. Applicant's Daytime Phone #: 207.797.7600		6. Agent's Daytime Phone #: 207.856.0277	
7. Location of Project: (Nearest Road, Street, Rt.#) 597 WATZENA AVE		8. Town: PORTLAND	9. County: LUMBERLAND
10. Type of Resource: (Check all that apply) <input type="checkbox"/> River, stream or brook <input type="checkbox"/> Great Pond <input type="checkbox"/> Coastal Wetland <input checked="" type="checkbox"/> Freshwater Wetland <input type="checkbox"/> Wetland Special Significance <input type="checkbox"/> Significant Wildlife Habitat <input type="checkbox"/> Fragile Mountain		11. Name of Resource: N/A	12. Amount of Impact (Sq.Ft.): Fill: 9135 Dredging/Veg Removal/Other:
13. Type of Freshwater Wetland: (Check all that apply) <input type="checkbox"/> Forested <input checked="" type="checkbox"/> Scrub Shrub <input type="checkbox"/> Emergent <input type="checkbox"/> Wet Meadow <input type="checkbox"/> Peatland <input type="checkbox"/> Open Water <input type="checkbox"/> Other _____		FOR FRESHWATER WETLANDS: Tier 1 <input type="checkbox"/> 0 - 4,999 sq. ft. <input checked="" type="checkbox"/> 5,000 - 9,999 sq. ft. <input type="checkbox"/> 10,000 - 14,999 sq. ft. Tier 2/3 <input type="checkbox"/> 15,000 - 19,999 sq. ft. <input type="checkbox"/> 20,000 - 43,560 sq. ft. <input type="checkbox"/> > 43,560 sq. ft.	
14. Brief Project Description: WETLAND FILL ASSOCIATED WITH THE CONSTRUCTION OF A DUNKIN' DONUTS RESTAURANT, PARKING AND OTHER SITE IMPROVEMENTS			
15. Size of Lot or Parcel:		<input type="checkbox"/> square feet, or 1.34 <input checked="" type="checkbox"/> acres	
16. Title, Right or Interest:		<input checked="" type="checkbox"/> own <input type="checkbox"/> lease <input type="checkbox"/> purchase option <input type="checkbox"/> written agreement	
17. Deed Reference Numbers: Book#: 22208 Page: 313		18. Map and Lot Numbers: Map #: 314 Lot #: A.7	
19. DEP Staff Previously Contacted: NO		20. Part of a larger project: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No After-the-Fact: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
21. Resubmission of Application? <input type="checkbox"/> Yes → <input checked="" type="checkbox"/> No If yes, previous application #:		Previous project manager:	
22. Written Notice of Violation? <input type="checkbox"/> Yes → <input checked="" type="checkbox"/> No If yes, name of DEP enforcement staff involved:		23. Previous Wetland Alteration: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
24. Detailed Directions to the Project Site: N. SIDE WATZENA AVENUE, 200' WEST OF MTP OVER-PASS; ADJACENT TO WENDY'S			
25. TIER 1 <input checked="" type="checkbox"/> Fee <input checked="" type="checkbox"/> Topographic Map <input checked="" type="checkbox"/> Documentation of Title, Right or Interest <input checked="" type="checkbox"/> Plan or Drawing (8 1/2" x 11") <input checked="" type="checkbox"/> Photos of Area <input checked="" type="checkbox"/> Statement of Avoidance & Minimization <input checked="" type="checkbox"/> Statement/Copy of cover letter to Maine Historic Preservation Commission <input checked="" type="checkbox"/> Copy to municipality		TIER 2/3 AND INDIVIDUAL PERMITS <input type="checkbox"/> Fee <input type="checkbox"/> Topographic Map <input type="checkbox"/> Documentation of Title, Right, Interest <input type="checkbox"/> Photos of Area <input type="checkbox"/> Plan or Drawing (8 1/2" x 11") <input type="checkbox"/> Copy of Public Notice <input type="checkbox"/> Professional Certification/Delineation <input type="checkbox"/> Erosion Control Plan <input type="checkbox"/> Alternatives Analysis, if required <input type="checkbox"/> Description of Avoidance & Minimization <input type="checkbox"/> Compensation Plan (if required) <input type="checkbox"/> Description of Previously Mined Peatland (if required) <input type="checkbox"/> Statement/Copy of cover letter to Maine Historic Preservation Commission <input type="checkbox"/> Construction Plan, if required <input type="checkbox"/> Copy to municipality	
26. FEES, Amount Enclosed: \$ 75.00			

FOR DEP USE	L. _____	ATS# _____	Total FEES _____	CK# _____	Date Rec'd _____
FOR CORPS USE	App# _____	Office Code _____	Date Rec'd _____	Date Completed _____	

SIGNATURE PAGE: *This page MUST be submitted along with the form on the previous page.*

By signing below the applicant (or authorized agent), certifies that he or she has:

Read and understood the following:

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in, or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Routine Uses: Information provided on this form will be used in evaluating the application for a permit. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor can a permit be issued.

CORPS SIGNATORY REQUIREMENT

USC Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry shall be fined not more than \$10,000 or imprisoned not more than five years or both. I authorize the Corps to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein.

DEP SIGNATORY REQUIREMENT

"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

"I hereby authorize the person named below to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application."

SEE AGENT AUTHORIZATION FORM
SIGNATURE OF APPLICANT, if agent involved _____ DATE _____

"Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in the application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant."

AGENT
SIGNATURE OF AGENT/APPLICANT _____ DATE 3/10/15

NOTE: Any changes in activity plans must be submitted to the DEP and the Corps in writing and must be approved by both agencies prior to implementation. Failure to do so may result in enforcement action and/or the removal of the unapproved changes to the activity.

(yellow)

KIMCO REALTY, LLC
65 Gray Road - Unit 4
Falmouth, ME 04105

March 3, 2005

Jeffrey R. Perry, Senior Project Manager
Sebago Technics
1 Chabot Street
Westbrook, ME 04098

RE: 599 Warren Avenue, Portland, Maine

Dear Jeff:

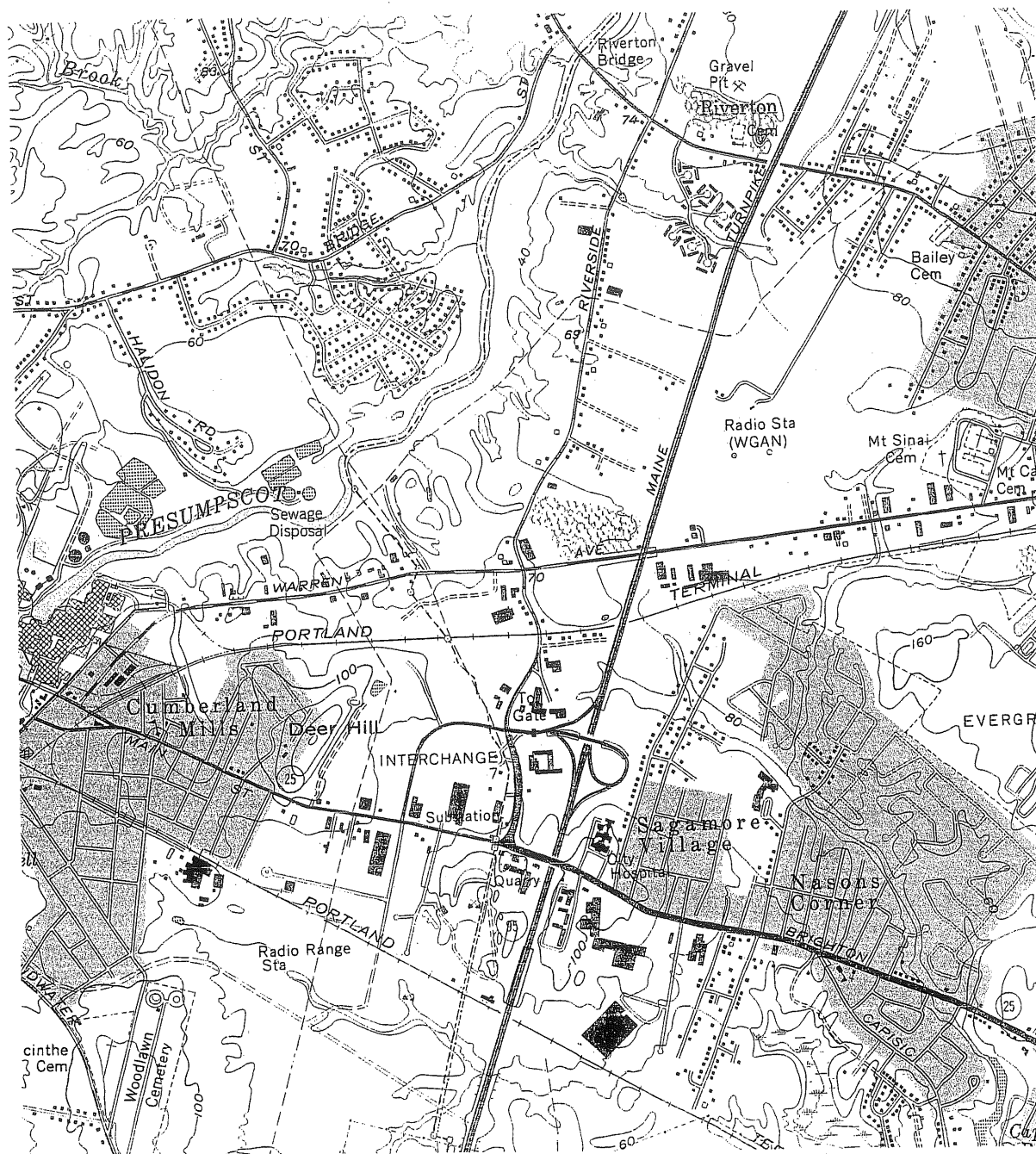
I hereby authorize you and Sebago Technics to act as my agent in the preparation and filing of environmental permits, including without limitation wetlands permits, for the proposed Dunkin' Donuts restaurant on Warren Avenue.

Sincerely,



Edward S. Wolak
Manager

Location: Warren Avenue, Portland
Applicant: Kimco Realty LLC
March 9, 2005



USGS TOPOGRAPHIC MAP

COPY

Recorded CCRD
1/7/05
Book 22208
Page 213


QUITCLAIM DEED WITH COVENANT
(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **OLDER BROTHER LLC**, a Maine limited liability company, and **YOUNGER BROTHER LLC**, a Maine limited liability company, both having a place of business in the City of Portland, County of Cumberland, and State of Maine, for consideration paid, GRANT to **KIMCO REALTY, LLC**, a Maine limited liability company, the mailing address of which is 65 Gray Road-Box 4, Falmouth, Maine 04105, with **QUITCLAIM COVENANT**, certain real estate located in Portland, County of Cumberland and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof.


IN WITNESS WHEREOF, Older Brother LLC has caused this instrument to be executed by Morris Fisher, its Vice President, and Younger Brother LLC has caused this instrument to be executed by Gregory W. Boulos, its President, hereunto duly authorized, this 7th day of January, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Older Brother LLC



Witness


By: 

Morris Fisher
Its Vice President

Younger Brother LLC



Witness

By: 

Gregory W. Boulos
Its President

STATE OF MAINE
County of Cumberland, SS.

January 7, 2005

Then personally appeared the above-named Morris Fisher, Vice President of Older Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Older Brother LLC.

Before me,



~~Notary Public/Maine Attorney-at-Law~~

Printed Name: PAUL D. PIETROPAOLI

STATE OF MAINE
County of Cumberland, SS.

January 7, 2005

Then personally appeared the above-named Gregory W. Boulos, President of Younger Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Younger Brother LLC.

Before me,



~~Notary Public/Maine Attorney-at-Law~~

Printed Name: PAUL D. PIETROPAOLI

Exhibit A

A certain lot or parcel of land located on the northerly side of Warren Avenue, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

BEGINNING at an iron pin set (5/8" rebar) on the northerly sideline of Warren Avenue, said pin also being at the southeasterly corner of land now or formerly of Michael Scarks and shown as Lot 2 on the Plan entitled "Plan of Property Warren Avenue, Portland, Maine, made for Neptune Properties, Inc., dated March 31, 1986", thence by the following courses and distances:

N 04° 24' 12" E along land now or formerly of Michael Scarks and shown as Lot No. 2 on the aforementioned Plan, a distance of 292.07 feet to a point;

Thence turning and running N 83° 43' 00" E a distance of 386.20 feet to a point on the westerly sideline of land now or formerly of the Greater Portland Radio, Inc., as recorded in Cumberland County Registry of Deeds in Book 3551, Page 190;

Thence running southeasterly along said westerly sideline (S 26° 09' 32" E) a distance of 59.48 feet to a point;

Thence running southwesterly along land now or formerly of the Maine Turnpike Authority S 18° 06' 00" W a distance of 253.70 feet to an iron pin set (5/8" rebar) at the northerly sideline of said Warren Avenue;

Thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of 355.85 feet to the POINT OF BEGINNING.

Bearings are referenced to True North.

EXCEPTING from the above described property, the premises conveyed to Wendy's Old Fashioned Hamburgers of New York, Inc. by deed dated September 24, 2002 and recorded in said Registry of Deeds in Book 18138, Page 171, as corrected by deed dated February 27, 2003 and recorded in said Registry of Deeds in Book 18956, Page 1.

Together with all right, title, and interest of the Grantors in and to a right of way or easement for ingress and egress on foot or by vehicle for the transmission of power, gas, water, sewer, fuel or other utility, and all other usual purposes of access over, under or above a strip of land adjoining the westerly sideline of the above-described parcel, said strip of land being described as follows:

BEGINNING at an iron pin set (5/8" rebar) on the northerly sideline of Warren Avenue, said pin also being at the southeasterly corner of land now or formerly of Pine Tree Paper, Inc. and running N 04° 24' 12" E for a distance of 292.07 feet, along the easterly sideline of land now or formerly of Pine Tree Paper, Inc. to a point;

Thence turning and running N 83° 43' 00" E for a distance of 50.88 feet to a point;

Thence turning and running S 04° 24' 12" W for a distance of 292.07 feet to an iron pin set (5/8" rebar) on the northerly sideline of Warren Avenue;

Thence turning and running S 83° 43' 00" W for a distance of 50.88 feet along the northerly sideline of Warren Avenue to the POINT OF BEGINNING.

Together with all right, title and interest of Grantors in and to the right to pave, repair, plow and maintain the above-described easement as described in a deed to Francis P. Drake dated March 31, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47.

Also, together with the right, title, and interest of Grantors in and to the right of way or easement for the installation, use and maintenance of an outlet from the stormwater detention basin of Lot No. 1 as described in a deed to Francis P. Drake dated March 31, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47.

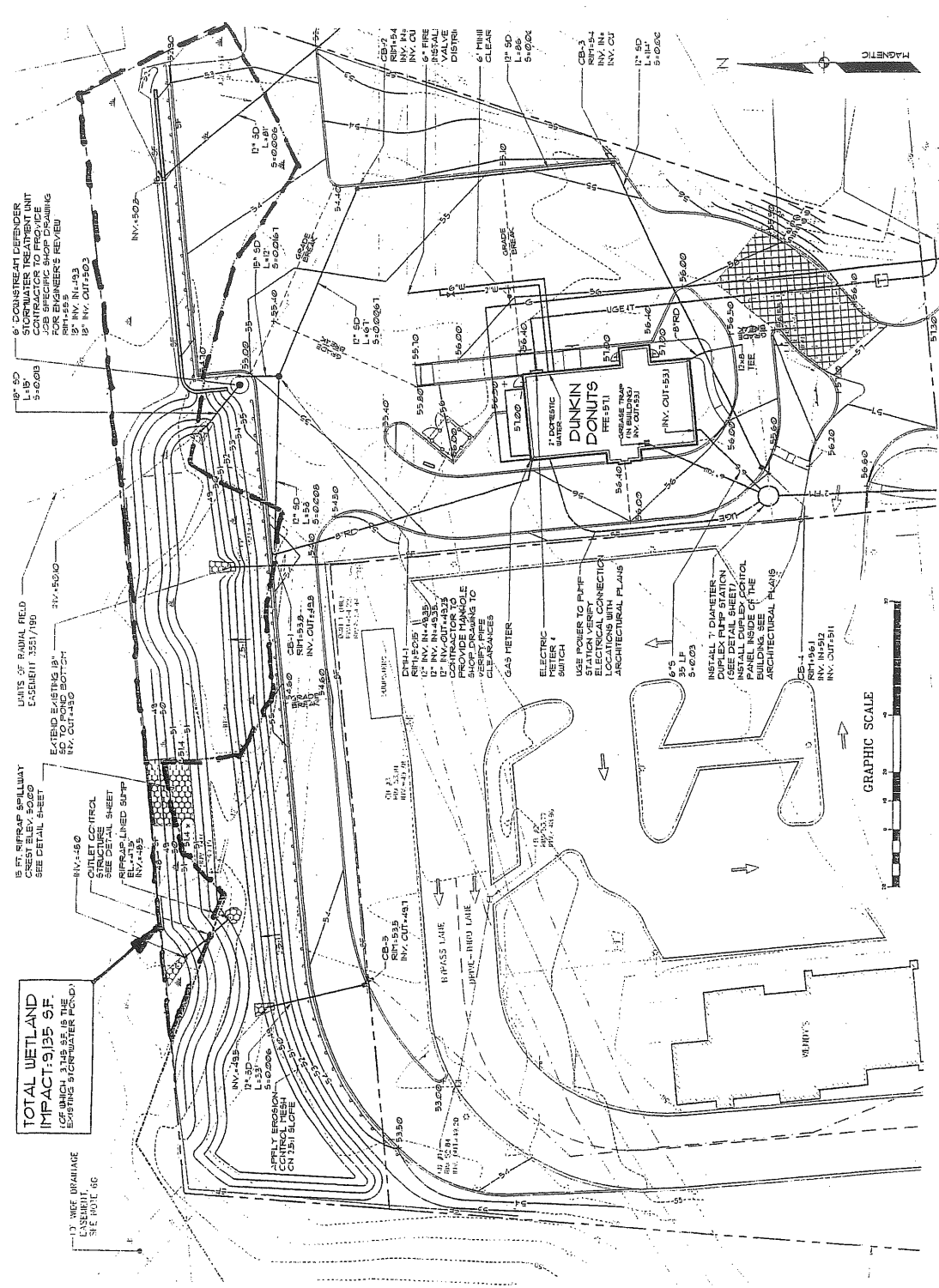
The above-described property is conveyed, SUBJECT, HOWEVER, to the following:

1. Taxes which are not yet due and payable on the date of delivery hereof;
2. Pole line easement from Frederick T. Knowles, et al. to Central Maine Power Company, dated March 29, 1954, and recorded in the Cumberland County Registry of Deeds in Book 2176, Page 301;
3. Twenty foot wide pipe line easement to Portland Water District, dated October 4, 1954, and recorded in said Registry of Deeds in Book 2197, Page 169;
4. Easement to Greater Portland Radio, Inc., dated May 10, 1974, and recorded in said Registry of Deeds in Book 3551, Page 190, as affected by Release of Easement from Porter Communication Systems, Inc. dated May 21, 1986, and recorded in Book 7183, Page 126, and easements to Porter Communications Systems, Inc., dated May 21, 1986, and recorded in said Registry of Deeds in Book 7183, Pages 127 and 128, as affected by Easement Amendment Agreement by and between Wargate Associates and Citadel Broadcasting Company dated March 24, 2000, and recorded in said Registry of Deeds in Book 15434, Page 232, and as affected by Notice of Relocation of Easement dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 168;
5. Plan of property as approved by the Planning Board of the City of Portland recorded in Plan Book 170, Page 38, as affected by Partial Vacation of Approved Subdivision Plat as recorded on February 14, 1989 in said Registry of Deeds in Book 8657, Page 27;
6. Indenture by and between Portland Water District and Bridgeside Associates dated April 27, 1988, and recorded in said Registry of Deeds in Book 8265, Page 75;
7. Affidavit of Gregory W. Boulos dated April 29, 1988, and recorded in said Registry of Deeds in Book 8272, Page 211;
8. Easements, restrictions, terms and conditions, set forth in a Quitclaim Deed With Covenant from Older Brother LLC and Younger Brother LLC to Wendy's Old Fashioned Hamburgers of New York, Inc., dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 171, as affected by Corrective Quitclaim Deed dated February 27, 2003, and recorded in said Registry of Deeds in Book 18956, Page 1;
9. Terms and conditions set forth in a Road Construction, Maintenance and Easement Agreement by and between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road

Construction, Maintenance and Easement Agreement dated February 27, 2003,
and recorded in said Registry of Deeds in Book 18956, Page 12.

10. Terms and conditions of a Sewer Joint Use Agreement between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 191.

Location: Warren Avenue, Portland
Applicant: Kimco Realty LLC
March 9, 2005



6" CONCRETE DEFENDER
STORMWATER TREATMENT UNIT
USE SPECIFIC SHOP DRAWINGS
FOR ENGINEER'S REVIEW
18" INV. IN-193
18" INV. OUT-503

UNITS OF RADIAL FIELD
EASEMENT 1351/190
5'-0.0000
18" INV. IN-193
5'-0.0000
18" INV. OUT-503
5'-0.0000

15 FT. RIPRAP SPILLWAY
CREST ELEV. 50.00
SEE DETAIL SHEET
18" INV. 48.00
CURB CUT CANONICAL
STRUCTURE
SEE DETAIL SHEET
RIPRAP LINED SUMP
SEE DETAIL SHEET
18" INV. 48.5

TOTAL WETLAND
IMPACT: 9,135 SF
USE WHICH IS THE
EXISTING STORMWATER FOOTPRINT

13' WEF DRAINAGE
EASEMENT
SEE PAGE 06

6" SD
5'-0.0000
18" INV. IN-193
5'-0.0061
6" SD
5'-0.0000
18" INV. IN-193
5'-0.0061
6" SD
5'-0.0000
18" INV. IN-193
5'-0.0061

INSTALL 7" CHARACTER
DUPLEX RFP TO MAIN
(SEE DETAIL SHEET)
INSTALL DUPLEX CONTROL
OF THE BUILDING. SEE
ARCHITECTURAL PLANS

ELECTRIC
METER 2
ELECTRIC
METER 1
ELECTRIC METER
SWITCH
USE POWER TO PUMP
STATION VERIFY
CONNECTION
LOCATIONS WITH
ARCHITECTURAL PLANS

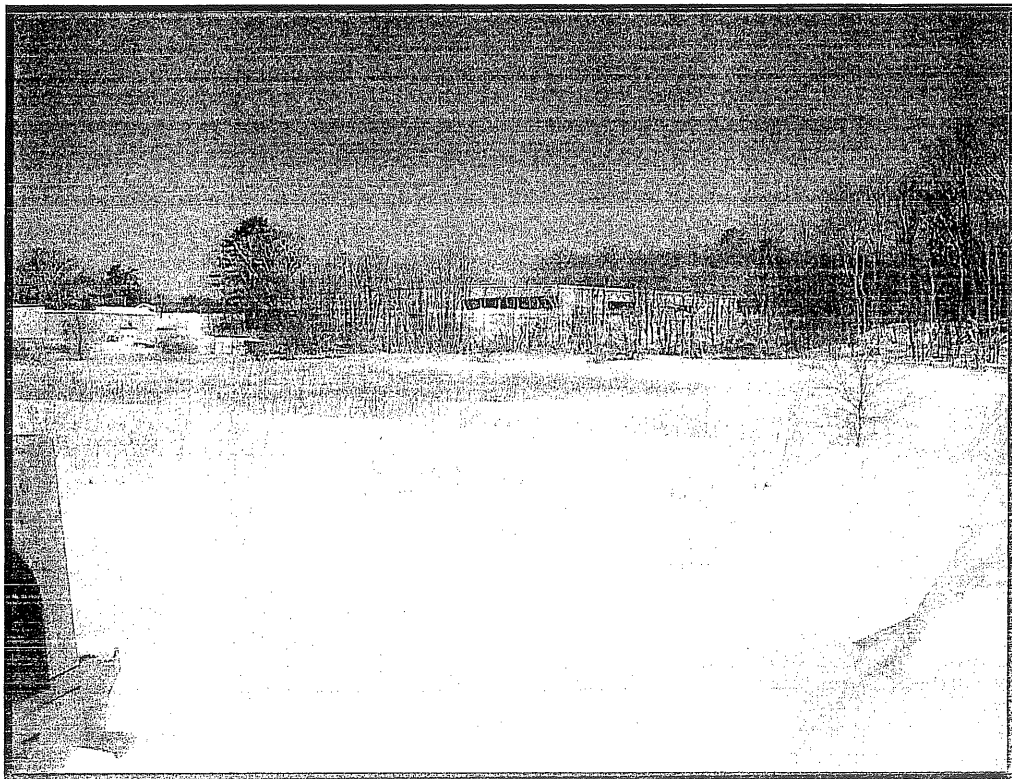
6" SD
5'-0.0000
18" INV. IN-193
5'-0.0061
18" INV. OUT-503
5'-0.0000

PROPOSED WETLAND IMPACT AREA DUNKIN' DONUTS

03461



1. View looking northeasterly of wetland impact area in middle ground.



2. View looking northwesterly of wetland impact area in middle ground.

Statement of Avoidance & Minimization

Dunkin' Donuts

Warren Avenue
Portland, Maine

Overview

Sebago Technics, Inc. on behalf of Kimco Realty, LLC has prepared this Statement of Avoidance & Minimization as part of the Tier 1 Natural Resources Protection Act application for a proposed Dunkin' Donuts restaurant. The 1.3 acre parcel is located on the north side of Warren Avenue adjacent to a recently developed Wendy's restaurant. The project is located in Portland's B-4 zone, which has a minimum lot size of 10,000 SF. The Portland Planning Staff and Board are reviewing the site plan for compliance with ordinance requirements. The surrounding area is commercial in nature.

