

MINUTES

PRESENT:

J. Burke
R. Dodds
D. Haywood
T. Kratzer
J. Mathieu
S. McNicol
E. Niemann
L. Senus
J. Strasser
M. Synchron, Alt #1
D. Banisch, Planner
T. Decker, Engineer
D. Pierce, Attorney

ABSENT:

CALL TO ORDER

The meeting was called to order by R. Dodds at 7:30 PM.

NOTIFICATION

In order to ensure full public participation at this meeting, all members of this Board, and members of the public are requested to speak only when recognized by the Chair so that there is no simultaneous discussion or over-talk, and further, all persons are requested to utilize the microphones which are provided for your use by the Township. Your cooperation is appreciated.

Notification of the time, date and place of this meeting has been published in the Hunterdon County Democrat and Express Times, and has been posted in the Kingwood Township Municipal Building at least 48 hours prior to this meeting and has been filed with the Municipal Clerk.

NEW AND PENDING MATTERS

Garden Solar, LLC – Block 15, Lot 4.03 – Route 12 – Determination of Completeness

W. Wilson was present for the application. He reviewed the application before the Board this evening. The application was originally before the Board of Adjustment. In view of the provisions of NJSA 40:55D-66.11, which is the section adopted in 2008, it provided that solar energy facilities be a permitted use in the industrial district. Even though the district is not labeled industrial, it is where the light industrial facilities are located in the Township. As a result, the application is not in need of a use variance from the Board of Adjustment. The applicant had appeared before the Board of Adjustment and been determined complete with temporary waivers for several items and a waiver for steep slopes, which the applicant seeks this evening from the Planning Board. The items that were temporarily waived have been provided. The applicant is seeking a determination of completeness and the scheduling of a public hearing date.

D. Pierce stated there seems to be an inconsistency between the application and plats in regard to the size of the property. The application states the property is 29.58 acres and the plat indicate 21.04. It should be clarified before the public hearing. The waiver for the steep slope is appropriate for the Planning Board to grant. W. Wilson responded the correct acreage is 21.04 acres and he confirmed the property is not considered steep slope. T. Decker stated the applicant provided all the items missing at the Board of Adjustment meeting. W. Wilson stated the applicant has a temporary approval to proceed from Hunterdon County Soil Conservation

District. W. Wilson stated the applicant has received an LOI from the DEP and are waiting for the letter from the Delaware Raritan Canal Commission. W. Wilson stated the application has received a letter from the Hunterdon County Planning Board indicating the application did not affect any County road or drainage facilities.

It was moved by D. Haywood, seconded by J. Mathieu and carried to grant a waiver from the requirement of steep slope and determine the application complete. All members present voted **AYE** on **ROLL CALL VOTE**.

J. Chmielak, engineer, and Tim Ferguson, Garden Solar, were also present this evening.

The public hearing was scheduled for November 9, 2010.

Public Hearing on Draft of Open Space and Recreation Plan Element

D. Banisch stated the hearing this evening is a continuation of the hearing started on September 14, 2010. At that time there were a number of plan revisions that were discussed. The plan itself has undergone a few revisions. The changes that were requested were to the three Figures in the mapping of the eleven maps. Figure 10 changes were requested to include the new trail at the Kingwood Park and the adding of proposed trails in the text of the document, the Bluffs, Kugler Woods, Flagg and Kirkland. Figure 11 added Division 6 player’s field and the loop trail. Figure 2 was revised for readability. He made the maps more readable so the targeted farms stand out from the preserved farms and possible candidates for future acquisitions. There was a change requested to the description of the Kingwood Township resident survey. Instead of discussing the survey at length, it was to be summarized with the high points for each one and included as an appendix to the plan. He stated it would be appropriate to entertain additional Planning Board comments and then from the public.

J. Burke stated at the Open Space Agricultural Advisory meeting it was discussed that there were preserved farms not identified on the maps. D. Banisch stated the ones discussed this evening were included on the revised Figure. D. Banisch stated Figure 4 should be updated to reflect the preserved parcels indicated on Figure 2.

R. Dodds opened the public hearing.

L. Frank, 41 Tumble Idell Road, inquired about the “Search” farm on Hampton Road. S. McNicol responded it is indicated as a targeted farm.

No other comments were made by the public.

It was moved by J. Mathieu, seconded by J. Burke and carried to adopt the Open Space Recreation Plan Element as proposed with the single amendment of modifying Figure 4 to contain the same information as Figure 2. All members present **AYE** on **ROLL CALL VOTE**.

Proposed Ordinance No. 16-16-2010

R. Dodds reviewed the history of the ordinance. D. Banisch commented W. Wilson, attorney, would like to come in for informational purposes with some comments from professionals who would enlighten the Board on the proposed ordinance. He stated W. Wilson requested 15 minutes of time to make his presentation.

W. Wilson, an attorney in Lebanon who is representing Garden Solar, LLC, was present for comments. There are two sites they are seeking to develop in the Township, the one before the Board earlier and another one along Route 12. His comments to D. Banisch were that they had hoped that they could spend a couple of minutes with the Board to give the Board the benefit of some of the information they have that could assist the Board. He would like to help with the educational process. He stated the following persons would be making statements: T. Ferguson, principal in Garden Solar, LLC, J. Chmielak, civil engineer, H. McBride, attorney with Wilentz, Goldman and Spitzer, and B. Fratus, member and co-founder of Garden Solar LLC. The comments will be general and not site specific. It will include the type of equipment used and nature of construction. At the conclusions of the statements there will be specific comments on the ordinance.

H. McBride provided the Board with an overview of the State policy and legislation that has been implemented within the last couple of years. J. Chmielak provided some comments from an engineering standpoint with respect to the environmental issues that arise. B. Fratus provided the Board with the market mechanisms that contributed to photovoltaic solar energy production.

D. Pierce stated the draft ordinance included a provision to insure that these sites would be cleaned up in the event of it no longer being an active facility. D. Pierce inquired what specific benefit is it to the residents of Kingwood Township by having the solar energy generated in this municipality as opposed to another municipality. B. Fratus stated reliability is the requirement of the delivering energy company. It gives a higher level of assurance in that community of generating resources, particularly in peak demand. So when the residents most need it, the grid is most taxed and the residents are most likely to have a brown or black out, which from Washington to Boston, that probability is increasing each year. The only thing that has saved the eastern seaboard from brown or black outs is the recession. The benefit to the residents is reliability for peak performance. PJM (Pennsylvania, New Jersey & Maryland grid) is the system operator which is acting as the high voltage transmission level. JCP&L is the distribution provider. The solar facilities are interconnecting into the JCP&L distribution system. The legislation was written to make sure that delivery was local. A test by BPU for determination of rate recovery for lines is focused around one aspect of local delivery. The company who is funding the project has requested to be non-disclosed.

J. Burke inquired as to the tax benefit to the Township. W. Wilson responded the property will come out of farmland assessment and anything attached to the ground will be taxed as an improvement. There are continuing discussions on how the systems will be taxed.

B. Fratus stated they have requested a 3 megawatt size each for the two proposed sites for the interconnection.

As a result of a comment from a Board member that the prime farmland should be reviewed and a possible density established, T. Ferguson stated the Board might want to consider a rationing of some sort on a per acre basis but the discussion should start by determining the importance of the negative impacts. He feels it is important to look carefully at the site level and Township level from a planning and policy perspective.

D. Banisch inquired if any NJDEP review would be taken if the property did not contain any regulated areas. T. Ferguson responded the NJDEP would not be involved. D. Banisch further stated that the areas not regulated by the NJDEP requirements no consideration will be given to critical habitat which might be dependent on those areas. T. Ferguson responded if it is not connected to the land use permit at this point there is no regulatory mechanism.

W. Wilson responded the NJDEP does not consider solar panels to be impervious. Regarding stormwater controls and erosion issues, J. Chmielak responded the way the panels are installed, there are gaps between the panels which helps distribute surface runoff from the top of the panel to the surface of the bottom of the panel to

minimize concentration. In regard to erosion and turf management perspective, they put careful consideration in the selection of grasses to minimize erosion, make sure they are durable, shade tolerant and will be viable to minimize the erosion. He thinks it is important to look at the vegetation condition post-development compared to the pre-development conditions. Typically with runoff numbers with lands that are farmed you have more stormwater runoff as opposed to vegetative surface, grasses and meadows. They have had significant meetings with the NJDEP reviewing the proposed applications and sites, as well as stormwater review and impact to the quantity of recharge and quality on the sites. The grasses will be maintained at higher heights than a manicured lawn which lends itself to mitigating some of these concerns with regard to runoff. A level of comfort should be given to the Township since the soil erosion issues will be addressed by the Hunterdon County Soil Conservation District.