In 2002 Wendy's International constructed a fast food restaurant adjacent to the subject parcel. Their stormwater detention pond was installed adjacent to an existing wetland that borders both the subject parcel and their site. The wetland eventually drains to the west via a culvert under Riverside Road, to the Presumpscott River (approximately 3000 feet away).

Both parcels are relatively small with little undisturbed land remaining after development. The Wendy's detention basin is located in a low area within an easement of the proposed Dunkin' Donuts parcel.

Proposal

We are proposing to expand Wendy's detention basin, which is now classified as a scrub-shrub wetland to include stormwater from both sites.

The location of the revised stormwater detention pond is in the only practical area to service both sites. In working through preliminary sketch/layout plans for the Dunkin site, a smaller building and a modular block retaining wall were eventually selected to help minimize wetland impacts. Due to the extent of wetlands in this area, (N.E. corner of Riverside Road Warren Avenue) the Dunkin-site represents the last remaining undeveloped parcel suitable for commercial development.



MAINE HISTORIC PRESERVATION COMMISSION
55 CAPITOL STREET
65 STATE HOUSE STATION
AUGUSTA, MAINE
04333

#03AG1

JOHN ELIAS BALDACCI
GOVERNOR

EARLE G. SHETTLEWORTH, JR.
DIRECTOR

July 12, 2004

Jeffrey R. Perry
Sr. Project Manager
Sebago Technics
1 Chabot St. / P.O. Box 1339
Westbrook, ME 04098-1339

Project: MHPC #1440-04 - proposed Dunkin' Donuts; 597 Warren Road
Location: Portland, ME


Dear Mr. Perry:

In response to your recent request, I have reviewed the information received June 16, 2004 to initiate consultation on the above referenced project. This project was reviewed pursuant to Section 106 of the National Historic Preservation Act of 1966, as amended.

Based on the location and scope of work, I have concluded that this project will have no effect upon historic properties [architectural or archaeological].

Please contact Mike Johnson of my staff if we can be of further assistance in this matter.

Sincerely,



Earle G. Shettleworth, Jr.
State Historic Preservation Officer

EGS/mj

March 8, 2005
03461

Att. 17

Ms. Kandi Talbot
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Dunkin' Donuts, Final Site Plan Review

Dear Kandi:

On behalf of Kimco Realty, LLC, we are pleased to submit 7 copies of the enclosed final site plan application for the above referenced project. The proposed layout has been modified since the January 2005 workshop in the following ways:

- A smaller building is proposed (2,512 SF to 1,840 SF)
- The driveway connection to the adjacent parcel, near Warren Avenue has been removed. Ingress/egress is still provided (where it currently exists) near the rear of the subject parcel.
- The width of the driveway curb-cut onto Warren Avenue has been reduced from 64' to 35' at the request of Tom Errico, traffic peer review.

In addition to the above changes, we have responded to the outstanding issues itemized in the January 21, 2005 Planning Department Memo:

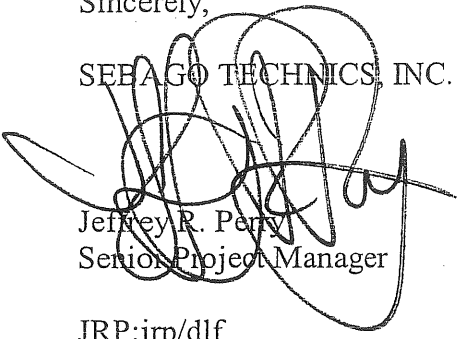
- The stormwater management has been revised to reflect the changes to the layout. A complete stormwater management plan is attached.
- Utility capacity letters (electric, water and gas) are attached. A sewer capacity letter was solicited from Public Works; a response has not been received as of the date of this submittal.
- Lighting catalogue cut-sheets of the proposed fixtures (full cut-off) and photometric plan are attached.
- Recommended plant substitutions have been made to the Landscape Plan as requested.
- The neighborhood meeting is not a requirement of a minor site plan, therefore, at your direction, one was not held.

- A signage plan is now shown on the Site Plan. The applicant will collocate their sign on the existing pylon sign for Wendy's, a sign detail is attached herein. In addition, there will be three directional signs on the site: 1. At the entrance to direct patrons to Wendy's, Dunkin' Donuts and Pioneer Telephone. 2. After the Dunkin' drive-up window, patrons will be directed to a "Left Turn Only" to exit the site, and 3. Where Dunkin' and Pioneer traffic merge with Wendy's to exit the site, a Stop-Sign is shown.
- The revised Grading and Utility Plan shows that 9,135 SF of wetlands will be impacted. Approximately 3,745 SF is associated with the existing stormwater pond, which will be reconfigured to manage both the subject parcel as well as Wendy'. A Wetland Alteration Permit has been submitted to the Maine DEP for this proposed activity.
- Amended Wendy's Site Plan: Under separate cover.
- An additional crosswalk has been added to the plans.

We look forward to presenting this information to the Board at the March 22, 2005 Public Hearing/Final Approval. After your review of the enclosed information, please call with any questions or comments.

Sincerely,

SEBAGO TECHNICS, INC.



Jeffrey R. Perry
Senior Project Manager

JRP:jrp/df

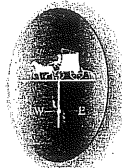
Enclosures

cc: Ed Wolak, Kimco Realty
Eben Adams, Pierce Atwood

Utility Letters

Lighting Cut-Sheets

Pylon Sign Detail



Portland Water District

FROM SEBAGO LAKE TO CASCO BAY

February 22, 2005

Mr. Jeffrey R. Perry
Sebago Technics, Inc.
One Chabot Street
Westbrook, Maine 04098-1339

Re: Dunkin' Donuts, Portland

Dear Jeffrey:

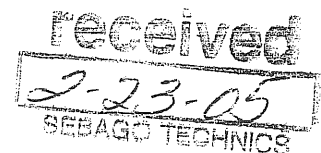
The Portland Water District has a 20" water main in a R/W crossing your property off Warren Avenue, Portland. There is no water main in Warren Avenue. A test on a nearby hydrant produced the following results: static pressure 80psi; pito pressure 64 psi; with a flow of 1342 gpm. With these results in mind, the District feels we have sufficient capacity available to serve this proposed project and meet all normal fire protection and domestic water service demands. This test hydrant is at a higher elevation than your project, so I expect a higher static pressure at your site. **Please notify your plumber of these results so that they can design your system to best fit the available pressure.**

With certification by the developer that all required permits and easement indentures have been received, we look forward to serving this project.

Sincerely,

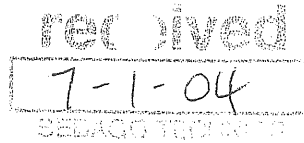
PORTLAND WATER DISTRICT

David W. Coffin, PLS
Engineering Supervisor





Central Maine Power



#03461

June 30, 2004

Mr. Jeffrey R. Perry
C/O Sebago Technics
One Chabot Street
PO Box 1339
Westbrook, Maine 04098

RE: Proposed Dunkin Donuts, 597 Warren Avenue, Portland

Dear Mr. Perry,

This letter is to advise you that Central Maine Power has sufficient three phase electrical capacity in the area to serve the subject project.

Once the project is accepted by the City of Portland, the owner will need to call our Customer Service Center at 1-800-565-3181 to sign up for a New Account and a Work Request Order so we may start a cost estimate.

To complete the cost estimate I will need the information of what voltage is required, the size of the main disconnect and the kilowatt loads required for the new facility. This information should be provided to me from the electrician or electrical engineering firm.

If you have any questions please feel free to call me at 828-2882.

Sincerely,

Paul DuPerre
Technical Advisor

An equal opportunity employer

162 Canco Road | Portland, ME 04103
tel (800) 750-4000

www.cmpco.com

An Energy East Company

Jeffrey Perry

From: pseigny@nisource.com
Sent: Wednesday, February 23, 2005 8:20 AM
To: jperry@sebagotech.com
Subject: Re: Proposed Dunkin' Donuts, Warren Ave. Portland, Maine



Commercial Request
for Gas Ser...

Jeffrey,

Based on my research it appears that we have a six inch plastic main running past this location. The main appears to be located on the even side of the street close to the curb. This would require us to do a long side crossing to reach the site in question. I could not tell from the records as to whether the existing main is operating at low or intermediate pressure but we can add the load at this location either way. The next step is to put a package of information together (see attached example) and mail it to the sales department. It will be assigned to one of the reps who will initiate a cost to serve analysis and report the results to the owner. After the owner signs the contract the rep. will forward a package to our construction department who will coordinate installation with the on-site GC. Please let me know if you any questions or need further information.

(See attached file: Commercial Request for Gas Service.doc)

Regards,
Phil Sevigny, R.C.G.C.
Commercial Sales Representative
BSG/NU
603-436-0310 X 5368

Jeffrey Perry

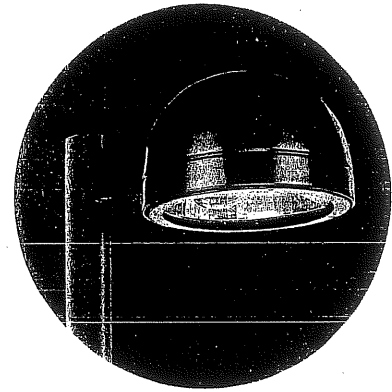
<jperry@sebagotech To: Philip
Sevigny/BSG/Enterprise@NiSource

WASHINGTON

SMALL/MEDIUM/LARGE

Features

- Spun aluminum, round dome-top housing, with narrow decorative reveal.
- Optional color vinyl trim stripe available.
- Formed aluminum door with clear, flat tempered glass lens, fully gasketed to housing. Hinged door secured with captive screws.
- Specular, anodized aluminum reflectors for horizontal lamp, provide Type II, III, IV or V square light patterns, and for vertical lamp provide Type IV or V square light patterns. Horizontal Type II and Type III reflectors with WN1 and WN2, and vertical Type V5 reflector feature unique, multi-faceted designs - patent pending. Segmented horizontal Type III, vertical Type III, and vertical Type V4 reflectors with WN3.
- IESNA Full Cutoff lighting classification achieved with vertical lamp.
- Extruded aluminum arm for pole mount. Cast aluminum wall bracket available.
- Pole top luminaire has four aluminum tube arms and cast slipfitter for 2 3/8" OD tenon.
- Mogul porcelain socket, pulse rated, with spring loaded, nickel plated center contact and reinforced lamp grip screw shell. Medium base for ED-17 lamp.
- CWA type ballast, HPF, starting rated at -20°F (-40°F for HPS).



Ordering Information

Example: WN3 - A - H1K - H3 - F - Q - DB - F4

	Series	Mount	Lamp/Watts	Orient./Dist.	Lens	Volts	Color	Options
Series	WN1 100-175W (H2, H3, H4, H5, or V5)							
	WN2 150-400W (H2, H3, H4, H5) or 150-200W (V4, V5)							
	WN3 1000W (H3, H4, H5) or 250-400W (V3, V4, V5)							
Mounting	A Arm Mount							
	WWB Wall Bracket							
	ST Spider Mount (2 3/8" tenon)							
Lamp Type/Wattage								
Metal Halide	H17 175W (ED-28) ²							
	H25 250W (ED-28)							
	H40 400W (ED-28)							
	H1K 1000W (BT-56)							
Super Metal Halide	MS17 175W (ED-28) ²							
	MS25 250W (ED-28)							
	MS40 400W (ED-28)							
	MS1K 1000W (BT-56)							
Pulse Start Metal Halide	P10 100W (ED-17)							
	P12 125W (ED-17)							
	P15 150W (ED-28) ²							
	P17 175W (ED-17) ³							
	P20 200W (ED-28) ²							
	P25 250W (ED-28)							
	P32 320W (ED-28)							
	P35 350W (ED-28)							
	P40 400W (ED-28)							
High Pressure Sodium	S10 100W (ED-23 1/2) ²							
	S15 150W (ED-23 1/2) ²							
	S25 250W (ED-18)							
	S40 400W (ED-18)							
	S1K 1000W (E-25)							
Lamp Orientation/Distribution	H2 Horiz. II							
	H3 Horiz. III							
	H4 Horiz. IV							
	H5 Horiz. V (square)							
	V3 Vert. III							
	V4 Vert. IV							
	V5 Vert. V (square)							
Lens	F Flat							
Voltage	Q Quad Tap® (120, 208, 240, 277V)							
	5 480V ¹							
	T 120/277/347V CSA							
Color	DB Dark Bronze							
	BL Black							
	WH White							
	GR Gray							
	PS Platinum Silver							
	RD Red (Premium Color)							
	DG Dark Gray (Premium Color)							
	FG Forest Green (Premium Color)							
	CC Custom Color (Consult Factory)							
Options	F1 Fusing - 120V							
	F2 Fusing - 208V							
	F3 Fusing - 240V							
	F4 Fusing - 277V							
	F5 Fusing - 480V							
	F6 Fusing - 347V							
	P1 Photo Button - 120V							
	P2 Photo Button - 208V							
	P3 Photo Button - 240V							
	P4 Photo Button - 277V							
	P6 Photo Button - 347V							
	QZ Quartz RS with lamp							
	HS Internal House Side Shield							
	VG Polycarbonate Vandal Guard							
	RXX Reveal (specify color)							
	L Lamp							

Arm Logic - Order Separately

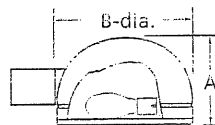
Series	ARM Rigid Arm
Luminaire Shape	W Washington
Arm Length	6 6" Arm (EPA: 1.0 ft ² , 0.1m ² , 40 lbs, 20 kg)
Pole Shape	S Square
	R4 Round Straight (4-4.5")
	R5 Round Straight (5")
	R6 Round Straight (6")
	T2 Round Tapered (2.5")
	T3 Round Tapered (3")
	T35 Round Tapered (3.5")
	T4 Round Tapered (4")
Color	DB Dark Bronze
	BL Black
	WH White
	GR Gray
	PS Platinum Silver
	RD Red (Premium Color)
	FG Forest Green (Premium Color)

- 1 Not available with 100W Pulse Start MH lamp.
- 2 Must use medium base ED-17 lamp in vertical units.
- 3 Vertical lamp only.

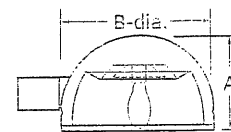
ROUND LUMINAIRES

Dimensions

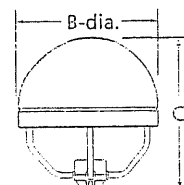
	A	B	C
WN1	11 1/2"	18"	23 1/2"
	292 mm	457 mm	597 mm
	14"	22 1/2"	27 1/4"
WNII	356 mm	572 mm	692 mm
	17 1/2"	26"	29 3/4"
WNIII	445 mm	660 mm	756 mm



Arm Mount (P/M)



Arm Mount (P/M)

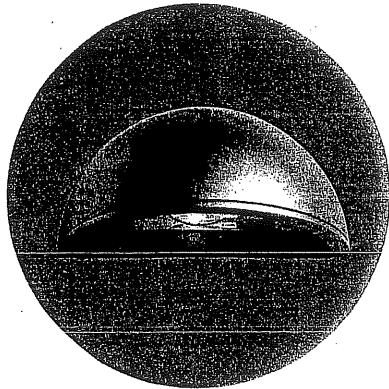


Spider Mount (S/M-S/F)

Note: Spider mount adds: Large - 0.5 EPA (5 lbs), Medium - 0.3 EPA (3 lbs), Small - 0.2 EPA (2 lbs)

BWD/BWU SERIES

Features



- Temper glass lens, sealed to cast aluminum door and secured to housing with stainless steel allenhead screws. BWD has opal glass for soft distribution with lamp image shielding. BWU has clear lens for maximum upright.
- Heavy wall, cast aluminum housing. Mounts over recessed j-boxes with galvanized steel wall flange. Stays put! No exposed mounting hardware.
- Soft uniform Type V distribution from BWD opal lens. Slight asymmetric distribution from clear lens upright version. Specular reflector increases lumen output.
- Available in 50,70,100 watt Metal halide and HPS, 2PLC26 fluorescent and 100watt max. incandescent.
- Standard finishes include dark bronze, black, white and platinum.

Ordering Information

Example: BWD15 - 50HPS - 120 - DBZ - XX

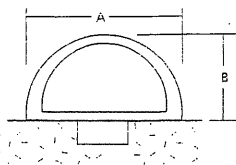
Series	Watts/Source	Volts	Finish	Options
Series				
BWD15	Downlight			
BWU15	Uplight			
Wattage/Source				
50HPS	Medium Base			
70HPS	Medium Base			
100HPS	Medium Base			
50MH	Medium Base			
70MH	Medium Base			
100MH	Medium Base			
100INC	Medium Base			
2PLC26	G24d-3 Base			
Voltage				
120	120V			
277	277V			
MT	Multi-Tap (120/208/240/277V)			
347	347V			
Finish				
DBZ	Dark Bronze			
BLK	Black			
WHT	White			
SAL	Platinum			
Options				
F				Fusing
LP				Lamp included.

DEVINE
DESIGN

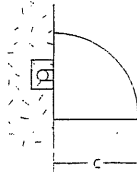
Dimensions

BWD

BOTTOM VIEW



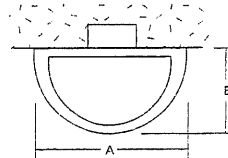
SIDE VIEW



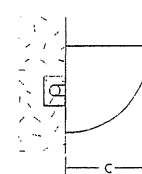
A	B	C
15 1/2"	8"	8 1/8"
394 mm	203 mm	206 mm

BWU

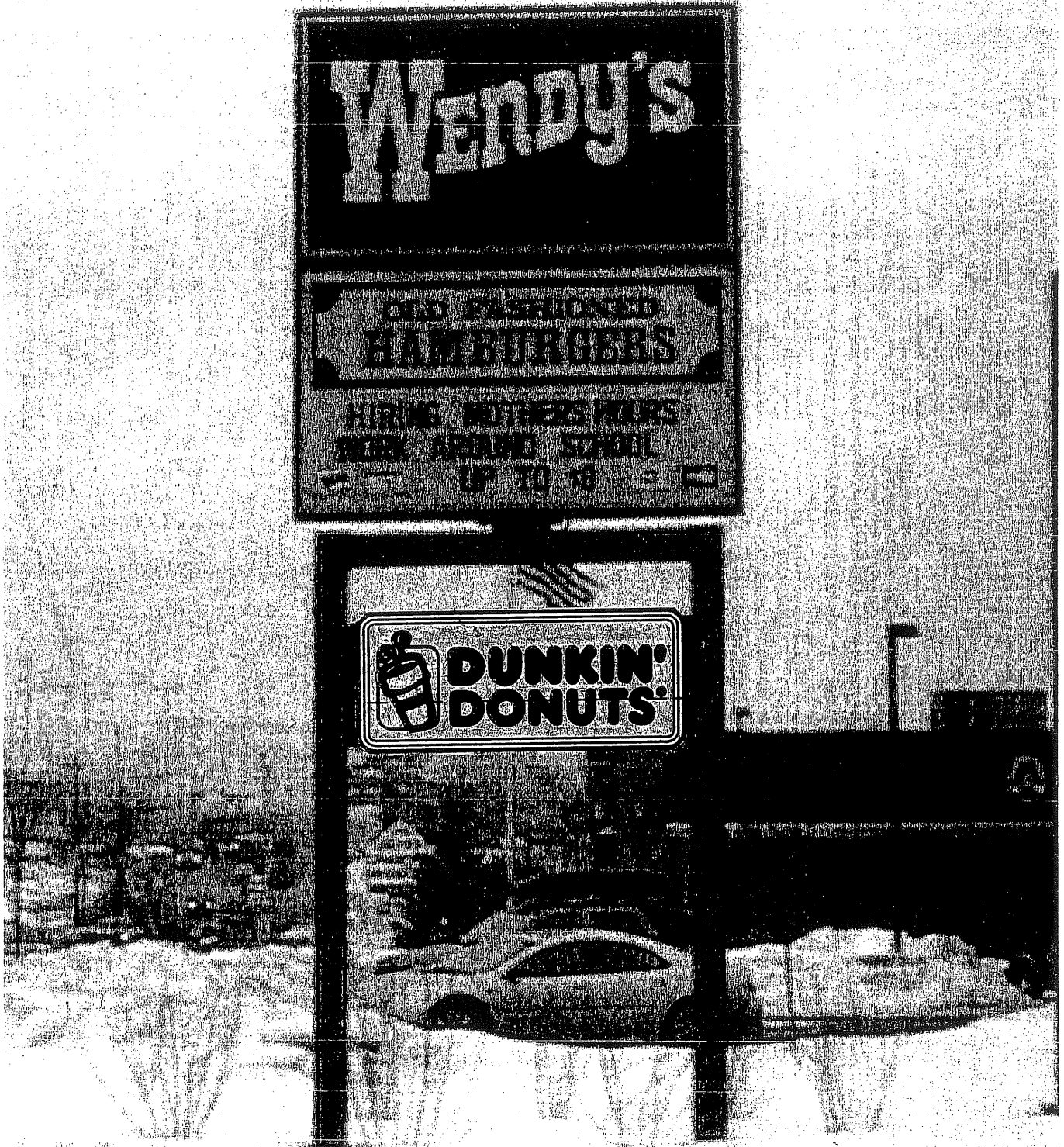
BOTTOM VIEW



SIDE VIEW



Hubbell Lighting



Existing Wendy's sign with proposed Dunkin' Donuts addition.

Att. 18

Kandi Talbot - Dunkin Donuts - Warren Avenue

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Kandi Talbot" <kcote@portlandmaine.gov>
Date: 03/14/2005 10:31 AM
Subject: Dunkin Donuts - Warren Avenue
CC: "Katherine Earley" <KAS@portlandmaine.gov>, "Jeffrey Perry" <jperry@sebagotechnics.com>

Kandi—

I have reviewed the most recent site plan prepared by Sebago Technics dated March 4, 2005 and offer the following comments.

- I find the revised driveway entrance to be an improvement. It appears that the width can be reduced further. I would suggest that a 30 foot entrance be provided. Additionally, the entrance design should be checked to ensure Wendy's truck deliveries can be accommodated (An explanation should be provided on Wendy's delivery truck routing).
- The width of the one-way entrance lane prior to the drive-through exit seems too wide (It scales about 25 feet). Based upon a review of truck turning paths and the desire to discourage drive-through vehicles from exiting the site from the entrance, I would suggest that the width be reduced.
- Painted end islands are illustrated on the plan. I would suggest that these islands be raised and landscaped if possible.
- I continue to suggest that a connection from the Dunkin Donuts circulation road into Wendy's be considered. This will minimize re-circulating traffic onto Warren Avenue, or illegal on-site maneuvers.
- As previously noted a monetary contribution of \$30,000 is requested for the upgrade of the Warren Avenue/Riverside Street intersection, which currently is both operationally and safety deficient.

If you have any questions, or need additional information, please call me.

Thomas A. Errico, P.E.
Senior Transportation Engineer
Wilbur Smith Associates
59 Middle Street
Portland, Maine 04043
(207) 871-1785 Phone
(207) 871-5825 Fax

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Kandi Talbot" <KCOTE@portlandmaine.gov>
Date: 03/14/2005 3:04:14 PM
Subject: RE: Dunkin Donuts - Warren Avenue

Kandi--

I was at the one of the first workshops and I indicated to them that I reviewed traffic levels from Evergreen Credit Union versus Dunkin Donuts and the amount of contribution required by Evergreen Credit. Traffic levels were very similar and thus I suggested that the monetary contribution also be similar. In respect to schedule I will have to investigate.

Thomas A. Errico, P.E.
Senior Transportation Engineer
Wilbur Smith Associates
59 Middle Street
Portland, Maine 04043
(207) 871-1785 Phone
(207) 871-5825 Fax

-----Original Message-----

From: Kandi Talbot [mailto:KCOTE@portlandmaine.gov]
Sent: Monday, March 14, 2005 2:58 PM
To: terrico@wilbursmith.com
Subject: Re: Dunkin Donuts - Warren Avenue

Tom,

Thanks for your comments on Dunkin Donuts. I do have a question for you though. What is the justification for requesting \$30,000 for the upgrade of the Warren Avenue/Riverside Street intersection. Where did the amount come from and what is the timing for the upgrade of of the intersection? The Planning Board asked that question at the last workshop. Thanks.

Kandi

>>> "Tom Errico" <terrico@wilbursmith.com> 3/14/2005 10:33:01 AM >>>
Kandi-

I have reviewed the most recent site plan prepared by Sebago Technics dated March 4, 2005 and offer the following comments.

* I find the revised driveway entrance to be an improvement. It appears that the width can be reduced further. I would suggest that a 30 foot entrance be provided. Additionally, the entrance design should be checked to ensure Wendy's truck deliveries can be accommodated (An explanation should be provided on Wendy's delivery truck routing).

* The width of the one-way entrance lane prior to the drive-through

exit seems too wide (It scales about 25 feet). Based upon a review of truck turning paths and the desire to discourage drive-through vehicles from exiting the site from the entrance, I would suggest that the width be reduced.

* Painted end islands are illustrated on the plan. I would suggest that these islands be raised and landscaped if possible.

* I continue to suggest that a connection from the Dunkin Donuts circulation road into Wendy's be considered. This will minimize re-circulating traffic onto Warren Avenue, or illegal on-site maneuvers.

* As previously noted a monetary contribution of \$30,000 is requested for the upgrade of the Warren Avenue/Riverside Street intersection, which currently is both operationally and safety deficient.

If you have any questions, or need additional information, please call me.

Thomas A. Errico, P.E.

Senior Transportation Engineer

Wilbur Smith Associates

59 Middle Street

Portland, Maine 04043

(207) 871-1785 Phone

(207) 871-5825 Fax

Att. 19

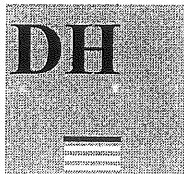
From: Marge Schmuckal
To: Kandi Talbot
Date: 03/16/2005 4:28:56 PM
Subject: 597 Warren Ave - Dunkin' Donuts

Kandi,
I've reviewed the most recent plans submitted for final review. All B-4 zoning requirements are being met for the structure.

You also dropped off plans for signage on 3/16/05. They are not meeting the signage requirements. Currently they are showing an off premise pole sign. They are apparently proposing to share a sign with Wendy's. The City of Portland does not allow off premise signs. The proposed signage on that shared sign is just over the maximum of 65 square feet.

The B-4 zone only allows one sign per street frontage plus one extra or two signs. The building plans are showing three signs which is one sign over the allowable under the sign ordinance.

Marge



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

■ ROADWAY DESIGN
■ ENVIRONMENTAL ENGINEERING
■ TRAFFIC STUDIES AND MANAGEMENT
■ PERMITTING
■ AIRPORT ENGINEERING
■ SITE PLANNING
■ CONSTRUCTION ADMINISTRATION

Handwritten: AH. 20

MEMORANDUM

DATE: March 16, 2005

TO: Kandi Talbot, City of Portland Planning

FROM: Stephen R. Bushey, P.E.

SUBJECT: Dunkin Donuts
Warren Avenue
Review memo #3

Response by Sebago Technics in italics, March 18, 2005

DeLuca-Hoffman Associates, Inc has reviewed the application materials dated March 4, 2005 for a proposed Dunkin Donuts off Warren Avenue. The materials received included the Revised Stormwater report and revised site development plans. We offer the following comments:

1. The development plans have been revised based on input from the Planning Board and other City Staff review. The primary revisions appear to include a modified building size and modifications to the site access and circulation patterns. The proposal now includes a primary entrance only at the existing easterly Wendy's d/w and a circulation pattern requiring exiting traffic from both the Wendy's and Dunkin Donuts to use the driveway to the west of Wendy's.
2. We assume that evidence has been provided for the easement allowing traffic to/from the Fuller-Jeffrey site (lot 314-A1) to continue to cross the Dunkin Donuts site as well as the Wendy's site, since their traffic will now have to also exit via the Wendy's exit drive. It is unclear from the existing conditions plan if these rights are in place.
3. We assume that Tom Errico will review the signage needs pertaining to the proposed circulation routes. We suggest that "Do Not Enter" signs may be warranted from the Dunkin Donuts and from the Wendy's to avoid the potential for traffic to exit through the easterly "entering only" driveway.
4. The stormwater management system for the new Dunkin Donuts includes a closed drainage system that will collect runoff from the developed area and convey it to a detention basin. An existing basin serving the adjacent Wendy's development will be substantially enlarged to handle the increase volume of runoff generated by the development. A new Downstream Defender Water Quality Treatment device is proposed to treat the parking lot runoff. The proposed application of the Downstream defender is appropriate and reasonable in our opinion.
5. The engineer should review the input for the basin's outlet control structure. We suggest that the Devise #2 be modeled as a sharp crested or broad crested weir (1.1' wide) rather than a vertical orifice/grate. We also suggest that the Devise #3 be modeled as a 4.9' long weir (6' wide baffle less the devise #2 width or (6' - 1.1' = 4.9')).

We agree that pond outlet control structure should be modeled as suggested to more accurately reflect the post developed peak flow rates at study point SP1. The model has been revised, with Device #2 modeled as a 1.1' wide sharp crested weir and Device #3 modeled as a 4.9' wide sharp crested weir. Revised HydroCAD output of the 2, 10, and 25yr. design storm events is attached (under separate cover) for study point SP1 and all upstream nodes in the post-developed condition. In the revised post development model, the peak flow rates at the study point remain the same or decrease for all design storm events from the previous post development model.

6. We trust that the applicant has provided evidence of their right to connect to the sewer Force main within Warren Avenue and that there is sufficient capacity in that line to handle the flows from this development. This may have been previously provided in last Fall's submissions. I believe the force main in the street is a private line.

The applicant owns the sewer force main in Warren Avenue. A sewer capacity letter has been requested of Frank Brancely of Public Works and will be forwarded when received.

7. An easement may be required for the water main services. The easement would likely be to the PWD.

I spoke with Jim Pandicio of PWD on March 17, 2005 regarding this question, and he informed me that no easement will be required.

8. I assume that the Fire Dept. has reviewed and has not required the installation of a fire hydrant in the project vicinity? There does not appear to be a fire hydrant on either lot.
9. A maintenance agreement should be provided for the water quality treatment unit and for the basin.

There is currently a maintenance agreement in place between Wendy's and Kimco (the applicant) with respect to the shared storm water facilities.

10. The vertical granite curb detail should be revised to meet the City's technical standards since the vertical granite will be installed in the right-of-way.

The detail will be revised as requested.

We trust these items can be satisfactorily worked out by the engineer and look forward to additional materials addressing these comments.

If you have any questions please call.

Steve Bushey, PE
Senior Engineer

Srb/jn1350.10/Dunkin Donuts03-16-05

From: "Steve Bushey" <SBushey@DelucaHoffman.com>
To: "Jeffrey Perry" <jperry@sebagotechnics.com>, "Kandi Talbot" <KCOTE@portlandmaine.gov>
Date: 03/18/2005 1:11:54 PM
Subject: RE: Dunkin Donuts

Jeff/Kandi,

Based on the response provided by Sebago Technics I am satisfied. With that I can recommend that the project be considered for approval by the Planning Board, notwithstanding any further comments from Staff.

If you have any further questions regarding the project or my previous comments please call.

Stephen Bushey, PE
Senior Engineer
Deluca-Hoffman Associates, Inc.
778 Main Street
South Portland, Maine 04106
Tel. 207-775-1121, Fax 207-879-0896
sbushey@delucahoffman.com

-----Original Message-----

From: Jeffrey Perry [mailto:jperry@sebagotechnics.com]
Sent: Friday, March 18, 2005 12:56 PM
To: 'Kandi Talbot'
Cc: Steve Bushey; 03461 (E-mail)
Subject: RE: Dunkin Donuts

Kandi, we have responded to Steve's comments in the attached letter. Our response is in "italics". With respect to Comment #5, I am faxing to Steve today (3-18) the revised stormwater calc's to reflect the recommended changes. After your collective review, please call with any questions.

-----Original Message-----

From: Kandi Talbot [mailto:KCOTE@portlandmaine.gov]
Sent: Wednesday, March 16, 2005 3:30 PM
To: jperry@sebagotechnics.com
Subject: Dunkin Donuts

Jeff,

Attached are Steve Bushey's comments regarding the Dunkin Donuts project. Any questions, please do not hesitate to contact me at 874-8901.

Thanks.
Kandi

CC: "03461 (E-mail)" <03461@sebagotechnics.com>

PLANNING BOARD REPORT #21-05

**DUNKIN DONUTS
VICINITY OF 597 WARREN AVENUE
SITE PLAN REVIEW AND TRAFFIC MOVEMENT PERMIT
KIMCO REALTY, LLC, APPLICANT**

Submitted to:
Portland Planning Board
Portland, Maine

Submitted by:
Kandice Talbot, Planner
March 18, 2005

I. INTRODUCTION

Kimco Realty, LLC has requested site plan approval for a 1,840 sq. ft. Dunkin Donuts building with drive-through, to be located on the northern side of Warren Avenue, adjacent to Wendy’s and to the west of the Maine Turnpike. The site is 1.36 acres and zoned B-4.

This development is a minor site plan, however, because of the number of traffic trips, the Planning Board will be reviewing this project under local delegated review authority for an MDOT Traffic Movement Permit.

59 notices were sent to area residents. A notice also appeared in the March 14th edition of the *Portland Press Herald*. Because this is a minor site plan, a neighborhood meeting was not required.

II. SUMMARY OF FINDINGS

Zoning:	B-4 Commercial Corridor Zone
Parcel Size:	1.36 acres
Building Floor Area:	1,840 sq. ft.

III. STAFF REVIEW

The proposed development has been reviewed by staff for conformance with the review standards of the site plan ordinance. Staff comments are highlighted in this report.

IV. SITE PLAN REVIEW

1/2. Traffic

Access to the site will be from Warren Avenue, where a curb cut currently exists. To the north of this property, is property owned by Fuller-Jeffrey Radio of Maine, Inc. The radio property has an access easement over the Dunkin Donuts property. As part of the Wendy’s project, which abuts this site, an easement was granted over the Wendy’s property to allow traffic to exit through their drive to the west of this site.

Vehicles for Dunkin Donuts, Wendy’s, and the Radio property will access through one curb cut on Warren Avenue. Dunkin Donuts and the radio property patrons will drive through the Dunkin Donuts parking lot.

To exit the site, Dunkin Donuts customers who parked, Dunkin Donuts customers who used the driveway, and the radio property patrons will exit through a proposed lane, which will be located to the north of Wendy’s drive-through lane, and exit out Wendy’s drive to the west of the site. The Traffic Engineer has reviewed the circulation plan and found the design to be acceptable.

As indicated previously, the Board will be reviewing this project under local delegated review authority for a MDOT Traffic Movement Permit. This development qualifies for MDOT review

because the projected site traffic demand exceeds 100 passenger car equivalents at peak hours. The proposed development is forecast to generate 330 AM and 90 PM peak hour trips.

The applicant has held a scoping meeting with the Traffic Engineer and has submitted a traffic study based on the scope prescribed.

The Traffic Engineer has reviewed the plans and offer the following comments:

1. The revised driveway entrance is an improvements. However, it appears that the width can be reduced further. A 30 foot entrance is recommended. Additionally, the entrance design should be checked to ensure Wendy's truck deliveries can be accommodated (An explanation should be provided on Wendy's delivery truck routing).
2. The width of the one-way entrance lane prior to the drive-through exit seems too wide (it scales about 25 feet). Based upon a review of truck turning paths and the desire to discourage drive-through vehicles from exiting the site from the entrance, it is recommended that the width be reduced.
3. Painted end islands are illustrated on the plan. It is recommended that these islands be raised and landscaped if possible.
4. It is recommended that a connection from the Dunkin Donuts circulation road into Wendy's be considered. This will minimize re-circulating traffic onto Warren Avenue, or illegal on-site maneuvers.
5. A monetary contribution of \$30,000 is recommended for the upgrade of the Warren Avenue/Riverside Street intersection, which currently is both operationally and safety deficient. Traffic levels from Evergreen Credit Union versus Dunkin Donuts and the amount of contribution required by Evergreen Credit Union were reviewed. Traffic levels were very similar, thus recommending that the monetary contribution also be similar. It appears that work on the intersection will be started in FY 2006-2007.

The Traffic Engineer's memo is included as Attachment 18. A potential condition of approval is:

- that the applicant revise the plans based on the Traffic Engineer's memo dated March 14, 2005 and that the applicant contribute \$30,000 prior to issuance of a building permit to the improvements at the Riverside Street/Warren Avenue. If the proposed MDOT/City improvements do not occur within 5 years from the contribution date, then the money shall be returned to the applicant.

The applicant is proposing 28 parking spaces for the development. The Zoning Administrator has stated that 28 parking spaces meets the zoning requirements.

3. Bulk, Location, Height of Proposed Buildings

The applicant is proposing a 1,840 sq. ft. drive-through donut shop building. The proposed facades will consist of EIFS and Block Veneer. The easterly and westerly elevations are proposed with a large amount of blank space.

4. Sewers, Stormdrains, Water

The applicant proposes to tie into existing utility lines on Warren Avenue. These utilities include gas, sanitary sewer, water and underground electric. The applicant has submitted capacity letters for gas, water and electric, which are included as Attachment 17. A sewer capacity letter has not been submitted at this time. A potential condition of approval is:

- That the applicant shall provide a sewer capacity letter from the Portland Sewer Division prior to issuance of a building permit.

The applicant proposes a sanitary force main connection into the existing system in Warren Avenue. However, the existing sanitary sewer in Warren Avenue is a "private" force main system. The purchase and sales agreement gives Dunkin Donuts permission to connect into the sanitary sewer system.

5. Landscaping and Existing Vegetation

The applicant is proposing eight (8) trees around the site. The trees will include Kwanzan Cherry and Greenspire Littleleaf Linden. The applicant is also proposing a number of shrubs along the front of the building elevation facing Warren Avenue and along the easterly property line.

The City Arborist has reviewed the plans and is recommending that the applicant change some of the Cherry trees and Linden trees to "Karpick" Red Maple, Ash, Hawthorne and Lilac. The City Arborist is also recommending that two Austrian Pine or Serbian Spruce be installed at the ends of the northerly parking spaces.

The applicant has revised the plans to address the City Arborist's review, however, the City Arborist has not been able to review the plans to date. A potential condition of approval is:

- that the City Arborist review and approve the landscaping plan prior to issuance of a building permit.

6. Soils and Drainage

The proposed development consists of the construction of a 1,84080 sq. ft. drive-through donut shop building and associated parking, traffic circulation, and landscaping improvements. An existing detention basin is located at the northwest corner of the site. This detention basin was constructed as part of the Wendy's restaurant development and is located within an easement of

the Dunkin Donuts project site. A stormwater management plan has been submitted and is included as Attachment 2.

The stormwater management system for the new building includes a closed drainage system that will collect runoff from the developed area and convey it to the existing detention basin. The existing detention basin serving the adjacent Wendy's development will be substantially enlarged to handle the increase volume of runoff generated by the development.

The applicant is proposing a downstream defender treatment tank to treat the stormwater prior to entering the detention basin.

The applicant has revised the plans to address the Development Review Coordinator's concerns and the DRC has reviewed and approved the plans pertaining to drainage.

7. Exterior Lighting

Lighting proposed for the site are eight (8) 175-watt metal halide pole fixtures mounted at a 20 ft. height. The applicant is also proposing wall-mounted fixtures on the proposed building. Catalogue cuts of the lighting fixtures have been submitted and meet the lighting standards. However, a photometric plan has not been submitted showing lighting levels. A potential condition of approval is:

- that a photometric plan be submitted for review and approval by staff, prior to issuance of a building permit.

8. Fire

The Fire Department has reviewed and approved the proposed plans.

9. Easements

There are a number of existing easements across the property, including:

- a. A drainage easement for the construction of a detention basin serving the Wendy's site.
- b. A 20 ft. wide Portland Water District easement.
- c. Access easements with abutters Fuller-Jeffrey Radio of Maine Inc. and Wendy's.
- d. Radial Field easement to abutters Fuller-Jeffrey Radio of Maine Inc.

10. Signage

The Zoning Administrator has reviewed the proposed signage and has found that the signage does not meet the zoning requirements. A potential condition of approval is:

- that the signage be revised to address the Zoning Administrator's comments in the memo dated March 16, 2005 to be reviewed and approved by the Zoning Administrator.

11. Wendy's Revised Plan

A revised Wendy's site plan shall be submitted to incorporate the changes required under this review. At this time, a revised site plan has not been submitted. A potential condition of approval is:

- that a revised site plan for the Wendy's property shall be submitted to staff for review and approval prior to issuance of a building permit.

V. STAFF RECOMMENDATIONS

Staff recommends that the Planning Board approve the Dunkin Donut's site plan with the proposed conditions of approval. With the completion of the off-site improvements, this project will not burden the surrounding area.

VI. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #21-05 relevant to standards for site plan regulations, and other findings as follows:

- i. That the plan [is/is not] in conformance with 23MRSA 704-A and Chapter 305 Rules and Regulations pertaining to Traffic Movement Permits.
- ii. That the plan [is/is not] in conformance with the site plan standards of the land use code.

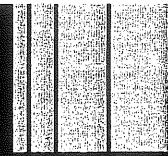
Potential Conditions of Approval

1. that the applicant revise the plans based on the Traffic Engineer's memo dated March 14, 2005 and that the applicant contribute \$30,000 prior to issuance of a building permit to the improvements at the Riverside Street/Warren Avenue. If the proposed MDOT/City improvements do not occur within 5 years from the contribution date, then the money shall be returned to the applicant.
2. That the applicant shall provide a sewer capacity letter from the Portland Sewer Division prior to issuance of a building permit.
3. that the City Arborist review and approve the landscaping plan prior to issuance of a building permit.
4. that a photometric plan be submitted for review and approval by staff, prior to issuance of a building permit.
5. that the signage be revised to address the Zoning Administrator's comments in the memo dated March 16, 2005 to be reviewed and approved by the Zoning Administrator.

6. that a revised site plan for the Wendy's property shall be submitted to staff for review and approval prior to issuance of a building permit.

Attachments:

1. Applicant's Submittal Letter dated June 14, 2004
2. Stormwater Management Report
3. Financial Capability Letter
4. Technical Capability Letter
5. Right, Title and Interest
6. Traffic Study
7. Fire Department Approval dated June 16, 2004
8. CMP Capacity Letter
9. Letter to Applicant from Planning Staff dated July 2, 2004
10. DRC's Memo dated July 15, 2004
11. Wildlife Habitats Assessment
12. Traffic Engineer's Memo dated January 20, 2005
13. Scoping Meeting Notes
14. Letters from Abutters
15. Applicant's Reponse to Abutter Letters
16. Tier 1 Wetlands Application
17. Applicant's Submittal dated March 8, 2005
18. Traffic Engineer's Memo dated March 14, 2005
19. Zoning Administrator's Memo dated March 16, 2005
20. DRC's Memos dated March 16, 2005 and March 17, 2005
21. Plans



Att. 1

June 14, 2004
03461

Ms. Sarah Hopkins
Development Review Services Coordinator
City of Portland Planning Department
389 Congress Street
Portland, ME 04101

Minor Site Plan Application
Dunkin' Donuts, 597 Warren Avenue

Dear Sarah:

On behalf of Kimco Realty, LLC, Sebago Technics has prepared the attached minor site plan application for the proposed development of a Dunkin' Donuts restaurant at 597 Warren Avenue. A sketch plan was submitted for the project for preliminary review in April of this year. The attached plans reflect revisions made to address preliminary comments from your sketch plan review. The proposed project involves the development of the property shown on the City of Portland Tax Map 314, Block A as Lot 7 and is located in the B-4 Zone. The property is under contract from the record property owner, Older Brother LLC and Younger Brother LLC (c/o CB Richard Ellis-Boulos Property Management) to the applicant. The total estimated cost of the proposed development is \$1,000,000.00.

The following narrative is provided to address the requirements for site plan applications outlined in the City Site Plan Review Ordinance. Appropriate exhibits are attached as indicated.

1. Existing Conditions and Proposed Uses

The site is currently vacant. When the adjacent Wendy's was developed, a curb cut to Warren Avenue was created to serve both their lot as well as the subject property. A paved drive over the site provides access to the adjacent property (N/F Fuller-Jeffrey Radio of Maine). Topography is generally level with the majority of the site draining to the rear. Vegetation is a mix of low scrub and grasses. The property is serviced by electricity, gas, water and sewer.

The site is currently under contract for development of a Dunkin' Donuts restaurant franchise. The building will seat 24 and have a drive-up window. Other site improvements will include paved parking, sidewalks, landscaping, lighting and stormwater management.

Granite curbing is shown at the existing access from Warren Avenue. Curbing will transition to bituminous on site. A bituminous sidewalk is proposed across the front of the site as well as connecting to the building.

Our review of the performance standards for restaurants (one parking space per 150 square feet of floor area not used for bulk storage or food preparation: 914 SF/150) indicates that seven parking spaces are required. Twenty seven (27) spaces and a drive-up queue of seven vehicles are proposed.

2. Land Areas

The total land area of the parcel is 1.36 acres.

3. Easements

Existing easements across the property include:

- A drainage easement for the construction of a detention basin servicing the Wendy's site.
- 20' wide Portland Water District easement.
- Access easements with abutters Fuller-Jeffrey Radio of Maine Inc. and Wendy's.
- Radial Field easement to abutters (N/F Fuller-Jeffrey Radio of Maine, Inc.).

There are no new easements proposed.

4. Solid Waste

The proposed use of the property is a Dunkin' Donuts restaurant franchise. It is anticipated that the site will generate solid waste typical of a retail franchise. Solid waste disposal will be handled by a dumpster. Solid waste disposal will be contracted with a private hauler.

5. Availability of Off-Site Facilities

The proposed building will have access to municipal water, sanitary sewer, overhead electric utility, and gas.

Utility capacity letters are pending.

The project site has frontage on Warren Avenue where an existing curb cut was constructed when the Wendy's site was developed. Vehicles will enter the site from this curb cut and will exit via Wendy's existing exit lane.

6. Stormwater Management

Stormwater will be directed to a detention basin at the rear of the site. When the Wendy's site was developed, a detention basin was constructed to service their development. We are proposing to modify the basin and outfall to service both properties. Please refer to the attached Stormwater Narrative Report.

An erosion and sediment control plan has been prepared for the project for implementation during construction. This plan has been placed directly on the design drawings.

7. Construction Plan

The erosion and sediment control plan included on the project design plans includes a proposed schedule of construction for the project.

8. Regulatory Approvals

The project is forecast to generate over 100 peak hour trips and, as such, a Traffic Movement Permit from MDOT will be required. We anticipate less than 4,300 square feet of wetlands (the threshold for permitting) will be impacted by this development; therefore, no freshwater wetland alteration permit will be required.

9. Financial and Technical Capability

A letter from the applicant's lender is attached providing evidence of the applicant's financial capacity to complete the project.

The applicant has contracted with Sebago Technics, Inc. to provide site and landscaping design and permitting services. This firm has worked extensively in the City of Portland designing similar projects. Architectural services are provided by New England Design of Barnstable, Massachusetts.

10. Right, Title and Interest

A copy of the Purchase and Sale Agreement is attached providing evidence of right, title and interest in the property.

11. Unusual Natural Areas, Wildlife and Fisheries Habitats, and Archeological Sites

There are no known or reported, unusual natural areas of wildlife, fisheries habitats or archaeological sites on or adjacent to the site.

Requests for determinations concerning the above have been sent to the Department of Inland Fisheries and the Maine Historic Preservation Commission. Upon receipt, these determination letters will be forwarded to the City.

Ms. Hopkins

-4-

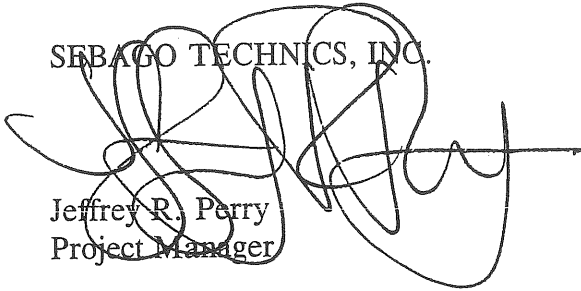
June 14, 2004

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We appreciate your input on our previous sketch plan submittal and look forward to presenting this material in greater detail in Workshop with the Planning Board. After your review of the enclosed information, please call me if you have questions or require additional information.

Sincerely,

SEBAGO TECHNICS, INC.

A large, stylized handwritten signature in black ink, overlapping the text "SEBAGO TECHNICS, INC." and "Jeffrey R. Perry".

Jeffrey R. Perry
Project Manager

JRP:jrp/jc

Enc.

cc: Ed Wolak, Kimco Realty LLC
Eben Adams, Pierce Atwood

STORMWATER MANAGEMENT REPORT

OCT 11 2004

**Dunkin' Donuts
597 Warren Avenue
Portland, Maine**

General

This stormwater management report has been prepared to present the results of an evaluation of the stormwater drainage and erosion control for the proposed Dunkin' Donuts development at 597 Warren Avenue in Portland. The project site is located on the north side of Warren Avenue, approximately 1,000 feet east of the Riverside Street intersection. The majority of the property is currently an undeveloped grass field. Frontage for the proposed project is located entirely on existing paved public roadways. There is an existing paved driveway entrance at the southern end of the site, that provides access the abutting Wendy's Restaurant site to the west, and a paved drive along the eastern property line, providing access a neighboring office building to the east. An existing detention basin is located at the northwest corner of the site. This detention basin was constructed as part of the Wendy's Restaurant development and is located within an easement of the Dunkin' Donuts project site.