R. Dodds noted receipt of the letters from Mr. Van Dalen and Mr. Wilson received in regard to the draft ordinance.

Septic Suitability

T. Decker noted there was a discussion at last month’s meeting regarding the County reviewing septic suitability on subdivisions. Kingwood Township is the only municipality in the County that does not request a review by the County Department of Health. In order for the County Health Department to start reviewing subdivision applications, they require a letter authorizing them to review septic suitability on subdivisions from the Township Board of Health. The fee for the County to review an application is \$115.00.

It was moved by J. Burke, seconded by D. Haywood to request the Township Board of Health write a letter to the County Department of Health requesting their review of septic suitability on subdivision applications. All members present voted **AYE** on **ROLL CALL VOTE**.

T. Decker left the meeting at this point.

Proposed Ordinance No. 16-16-2010

R. Dodds briefly reviewed the SADC (State Agricultural Development Committee) created AMPS (Agricultural Management Practices) for the construction, installation and operation of solar energy generation facilities structures on commercial farms. The AMP, Letter M, states the construction, installation and operation of solar energy generation structures and equipment shall not be located on soils classified as prime farmland as determined by the USDA, Natural Resources Conservation Services, to the maximum extent possible. The definition of a commercial farm is a farm management unit of no less than 5 acres producing agricultural or horticultural products worth \$2,500 or more annually and satisfying the eligibility criteria for differential property taxation pursuant to the Farmland Assessment Act.

D. Banisch stated some of the legislation that was referred to in the correspondence from the objectors to the ordinance was reviewed by the Board in their drafting of the ordinance. Section 66:11, adopted in March of 2009, of the MLUL (Municipal Land Use Law), states that a renewable energy facility on a parcel or parcels of land comprised of 20 or more contiguous acres owned by the same person or entity shall be a permitted use within every industrial district of a municipality. The legislature focuses on industrial zones districts. It did not focus on every zoning district in your town or in the state other than industrial zones. The legislature did say it was inherently beneficial.

Excerpt from proposed Ordinance No. 16-16-2010 -

Section 132-102(P)

P. Solar and/or Photovoltaic Energy Facilities and Structures.

All Major solar or photovoltaic energy facility or structure installations shall comply with the following conditional use standards:

(1) Major solar or photovoltaic energy facilities and structures, must conform to the bulk requirements for a principal structure in the zone in which such facilities and structures are to be located, except as modified herein:

a. Minimum lot size: 20-acres.

C. Graybar, CEO of Sundancer Capital – A starting point would be that they would be permitted in all zones of the Township. The way to approach would be to be silent on the minimum lot size and let the market self-regulate itself in terms of minimum lot size. The Township has a minimum lot size in each zone and can be relied on for these types of facilities.

D. Banisch stated for uniformity in terms of a conditional use standard that is applied to all zones that is the one benefit to having a minimum lot size requirement that applies to this use where it is set up as a conditional use in all zones. There is some uniformity benefit to it which the MLUL speaks to and encourages.

D. Pierce stated it does not hurt uniformity to have a number but the number is based upon, for the most part, our ordinary development and carrying capacity of the soils. In this type of development it is not a factor. The danger in setting a minimum lot size is the concept that it is arbitrary and capricious. There is independent state legislation that has said in industrial zones it should be 20 acres. It is the minimum lot size that makes it feasible. While there could be a danger that it will be arbitrary and capricious, there is some third-party independent basis which states the minimum is 20 acres in industrial zones.

In response to a Board member’s comment regarding the facilities becoming more efficient and effective in the future and the possible reduction of the required acreage, C. Graybar stated it is difficult to look in the future and know that the efficiency will halve itself or double its output. If the technology should double, in his case, he would only have an approved interconnection at the voltage that exists. You can apply to produce more energy.

(2) No major solar or photovoltaic energy facilities and structures shall occupy areas of land containing Prime Farmland and Farmlands of Statewide Significance as identified by the USDA Natural Resources Conservation Service.