The proposed development consists of the construction of a 2,480 s.f. drive through donut shop building and associated parking, traffic circulation and landscaping improvements. The existing detention basin will be enlarged to provide detention storage for stormwater runoff generated from both the existing Wendy's site and the proposed Dunkin' Donuts project sites.

The site is located within the Presumpscot River Watershed, which is not listed as a watershed most at risk from new development by the Maine Department of Environmental Protection. The proposed development will create approximately 0.58 acres of new impervious surface, comprised of rooftop and parking lot pavement. Based on the site location and limited amount of proposed impervious area, the site does not require a Maine Department of Environmental Protection Stormwater Permit.

Site Characteristics

The project site occupies an area of approximately 1.37 acres and is currently an undeveloped grass field with wetland areas along the northern property line. Abutters include Wendy's to the west, commercial office space to the east, Warren Avenue to the south, and undeveloped wetland to the north. The site is gently sloped (1%-2%), towards the rear (northerly) property line. Existing ground cover consists of a mixture of meadow grass and weeds with small areas of wetlands and pavement.

Runoff from the site drains north to the existing wetlands, which ultimately drain west to the Presumpscot River. Runoff from the neighboring Wendy's site currently drains north to the existing detention basin before being discharged to the abutting wetlands. The existing detention basin is located within an easement on the Dunkin' Donuts project site. The runoff

from the existing Wendy's development is included as an existing condition in both the pre-development and post-development stormwater models.

Runoff from approximately 0.6 acres to the east of the project site, including a portion of the parking lot and lawn for the abutting property and a section of the Maine Turnpike, flows west and enters the project site across its eastern property line. This runoff was included in the stormwater analysis for the site by treating it as an existing condition in both the pre-development and post-development models.

The enclosed pre-development watershed maps and USGS topographic map (Exhibit 1) depict the general drainage patterns at the project site.

Soils

Soil classifications within the project area were referenced from the Cumberland County Medium Intensity Soil Survey. A copy of this map (Exhibit 2), delineating the project site, is included with this report.

The southern portion of the site is comprised of Suffield silt loam, and the northern portion of the site is comprised of Scantic silt loam. The Scantic series consists of deep, poorly drained, medium textured soils that are underlain by fine-textured material. The Suffield soil series consists of deep, well drained, medium-textured soils. The Scantic series is classified by the Soil Conservation Service as a Group D hydrologic soil, and Suffield is classified as a Group C soil.

Wetlands

The proposed project will impact approximately 7,985 square feet of wetland area, 3,745 square feet of which was created by the construction of the existing detention pond in 2002. Therefore, the proposed project will impact a total of approximately 4,240 square feet of wetland, which is under the threshold requiring a Tier 1 NRPA Wetland Permit.

Stormwater Management

In order to evaluate drainage characteristics in pre and post-development conditions, a quantitative analysis was performed to determine peak rates of runoff for the 2, 10 and 25-year storm events. Runoff calculations were performed following the methodology outlined in the USDA Soil Conservation Service's "Urban Hydrology for Small Watersheds, Technical Release #55" and HydroCAD Stormwater Modeling System software.

The 24-hour rainfall values used in the hydrologic model are as follows.

Storm Frequency Precipitation (in./24 hr)	
2-year	3.0
10-year	4.7
25-year	5.5

Three study points were analyzed in pre-development and post-development conditions. The study points correspond to offsite discharge points along the project's northerly and westerly property lines, where runoff enters the abutting wetlands.

Times of concentration (Tc) for each watershed were determined based on existing and proposed land cover and topography. In cases where a calculated Tc is less than 5.0 minutes, a direct entry was made in the model such that the minimum Tc for any watershed is 5.0 minutes. This assumption of a 5 minute minimum TC is consistent with the underlying assumptions of the USDA TR-55/TR-20 hydrologic model.

Study Point SP-1 represents the point of discharge from the existing detention basin which provides stormwater control for the existing Wendy's site, as well as runoff of sheet flow from contributory undeveloped areas at the north end of the site. In the post development model this study point corresponds to the modified detention basin outlet.

Study Point SP-2 represents the point where runoff exits the property at its northeast corner via sheet and shallow concentrated flow.

Study Point SP-3 represents the point where runoff exits the property at the northwest corner of the site via sheet and shallow concentrated flow.

Runoff at the front of the site, abutting Warren Avenue, drains across an existing paved apron that comprises the existing entrance to the Wendy's restaurant site. The design grades and runoff patterns at this location remain unchanged in the post development condition.

On site drainage patterns will generally follow the existing topography of the land in the post-development condition. The majority of the runoff from the Dunkin' Donuts site is conveyed by sheet flow to catch basins in the proposed parking areas. Runoff collected in the closed drainage system is routed through a proposed Downstream Defender stormwater treatment unit prior to discharge to the stormwater detention pond. The Downstream Defender unit has been sized in accordance with MDEP criteria to provide 60% total suspended solids removal efficiency.

The following table summarizes the results of the analysis. Computer generated data sheets and hydrographs are provided in the subsequent sections of this report.

Study Point	Total Watershed Area (Ac)		Average Weighted Curve No. (cn)		Peak Rates of Runoff (cfs)					
	Pre	Post	Pre	Post	2-Year		10-Year		25-Year	
					Pre	Post	Pre	Post	Pre	Post
SP-1	1.61	2.00	84	87	2.2	2.0	4.2	4.1	5.2	5.2
SP-2	1.86	1.51	80	82	1.7	1.7	3.7	3.4	4.7	4.3
SP-3	0.05	0.01	73	73	< 0.1	< 0.1	0.1	< 0.1	0.1	< 0.1

The analysis summarized in Table 1 indicates that the proposed modifications to the existing stormwater detention pond control runoff such that there is no increase in peak runoff rates in any of the design storms analyzed. Runoff is controlled by an expanded detention pond and new outlet control structure.

The supporting calculations for the detention pond are included in the attached HydroCAD output, and design details are shown on the project plans.

An Erosion and Sedimentation Control Plan has been developed for the project site placing emphasis on the installation of sedimentation barriers and revegetation to minimize erosion potential from development activities during and after construction. The Erosion Control Plan has been placed directly on the design plans to include locations of erosion control provisions (i.e., silt fence, inlet protection and construction entrances), along with a narrative and construction details for reference by the contractor during construction.

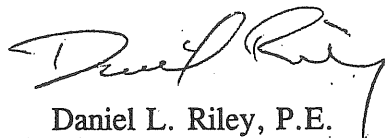
The incorporation of these measures and drainage provisions meets the standard for stormwater runoff for the proposed site development such that no downstream properties will be adversely impacted by the development.

Prepared by:

SEBAGO TECHNICS, INC.



Michael Tadema-Wielandt
Project Engineer



Daniel L. Riley, P.E.
Senior Project Manager

MTW/DLR:met/df
October 8, 2004

Enc.



AH. 3

June 14, 2004

Edward S. Wolak
 Kimco Realty, LLC
 65 Gray Road
 West Falmouth, ME 04105

Dear Ed:

This commitment letter replaces and supercedes the commitment letter dated June 17, 2003, which is now null and void.

We have approved your request for a loan and this letter, when accepted and properly signed, will constitute an agreement between Androscoggin Bank ("Bank"), who agrees to lend, and Kimco Realty, LLC ("Borrower") who agrees to borrow, in accordance with the following terms and conditions:

- A. **BORROWER:** Kimco Realty, LLC
- B. **AMOUNT:** \$950,000.00 Term Loan
- C. **PURPOSE OF LOAN AND USE OF FUNDS:** Finance the construction of a new Dunkin Donuts facility at 599 Warren Avenue in Portland.
- D. **RATE:**

 Option 1. A variable interest rate equal to the Prime Rate in effect on the date of closing, as the "Prime Rate" is reported in The Wall Street Journal in the column entitled "Money Rates." Plus three-quarters percent (0.75%) per annum will be charged. The Bank will adjust the interest rate monthly on the first day of the month following a change in the Prime Rate.

 Option 2. An interest rate equal to the three (3) year Federal Home Loan Bank Board advance rate plus two and three quarters percent (2.75%) fixed for three (3) years and adjusted in three (3) year intervals.

 X Option 3. An interest rate equal to the five (5) year Federal Home Loan Bank Board advance rate plus three percent (3.00%) fixed for five (5) years and adjusted in five (5) year intervals.

E. **FEES:** PROCESSING FEE: \$275.00
 ORIGINATION FEE: \$2,500.00

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F. **TERM:** Fifteen (15) Years, Six (6) Months.

G. **REPAYMENT TERMS:** Six (6) months of interest-only payments followed by One Hundred Eighty (180) monthly payments of principal and interest in an amount sufficient to amortize the principal balance over the then remaining term at the interest rate in effect for the month on which the payment is due, provided, however, that the final monthly payment includes all remaining principal, accrued interest and all other charges then due.

H. **LATE CHARGE:** A late charge of 5% of the scheduled monthly payment shall be assessed on each payment received more than ten (10) days after the scheduled due date.

I. **OFFSET RIGHTS:** Borrower agrees the Bank shall have the right, without notice, to reduce to possession and set off against any and all obligations of the Borrower any account, deposit or other property of Borrower coming into Bank's possession.

J. **COLLATERAL:**
 First priority mortgage and collateral assignment of leases and rents on land and buildings located at 599 Warren Avenue, Portland, Maine.

K. Second priority mortgage and collateral assignment of leases and rents on land and buildings located at 593 Main Street, Gorham, Maine, subject to the first mortgage held by Androscoggin Bank.

L. **GUARANTEES:** Unconditional personal guaranty of Edward S. Wolak and the unlimited corporate guaranty of Gorham Distribution Center, Inc.

M. **FINANCIAL STATEMENTS:**
 Borrower shall furnish annually to Bank tax returns and reviewed financial statements in form and substance satisfactory to Bank.

Corporate Guarantor shall furnish annually to Bank accrual basis tax returns and reviewed financial statements prepared by an independent public accountant satisfactory to the Bank.

Personal Guarantor shall furnish annually to Bank annual tax returns and personal financial statements in form and substance satisfactory to Bank.

Borrower and Corporate Guarantor will maintain their books and records, respectively, relating to financial affairs at all times in accordance with, and all financial statements provided for herein shall be prepared in accordance with, generally accepted accounting principles.

N. **INSURANCE REQUIREMENTS:**
 Borrower will maintain hazard, liability and flood insurance with financially sound and reputable insurers in such amounts and for such coverage as shall be satisfactory in all

respects to Bank on the property at 599 Warren Avenue, Portland, Maine and 593 Main Street, Gorham, Maine. 3B

Bank shall be designated as Mortgagee under standard Mortgagee Clause and be provided with a Lenders Loss Payable Endorsement, with ten (10) day Notice of Cancellation Clause given to Bank on the property at 599 Warren Avenue, Portland, Maine, and 593 Main Street, Gorham, Maine.

- O. **ENVIRONMENTAL COMPLIANCE ANALYSIS:** The loan is subject to the completion of an Environmental Risk Assessment Questionnaire and such other follow-up analysis that may be determined to be necessary, including but not necessarily limited to an environmental site assessment of any real estate pledged to secure the loan, or an environmental audit of Borrower's operations. All assessments, audits or other analyses shall be at Borrower's expense and shall be performed by a qualified environmental consulting firm. If the results of any site assessment reveal that environmental problems exist, or if the results of any environmental audit reveal compliance problems by Borrower with relevant environmental laws and regulations, Bank reserves the right to terminate its commitment hereunder.

If any further environmental analyses are required, Borrower authorizes Bank or its agents to directly discuss with any consultants retained by Borrower the results of those analyses. Borrower acknowledges that Bank's inquiries and required environmental analyses are for Bank's credit risk assessment purposes only. The decision by Bank to lend after review of Borrower's environmental consultant's report should not be construed as Bank's determination or implicit representation that Borrower's real property or mode of operation is free of actual or potential environmental problems.

Borrower will remove, in accordance with applicable law, or will otherwise comply with orders or directives of environmental regulatory agencies relating to use or removal of underground storage tank(s) and will provide evidence, through reports of qualified environmental consultants that no unacceptable environmental problems resulted from prior use of those tanks.

Borrower will provide evidence, in the form of reports from a qualified environmental consulting firm, that there are no leaks in any underground storage tanks that exist on real property the Borrower is pledging to secure this loan.

P. **CONDITIONS:**

1. Borrower will pay all out-of-pocket costs and expenses incurred by Bank in connection with the proposed loan and incurred by Bank in connection with the proposed loan and financing arrangement. This will include, but will not be limited to, attorney's fees, lien search fees, filing fees, environmental audit fees and appraisal costs. These fees will be paid by Borrower whether or not the transaction contemplated herein is closed. Borrower agrees to pay any out-of-pocket costs and expenses incurred by the Bank after the closing and during the life of the loan, including but not limited to subsequent appraisal costs, environmental audit fees and/or title and lien search fees which may be required by the Bank.

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2. Borrower shall execute such further documents to secure the loan transaction contemplated hereunder as counsel for Bank shall determine necessary or advisable in the interest of Bank.

3. A default in any outstanding loan by Borrower to Bank or to any other person or institution whose priority is superior to Bank will be considered as a default in all loans.

4. Any business conducted by Borrower shall have all licenses, permits and approvals to operate, including appropriate environmental approvals.

5. All collateral shall be kept in good repair, and all taxes and assessments thereon shall be paid when due.

6. Borrower shall not cause or permit to exist any environmental problems from their business activities and shall, at all times, maintain compliance with all applicable federal, state and local environmental and land use laws and regulations including, but not limited to, those provisions relating to fuel and chemical storage tanks.

7. Borrower shall promptly notify Bank of any change in environmental status from that previously supplied to Bank. Further, Borrower shall promptly notify Bank of the commencement of state, federal or private environmental or land use investigation or enforcement proceeding or threat thereof.

8. Borrower and Guarantor agree to indemnify and hold Bank harmless from all liability or loss arising out of violations of all applicable environmental laws or regulations except insofar as the violation was a direct and intentional result or independent action taken by Bank.

9. No loan commitment given by Bank to Borrower shall be assignable by Borrower.

10. This commitment to lend is subject to the receipt of credit reports, appraisals and title opinions satisfactory to the Bank.

11. Borrower shall confirm by satisfactory documentation supplied to Bank, the existence of all leases, insurance or other collateral reserved or taken by Bank.

12. No liens, attachments or other encumbrances, whether or not superior to the lien of Bank, shall be placed or arise upon the collateral other than those previously approved by Bank.

13. Borrower and/or Guarantor shall certify to Bank prior to closing the status of any actions, suits, proceedings or investigations, now pending or to the knowledge of Borrower threatened against or affecting Borrower or Guarantor.

14. Borrower hereby submits to the jurisdiction of the state and federal courts located within the State of Maine in connection with any suits or proceedings arising from, under or in connection with any loan document, and agree that this Commitment Letter and the

3D

loan documents governing the loan transaction shall be construed in all respects in accordance with and shall be governed by the laws of the State of Maine. Borrower hereby waives any rights that Borrower may have to a trial by jury of any dispute arising under or relating to this loan or any of the other documents executed in conjunction with this loan (including commitment letter, notes, mortgages, pledge agreements, security agreements, financing statements, guaranties and other documents related to this loan) and agrees that any such dispute shall be tried before a judge sitting without a jury.

15. The Bank shall be given as security a first mortgage, which shall create a valid lien on real estate, pledged with good and merchantable title. Title insurance shall be provided to Bank by a title company approved by Bank.

16. The loan is subject to an appraisal on the property located at 599 Warren Avenue, Portland, Maine, by an appraiser acceptable to Bank. The combined loan to value, including the Gorham property, shall not exceed 80%.

17. Satisfactory organizational documents authorizing the Borrower to borrow from the Bank and the Corporate Guarantor to guaranty the loan shall be made available to the Bank prior to closing.

18. Borrower and Corporate Guarantor shall provide an opinion of counsel, if applicable, to the Bank stating a legal opinion of such attorney as to such matters as we may request, including but not limited to the following:

- a. Corporate existence;
- b. Corporate authority;
- c. No litigation or proceedings pending against Borrower; and
- d. Land use.

Construction Loan Requirements:

At least fifteen (15) days prior to loan closing, Borrowers will provide the following to Lender for its review and approval:

A detailed budget for the cost of constructing the project together with copies of executed bids and contracts with any contractors or suppliers, which must be approved by Lender.

Two (2) complete sets of the final plans and specifications for the construction of the project, by a qualified architect. The final plans and specifications must be prepared in accordance with good architectural and engineering practices and comply with all applicable federal, state and local laws, ordinances, codes, rules and regulations, including but not limited to those relating to zoning, building, fire prevention, health safety, handicap access, historic preservation, wetlands and flood control.

Evidence satisfactory to Lender and Lender's counsel that all permits, licenses and approvals required for the construction and use of the project under applicable laws, ordinances, codes, rules and regulations and under the terms of any restriction, easement or covenant affecting the land have been obtained.

3E

Insurance:

Borrower will obtain and maintain at all times during the construction of the Project such insurance as may be reasonably required by Lender, including, without limitation, commercial general liability insurance, contractor's liability insurance, comprehensive automobile liability insurance, all-risk contractor's equipment floater insurance, employer liability insurance, workmen's compensation insurance and builder's risk insurance.

Cost Overruns/Change Orders:

In addition, if Lender at any time determines, in its sole discretion, that the remaining undisbursed portion of the Loan is or will be insufficient to pay for all Project costs, Borrower will, within five (5) days after written notice of such determination by Lender, deposit with Lender such funds as Lender may require, in an amount sufficient to remedy the condition described in such notice, and until so deposited Lender shall have no obligation to make any further advances of the Loan.

Any change orders over \$5,000 shall require the written consent of the Lender.

Handicap Access:

Borrower shall provide evidence satisfactory to Lender that the proposed construction or renovation to be financed with the proceeds of the Loan will comply with all applicable provisions of the Americans with Disabilities Act of 1990 and the Maine Human Rights Act, including any rules and regulations promulgated thereunder, as well as any other laws or ordinances relating to equal access to public accommodations. Upon the completion of such construction or renovation, Borrower will provide evidence satisfactory to Lender that such construction or renovation does so comply.

Inspection Fees:

Lender shall retain, at Borrower's cost and expense, an outside consulting architect, engineer or inspector to (i) advise Lender as to the accuracy of the budget for the construction of the Project, (ii) advise Lender as to whether the final plans and specifications for the Project are satisfactory for the intended purposes, (iii) make periodic inspections of the construction on the project and to approve requisitions, (iv) advise Lender as to any requested change orders, and (v) review any construction contracts related to the Project. Lender, or any of its officers or employees, or any inspector retained by Lender will not assume any obligations to Borrower or any other party concerning the quality of the construction of the Project as a result of any such inspection activities.

Such architect or inspector shall furnish periodic reports to Lender on the progress of the work and in connection with request for advances; he shall certify to Lender that the work is proceeding satisfactorily and that the undisbursed amount of the Loan will be sufficient to complete the work. In addition to the foregoing, all requests for disbursements shall be accompanied by the following documents and any others, which Lender may require:

- (a) Invoices on the Project and completed requisition forms.
(AIA Documents B141 and G702)
- (b) Mechanic's lien waivers executed by contractor, subcontractors, suppliers, and suppliers of subcontractors for services and material already provided.

- (c) An updated construction budget and requisition form.

3F

On completion of the work such architect or inspector shall certify to Lender that all of the work was performed to his satisfaction, in accordance with the approved plans and specifications, and in compliance with all applicable codes, ordinances, rules and regulations relating to the construction of the Project. A Construction Loan Agreement shall also require updating of cost breakdowns, surveys and title insurance policies without further exceptions as conditions of each advance and shall contain such other terms and conditions, including commencement and completion dates as Lender may reasonably require.

Construction Loan Agreement:

The loan proceeds shall be advanced under a Construction Loan Agreement to finance the construction of the Project in accordance with plans and specifications and assignable contracts, which shall be subject to Lender's approval. Lender will make disbursements on account of the Loan not more often than once monthly after receipt of (i) written certification by an architect or inspector approved by Lender that the work covered thereby was completed to his satisfaction and in accordance with the approved plans and specifications, such disbursements to be made not more than ninety percent (90%) of the cost of each stage and (ii) title insurance disbursement endorsement by an attorney satisfactory to Lender showing that there are no mechanic's or other liens prior to Lender's mortgage.

Under Maine law, no promise, contract or agreement to lend money, extend credit, forbear from collection of a debt or make any other accommodation for the repayment of a debt for more than \$250,000 may be enforced in court against the Bank unless the promise, contract or agreement is in writing and signed by the Bank. Accordingly, the Borrower cannot enforce any oral promise unless it is contained in a loan document signed by the Bank, nor can any change forbearance, or other accommodation relating to the loan, this agreement or any other loan document be enforced, unless it is in writing signed by the Bank. Borrower also understands that all future promises, contracts or agreements of the Bank relating to any other transaction between Borrower and Bank cannot be enforced in court unless they are in writing signed by the Bank. Borrower further agrees that the requirement of a writing described in this paragraph shall apply to this commitment, the loans or credit described herein, any extension, modification, renewal, forbearance or other accommodation relating to the transactions contemplated by this commitment, and to any other credit relationship between Borrower and Bank, (whether existing now or created in the future) whether or not the amount involved exceeds \$250,000.

Any additions, deletions, substitutions or other changes in this Agreement must be documented in writing to become effective.

This commitment was approved upon the basis of information and financial data furnished by Borrower and Guarantor and is extended subject to and conditioned upon there being no material change in the information provided or financial condition of Borrower or Guarantor. In the event of such material change, in the opinion of Bank, the right is reserved to terminate the commitment. Further, at any time after the date hercof the Bank deems itself insecure, it may require additional collateral or alter the terms of this commitment.

To the extent that the terms and conditions as stated herein are not incorporated into the loan documents, this letter will survive the loan closing and will govern our relationship while the loan detailed herein, together with interest and fees, remains outstanding.

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The Bank's obligation to make loans or advances hereunder is hereby expressly conditioned upon receipt by the Bank of any reports, instruments or documentation as required herein and which are satisfactory to the bank. If the terms and conditions as herein stated are satisfactory, please sign this letter signifying your acceptance and return a signed and accepted copy by June 21, 2004 as your authorization for us to proceed. If we do not receive your written acceptance as requested, this commitment will expire at that time. Whether or not the aforesaid conditions are met, the loan must close by September 30, 2004 or this commitment will expire. Any extension of this commitment must be in writing and signed by both parties.

Sincerely,

ANDROSCOGGIN BANK

By: Pamela J. Settle
Pamela J. Settle
Its: Vice President

The undersigned acknowledges receipt and acceptance of this commitment letter, the terms and conditions of which shall survive until the loan made hereunder is paid in full unless modified in writing and signed by Borrower, Guarantor and the Bank.

BORROWER:

KIMCO REALTY, LLC

By: _____
Edward S. Wolak
Its: Member

GUARANTORS:

GORHAM DISTRIBUTION CENTER, INC.

By: _____
Edward S. Wolak
Its:

AH.4

June 14, 2004

Kimco Realty, LLC
Dunkin Donuts Plaza
65 Gray Road, Box 4
Falmouth, Maine 04105

City of Portland
Planning Division
Portland City Hall
389 Congress Street
Portland, ME 04101

RE: Technical Capacity of Kimco Realty, LLC with respect to its Site Plan application
for Warren Avenue

Dear Sir or Madam:

I am the principal of Kimco Realty, LLC. I have developed in excess of 25 Dunkin' Donuts restaurants throughout Maine, New Hampshire and New York, including locations within the City of Portland. I have extensive experience with the implementation of and compliance with land use rules and regulations.

With regard to this proposed project on Warren Avenue in Portland, Kimco Realty, LLC has engaged Sebago Technics, Inc., a full service engineering firm located in Westbrook, Maine. Sebago Technics, Inc. will assist Kimco Realty, LLC in all aspects of the permitting for this project.

Between the extensive development experience of the principal of Kimco Realty, LLC, and the expertise of Sebago Technics, Inc., Kimco Realty, LLC has sufficient technical capacity to develop the proposed site on Warren Avenue.

Sincerely,



Edward S. Wolak
President

18956-1

Att. 5

CORRECTIVE QUITCLAIM DEED
(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **OLDER BROTHER LLC**, a Maine limited liability company and **YOUNGER BROTHER LLC** a Maine limited liability company (collectively "Grantor"), for consideration paid, GRANT to **WENDY'S OLD FASHIONED HAMBURGERS OF NEW YORK, INC.**, an Ohio corporation whose mailing address is P.O. Box 256, 4288 West Dublin-Granville Road, Dublin, Ohio 43017 ("Grantee"), with **QUITCLAIM COVENANT**, certain real estate located in Portland, County of Cumberland and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as "Parcel A").

EXCEPTING AND RESERVING to Grantor its successors and assigns, a non-exclusive, perpetual easement, appurtenant to Grantor's remaining land which is more particularly described in Exhibit B attached hereto and made a part hereof (hereinafter referred to as "Parcel B"), for the purpose of a paved road for continuous and uninterrupted vehicular and pedestrian ingress, egress and access, and the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities, to and from Parcel B and Warren Avenue; over, upon, across, and through the area described in Exhibit C, attached hereto and made a part hereof (the "Easement Area"). This easement shall include the right to enter upon such other portions of Parcel A as abut the Easement Area to the extent reasonably necessary for the purpose of constructing and maintaining said Easement Area and installing such utilities, provided however, Grantor, its successors and assigns, agree (i) that such use of such other portions of Parcel A shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. This easement is subject to and benefited by the covenants and conditions set forth in a Road Construction, Maintenance and Easement Agreement by and between Grantor and Grantee, dated September 24, 2002, and recorded in the Cumberland County Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road Construction, Maintenance and Easement Agreement between Grantor and Grantee of even or near date and to be recorded in the Cumberland County Registry of Deeds.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, the right to relocate to the Easement Area, a portion of the existing easement burdening the real estate comprised of Parcel A and Parcel B, which easement is more particularly described in instruments recorded in said Registry of Deeds in Book 3551, Page 190 and Book 7183, Page 127, as amended by Easement Amendment Agreement (Corrective) dated March 24, 2000 and recorded in said Registry of Deeds in Book 15434, Page 232.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a non-exclusive, assignable easement in gross for continuous and uninterrupted vehicular and pedestrian ingress, egress and access over, upon, across, and through the Easement Area. The assigns of the Grantor with respect to the in gross easement described in this paragraph shall be limited to those persons and entities owning or occupying that certain parcel of real estate located adjacent to and easterly of Parcel B, and identified as "N/F Maine Turnpike Authority, 430 Riverside St, Portland, Maine 6522/343" and "N/F Maine Turnpike Authority, 430 Riverside St, Portland, Maine 2282/77" (collectively, the "MTA Parcel") on a plan entitled "ALTA/ACSM

Land Title Survey on Warren Avenue, Portland, Maine Made For Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001, and revised through December 2, 2002. The assignment of the easement in gross as set forth in this paragraph shall not be construed to affect or impair the other rights and easements reserved by Grantor as set forth in this instrument.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns a perpetual easement, appurtenant to Parcel B, for drainage from Parcel B over, under and across Parcel A and the use, maintenance and repair of any stormwater detention facilities now or hereafter located on Parcel A by Grantee, its successors or assigns. This easement shall include the right to enter upon such other portions of Parcel A as abut this easement area and as are reasonably necessary for the purpose of maintaining, repairing, and replacing said stormwater detention facilities or any culverts or other drainage apparatus as are reasonably necessary in connection with the development of Parcel B, provided however, Grantor, its successors and assigns, agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, a perpetual easement appurtenant to Parcel B, to erect a sign, subject to requisite governmental approvals, on any sign pylon hereafter erected on Parcel A by Grantee, its successors or assigns, provided however, that for so long as a Wendy's Old Fashioned Hamburgers hamburger restaurant is continuously operated by Grantee on Parcel A, any sign erected for the benefit of Parcel B on such pylon shall be smaller in square footage than the primary sign erected by Grantee on such pylon to advertise the Wendy's Old Fashioned Hamburgers hamburger restaurant on Parcel A. This easement shall include the right to enter upon such other portions of Parcel A as abut this easement area and as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said sign, provided however, Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof. By acceptance of this deed Grantee agrees that the sign pylon will be physically designed and constructed in a manner so as to reasonably accommodate a commercially reasonable sign relating to the current or future use of Parcel B.

ALSO EXCEPTING AND RESERVING to Grantor, its successors and assigns, two (2) perpetual easements (one of which shall be appurtenant to Parcel B and one of which shall be in gross and assignable to those persons and entities owning or occupying the MTA Parcel, and the assignment of such easement in gross as aforesaid shall not be construed to impair the appurtenant easement set forth in this paragraph) for the installation, operation, maintenance, repair, and replacement of overhead and/or underground utilities (expressly including an underground sewer line to serve Parcel B and/or the MTA Parcel, said sewer line to run across the portion of Parcel A which is described on Exhibit D, attached hereto and made a part hereof) necessary or desirable for the development, use and occupancy of Parcel B and/or the MTA Parcel, subject, however, to the prior approval by Grantee of the location of such utilities (other than said sewer line,

the location of which is described on Exhibit D), which approval shall not be unreasonably withheld, conditioned or delayed, together with the right to enter upon such other portions of Parcel A as are reasonably necessary for the purpose of installing, maintaining, repairing and replacing said utilities, provided however, that Grantor, its successors and assigns agree (i) that such use shall not unreasonably interfere with the then-existing use or occupancy of Parcel A; and (ii) to repair any damage to Parcel A that results from such use thereof.

AND GRANTOR DOES HEREBY COVENANT AND AGREE with Grantee that Parcel B shall not be used for a drive-through, quick service restaurant which sells hamburger products if such hamburger products exceed fifteen percent (15%) of its gross sales or which sells chicken products if such chicken products exceed fifteen percent (15%) of its gross sales. The foregoing restriction shall not apply to sit-down restaurants with waiter/waitress service, which may sell hamburger products exceeding the foregoing fifteen percent (15%) limitation and/or chicken products exceeding the foregoing fifteen percent (15%) limitation, so long as the restaurant does not have a drive-through facility. This restriction shall burden and run with Parcel B for a period of twenty (20) years from September 24, 2002, and shall benefit Parcel A, and the owners, successors, and assigns thereof and shall automatically expire at the expiration of said twenty (20) year period. In the event of any transfer of Parcel B, Grantor shall be relieved from, and have no further responsibility for, the enforcement of the foregoing restriction but such sale shall not preclude Grantee from enforcing the foregoing restriction against any transferee of Parcel B.

ALSO HEREBY GRANTING to Grantee, its successors and assigns, a perpetual non-exclusive easement, appurtenant to Parcel A, over the portion of Parcel B that is described on Exhibit E, attached hereto and made a part hereof, for the purpose of a paved road for vehicular and pedestrian ingress and access to (but not egress from) Parcel A. This easement shall include the right to enter upon such other portions of Parcel B as about the Easement Area to the extent reasonably necessary for the purpose of constructing and maintaining said Easement Area, provided however, Grantee, its successors and assigns, agree, by their acceptance hereof, (i) that such use of such other portions of Parcel B shall not unreasonably interfere with the then-existing use or occupancy of Parcel B; and (ii) to repair any damage to Parcel B that results from such use thereof. This easement is subject to and benefited by the covenants and conditions set forth in a Road Construction, Maintenance and Easement Agreement by and between Grantor and Grantee, dated September 24, 2002, and recorded in the Cumberland County Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road Construction, Maintenance and Easement Agreement between Grantor and Grantee of even or near date and to be recorded in the Cumberland County Registry of Deeds.

ALSO HEREBY GRANTING to Grantee, its successors and assigns, a perpetual non-exclusive easement, appurtenant to Parcel A, over the portion of Parcel B that is described on Exhibit F, attached hereto and made a part hereof, for the installation, operation, maintenance, repair and replacement of a stormwater detention pond or stormwater drainage area (including any underground pipes and culverts in such area for

the drainage of stormwater from Parcel A to the foregoing easement area), provided however, that the foregoing stormwater detention and/or drainage facilities shall not interfere in any way with the Grantor's installation, operation, maintenance, repair, or replacement of a paved driveway or roadway, for pedestrian and vehicular passage, over a strip of land on Parcel B that is at least twenty-four (24) feet wide running in a generally east-west direction, parallel with the northerly boundary of Parcel A, to provide full ingress and egress to and from the easterly portions of Parcel B via (i) that certain 50.88-foot-wide right of way described and reserved in a deed from Michael Scarks to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47; and (ii) the Easement Area. Grantor, its successors, and assigns, shall have the right to use, in common with Grantee, any stormwater detention and/or drainage facilities installed by Grantee in connection with the foregoing easement and shall also have the right to modify or enlarge the same, at Grantor's sole expense, to accommodate additional drainage, detention, and/or treatment of stormwater from Parcel B and/or the MTA Parcel; provided that such use, modification, or enlargement does not adversely impact the use of the same for the stormwater from Parcel A. By acceptance of this deed, Grantee agrees that Grantee, its successors, and assigns shall be responsible, at Grantee's sole expense, for maintaining and repairing the stormwater detention and drainage facilities to keep the same in good order, condition, and repair and in compliance with applicable laws, until such time, if any, as Grantor, its successors or assigns, develop Parcel B and/or the MTA Parcel and make use of the stormwater detention and drainage facilities installed by Grantee on Parcel B. If Grantor, its successors or assigns develop Parcel B and/or the MTA Parcel and make use of the stormwater detention and drainage facilities installed by Grantee on Parcel B, either party shall have the right to maintain and repair the same, but the costs of maintenance and repair shall be shared equally by the parties, except to the extent such is done at the request of Grantor, its successors or assigns to modify or enlarge such facilities to accommodate additional drainage, detention and/or treatment of stormwater from Parcel B and/or the MTA Parcel, in which event such costs shall be paid solely by Grantor, its successors or assigns. Nothing herein contained shall be construed to preclude Grantor, its successors or assigns from granting rights to others to use any portion of Parcel B (including that portion described on Exhibit F) for drainage, detention and/or treatment of stormwater.

The purpose of this corrective deed is as follows: There were erroneous City of Portland tax map and lot references contained in the labeling of easement areas set forth on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine Made For Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001, as revised through September 12, 2002. The opening paragraphs of Exhibits C, D, and E to that certain deed from Grantor to Grantee dated September 24, 2002 and recorded in the Cumberland County Registry of Deeds in Book 18138, Page 171, described various easement areas by reference to said plan and thereby perpetuated the erroneous tax map and lot references contained in the labeling of the easement areas on said plan. Said ALTA/ACSM Land Title Survey has been amended by revision dated December 2, 2002, to correct the tax map and lot references contained in the labeling of the easement areas and the City of Portland has requested that the

Grantor execute this corrective deed so that the Exhibits hereto will conform to said revised plan.

IN WITNESS WHEREOF, each Grantor has caused this instrument to be executed on its behalf by its duly authorized undersigned representative, this 27 day of February 2003.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]

OLDER BROTHER LLC

By: [Signature]
Joseph F. Boulos
Its Manager

[Signature]

YOUNGER BROTHER LLC

By: [Signature]
Gregory W. Boulos
Its Manager

STATE OF MAINE
County of Cumberland, SS.

February 27, 2003

Then personally appeared the above-named Joseph F. Boulos, Manager of Older Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Older Brother LLC.

Before me,

[Signature]
Notary Public/Maine Attorney-at-Law
Printed Name: Janna A. Merritt

SEAL

STATE OF MAINE
County of Cumberland, SS.

February 24, 2003

Then personally appeared the above-named Gregory W. Boulos, Manager of Younger Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Younger Brother LLC.

Before me,

[Signature]
Notary Public/Maine Attorney-at-Law
Printed Name: PAUL D. PIETROPAOLI

EXHIBIT A
(Legal Description of Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Lot, 52,173 S.F., 1.1977 Acres" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E through land of the Grantor a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to a point;

thence S 05° 39' 10" E through land of the Grantor a distance of Two Hundred Eleven and 71/100 (211.71) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

Specifically excluded from this conveyance is all right, title, or interest of Grantor in and to a certain access and utility easement over the parcel which abuts the westerly sideline of the above-described premises as set forth in a deed from Michael Scarks to Francis P. Drake dated March 31, 1988, recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47, which access and utility easement is hereby excepted and reserved by Grantor for the benefit of the land described in Exhibit B to this deed.

EXHIBIT B
(Legal Description of Parcel B)

A certain lot or parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, being all of the premises described in a deed from Bridgeside Associates to Wargate Associates dated December 1, 1994, and recorded in the Cumberland County Registry of Deeds in Book 11750, Page 307, as further conveyed by Wargate Associates to Older Brother LLC and Younger Brother LLC, as tenants in common, EXCEPTING, HOWEVER, that portion thereof that is described in Exhibit A to this Quitclaim Deed with Covenant.

EXHIBIT C
(Legal Description of Easement Area)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-A-7" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Two Hundred Seventeen and 97/100 (217.97) feet to a point;

thence N 84° 20' 50" E along the northerly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached) a distance of Eighty-One and 00/100 (81.00) feet to a point;

thence S 41° 02' 56" W a distance of Ninety-Four and 78/100 (94.78) feet to a point;

thence S 05° 39' 10" E a distance of Eighty-Four and 11/100 (84.11) feet to a point;

thence S 22° 37' 24" E a distance of Forty-One and 11/100 (41.11) feet to a point;

thence southerly, along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Twenty-Eight and 60/100 (28.60) feet to the northerly sideline of said Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of said Warren Avenue a distance of Seventy-Three and 45/100 (73.45) feet to the point of beginning.

EXHIBIT D

(Legal Description of Sewer Line Easement Area)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Utility Easement for Lot 314-A-7" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning on the northerly sideline of Warren Avenue at a southeasterly corner of Lot 2, as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 04° 24' 12" E along the easterly sideline of said Lot 2 a distance of Ten and 18/100 (10.18) feet to a point;

thence N 83° 43' 00" E a distance of Two Hundred Sixty-Two and 15/100 (262.15) feet to a point on the easterly boundary of Parcel A (as that term is defined in the instrument to which this Exhibit is attached);

thence S 05° 39' 10" E along the easterly boundary of said Parcel A a distance of Ten and 00/100 (10.00) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet to the point of beginning.

EXHIBIT E

(Legal Description of Access Easement to Benefit Parcel A)

A certain parcel of land situated on the northerly side of Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Access Easement for Lot 314-A-3" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002; being bounded and described as follows:

Beginning at a point on the northerly sideline of Warren Avenue at the southeasterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached); said point of beginning being located N 83° 43' 00" E a distance of Two Hundred Sixty-Three and 92/100 (263.92) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence N 05° 39' 10" W a distance of Sixty and 00/100 (60.00) feet;

thence N 83° 43' 00" E a distance of Seventy-Eight and 27/100 (78.27) feet;

thence S 06° 17' 00" E a distance of Thirty and 04/100 (30.04) feet;

thence southwesterly along a curve concave to the left having a radius of Fifteen and 00/100 (15.00) feet, and an arc distance of Twenty-Eight and 99/100 (28.99) feet;

thence southerly along a curve concave to the left having a radius of Thirty-Five and 00/100 (35.00) feet and an arc distance of Eleven and 17/100 (11.17) feet to the northerly sideline of Warren Avenue;

thence S 83° 43' 00" W along said northerly sideline of Warren Avenue a distance of Seventy and 44/100 (70.44) feet to the point of beginning.

EXHIBIT F

(Legal Description of Stormwater Easement Area)

A certain parcel of land situated on the northerly side of, but not adjacent to, Warren Avenue in the City of Portland, County of Cumberland, and State of Maine, as shown as "Proposed Drainage Easement" on a plan entitled "ALTA/ACSM Land Title Survey on Warren Avenue, Portland, Maine, Made for Wendy's Old Fashioned Hamburgers of New York, Inc." prepared by Owen Haskell, Inc., Job No. 2001-220P, dated October 30, 2001 and revised through December 2, 2002, being bounded and described as follows:

Beginning at the northwesterly corner of Parcel A (as that term is defined in the instrument to which this Exhibit is attached), said point of beginning being located N 04° 24' 12" E a distance of Two Hundred Seventeen and 97/100 (217.97) feet from a southeasterly corner of Lot 2 as shown on a plan entitled "Plan of Neptune Properties" recorded in the Cumberland County Registry of Deeds in Plan Book 170, Page 38;

thence continuing N 04° 24' 12" E along the easterly boundary of said Lot 2 a distance of Seventy-Four and 10/100 (74.10) feet;

thence N 83° 42' 58" E a distance of Two Hundred Fifty and 00/100 (250.00) feet;

thence S 06° 17' 02" E a distance of Forty-Five and 00/100 (45.00) feet;

thence S 45° 04' 27" W a distance of Forty-Eight and 53/100 (48.53) feet;

thence S 84° 20' 50" W a distance of Two Hundred Twenty-Five and 85/100 (225.85) feet to the point of beginning.

Received
Recorded Register of Deeds
Mar 03, 2003 01:53:59P
Cumberland County
John B. D Brien

COPY

Recorded CCRD #03461
1/7/05
Book 22208
Page 213


QUITCLAIM DEED WITH COVENANT
(Maine Statutory Short Form)

KNOW ALL BY THESE PRESENTS, that **OLDER BROTHER LLC**, a Maine limited liability company, and **YOUNGER BROTHER LLC**, a Maine limited liability company, both having a place of business in the City of Portland, County of Cumberland, and State of Maine, for consideration paid, GRANT to **KIMCO REALTY, LLC**, a Maine limited liability company, the mailing address of which is 65 Gray Road-Box 4, Falmouth, Maine 04105, with QUITCLAIM COVENANT, certain real estate located in Portland, County of Cumberland and State of Maine, which is more particularly described in Exhibit A attached hereto and made a part hereof.

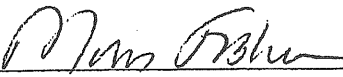
IN WITNESS WHEREOF, Older Brother LLC has caused this instrument to be executed by Morris Fisher, its Vice President, and Younger Brother LLC has caused this instrument to be executed by Gregory W. Boulos, its President, hereunto duly authorized, this 7th day of January, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Older Brother LLC



Witness


By: 

Morris Fisher
Its Vice President

Younger Brother LLC



Witness

By: 

Gregory W. Boulos
Its President

STATE OF MAINE
County of Cumberland, SS.

January 7, 2005

Then personally appeared the above-named Morris Fisher, Vice President of Older Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Older Brother LLC.

Before me,



Notary Public/Maine Attorney-at-Law

Printed Name: PAUL D. PIETROPAOLI

STATE OF MAINE
County of Cumberland, SS.

January 7, 2005

Then personally appeared the above-named Gregory W. Boulos, President of Younger Brother LLC, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said Younger Brother LLC.

Before me,



Notary Public/Maine Attorney-at-Law

Printed Name: PAUL D. PIETROPAOLI

Exhibit A

A certain lot or parcel of land located on the northerly side of Warren Avenue, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

BEGINNING at an iron pin set (5/8" rebar) on the northerly sideline of Warren Avenue, said pin also being at the southeasterly corner of land now or formerly of Michael Scarks and shown as Lot 2 on the Plan entitled "Plan of Property Warren Avenue, Portland, Maine, made for Neptune Properties, Inc., dated March 31, 1986", thence by the following courses and distances:

N 04° 24' 12" E along land now or formerly of Michael Scarks and shown as Lot No. 2 on the aforementioned Plan, a distance of 292.07 feet to a point;

Thence turning and running N 83° 43' 00" E a distance of 386.20 feet to a point on the westerly sideline of land now or formerly of the Greater Portland Radio, Inc., as recorded in Cumberland County Registry of Deeds in Book 3551, Page 190;

Thence running southeasterly along said westerly sideline (S 26° 09' 32" E) a distance of 59.48 feet to a point;

Thence running southwesterly along land now or formerly of the Maine Turnpike Authority S 18° 06' 00" W a distance of 253.70 feet to an iron pin set (5/8" rebar) at the northerly sideline of said Warren Avenue;

Thence S 83° 43' 00" W along the northerly sideline of Warren Avenue a distance of 355.85 feet to the POINT OF BEGINNING.

Bearings are referenced to True North.

EXCEPTING from the above described property, the premises conveyed to Wendy's Old Fashioned Hamburgers of New York, Inc. by deed dated September 24, 2002 and recorded in said Registry of Deeds in Book 18138, Page 171, as corrected by deed dated February 27, 2003 and recorded in said Registry of Deeds in Book 18956, Page 1.

Together with all right, title, and interest of the Grantors in and to a right of way or easement for ingress and egress on foot or by vehicle for the transmission of power, gas, water, sewer, fuel or other utility, and all other usual purposes of access over, under or above a strip of land adjoining the westerly sideline of the above-described parcel, said strip of land being described as follows:

BEGINNING at an iron pin set (5/8" rebar) on the northerly sideline of Warren Avenue, said pin also being at the southeasterly corner of land now or formerly of Pine Tree Paper, Inc. and running N 04° 24' 12" E for a distance of 292.07 feet, along the easterly sideline of land now or formerly of Pine Tree Paper, Inc. to a point;

Thence turning and running N 83° 43' 00" E for a distance of 50.88 feet to a point;

Thence turning and running S 04° 24' 12" W for a distance of 292.07 feet to an iron pin set (5/8" rebar) on the northerly sideline of Warren Avenue;

Thence turning and running S 83° 43' 00" W for a distance of 50.88 feet along the northerly sideline of Warren Avenue to the POINT OF BEGINNING.

Together with all right, title and interest of Grantors in and to the right to pave, repair, plow and maintain the above-described easement as described in a deed to Francis P. Drake dated March 31, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47.

Also, together with the right, title, and interest of Grantors in and to the right of way or easement for the installation, use and maintenance of an outlet from the stormwater detention basin of Lot No. 1 as described in a deed to Francis P. Drake dated March 31, 1988 and recorded in the Cumberland County Registry of Deeds in Book 8229, Page 47.

The above-described property is conveyed, SUBJECT, HOWEVER, to the following:

1. Taxes which are not yet due and payable on the date of delivery hereof;
2. Pole line easement from Frederick T. Knowles, et al. to Central Maine Power Company, dated March 29, 1954, and recorded in the Cumberland County Registry of Deeds in Book 2176, Page 301;
3. Twenty foot wide pipe line easement to Portland Water District, dated October 4, 1954, and recorded in said Registry of Deeds in Book 2197, Page 169;
4. Easement to Greater Portland Radio, Inc., dated May 10, 1974, and recorded in said Registry of Deeds in Book 3551, Page 190, as affected by Release of Easement from Porter Communication Systems, Inc. dated May 21, 1986, and recorded in Book 7183, Page 126, and easements to Porter Communications Systems, Inc., dated May 21, 1986, and recorded in said Registry of Deeds in Book 7183, Pages 127 and 128, as affected by Easement Amendment Agreement by and between Wargate Associates and Citadel Broadcasting Company dated March 24, 2000, and recorded in said Registry of Deeds in Book 15434, Page 232, and as affected by Notice of Relocation of Easement dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 168;
5. Plan of property as approved by the Planning Board of the City of Portland recorded in Plan Book 170, Page 38, as affected by Partial Vacation of Approved Subdivision Plat as recorded on February 14, 1989 in said Registry of Deeds in Book 8657, Page 27;
6. Indenture by and between Portland Water District and Bridgeside Associates dated April 27, 1988, and recorded in said Registry of Deeds in Book 8265, Page 75;
7. Affidavit of Gregory W. Boulos dated April 29, 1988, and recorded in said Registry of Deeds in Book 8272, Page 211;
8. Easements, restrictions, terms and conditions, set forth in a Quitclaim Deed With Covenant from Older Brother LLC and Younger Brother LLC to Wendy's Old Fashioned Hamburgers of New York, Inc., dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 171, as affected by Corrective Quitclaim Deed dated February 27, 2003, and recorded in said Registry of Deeds in Book 18956, Page 1;
9. Terms and conditions set forth in a Road Construction, Maintenance and Easement Agreement by and between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 182, as affected by Corrective Road

Construction, Maintenance and Easement Agreement dated February 27, 2003, and recorded in said Registry of Deeds in Book 18956, Page 12.

10. Terms and conditions of a Sewer Joint Use Agreement between Older Brother LLC and Younger Brother LLC, as parties of the first part, and Wendy's Old Fashioned Hamburgers of New York, Inc. as party of the second part, dated September 24, 2002, and recorded in said Registry of Deeds in Book 18138, Page 191.

Application for MDOT Permit
for the
Proposed Warren Avenue Dunkin' Donut
601 Warren Avenue - Portland, Maine

Prepared for:
Kimco Realty LLC
Falmouth, Maine
207/ 797-7600

Prepared by:
Eaton Traffic Engineering
2 Miranda Street
Brunswick, ME 04011-7348
207/ 725-9805

and

Sebago Technics
One Chabot Street
Westbrook, ME 04098-1339
207/ 856-0277

Department of Transportation
Traffic Engineering Division
16 State House Station
Augusta, Maine 04333
Telephone: 207-287-3775

FOR MDOT USE 1/2000
ID #

Total Fees:
Date: Received

PERMIT APPLICATION - TRAFFIC
TRAFFIC MOVEMENT PERMIT, 23 M.R.S.A. § 704 - A

Please type or print:
This application is for:

Traffic 100-200 PCE's _____

Traffic 200+ PCE's X

Name of Applicant: Kimco Realty LLC

Address: 65 Gray Rd. Box 4, Falmouth, Maine 04105 Telephone: 207-797-7600

Name of local contact or agent: William C. Eaton

Address: 2 Miranda St., Brunswick, ME 04011 Telephone: 207-725-9505

Name and type of development: Proposed Dunkin' Donuts Restaurant

Location of development including road, street, or nearest route number: 601 Warren Avenue

City/Town/Plantation: Portland , County: Cumberland , Tax Map # 314 , Lot # A 7

Do you want a consolidated review with DEP pursuant to 23 M.R.S.A. § 704-A (7)?