D. Banisch stated the Board is aware that there is an abundance of natural resources in the municipality. By setting it up as a conditional use, it requires the applicant to go through a series of tests that will demonstrate that the use should be continued to be permitted on that site despite the incidence of prime soils, critical habitat or any other environmental features. It was specifically so the reviewing agency, led by the testimony provided by the applicant, is sufficiently persuaded that the particular site should be given up to something that should otherwise, in accordance to the legislature, belong in an industrial zone. It is actually measuring against that standard all the time. Let the applicant come forward and explain why the Township is giving up whatever standards they do not meet. Conditional use standards and tests are not alien concepts to a land use attorney. It is quite the common place to have conditional uses in an ordinance.

W. Wilson stated he does not agree with that interpretation. He stated they believe what has been written was a flat out ban of solar farming as do all the lawyers they have consulted and that was the intent when the ordinance was written. In his view, it is an abuse of a conditional use when there are so many negatives. His view grows out of a concern that the legislature has very clearly stated that the use is inherently beneficial and

when you look at the definition as found in the MLUL, as amended, it is very compelling language. He thinks it goes beyond a conditional use and why you are still able to do it despite not meeting all the conditions. He thinks that the factors that need to be present to be a conditional use are perhaps more appropriately viewed on a site specific basis as far as negative criteria. They are entitled, to some extent, to the benefits of the inherently beneficial moniker. He feels the label of a conditional use almost contradicts the inherently beneficial designation. He stated you cannot define the standard municipality wide. Municipally wide it is going to apply to every site. There might be conditions that he cannot meet on a particular site.

D. Pierce stated the law provides that these facilities are permitted in industrial zones on lots 20 acres or more. They are deemed inherently beneficial in every other zone in the Township. It means, in the absence of any ordinance, any of these facilities not proposed in an industrial zone have to go to the Board of Adjustment for a use variance. They have the benefit of being deemed inherently beneficial but they still have to demonstrate that they can meet the criteria for the granting of the use variance. The Township has the obligation to plan for land use in the Township and there are competing interests. The Township has to provide for a variety of uses and appropriate locations for the variety of uses. The Township has the obligation to its residents to try and look at the proposals and come up with legitimate ways to say the Township will encourage in this area but not in this area. There may an issue with respect with the amount of prime farmland and statewide significant soils that are prohibited in this draft ordinance but that does not mean that the Board and the Township cannot impose some restrictions. He does not think that the Township can require a mitigation to be set aside in a preserved nature. He stated public set asides have been deemed invalid. The Township can grant density bonuses by lot size averaging or cluster zoning where you compress the development and preserve some of those critical areas.

C. Graybar stated the grid in Kingwood, if they use their best technology, you will not build more than four facilities. If you build a couple of smaller ones, you might have them scattered about the Township. With more than four or five projects like theirs, it would totally saturate the grid and solar economics would be violated on the fourth farm in Kingwood. There would be no fourth farm.

T. Ferguson state the limitation should be the acceptability to the line. He explained the process in selecting a property or area. In regard to their project, they will be using .002 percent of the gross total farmland assessed area.

D. Pierce stated, in consultation with D. Banisch, the Township can create a blended ordinance which distinguishes between the AR-2 zone and the other commercial zones in the Township. In the commercial zones of the Township, there is the anticipation through the ordinance that there will be a certain intensity of development of those properties and a desire to develop those properties for commercial or industrial use. The reason they have not been developed for that yet because the Township does not have any sewer. It was anticipated for decades that those are the lands that are going to be developed or should be developed. One of the prime purposes of Kingwood's zoning ordinance for the AR-2 zone is to promote agricultural viability. The Township can help those farmers retain the agricultural uses by allowing them, similar to the AMPS, major solar facilities on their farms but it cannot occupy more than 20% of the area of the farm and have to avoid to the maximum extent practical, the use of these lands. It promotes two different policies. It is the balancing that is giving the difficulty. The reliance upon the grid and the corridors in Kingwood is based on current technology. This technology is changing quickly. In 20 years there might not be an impediment to put in these facilities in other locations in the Township. It would be shortsighted of the Township to rely just upon that limitation. The AR-2 zone would not have the 20 acre minimum but the size of the lot would determine if it is feasible or not. It would promote the Township policy of aiding a farmer and helping to promote farming and the viability of farming so those lands are not turned into residential.