Yes _____ No X

Was this development started prior to obtaining a traffic permit? No

Is the project located in an area designated as a growth area (as defined in M.R.S.A. title 30 - A, chapter 187)?

Yes X No _____

Is this project located within a compact area of an urban compact municipality? Yes X No _____

Is this development or any portion of the site currently subject to state or municipal enforcement action?

No

Existing DEP or MDOT permit number (if applicable):

NA

Name(s) of DOT staff person(s) contacted concerning this application:

Tom Errico, Acting Portland Traffic Engineer- Delegated Review Authority

Name(s) of DOT staff person(s) present at the scoping meeting for 200+ applications: _____

Section 1

Site and Traffic Information

1.0 Overview

Sebago Technics and Eaton Traffic Engineering have been retained to prepare plans and permit applications for a proposed Dunkin' Donut shop and office building to be located on Warren Avenue in Eliot, Maine. The development would include the construction of a 1,840 square foot Dunkin' Donut located behind the existing Wendy's restaurant on the northerly side of Warren Avenue across from Home Depot. The proposed Dunkin' Donut will utilize the existing access driveways to/from Wendy's. Wendy's has two driveways – a one-way exit on the westerly side of the site, and a two-way driveway on the easterly side. Wendy's traffic essentially follows a one-way flow on the site, with traffic entering at the east driveway and exiting at the west. The only two-way usage of the east driveway appears to be for employees and visitors to Pioneer Telephone, located just east of Wendy's on Warren Avenue.

1.1 Site Description

The project site is behind a site occupied by a Wendy's restaurant and is relatively level and cleared.

1.2 Existing and Proposed Uses

The proposed use is a 1,840 square foot Dunkin' Donut shop with a drive-through window.

1.3 Site and Vicinity Boundaries

Figure 1, following this page, shows the project location. The Applicant is not aware of any other currently proposed development sites in the immediate vicinity of the proposed facility other than Evergreen Credit Union, located on Riverside Street just south of Home Depot. The credit union is not expected to be operational (other than an ATM) during the PM peak hour.

1.4 Proposed Uses in Vicinity of the Proposed Development

The Applicant is unaware of any proposed development that is highly likely to occur in the vicinity of the proposed retail development other than that noted in 1.3 above.

1.5 Trip Generation

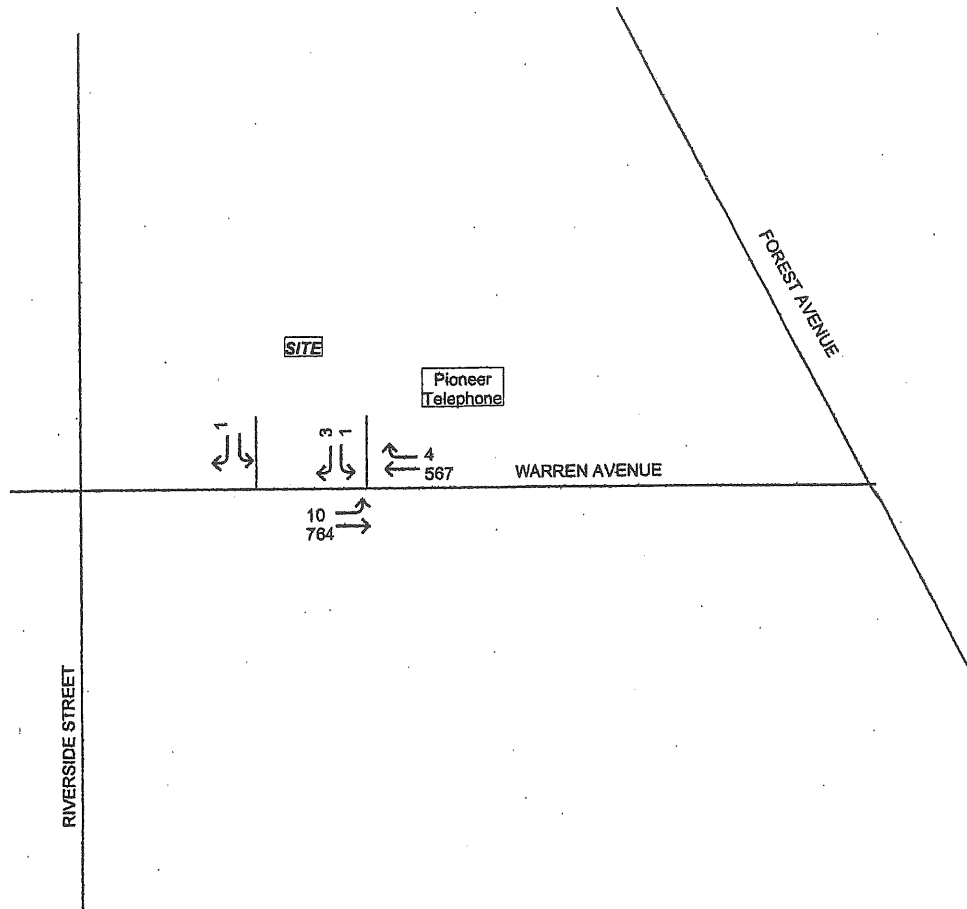
See Attachment by Eaton Traffic Engineering.

1.6 Trip Distribution and Assignment

See Attachment by Eaton Traffic Engineering.

Trip Generation/ Distribution/ Assignment

The proposed development consists of a 1,840 square foot Dunkin' Donut shop with seating for 22 persons. For the proposed Dunkin' Donut shop, MDOT has a "standard" AM peak hour trip generation estimate of 330 peak hour trips, with 90 trips in the PM peak hour. Accordingly it appears that the AM peak hour is the appropriate time period for analysis. Based upon ITE data (Table 5.8 of Trip Generation Handbook), it is estimated that approximately 50 percent of the Dunkin' Donut trips (164) are pass-by trips, and the remainder (166) are primary trips. From a manual turning movement count of Warren Avenue @ Wendy's Restaurant (see Figure 2 attached) directional distribution in the AM peak hour is 57 percent eastbound and 43 percent westbound on Warren Avenue. Pass-by trips were distributed and assigned on this basis. Primary trips were distributed and assigned on the basis of the distribution used for the traffic study for the Wendy's Restaurant (Gorrill-Palmer, January 2002), which was 75 percent to/from the west and 25 percent to/from the east. Figure 3 presents the assignment of site generated AM peak hour trips.



NOT TO SCALE

Figure 2

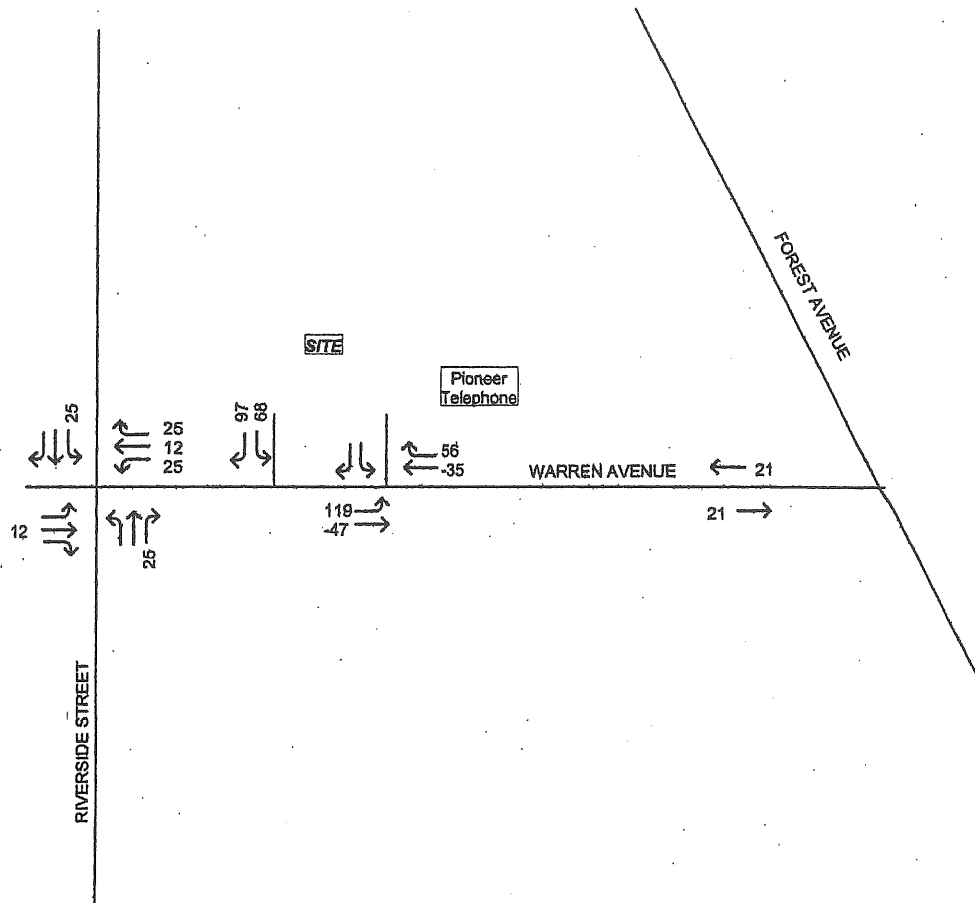
ESTIMATED 2005 AM PEAK HOUR TRAFFIC - PRE-DEVELOPMENT

PROPOSED WARREN AVENUE DUNKIN' DONUT / PORTLAND, MAINE



EATON
TRAFFIC
ENGINEERING

2 Miranda St. - Brunswick, Maine
(207) 725-9805 Fax (207) 725-0847



NOT TO SCALE

Figure 3
SITE GENERATED WEEKDAY AM PEAK HOUR TRAFFIC

PROPOSED WARREN AVENUE DUNKIN' DONUT / PORTLAND, MAINE

Safety

Safety data for the most recent available 3 year period (2001-03) was obtained from the Accident Records Section of MDOT for roadways in the vicinity of the site. Attached are the MDOT computer summaries of accidents on Riverside Street and Warren Avenue in the vicinity of the site.

MDOT guidelines for identification of a High Crash Location (HCL - indicating a potential safety deficiency) is that a location must experience both 8 or more accidents in a 3 year period and have a Critical Rate Factor of 1.00 or greater. Five of the locations satisfy the criteria and are highlighted on the MDOT computer summaries. Detailed accident collision diagrams were prepared from accident reports on file at MDOT. A summary of the analysis of the collision diagrams prepared for each HCL is as follows (collision diagrams attached):

Larrabee @ Riverside: Of the 46 accidents occurring at this location, 29 were rear-end collisions, with the majority on the Larrabee Road and Maine Turnpike approaches. The next most common accident types were left-turn (6) and angle collisions (5). The clear pattern of rear-end collisions suggests that signal clearance intervals should be re-evaluated, as well as signal visibility. Rear-end collisions on the Larrabee Road approach may be related to the "trap lane" created when the inside through lane becomes an exclusive left turn lane at the intersection with little warning. The recent opening of the Rand Road interchange should have reduced volumes somewhat at this intersection, but 2003 accidents totaled 20, an increase over 2001 and 2002 levels. Planned widening of Riverside Street in the vicinity may improve capacity and level of service and have a positive impact on safety at this location.

Warren Avenue/ Riverside to Saville: A total of 33 accidents occurred on this link, with 17 angle collisions, 9 left turn collisions, and 7 rear end collisions. Most of the accidents appear to be related to movements to/from adjacent land uses, with 5 accidents each clearly identified at Home Depot and BJ's. The development of a third lane to provide a two-way left-turn lane throughout most of this section of roadway might help reduce the frequency of accidents,

particularly rear-end and left-turn accidents on Warren Avenue. This lane would also provide a safety refuge for vehicles exiting driveways via a left turn to Warren.

Riverside Street/ Larrabee to Riverside Ct: Of the 26 accidents on this segment of roadway, one half (13) were left turn collisions, with the next most prevalent patterns being lane-change/sideswipe (4) and rear-end collisions (4). The majority of these accidents appear to be related to access movements to/from adjacent land uses along Riverside Street. Proposed improvements in the vicinity may help address the problem. There is a pattern of decreasing accidents over time – 14 accidents occurred in 2001, 8 in 2002 and 4 in 2003. This segment should be monitored to ensure that this pattern either continues or stabilizes.

Riverside Street/ Riverside Ct to RR Crossing: A total of 13 accidents of various types occurred on this segment, most also appearing to be related to access movements to/from adjacent land use. As was the case for the previous segment, the number of accidents is lessening over time – 8 in 2001, 4 in 2002 and 1 in 2003. Monitoring is recommended.

Riverside Street/ Warren to McAlester Farms: Of the 14 accidents on this segment 6 were rear-end collisions and 5 were lane-change/sideswipe collisions. 6 of these 11 accidents occurred on the northbound departure of Riverside Street where two through lanes merge to one lane within a substandard distance of the intersection (perhaps 150 feet of merge-weave distance). There are proposed improvements for the intersection of Riverside @ Warren which may both lengthen the weave-merge section and provide additional lanes to Warren eastbound, which could improve the LOS of this intersection and help improve safety.

CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Fire Copy

Att. 7

2004-0118
Application I. D. Number

06/15/2004
Application Date

Dunkin Donuts
Project Name/Description

Kimco Realty, LLC
Applicant
65 Gray Street, Falmouth, ME 04105
Applicant's Mailing Address

597 - 597 Warren Ave , Portland, Maine

Address of Proposed Site

314 A007001

Assessor's Reference: Chart-Block-Lot

Consultant/Agent

Applicant Ph: (207) 797-7600 Applicant Fax: (207) 797-4300

Applicant or Agent Daytime Telephone, Fax

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify)

2,432 s.f.

Proposed Building square Feet or # of Units

Acreage of Site

B4
Zoning

Check Review Required:

- Site Plan (major/minor) Subdivision # of lots PAD Review 14-403 Streets Review
 Flood Hazard Shoreland Historic Preservation DEP Local Certification
 Zoning Conditional Use (ZBA/PB) Zoning Variance Other

Fees Paid: Site Plan \$400.00 Subdivision Engineer Review Date 06/15/2004

Fire Approval Status:

Reviewer Lt. MacDougal

- Approved Approved w/Conditions See Attached Denied

Approval Date 06/16/2004 Approval Expiration 06/16/2005 Extension to Additional Sheets Attached
 Condition Compliance Lt. MacDougal signature 06/16/2004 date

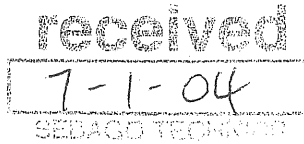
Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- Performance Guarantee Accepted date amount expiration date
 Inspection Fee Paid date amount
 Building Permit Issue date
 Performance Guarantee Reduced date remaining balance signature
 Temporary Certificate of Occupancy Conditions (See Attached) expiration date
 Final Inspection date signature
 Certificate Of Occupancy date
 Performance Guarantee Released date signature
 Defect Guarantee Submitted submitted date amount expiration date
 Defect Guarantee Released date signature



Central Maine Power



AH. 8

June 30, 2004

Mr. Jeffrey R. Perry
C/O Sebago Technics
One Chabot Street
PO Box 1339
Westbrook, Maine 04098

RE: Proposed Dunkin Donuts, 597 Warren Avenue, Portland

Dear Mr. Perry,

This letter is to advise you that Central Maine Power has sufficient three phase electrical capacity in the area to serve the subject project.

Once the project is accepted by the City of Portland, the owner will need to call our Customer Service Center at 1-800-565-3181 to sign up for a New Account and a Work Request Order so we may start a cost estimate.

To complete the cost estimate I will need the information of what voltage is required, the size of the main disconnect and the kilowatt loads required for the new facility. This information should be provided to me from the electrician or electrical engineering firm.

If you have any questions please feel free to call me at 828-2882.

Sincerely,

Paul DuPerre
Technical Advisor

An equal opportunity employer

162 Canco Road | Portland, ME 04103

tel (800) 750-4000

www.cmpco.com

An Energy East Company

Att. 9

Department of Planning & Development
Lee D. Urban, Director



CITY OF PORTLAND

Division Directors
Mark B. Adelson
Housing & Neighborhood Services

Alexander Q. Jaegerman, AICP
Planning

John N. Lufkin
Economic Development

July 2, 2004

Jeffrey Perry
Project Manager
Sebago Technics
One Chabot Street
P.O. Box 1339
Westbrook, ME 04098-1339

RE: Dunkin' Donuts Building, 597 Warren Avenue
ID #2004-0118, CBL #314-A-007

Dear Mr. Perry:

After review of the Dunkin' Donuts site plan proposed at 597 Warren Avenue, the following comments have been generated:

1. Based on the preliminary traffic study prepared by Eaton Traffic Engineering, a MDOT Traffic Movement Permit is necessary. The City of Portland has delegated review authority for a Traffic Movement Permit, which requires Planning Board review. Also, a Traffic Movement Permit requires an additional fee of \$1,000. The project is tentatively scheduled for a Planning Board workshop on August 24th.
2. A standard boundary survey, stamped by a registered surveyor, shall be submitted.
3. Capacity letters from the Portland Water District and the Portland Sewer Division shall be submitted.
4. There is an access easement that runs through the site. Please submit a copy of the easement language for review by Corporation Counsel.
5. The Traffic Engineer is currently reviewing the layout of the plan. Additional comments from the Traffic Engineer shall be forwarded to you.

9A

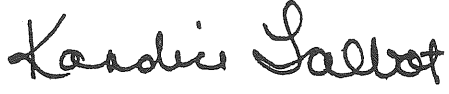
- 6. The Development Review Coordinator is currently reviewing stormwater management plan. Additional comments from the Development Review Coordinator shall be forwarded to you.

- 7. The City Arborist is currently reviewing the landscaping plan. Additional comments from the City Arborist shall be forwarded to you.

- 8. Lighting catalogue cuts and a lighting photometric plan shall be submitted to determine if the lighting meets the City's lighting standards.

If you have any questions, please do not hesitate to contact me at 874-8901.

Sincerely,



Kandice Talbot
Planner

CC: Sarah Hopkins, Development Review Services Manager



DeLUCA-HOFFMAN ASSOCIATES, INC.
CONSULTING ENGINEERS

778 MAIN STREET
SUITE 8
SOUTH PORTLAND, MAINE 04106
TEL. 207 775 1121
FAX 207 879 0896

■ ROADWAY DESIGN
■ ENVIRONMENTAL ENGINEERING
■ TRAFFIC STUDIES AND MANAGEMENT
■ PERMITTING
■ AIRPORT ENGINEERING
■ SITE PLANNING
■ CONSTRUCTION ADMINISTRATION

Att. 10

MEMORANDUM

DATE: July 15, 2004
TO: Kandi Talbot, City of Portland Planning
FROM: Stephen R. Bushey, P.E.
SUBJECT: Dunkin Donuts
Warren Avenue

DeLuca-Hoffman Associates, Inc has reviewed the application materials dated June 14, 2004 for a proposed Dunkin Donuts off Warren Avenue. The materials received included only the Stormwater report and pre/postdevelopment watershed plans. We have not reviewed the site plans, grading or utility plans. We offer the following comments:

1. The stormwater management system for the new Dunkin Donuts includes a closed drainage system that will collect runoff from the developed area and convey it to a detention basin. An existing basin serving the adjacent Wendy's development will be substantially enlarged to handle the increase volume of runoff generated by the development.
2. The post development runoff modeling includes a watershed 40 containing the proposed detention basin. This watershed area must be routed through the pond within the computer model. Because of the increased area adjustments to the outlet control structure may be necessary as well as potential increases to the basin size.
3. The watershed plans contain no information on the pipe sizing and other drainage system measures, therefore no review was completed.
4. Does the Planning Staff want our review of the grading and utilities designs? If so, then plans should be forwarded to this office.
5. We assume that staff will review the queuing lengths for vehicles entering the facility and the circulation with the adjacent Wendy's restaurant.
6. Design plans for the detention basin including cross sections and details for the outlet control structure should be provided.
7. Erosion control measures and plans should be provided on the grading plans.

We trust these items can be satisfactorily worked out by the engineer and look forward to additional materials addressing these comments.

If you have any questions please call.

Steve Bushey, PE
Senior Engineer

Srb/jn1350.10/Dunkin Donuts07-15-04

John E. Baldacci
Governor



received
8-16-04
SEBAGO TECHNICS
Roland D. Martin
Commissioner

Att. 11

DEPARTMENT OF INLAND FISHERIES AND WILDLIFE

Wildlife Division – Region A
358 Shaker Rd.
Gray, ME 04039
Phone: (207) – 657-2345 x 109
Fax: (207) – 657-2980

August 13, 2004

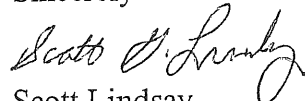
Jeffrey Perry
Sebago Technics
1 Chabot St.
P.O. Box 1339
Westbrook, ME 04098

Dear Mr. Perry,

You contacted this office requesting information on any wildlife habitats that may be impacted by a proposed Dunkin Donuts on Warren Avenue in Portland.

Based on a review of our most current data, I conclude there are no Essential or Significant Wildlife Habitats within or adjacent to this site, nor are there any documented occurrences of rare, threatened or endangered species at this site. Given the extensive development existing at this urban location, I do not believe this development will have any negative impact on wildlife habitats.

Sincerely


Scott Lindsay

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Ethan Boxer-Macomber" <EBM@portlandmaine.gov>
Date: 1/20/05 10:01:31 AM
Subject: Dunkin Donuts - Warren Avenue

Ethan-

I have reviewed the site plan and traffic study for the above project and generally find the project to be acceptable with the following requirements.

- * I continue to believe that the curb opening width for the entry drive to be excessive. A drawing was provided that illustrates truck turning movements and I believe the drawing supports some minor narrowing is possible.
- * Movements from the exit driveway from Dunkin Donuts and the Wendy's Circulation road should be controlled by a Stop Sign (movements from Dunkin Donuts should stop).
- * The traffic study concludes that poor traffic conditions will exist at the Warren Avenue/Riverside Street intersection after the project is complete. This analysis accounts for programmed improvements by MaineDOT. Implementation of these improvements are very important and should be incorporated as soon as possible. Developments in the area have contributed money to assist in funding the improvements. Accordingly, the applicant should make a monetary contribution to assist in mitigating traffic problems in the Warren Avenue/Riverside Street area. It is my recommendation that the applicant contribute \$30,000.00.

If you have any questions please contact me.

Thomas A. Errico, P.E.

Senior Transportation Engineer

Wilbur Smith Associates

59 Middle Street

Portland, Maine 04043

(207) 871-1785 Phone

(207) 871-5825 Fax

City of Portland

TRAFFIC MOVEMENT PERMIT SCOPING MEETING

Permit Category: 100 - 200 PCEs 200 + PCEs
 New Modification

Attendance: _____ Date: 9/22/04
Tom Corvico / Lucie Cole / Randy Dunton, Jeff Perry

Meeting Location: _____

Project Name: Dunkin Donuts
Address: _____

Applicant: _____
Address: _____

Project Engineer: _____
Address: _____

MDOT Traffic Engineer (reviewer): _____

Filings: Has the Applicant notified abutters via certified mail at least 7 days prior to this meeting?
Has the "Notice of Intent to File" been published in a local newspaper?

Section 1 - Site and Traffic Information

1A. Site Plan

Size of development parcel (acres): 59,242 sq. ft.
Size of development parcel to be left non-vegetated (acres): _____

1B. Existing and Proposed Site Uses

Type of development:

<u>USE</u>	<u>SIZE</u>
<u>Dunkin' Donuts</u>	<u>2512 sq</u>
_____	_____
_____	_____

1C. Site and Vicinity Boundaries

- Boundary or title survey signed and sealed by a professional land surveyor
- Vicinity map provided

1D. Proposed Uses in the Vicinity of Proposed Development

Other approved development(s): Evergreen, Maine Mall Motors,
Westbrook Crossings, Hannaford (Forest + Riverside)
Lowes

1E. Trip Generation

Summary tables for each land use code: PM ~~AM~~ traffic

ITE (LUC)	Weekday	AM Peak	PM Peak	Saturday Peak
<u>MDOT</u>	<u>330</u>			

Trip rates obtained from other sources:
 Number of locations where driveway counts taken: _____
 Dates & time periods when driveway counts taken: _____
 Locations where driveway counts were taken: _____

1F. Trip Distribution

- _____ Stick diagram for each major intersection on either side of the development driveway(s)?
- _____ ITE trip generation handbook
- _____ Actual survey done? Location? 5090
- _____ Other. Explain. _____

Comments: _____

1G. Trip Assignment

- _____ Stick diagram for each major intersection on either side of the development driveway(s)?
- Percent primary trips _____
- Percent passer-by trips _____
- Percent diverted trips _____

Stacking - 8 to menu board
 - access to radio station - do they have

Project Name:

Basis for using above-listed percentages:

- Existing traffic patterns of adjacent street
- Zip code survey
- Gravity model
- Other. Explain. _____

Comments: _____

Section 2 - Traffic Crashes

see traffic study

- 01-03 Year(s) of MDOT crash records for study area
- _____ Number of high crash locations
- _____ Collision diagrams provided

Mitigation provided for each high crash location: _____

Other traffic problems: _____

Comments: _____

Section 3 - Development Entrances and Exits

3A. Entrance and Exit Locations

- 800 ft Distance to nearest intersecting road or town line (to the nearest hundredth of a mile)
- 2 Number, width and surface of each proposed entrance/exit
- existing conditions 40 ft.