T. Ferguson stated developers begin to come and see a market of far too little supply. They flood the area, uneducatedly, with offers they cannot back up. Once they take the option on the farm and they discover what the other companies have planned, they abandon the option.

C. Graybar stated if you limit the amount to 20% of a farm, you will have to multiple it by five.

(3) Major solar or photovoltaic energy facilities and structures shall not occupy areas of land designated by the NJDEP as critical habitat for State threatened and/or endangered species of flora and fauna or any areas of species of special concern.

(4) No portion of major solar or photovoltaic energy facilities and structures shall occupy areas of land designated by NJDEP as floodplains, flood hazard areas, wetlands, wetland transition areas or riparian corridors. A 300 foot buffer shall be maintained between NJDEP designated Category One waters, as defined in the existing Surface Water Quality Standards rules at N.J.A.C. 7:9B-1.4, and any portion of proposed major solar or photovoltaic energy facilities and structures. Category One waters include, and may not be limited to, the Lockatong, Wickecheoke, Warford, Nishisakawick and Little Nishisakawick Creeks and all named and unnamed tributaries of these streams.

W. Wilson stated the Township should not regulate since it is already done by the NJDEP.

(5) Major solar or photovoltaic energy facilities and structures shall not occupy any area beyond the required principal building setbacks for the zone in which the facility is to be located.

W. Wilson noted the applicant's concern is whether "berms" will fall under structures.

D. Banisch suggested language of "exclusive of the required berms, viewscaping and landscaping".

(6) Major solar and photovoltaic energy facilities and structures shall not be visible from the public traveled way (public roads, trails, waterways, scenic highways and bi-ways), publicly owned properties, open space, preserved farmland and historic resources, including sites and buildings listed or eligible for listing on the State and National Registers of Historic Places.

- a. Installations shall be sited behind existing vegetation, which shall be supplemented with landscaping to shield the installation from public view.
- b. To the extent achievable, solar and photovoltaic energy facilities and structures shall be sited using the natural topography to screen the energy project from public view and the view of any adjoining residences.

R. Dodd's stated the Board's concern is to alleviate impacting the surrounding property owners. W. Wilson stated the applicant's concern is in the reference to waterways.

D. Banisch stated visual impact is real. Question becomes how effective you want the screening at the time of installation is put into service. Are you willing to tolerate a period of growing before you cannot see it or be completely invisible at the time it is put into service and have a vigorous landscaping requirement?

D. Pierce stated screening, in commercial sites, is not to completely conceal the building. Along the Route 12 corridor, the parking is in the rear of the facility.

W. Wilson inquired if can be sorted out at the Board of Adjustment hearing or the Planning Board. D. Banisch stated each application is taken on its individual merits.

D. Banisch stated the Township has a 25' buffering standard that is sufficiently vague but this ordinance is more specific. The ordinance calls for a 25' fairly heavily landscaped buffer to establish a screen to completely obscure the view of the facility from the time it is put in service. The ordinance does anticipate a period of growing and identifies a 25' wide planted buffer in the VC-1 and the POR zones and then 50' wide in the other zones. The requirements in the other zones are slightly relaxed. The AR-2 zone might call for a more vigorous standard than the other zones or it might suggest a need for some uniformity between the planting standards as proposed in the draft ordinance.

W. Wilson stated if there are residences within a couple hundred feet you have to be very aware of being able to see it from the second floor of a residence.