3B. Plan View of Each Intersection Created

Names of intersecting road Warren

Posted speed limits 35

Entrance/Exit Sight Distance:	Left	Right
_____	<u>916</u>	<u>800</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Usage and location of all driveways and roads located adjacent to the development site:

Home Depot Service Drive

3C. Entrance/Exit Design

- Lighting - *will check*
- Driveway spacing and corner clearance (Access Management)
- Adequate sight distance for vehicles exiting development
- Entrance grade (see fact sheet)
- Entrance/exit widths less than 42 feet (12.8 meters)
- Left turn lane
- Right turn lane
- Signal warranted
- Lane encroachment - *will need to look at*
- Separation islands (see fact sheet)
- Drainage study using 50 year storm for culverts and to connect to MDOT system
- Capacity Analysis - *will do*
- Queuing Analysis - *will do*
- Study to be submitted to MDOT Division Engineer

Comments: _____

Section 4 - Title, Right or Interest

- Title, right or interest in project site
- Title, right or interest in entrance/exits
- Title, right or interest in drainage easement affecting MDOT

Section 5 - Public or Private Rights-of-Way

- Location and width of proposed streets, easements and other public or private rights-of-way
- No signs, structures or pavement connected to the entrance

Section 6 - Schedule

Project schedule: _____

Further study items required (\$500.00 additional fee): _____

Section 7 - Full Traffic Study

_____ \$1,500.00 additional fee required

Build-out year (Phase 1): _____
Build-out year (Full Occupancy): 2005

FS 1. Time Period(s) for Traffic Engineering Analysis

- AM weekday peak hour of adjacent street.
- Noontime weekday peak hour of adjacent street
- PM weekday peak hour of adjacent street.
- Noontime Saturday peak hour of adjacent street.
- Other. Explain. _____

FS 2. Background Annual Traffic Growth Rate

- Type of counts taken:
- Peak hour
 - AADT
 - Base counts less than 2 years old?

FS 3. Study Area to Include the Following Intersections

Side drives
Warnen
Riverside

Additional intersection(s) required if one hour volumes from development are:
25 vehicles in left turn only lane
35 vehicles in through, right turn lane or combined through and right turn
35 vehicles (multiplying the left turn volume by 1.5) in a combined left turn and through lane, or a combined left turn, through and right turn lane

FS 4. Intersection Capacity Analysis

- Isolated
 - Interconnected. Intersection(s) _____
- Software package (isolated): Synchro
Software package (interconnected): _____

FS 5. Analyze or Evaluate the Following

	<u>Location</u>
<input type="checkbox"/> Left turn lane warranted	_____
<input type="checkbox"/> Right turn lane warranted	_____
<input checked="" type="checkbox"/> * Traffic signal warranted	_____
<input type="checkbox"/> Sight distance evaluation	_____
<input type="checkbox"/> Truck climbing lane warranted	_____
<input checked="" type="checkbox"/> * Truck/RV turning radii evaluation	_____
<input type="checkbox"/> Investigation of HCL	_____

Traffic Movement Permit Scoping Meeting
Project Name:

FS 6. Other Development Traffic To Be Included in Study

FS 7. List Location(s) and Date(s) of Completion of Other Projects and Their Traffic Engineer

A# 14

NORMAN, HANSON & DETROY, LLC

ATTORNEYS AT LAW

415 CONGRESS STREET

P.O. BOX 4600

PORTLAND, MAINE 04112-4600

PETER J. DETROY
STEPHEN HESSERT
RODERICK R. ROVZAR
THEODORE H. KIRCHNER
MARK G. LAVOIE
STEPHEN W. MORIARTY
JAMES D. POLIQUIN
JOHN H. KING, JR.
PAUL F. DRISCOLL
WILLIAM O. LACASSE
MARK E. DUNLAP
ROBERT W. BOWER, JR.
JONATHAN W. BROGAN
CHRISTOPHER C. TAINTOR
DAVID P. VERY
DANIEL L. CUMMINGS

RUSSELL B. PIERCE, JR.
ANNE M. CARNEY
DAVID L. HERZER, JR.
THOMAS S. MARJERISON
ADRIAN P. KENDALL
EMILY A. BLOCH
ANNE H. JORDAN
AARON K. BALTES
JOHN R. VEILLEUX
LANCE E. WALKER
DORIS V. R. CHAMPAGNE
NOAH D. WUESTHOFF
C. LINDSEY MORRILL
JENNIFER A.W. RUSH
DANIEL J. EDWARDS

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E-Mail
pdriscoll@nhdlaw.com

Website
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ROBERT F. HANSON
(1944 - 2004)

OF COUNSEL
DAVID C. NORMAN

January 31, 2005

Sarah Hopkins, Assistant City Planner
City of Portland
Planning & Urban Development
389 Congress Street
Portland, ME 04101

Re: Application of Kimco Realty, LLC for Site
Plan Approval, Warren Avenue, Portland, Maine

Dear Sarah:

This will advise that I represent Casey & Paige, LLC and CP & S Associates, LLC, abutters of the proposed Dunkin' Donuts project of Kimco Realty, LLC, on Warren Avenue in Portland, Maine. Casey & Paige, LLC and CP & S Associates, LLC are opposed to the present project design submitted by Kimco Realty, LLC for several reasons and we hope to be able to work out an arrangement with it to address these concerns and will work to do so in the near future.

In general, the concerns of Casey & Paige, LLC and CP & S Associates, LLC relate to access to their adjacent properties on Warren Avenue and the proposed development of those properties in the future. The curb cut benefiting the Kimco Realty, LLC parcel, over which Casey & Paige, LLC enjoys deeded easement rights, is wholly inadequate for the intended development of the adjacent properties. We also have concerns based on our technical reports that the development of the Kimco Realty, LLC property as presently proposed will interfere with copper radial field easement Casey &

Sarah Hopkins, Assistant City Planner
January 31, 2005
Page 2

Paige, LLC enjoys over the Kimco Realty, LLC parcel.

In connection with the proposed development of the Kimco Realty, LLC, we request that the City of Portland either (a) grant Casey & Paige, LLC and CP & S Associates, LLC a curb cut onto Warren Avenue directly or (b) require Kimco Realty, LLC to provide adequate access over its property to allow for the development of the adjacent parcels. We are prepared to work with Kimco Realty, LLC in relocating its curb cut access for this purpose if city planners consider it appropriate that we coordinate our efforts at developing these properties.

In any event, we request that you provide us with notice of all public hearings at which the development of the Kimco Realty, LLC parcel will be considered. Thank you for your attention to this matter.

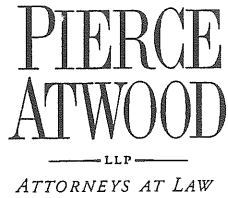
Very truly yours,



Paul F. Driscoll

PFD/pfd

cc: Mr. Peter R. Bouchard
Mr. Michael L. Dilworth
Eben Adams, Esq.



Att. 14

Eben Adams

One Monument Square
Portland, ME 04101

207-791-1175 voice
207-791-1350 fax
eadams@pierceatwood.com
pierceatwood.com

Admitted in: MA ME

VIA HAND DELIVERY

February 3, 2005

Sarah Hopkins, Assistant City Planner
Planning & Urban Development
City of Portland
City Hall – 289 Congress Street
Portland, Maine 04101

RE: Site Plan Application for Kimco Realty, LLC
597 Warren Avenue – Portland, ME

Dear Ms. Hopkins:

I represent Kimco Realty, LLC (“Kimco”) and I am writing in response to the letter you recently received from Attorney Paul Driscoll on behalf of his clients, Casey & Paige, LLC (“Casey & Paige”) and CP&S Associates, LLC (“CP&S”). A copy of Attorney Driscoll’s letter is attached as **Exhibit A**.

Attached as **Exhibit B** is a copy of the latest version of Kimco’s Site Plan Application that I have marked up for purposes of this letter. Casey & Paige owns the parcel to the northeast of Kimco’s Parcel (the “Casey & Paige Parcel”). The Casey & Paige Parcel includes a radio tower, a two-story office building, as well as paved parking. CP&S owns the parcel immediately to the east of the Kimco Parcel (the “CP&S Parcel”). The CP&S parcel is an unimproved parcel with frontage on Warren Avenue that was previously owned by the Maine Turnpike Authority.

First I will address Attorney Driscoll’s concerns that the proposed development on the Kimco Parcel will interfere with the copper radial field easement Casey & Paige enjoys over the Kimco Parcel. A copper radial field is a series of underground copper wires emanating from an AM radio tower, which aid in the performance of the tower. If you imagine that the radio tower is the axle of a wheel, the copper radials leave the radio tower in a circular pattern like spokes of the wheel. Because the copper radial field associated with the radio tower on the Casey & Paige Parcel extends onto the northeast corner of the Kimco Parcel, Casey & Paige’s predecessor obtained an easement from Kimco’s predecessor for the location of these copper radials on that portion of the Kimco Parcel. A copy of that easement is attached as **Exhibit C**, and I have marked the easement area on **Exhibit B**. The easement provides, in relevant part, that Kimco “retains the right to pave over and otherwise use the limits of said copper radial field provided [Kimco] does not interfere with its intended operation.”

Sarah Hopkins, Assistant City Planner
February 3, 2005
Paige - 2 -

As you can see from **Exhibit B**, Kimco proposes to pave portions of the copper radial field easement area, and use portions of it for storm water management. The proposed pavement is expressly permitted under the copper radial field easement. Being mindful of the restrictions in the easement, before submitting Kimco's site plan application, it engaged a radio frequency engineer to review the copper radial field and provide an analysis of whether or not Kimco's contemplated use would interfere with the intended operation of the copper radial field. It is the opinion of our expert engineer that the development proposed by Kimco will not interfere with the copper radial field. A copy of the expert's report is attached as **Exhibit D**. Based on the foregoing, Kimco challenges Attorney Driscoll's contention that Kimco's proposed site plan will interfere with the copper radial field.¹ Furthermore, to the extent that there is a dispute between Casey & Paige and Kimco regarding this issue, the Planning Board is not the proper forum to resolve that issue and therefore it should not be a factor in the Planning Board's consideration of Kimco's site plan application. Casey & Paige has other means to address this issue, should it choose to do so.

Next, I wish to address Attorney Driscoll's comment that the curb cut on the Kimco Parcel is "wholly inadequate for the intended development of the adjacent properties." In considering Attorney Driscoll's comment, it is important to remember that the Casey & Paige Parcel and the CP&S Parcel are distinct parcels with distinct property rights, despite the fact that the parcels are owned by related entities. Turning first to the Casey & Paige Parcel, Attorney Driscoll is correct in his statement that the Casey & Paige Parcel enjoys deeded access rights over the Kimco Parcel. As the Planning Board is well aware, Kimco's Site Plan Application adequately protects and preserves access to and from the Casey & Paige Parcel in accordance with those easement rights. Nothing in Kimco's Site Plan Application limits any future development or redevelopment of the Casey & Paige Parcel.

As to the CP&S Parcel, (which is what I presume Attorney Driscoll's clients are concerned about) it presently has no deeded access rights over the Kimco Parcel. Attorney Driscoll's proposal that the Planning Board force Kimco to grant such ingress and egress rights to the CP&S Parcel is inappropriate. I am unaware of any legal authority the Planning Board has to require Kimco to grant such access rights against its will.

As you know, Kimco and CP&S have been involved in discussions regarding the development of their respective parcels. One of the topics of discussion involved Kimco granting to CP&S ingress and egress rights over the Kimco Parcel for the benefit of the CP&S Parcel. Kimco and, I believe, the Planning Board Staff agree that such an arrangement would be beneficial. Among other things, it would allow for a consolidation of the curb cuts on Warren Avenue. Unfortunately, we have been unable to reach final terms with CP&S. No discussions

¹ Attorney Driscoll's position is further undermined by the fact that there already exists extensive paving over the balance of the copper radial field area on the Casey & Paige Parcel. Indeed, a significant portion of the office building on the Casey & Paige Parcel has been built on the copper radial field.

Sarah Hopkins, Assistant City Planner
February 3, 2005
Paige - 3 -

are currently on going. As a result, Kimco had no choice but to proceed with the current site plan application.

While not pertinent to Kimco's current application, Kimco remains willing to work with Attorney Driscoll's clients. As you can see, we have intentionally designed the site layout such that it would not be difficult to amend Kimco's site plan in the future to allow ingress and egress to the CP&S Parcel if the parties should come to an agreement. Accordingly, Kimco respectfully requests that the Planning Board consider the site plan application as is.

Finally, with respect to Attorney Driscoll's request that the Planning Board grant a curb cut on Warren Avenue to the CP&S Parcel, that is a matter wholly between the Planning Board and CP&S and is not relevant to Kimco's site plan application. The Planning Board should remember, however, that without a future access easement from Kimco to CP&S, any proposed development of the CP&S Parcel cannot provide for traffic from the CP&S Parcel to exit via the Kimco Parcel. The access easement benefiting the Casey & Paige Parcel cannot be used for the benefit of the CP&S parcel without Kimco's consent.

I want to reiterate that Kimco remains willing to work with Attorney Driscoll's clients on coordinated access. However, because there is no assurance that the parties will reach a mutually acceptable agreement and because this site plan application has been pending for so long, Kimco respectfully request that the Planning Board consider the application in its current form. If, at a later date, we are able to reach an agreement with CP&S, we understand that we may need to come back to the Planning Board to amend our site plan. We are disappointed that Attorney Driscoll's clients are seeking to draw the Planning Board into what is nothing more than a negotiation between two adjacent landowners.

Should you have any questions regarding any matters addressed in this letter, please do not hesitate to contact me. Obviously, we are prepared to address any questions the Planning Board may have at the next consideration of Kimco's site plan application.

Sincerely,



Eben Adams

EA/bkr

Enclosure

cc: Mr. Edward S. Wolak (w/o encl.)
Paul F. Driscoll, Esq. (w/encl.)

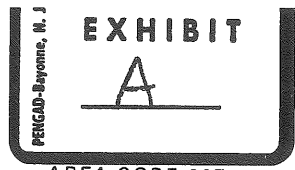
NORMAN, HANSON & DETROY, LLC

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PORTLAND, MAINE 04112-4600

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OF COUNSEL
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ROBERT F. HANSON
(1944 - 2004)

January 31, 2005

Sarah Hopkins, Assistant City Planner
City of Portland
Planning & Urban Development
389 Congress Street
Portland, ME 04101

Re: Application of Kimco Realty, LLC for Site
Plan Approval, Warren Avenue, Portland, Maine

Dear Sarah:

This will advise that I represent Casey & Paige, LLC and CP & S Associates, LLC, abutters of the proposed Dunkin' Donuts project of Kimco Realty, LLC, on Warren Avenue in Portland, Maine. Casey & Paige, LLC and CP & S Associates, LLC are opposed to the present project design submitted by Kimco Realty, LLC for several reasons and we hope to be able to work out an arrangement with it to address these concerns and will work to do so in the near future.

In general, the concerns of Casey & Paige, LLC and CP & S Associates, LLC relate to access to their adjacent properties on Warren Avenue and the proposed development of those properties in the future. The curb cut benefiting the Kimco Realty, LLC parcel, over which Casey & Paige, LLC enjoys deeded easement rights, is wholly inadequate for the intended development of the adjacent properties. We also have concerns based on our technical reports that the development of the Kimco Realty, LLC property as presently proposed will interfere with copper radial field easement Casey &

RECEIVED
FEB - 1 2005

Sarah Hopkins, Assistant City Planner

January 31, 2005

Page 2

Paige, LLC enjoys over the Kimco Realty, LLC parcel.

In connection with the proposed development of the Kimco Realty, LLC, we request that the City of Portland either (a) grant Casey & Paige, LLC and CP & S Associates, LLC a curb cut onto Warren Avenue directly or (b) require Kimco Realty, LLC to provide adequate access over its property to allow for the development of the adjacent parcels. We are prepared to work with Kimco Realty, LLC in relocating its curb cut access for this purpose if city planners consider it appropriate that we coordinate our efforts at developing these properties.

In any event, we request that you provide us with notice of all public hearings at which the development of the Kimco Realty, LLC parcel will be considered. Thank you for your attention to this matter.

Very truly yours,



Paul F. Driscoll

PFD/pfd

cc: Mr. Peter R. Bouchard
Mr. Michael L. Dilworth
Eben Adams, Esq.

CITY OF PORTLAND, MAINE

PLANNING BOARD

Lee Lowry III, Chair
Kevin Beal, Vice Chair
John Anton
Michael Patterson
David Silk
Janice E. Tevanian
Shalom Odokara

September 8, 2005

Kimco Realty, LLC
65 Gray Street
Falmouth, ME 04105

RE: Dunkin Donuts, 597 Warren Avenue
ID #2004-0118, CBL #314-A-007

Dear Sir:

On March 22, 2005, the Portland Planning Board voted 6-1 (Anton opposed) to approve the site plan for the Dunkin Donuts project located at 597 Warren Avenue. The approval was granted for the project with the following conditions:

- i. That the applicant revise the plans based on the Traffic Engineer's memo dated March 14, 2005 and that the applicant contribute \$30,000 prior to issuance of a building permit to the improvements at the Riverside Street/Warren Avenue. If the proposed MDOT/City improvements do not occur within 5 years from the contribution date, then the money shall be returned to the applicant.
- ii. That the City Arborist review and approve the landscaping plan prior to issuance of a building permit.
- iii. That a photometric plan be submitted for review and approval by staff, prior to issuance of a building permit.
- iv. That a revised site plan for the Wendy's property shall be submitted to staff for review and approval prior to issuance of a building permit.
- v. That the site plans be revised to reflect the crosswalks and caution sign, subject to the review and approval of the traffic engineer.
- vi. No building permit shall be issued until the applicant receives the required wetlands permit from DEP.

The Portland Planning Board also voted 5-2 (Anton and Tevanian opposed) to approve the traffic movement permit subject to the following conditions of approval:

- i. That the Traffic Engineer review and approve the plans based on his March 14, 2005 memo and that the applicant contribute \$30,000 prior to issuance of a building permit as stated in condition i. under site plan approval conditions.
- ii. That the Traffic Engineer review the safety of the intersection regarding the fatal accident and any other records the City may have on accidents at this location. Based on this analysis, the Traffic Engineer shall determine if the intersection is safe at this time.

The approval is based on the submitted site plan and the findings related to site plan and subdivision review standards as contained in Planning Report #21-05, which is attached.

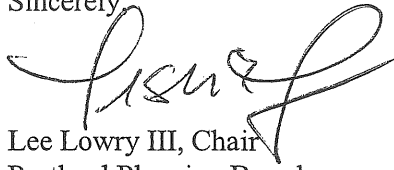
Please note the following provisions and requirements for all site plan approvals:

1. Where submission drawings are available in electronic form, the applicant shall submit any available electronic Autocad files (*.dwg), release 14 or greater, with seven (7) sets of the final plans.
2. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.
3. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
4. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
5. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.
6. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

7. The Development Review Coordinator must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at the Planning Division at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact Kandice Talbot at 874-8901.

Sincerely,



Lee Lowry III, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Services Manager
Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Inspections Division
Michael Bobinsky, Public Works Director
Traffic Division
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Greg Cass, Fire Prevention
Assessor's Office
Approval Letter File



CITY OF PORTLAND, MAINE
Department of Building Inspections

_____ 20 11

Received from _____

Location of Work 577 Main Ave

Cost of Construction \$ _____

Permit Fee \$ 100.00

Building (I1) ___ Plumbing (I5) ___ Electrical (I2) ___ Site Plan (U2) ___

Other Plumbing

CBL: 311 A 117

Check #: 19-117 Total Collected \$ 100.00

THIS IS NOT A PERMIT

No work is to be started until PERMIT CARD is actually posted upon the premises. Acceptance of fee is no guarantee that permit will be granted. PRESERVE THIS RECEIPT. In case permit cannot be granted the amount of the fee will be refunded upon return of the receipt less \$10.00 or 10% whichever is greater.

WHITE - Applicant's Copy
YELLOW - Office Copy
PINK - Permit Copy



PORTLAND MAINE

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Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

August 8, 2005

Kimco Realty, LLC
65 Gray Street
Falmouth, ME 04105

RE: Amendment to Dunkin' Donuts Site Plan, 597 Warren Avenue
ID #2005-0171, CBL #314-A-007

Dear Sir or Madam:

This letter is to confirm that on July 27, 2005 the revision to the approved Dunkin' Donuts Site Plan was approved. The approved revision is for an access drive to the abutting property with the following condition:

1. That the applicant shall submit executed easements allowing access from the abutting property to the Dunkin' Donuts and Wendy's sites.

The revised plan has been reviewed and approved by the project review staff including representatives of the Planning, Public Works, Building Inspections, Fire and Parks Departments.

If you have any questions regarding the revision please contact Kandice Talbot at 874-8901.

Sincerely,

Alexander Jaegerman
Planning Division Director

O:\PLAN\DEV\REV\WARREN597-DUNKIN\REVISIONLETTER7-27-05.DOC

cc: Lee D. Urban, Planning and Development Department Director
Sarah Hopkins, Development Review Services Manager
Kandice Talbot, Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Inspections Division
Michael Bobinsky, Public Works Director
Traffic Division
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Fire Prevention
Assessor's Office
Approval Letter File



PORTLAND MAINE

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Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

August 8, 2005

Kimco Realty, LLC
65 Gray Street
Falmouth, ME 04105

RE: Amendment to Dunkin' Donuts Site Plan
ID #2005-0171, CB

597 Warren Ave

Dear Sir or Madam:

This letter is to confirm that on August 27, 2005 the revision to the approved Dunkin' Donuts Site Plan was approved. The approved revision is for an access drive to the abutting property with the following condition:

1. That the applicant shall submit executed easements allowing access from the abutting property to the Dunkin' Donuts and Wendy's sites.

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If you have any questions regarding the revision please contact Kandice Talbot at 874-8901.

Sincerely,

Alexander Jaegerman
Planning Division Director

O:\PLANDEVREV\WARREN597-DUNKINREVISIONLETTER7-27-05.DOC

cc: Lee D. Urban, Planning and Development Department Director
Sarah Hopkins, Development Review Services Manager
Kandice Talbot, Planner
— Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
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Penny Littell, Associate Corporation Counsel
Fire Prevention
Assessor's Office
Approval Letter File

CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Engineering Copy

2005-0171

Application I. D. Number

7/26/2005

Application Date

Amendment to Plan - Dunkin Donuts

Project Name/Description

Kimco Realty, LLC

Applicant

65 Gray Street, Falmouth, ME 04105

Applicant's Mailing Address

Warren Avenue, Portland, Maine

Address of Proposed Site

314 A007

Assessor's Reference: Chart-Block-Lot

Consultant/Agent

Applicant Ph: (207) 797-7600 Applicant Fax: (207) 797-4300

Applicant or Agent Daytime Telephone, Fax

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) Amendment to Plan

1,840 s.f.

Proposed Building square Feet or # of Units

Acreeage of Site

B4

Zoning

Check Review Required:

- Site Plan (major/minor) Subdivision # of lots _____ PAD Review 14-403 Streets Review
 Flood Hazard Shoreland Historic Preservation DEP Local Certification
 Zoning Conditional Use (ZBA/PB) Zoning Variance Other _____

Fees Paid: Site Pla \$250.00 Subdivision _____ Engineer Review _____ Date 7/26/2005

Engineering Approval Status:

Reviewer Eric Labelle-PW

- Approved Approved w/Conditions See Attached Denied

Approval Date _____ Approval Expiration _____ Extension to _____ Additional Sheets Attached
 Condition Compliance _____ signature _____ date _____

Performance Guarantee Required* Not Required

* No building permit may be issued until a performance guarantee has been submitted as indicated below

- | | | | |
|---|----------------|--|-----------------|
| <input type="checkbox"/> Performance Guarantee Accepted | _____ | _____ | _____ |
| | date | amount | expiration date |
| <input type="checkbox"/> Inspection Fee Paid | _____ | _____ | |
| | date | amount | |
| <input type="checkbox"/> Building Permit Issue | _____ | | |
| | date | | |
| <input type="checkbox"/> Performance Guarantee Reduced | _____ | _____ | _____ |
| | date | remaining balance | signature |
| <input type="checkbox"/> Temporary Certificate of Occupancy | _____ | <input type="checkbox"/> Conditions (See Attached) | _____ |
| | date | | expiration date |
| <input type="checkbox"/> Final Inspection | _____ | _____ | |
| | date | signature | |
| <input type="checkbox"/> Certificate Of Occupancy | _____ | | |
| | date | | |
| <input type="checkbox"/> Performance Guarantee Released | _____ | _____ | |
| | date | signature | |
| <input type="checkbox"/> Defect Guarantee Submitted | _____ | _____ | _____ |
| | submitted date | amount | expiration date |
| <input type="checkbox"/> Defect Guarantee Released | _____ | _____ | |
| | date | signature | |

NORMAN, HANSON & DETROY, LLC

ATTORNEYS AT LAW

415 CONGRESS STREET

P.O. BOX 4600

PORTLAND, MAINE 04112-4600

PETER J. DETROY
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ROBERT F. HANSON
(1944 - 2004)

OF COUNSEL
DAVID C. NORMAN

July 22, 2005

Kandi Talbot, Assistant Planner
Planning and Development Department
City of Portland
389 Congress Street
Portland, ME 04101

Re: Application for Amendment to
Site Plan Approval for Kimco
Realty, LLC's Warren Avenue Project

Dear Ms. Talbot:

Thank you for meeting with Dan Edwards of my office on Monday, July 18, 2005. This cover letter and the associated enclosures represent Kimco Realty, LLC's request for an administrative approval of a minor site plan amendment to the above-referenced project. A copy of the approved site plan is enclosed for your review as Exhibit A. We are making this application with the approval of Kimco Realty, LLC and its legal counsel, Dennis Keeler of Pierce Atwood, pursuant to the terms of an agreement between Kimco Realty, LLC, Casey & Paige, LLC and CP & S Associates, LLC. A copy of this agreement is attached as Exhibit B.

The enclosed materials represent changes consistent with those recommended by Tom Errico during a meeting including you, Mr. Errico, Peter Bouchard of CP&S and Dan Edwards earlier this summer. The pertinent changes, which are reflected on the enclosed Exhibit C (anticipated CP&S site plan) and Exhibit D (proposed Kimco Amended Site Plan), are as follows:

- Kimco Realty, LLC has agreed to grant CP&S Associates, LLC an ingress easement, which will permit direct access from the Kimco entrance into the

CP&S parcel in anticipation of the proposed development of a car wash on the CP&S parcel and to grant CP&S a rear access easement which will permit all traffic from both the CP&S and Casey & Paige LLC parcels to exit via the egress route shared by the existing Wendy's and the proposed Dunkin' Donuts; and

- CP&S and Kimco have agreed to revise the property line between their adjacent parcels to permit Kimco to add three additional parking spaces along the Kimco/CP&S property line. Pursuant to this agreement, CP&S will deed a small triangular parcel of its lot to Kimco.

The objective of these changes is to satisfy the City's desire to limit curbs cuts and points of egress onto Warren Avenue. At a later date, CP&S plans to submit a site plan application for its proposed car wash, which -- also consistent with Tom Errico's recommendations -- will include a right-turn-only entrance to the car wash parcel from Warren Avenue.

Because this approval is required to satisfy the terms of a time-sensitive agreement between Kimco Realty, LLC, CP&S Associates, LLC and Casey & Paige, LLC, we would very much appreciate your response as soon as possible.

Naturally, if there are any questions or comments, please feel free to contact me. Thank you very much for your time and assistance in this matter.

Very truly yours,



Paul F. Driscoll

PFD/pfd

cc: Daniel J. Edwards, Esq. (w/encl.)
Dennis C. Keeler, Esq. (w/encl.)
Mr. Peter R. Bouchard (w/encl.)

MEMORANDUM OF
UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, effective as of July 14, 2005, is by and among KIMCO REALTY, LLC, a Maine limited liability company located in Falmouth, Maine ("Kimco"), CASEY & PAIGE, LLC, a Maine limited liability company located in Portland, Maine ("Casey & Paige"), and CP&S ASSOCIATES, LLC, a Maine limited liability company located in Portland, Maine ("CP&S").

RECITALS:

A. Kimco owns a parcel of land on Warren Avenue being approximately 1.36 acres (the "Kimco Parcel") as shown on the plan entitled "Approved Kimco Site Plan" prepared by Sebago Technics, dated July 12, 2005, a copy of which is attached hereto as Exhibit A (the "Kimco Parcel"). Kimco owns a private sewer force main that runs under and along Warren Avenue and connects to the public sewer maintained by the City of Portland and/or the Portland Water District (the "Private Force Main"). Wendy's Old Fashioned Hamburgers of New York, Inc. ("Wendy's") owns the parcel adjacent to, and westerly of, the Kimco Parcel (the "Wendy's Parcel"). The Wendy's Parcel is shown on Exhibit A and labeled as "Existing Wendy's Site". In connection with the acquisition of the Kimco Parcel, Kimco received a right to assign an easement in gross benefiting the owners of the "CP&S Parcel" (defined below) allowing access over the Wendy's Parcel (the "Easement in Gross").

B. Casey & Paige owns a parcel of land adjacent to, and northeasterly of, the Kimco Parcel as partially shown on Exhibit B, being the land on which the building identified as "Pioneer Telephone" is located (the "Casey & Paige Parcel"). The Casey & Paige Parcel is benefited by an access easement over the Kimco Parcel and the Wendy's Parcel to Warren Avenue (the "Access Easement"). The Casey & Paige Parcel is also benefited by a copper radial field easement over a portion of the Kimco Parcel, as depicted on Exhibit C (the "Copper Radial Field Easement").

C. CP&S owns a parcel of land adjacent to, and easterly of, the Kimco Parcel as shown on Exhibit B and labeled as land "N/F CP&S Associates, LLC" (the "CP&S Parcel"). The CP&S Parcel is adjacent to, and southerly of, the Casey & Paige Parcel.

D. Kimco has received site plan approval from the City of Portland to develop the Kimco Parcel as a Dunkin' Donuts store generally consistent with the site plan attached as Exhibit A (the "Approved Kimco Site Plan").

E. CP&S is in the process of obtaining required approvals from the City of Portland to construct a brushless car wash on the CP&S Parcel in accordance with the plan attached as Exhibit B (the "CP&S Site Plan").

(Ward 16049)




F. In connection with the development of CP&S Parcel and the Casey & Paige Parcel, CP&S and Casey Paige have requested that Kimco accept a modification of the Approved Kimco Site Plan. Kimco is willing to accept certain modification to its Approved Kimco Site Plan, as depicted on the amended Site Plan attached hereto as **Exhibit C** (the “Proposed Kimco Amended Site Plan”).

G. The parties desire to cooperate in the development of the Kimco Parcel, the continued use of the Casey & Paige Parcel and the development of the CP&S Parcel. Accordingly, the parties agree to exchange certain rights and easements, and to cooperate in the permitting and planning processes as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereby agree as follows:

1. Kimco agrees to provide CP&S Parcel with the right to connect to the Private Force Main (including the right to discharge no more than 2,000 gallons per day of sewerage into the Private Force Main), provided that CP&S will be solely responsible for the installation, maintenance and repair of any pipes, connections or other equipment serving only the CP&S Parcel, and CP&S will be responsible for its pro rata share of usage charges, maintenance and repair of the Private Force Main.

2. Kimco agrees to grant to CP&S an easement appurtenant to the CP&S Parcel for vehicular and pedestrian ingress, but not egress (the “CP&S Ingress Easement”) together with an easement appurtenant to the CP&S Parcel for vehicular and pedestrian ingress and egress over the rear portion of the Kimco Parcel (the “CP&S Rear Access Easement”). Both the CP&S Ingress Easement and the CP&S Rear Access Easement will be located generally as shown on **Exhibit C**.

3. Kimco agrees to assign the Easement in Gross to CP&S so that vehicles may exit from the CP&S Parcel across the Wendy’s Parcel, by way of the CP&S Rear Access Easement.

4. Casey & Paige and CP&S agree not to oppose Kimco’s development of the Kimco Parcel as a Dunkin’ Donuts store, provided that Casey & Paige and CP&S shall not be obligated to incur out of pocket expenses.

5. Kimco agrees not to oppose CP&S’s development of the CP&S Parcel as a car wash in accordance with the CP&S Site Plan, provided that (a) Kimco shall not be obligated to incur out of pocket expenses; and (b) nothing herein shall prevent Kimco from opposing any portion of CP&S’s application for approval – including, without limitation, facts shown on the CP&S Site Plan – that Kimco determines in its reasonable judgment, raise concerns regarding (i) safety, (ii) traffic or (iii) stormwater. Kimco agrees not to object to the right turn in only entrance onto the CP&S Parcel from Warren Avenue, as shown on the CP&S Site Plan; provided that Kimco reserves the right to object to design or layout issues with such entrance to the extent that Kimco reasonably determines that such design raises a risk of left turning traffic into the



CP&S Parcel from Warren Avenue or if the incoming traffic is not channeled properly to avoid any interruption or impact on the cuing of traffic waiting for the car wash. Kimco will not object to the fact that the design provides for the flow of traffic to enter the CP&S Parcel from the common entranceway , as depicted on the Proposed Kimco Amended Site Plan to exit the CP&S Parcel to the rear of the Kimco Parcel and the Wendy's Parcel, again, subject to any safety or traffic concerns.

6. Casey & Paige hereby acknowledges and agrees that the traffic flow on the Kimco Parcel and the Wendy's Parcel, as shown on the Kimco Site Plan and the CP&S Site Plan, and the corresponding relocation and bifurcation of the Access Easement so as to provide ingress over the Kimco Parcel and egress over the Kimco Parcel and the Wendy's Parcel is permitted under the terms of the Access Easement and does not constitute an unreasonable interference with the Access Easement. Casey & Paige hereby consents to said relocation and bifurcation and use of the Access Easement, as depicted on both the Kimco Site Plan and the CP&S Site Plan..

7. Casey & Paige acknowledges and agrees that the proposed use of the Copper Radial Field Easement area on the Kimco Parcel for paved parking areas and storm water management as shown on Exhibit A is permitted under the terms of the Copper Radial Field Easement and Casey & Paige hereby consents to said use of the Copper Radial Field Easement Area. Casey & Paige agree that Kimco is hereby released of any obligation to restore any disruption to the Copper Radial Field Easement, or the copper radial field or any of the copper wiring, resulting from the installation and construction of the work shown on the Approved Kimco Site Plan or, if approved, the Proposed Kimco Amended Site Plan.

8. Casey & Paige and CP&S agree to allow Kimco to modify the existing pavement on the Casey & Paige Parcel and the CP&S Parcel as shown on Exhibit B near the northernmost corner of the CP&S Parcel.

9. The Casey & Paige Parcel and the CP&S Parcel shall be subject to the condition that neither parcel shall be used for a business that collects more than 15% of its gross sales from the sale of any one, or any combination of, the following items: coffee, bagels, donuts, baked goods, ice cream and beverages, e.g., shakes, frozen drinks or slushies, soda. Casey & Paige and CP&S agree to record deed restrictions on their respective parcels to memorialize the restrictions set forth in this paragraph.

10. The parties acknowledge that Casey & Paige and CP&S have requested Kimco to accept an amendment to the Kimco Site Plan to accommodate the changes reflected on the Proposed Kimco Amended Site Plan. Kimco is prepared to accept such changes on the following terms and conditions: (a) all such permits and approvals as may necessary to reflect such changes are obtained by CP&S or Casey & Paige, at no expense to Kimco; (b) no changes shall be permitted to the Proposed Kimco Amended Site Plan without the prior approval of Kimco and no conditions shall be imposed on the Proposed Kimco Amended Site Plan, or in connection with its approval, without the approval of Kimco; (c) CP&S shall grant to Kimco fee title to that portion of the CP&S Parcel as is necessary to accommodate all of the twelve parking spaces on the easterly side of the Kimco Parcel as reflected on the Proposed Kimco Amended



Site Plan and satisfy the permitting requirements of the City of Portland, and any approval of the Proposed Kimco Amended Site Plan shall be conditioned upon such transfer taking place within 10 days of approval;; and (d) all such permits and approvals have been obtained in compliance with this Paragraph no later than July 29, 2005. If the permits and approvals for such site plan modification have not been obtained by July 29, 2005 in accordance with the requirements of this Section, Kimco shall have the right to proceed to develop the Kimco Parcel in accordance with the Approved Kimco Site Plan attached hereto as **Exhibit A** and shall be relieved of any obligation to accept any changes thereto. In such event, the balance of the agreements set forth in this Memorandum of Understanding shall remain in full force and effect.

11. The parties acknowledge and agree to execute and record, as necessary, all such deeds, easements, agreements, consents or any other documents necessary to effectuate the agreements contained herein.

12. This Memorandum of Understanding shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

13. The Exhibits attached are hereby incorporated herein by reference.

14. This Memorandum of Understanding shall be governed by and interpreted in accordance with the laws of the State of Maine.

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IN WITNESS WHEREOF, the undersigned have each caused this Memorandum of Understanding to be executed by its respective duly authorized representative, as of the date set forth across from their respective signature, to be effective for all purposes as of the date set forth in the introductory paragraph above.

KIMCO REALTY, LLC, a Maine limited liability company

Date: July 15, 2005

By: Ed Wolak
Its: MEM.
Name: ED WOLAK

CASEY & PAIGE, LLC, a Maine limited liability company

Date: July 14, 2005

By: [Signature]
Its: Peter R. Bouchard
Name: Member

CP&S ASSOCIATES, LLC, a Maine limited liability company

Date: July 14, 2005

By: [Signature]
Its: Peter R. Bouchard
Name: MEMBER



City of Portland Site Plan Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

Address of Proposed Development:		Zone:
Total Square Footage of Proposed Structure: 1,840	Square Footage of Lot: 58,465	
Tax Assessor's Chart, Block & Lot: Chart# 314 Block# A Lot# 7	Property owner's mailing address: 65 Gray Road Falmouth, ME 04105	Telephone #: (207) 797-7600
Consultant/Agent, mailing address, phone # & contact person: Dennis C. Keeler, Esq. Pierce Atwood, LLP One Monument Square Portland, ME 04101 Paul F. Driscoll, Esq. Norman, Hanson & DeTroy, LLC P.O. Box 4600 Portland, ME 04112-4600	Applicant's name, mailing address, telephone #/Fax#/Pager#: Kinco Realty, LLC 65 Gray Road Falmouth, ME 04105 Attn: Ed Wolak	Project name: Minor Amendment to Warren Avenue Dunkin' Donuts Site Plan
<p>Proposed Development (check all that apply)</p> <p><input type="checkbox"/> New Building <input type="checkbox"/> Building Addition <input type="checkbox"/> Change of Use <input type="checkbox"/> Residential <input type="checkbox"/> Office <input type="checkbox"/> Retail <input type="checkbox"/> Manufacturing</p> <p><input type="checkbox"/> Warehouse/Distribution <input type="checkbox"/> Parking lot</p> <p><input type="checkbox"/> Subdivision (\$500.00) + amount of lots _____ (\$25.00 per lot) \$ _____</p> <p><input type="checkbox"/> Site Location of Development (\$3,000.00) (except for residential projects which shall be \$200.00 per lot _____)</p> <p><input type="checkbox"/> Traffic Movement (\$1,000.00) <input type="checkbox"/> Stormwater Quality (\$250.00)</p> <p><input type="checkbox"/> Section 14-403 Review (\$400.00 + \$25.00 per lot)</p> <p><input type="checkbox"/> Other _____</p> <p>Major Development (more than 10,000 sq. ft.)</p> <p><input type="checkbox"/> Under 50,000 sq. ft. (\$500.00)</p> <p><input type="checkbox"/> 50,000 - 100,000 sq. ft. (\$1,000.00)</p> <p><input type="checkbox"/> Parking Lots over 100 spaces (\$1,000.00)</p> <p><input type="checkbox"/> 100,000 - 200,000 sq. ft. (\$2,000.00)</p> <p><input type="checkbox"/> 200,000 - 300,000 sq. ft. (\$3,000.00)</p> <p><input type="checkbox"/> Over 300,000 sq. ft. (\$5,000.00)</p> <p><input type="checkbox"/> After-the-fact Review (\$1,000.00 + applicable application fee)</p> <p>Minor Site Plan Review</p> <p><input type="checkbox"/> Less than 10,000 sq. ft. (\$400.00)</p> <p><input type="checkbox"/> After-the-fact Review (\$1,000.00 + applicable application fee)</p> <p>Plan Amendments</p> <p><input checked="" type="checkbox"/> Planning Staff Review (\$250.00)</p> <p><input type="checkbox"/> Planning Board Review (\$500.00)</p>		
- Please see next page -		

Who billing will be sent to: (Company, Contact Person, Address, Phone #)

Paul F Driscoll, Esq.

Norman, Hanson & DeTroy, LLC, P. O. Box 4600, Portland, ME 04112-4600

Submittals shall include (9) separate folded packets of the following:

- a. copy of application
- b. cover letter stating the nature of the project
- c. site plan containing the information found in the attached sample plans check list

Amendment to Plans: Amendment applications should include 6 separate packets of the above (a, b, & c)

ALL PLANS MUST BE FOLDED NEATLY AND IN PACKET FORM

Section 14-522 of the Zoning Ordinance outlines the process; copies are available at the counter at .50 per page (8.5 x11) you may also visit the web site: ci.portland.me.us chapter 14

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Kimco Realty, LLC

Signature of applicant: By:



Date:

7/20/05

This application is for site review ONLY, a building Permit application and associated fees will be required prior to construction.

Development in Portland

The City of Portland has instituted the following fees to recover the costs of reviewing development proposals under the Site Plan and Subdivision ordinances: application fee; engineering fee; and inspection fee. Performance and defect guarantees are also required by ordinance to cover all site work proposed.

The **Application Fee** covers general planning and administrative processing costs, and is paid at the time of application.

The Planning Division is required to send notices to neighbors upon receipt of an application and prior to public meetings. The applicant will be billed for mailing and advertisement costs. Applicants for development will be charged an **Engineering Review Fee**. This fee is charged by the Planning Division for review of on-site improvements of a civil engineering nature, such as storm water management as well as the engineering analysis of related improvements within the public right-of-way, such as public streets and utility connections, as assessed by the Department of Public Works. The Engineering Review fee must be paid before a building permit can be issued. Monthly invoices are sent out by the Planning Division on a monthly basis to cover engineering costs.

A **Performance Guarantee** will be required following approval of development plans. This guarantee covers all required improvements within the public right-of-way, plus certain site improvements such as landscaping, paving, and drainage improvements. The Planning Division will provide a cost estimate form for figuring the amount of the performance guarantee, as well as sample form letters to be filled out by a financial institution.

An **Inspection Fee** must also be submitted to cover inspections to ensure that sites are developed in accordance with the approved plan. The inspection fee is 2.0% of the performance guarantee amount, or as assessed by the planning or public works engineer. The minimum inspection fee is \$300 for development, unless no site improvements are proposed. Public Works inspects work within the City right-of-way and Planning inspects work within the site including pipe-laying and connections. (The contractor must work with inspectors to coordinate timely inspections, and should provide adequate notice before inspections, especially in the case of final inspection.)

Upon completion of a development project, the performance guarantee is released, and a **Defect Guarantee** in the amount of 10% of the performance guarantee must be provided. The Defect Guarantee will be released after a year.

Other reimbursements to the City include actual or apportioned costs for advertising and mailed notices. All fees shall be paid prior to the issuance of any building permit.

For more information on the fees or review process, please call the Planning Division at 874-8719 or 874-8721.



City Of Portland Site Plan Checklist

Project Name, Address of Project	Application Number		
Submitted () & Date	Item	Required Information	Section 14-525 (b,c)
_____	(1)	Standard boundary survey (stamped by a registered surveyor, at a scale of not less than 1 inch to 100 feet and including:	1
_____	(2)	Name and address of applicant and name of proposed development	a
_____	(3)	Scale and north points	b
_____	(4)	Boundaries of the site	c
_____	(5)	Total land area of site	d
_____	(6)	Topography - existing and proposed (2 feet intervals or less)	e
_____	(7)	Plans based on the boundary survey including:	2
_____	(8)	Existing soil conditions	a
_____	(9)	Location of water courses, marshes, rock outcroppings and wooded areas	b
_____	(10)	Location, ground floor area and grade elevations of building and other structures existing and proposed, elevation drawings of exterior facades, and materials to be used	c
_____	(11)	Approx location of buildings or other structures on parcels abutting the site	d
_____	(12)	Location of on-site waste receptacles	e
_____	(13)	Public utilities	e
_____	(14)	Water and sewer mains	e
_____	(15)	Culverts, drains, existing and proposed, showing size and directions of flows	e
_____	(16)	Location and dimensions, and ownership of easements, public or private rights-of-way, both existing and proposed	f
_____	(17)	Location and dimensions of on-site pedestrian and vehicular access ways	
_____	(18)	Parking areas	g
_____	(19)	Loading facilities	g
_____	(20)	Design of ingress and egress of vehicles to and from the site onto public streets	g
_____	(21)	Curb and sidewalks	g
_____	(22)	Landscape plan showing:	h
_____	(23)	Location of existing proposed vegetation	h
_____	(24)	Type of vegetation	h
_____	(25)	Quantity of plantings	h
_____	(26)	Size of proposed landscaping	h
_____	(27)	Existing areas to be preserved	h
_____	(28)	Preservation measures to be employed	h
_____	(29)	Details of planting and preservation specifications	h
_____	(30)	Location and dimensions of all fencing and screening	i
_____	(31)	Location and intensity of outdoor lighting system	j
_____	(32)	Location of fire hydrants, existing and proposed	k
_____	(33)	Written statement	c
_____	(34)	Description of proposed uses to be located on site	l
_____	(35)	Quantity and type of residential, if any	l
_____	(36)	Total land area of the site	b2
_____	(37)	Total floor area and ground coverage of each proposed building and structure	b2
_____	(38)	General summary of existing and proposed easements or other burdens	c3
_____	(39)	Method of handling solid waste disposal	4
_____	(40)	Applicant's evaluation of availability of off-site public facilities, including sewer, water and streets	5
_____	(41)	Description of any problems of drainage or topography, or a representation that there are none	6
_____	(42)	An estimate of the time period required for completion of the development	

_____	(43)	A list of all state and federal regulatory approvals to which the development may be subject to	8
_____	(44)	The status of any pending applications	8
_____	(45)	Anticipated timeframe for obtaining such permits	h8
_____	(46)	A letter of non jurisdiction	h8
_____	(47)	Evidence of financial and technical capability to undertake and complete the development including a letter from a responsible financial institution stating that is has reviewed the planned development and would seriously consider financing it when approved.	

Note: Depending on the size and scope of the proposed development, the Planning Board or Planning Authority may request additional information, including (but not limited to):

- | | |
|--|--|
| - drainage patterns and facilities; | - an environmental impact study; |
| - erosion and sedimentation controls to be used during construction; | - a sun shadow study; |
| - a parking and/or traffic study; | - a study of particulates and any other noxious emissions; |
| and | |
| - a noise study; | - a wind impact analysis. |

Other comments:

Staff approval shall be conditioned upon the following taking place within 10 days
of such approval: CP&S Associates, LLC conveying to Kimco Realty, LLC the area
necessary to accommodate the "Revised Property Line," as reflected on the Proposed
Amended Site Plan for Kimco Realty, LLC.

Neighborhood Meetings

In May of 2001, the Planning Board's review procedures were revised to improve neighborhood notification and encourage communication between applicants for development and neighborhood residents.

Neighborhood meetings, organized and hosted by the applicant, are now required for zone change proposals, subdivisions of 5 or more units/lots, and for any major site plan proposals only. Notification of the neighborhood meeting must be mailed to property owners within 500 ft. of the development parcel.

Scheduling of Neighborhood Meeting:

The neighborhood meeting must be held after the first Planning Board workshop but not less than seven (7) days prior to the Planning Board public hearing.

The meeting should be held in the evening, during the week, at a location in the neighborhood.

Upon request, the Planning Division will provide to the applicant mailing labels for the neighborhood meeting invitation. We require 48 hours notice to generate the mailing labels. A charge of \$1.00 per sheet of labels will be payable upon receipt of the labels.

Notice:

The applicant shall send notices to property owners within 500 ft. of the development site at least 7 days prior to the neighborhood meeting. Notice shall contain a brief description of the project, date, time and location of the neighborhood meeting.

Sign-up Sheets and Meeting Minutes:

At the meeting, the applicant shall circulate a sign-up sheet for those in attendance. The applicant shall also keep minutes of the meeting.

After holding the neighborhood meeting, the applicant shall submit the sign-up sheet and meeting minutes to the Planning Division. The meeting minutes and sign-up sheet will be attached to the Planning Board report. A public hearing will not be scheduled until the meeting minutes and sign-up sheet are submitted to the Planning Authority.

Please call the Planning Office (874-8719) if you have any questions.

Kandi Talbot - Dunkin Donuts - Warren Avenue

From: "Tom Errico" <terrico@wilbursmith.com>
To: "Kandi Talbot" <KCOTE@portlandmaine.gov>
Date: 06/27/2005 2:57 PM
Subject: Dunkin Donuts - Warren Avenue
CC: "Katherine Earley" <KAS@portlandmaine.gov>, "Jeffrey Perry" <jperry@sebagotechnics.com>

Kandi—

I have reviewed the driveway entrance plan provided by Sebago Technics dated April 11, 2005 and find the layout to be acceptable. Please let me know if you have any questions or need additional input.

Best Regards,

Thomas A. Errico, P.E.
Senior Transportation Engineer
Wilbur Smith Associates
59 Middle Street
Portland, Maine 04101
(207) 871-1785 Phone
(207) 871-5825 Fax