- (7) In all zoning districts, major solar and photovoltaic energy facilities and structures shall not be visible from adjoining residential uses or zones, and shall be screened by a combination of berms, landscaping and fencing. Fencing shall be installed behind the required berms and landscaping.
- a. A Maintenance Plan shall be submitted for the continuing maintenance of all required plantings, including a schedule of specific maintenance activities to be conducted. Maintenance of the required berms, landscaping and fencing shall be a continuing condition of any approval that may be granted. The use of herbicides shall not be permitted as an acceptable maintenance practice.
 - (i.) Organic farming is encouraged as a best management practice for areas of the tract (or tracts) that are not occupied by solar and photovoltaic energy facilities and structures.
 - (ii.) Soil erosion control, soil stabilization. All ground areas occupied by the Major solar or photovoltaic energy facility or structure installation that are not utilized for access to operate and maintain the installation shall be planted and maintained with shade tolerant grasses for the purpose of soil stabilization. A seed mixture of native, non-invasive shade tolerant grasses shall be utilized and specified in a landscaping plan that shall be provided. If it can be demonstrated by the applicant that an alternative vegetative ground cover consisting of native, non-invasive plant species for soil erosion control and soil stabilization can be sustained over the life of the facility, the reviewing Board may approve such an alternative to requirement for native, non-invasive shade-tolerant grasses or mix of grasses. The use of stone shall not be permitted for soil erosion control and soil stabilization. The components of this plan may be combined with the requirements of the Grading and Drainage Plan (§132-102.P.(10) below).
 - (iii.) Existing surface water drainage courses. The bed and banks of existing drainage ditches, brooks, streams and drainage swales shall be maintained in their natural condition, except that where soil erosion is evident in these features due to a lack of suitable stabilized vegetation, the Board may require such areas to be planted and stabilized in accordance with the recommendations found in Chapter 8, Restoration Design, of the publication entitled Stream Corridor Restoration, Principles, Processes and Practices, 10/98 Published Version. Revised 8/2001, prepared by the Natural Resource Conservation Service and available through a link on NJDEP's website at http://www.nrcs.usda.gov/technical/stream_restoration/newtofc.htm.

W. Wilson indicated their projects are fenced.

J. Burke stated there was a misconception that the berm was meant to surround the entire property. The berm was meant if the topography was such that you needed to elevate the trees to give you the visual buffer then a

berm would be necessary to plant the trees. W. Wilson stated with that concept, there is no disagreement. The disagreement is that you have to berm the entire property.

D. Banisch called their attention to #9. He would suggest on the second line between “existing and vegetative” two words could be added words “or proposed”. It does require the applicant put forth some objective evidence that what they are proposing works.

R. Dodds stated what he liked from the SADC piece was a requirement of a Conservation Plan and that is what is missing from all these sections. The applicant should provide a plan. D. Banisch stated it might be another way to structure standards.

In regard to 7A, the applicant responded they have been working with the Audubon Society and they would like to see it weedwacked under the panels twice a year and were very specific in the type of species they would like to remain untouched. The Audubon Society provided the standards of mowing between the panels in the row and weedwacking twice a year. Another applicant responded they conferred with NCRS on their stabilization plan to encourage the right type of seed in the right season. They concur with mowing it twice a year. Herbicides will not be an issue with the solar energy facilities. D. Banisch stated, in regard to 7A(i), it is advisory.

(8) Berm, landscaping, fence requirements. As required herein, a landscaped berm shall be provided not less than 25’ in width and of sufficient height to totally obscure any view of all solar and photovoltaic energy facilities and structures at the time such facilities and structures are placed in service. Landscaping for the berm shall include an even mix of coniferous and deciduous trees and shrubs that are indigenous to the area, which shall be native species as listed in Appendix C of the Kingwood Township Conservation Plan Element, and shall not include invasive species as listed in Appendix D in the Conservation Plan. Such plantings shall be depicted on a plan prepared by a licensed landscape architect. At the time of planting, deciduous trees shall be not less than 2” to 2-1/2” DBH (diameter at breast height). Coniferous trees shall be a minimum of 8’ to 10’ in height or at least 5’ higher than the highest elevation of the top of the highest solar or photovoltaic panel or component of facility equipment (i.e. transformer compound). A security fence not less than 6’ in height shall be installed behind the required berm and landscaping, which shall secure the facility at all times from public trespass and restrict access to all electrical wiring that may be readily accessible. One or more access gates to the facility shall be provided. Each access gate shall include a sign identifying the responsibility parties (1) for operation of the major solar and photovoltaic energy facilities and structures, (2) for maintenance of the facility, and (3) for maintenance of the berm, landscaping and security fence. All Transformers and high voltage equipment shall be situated within a compound, which shall be enclosed within a security fence and access gate, which shall remain locked at all times. The height of the security fence and access gate surrounding transformers and high voltage equipment shall be not less than eight (8) feet in height, or as required by applicable federal & State regulation, and/or local building code.

After a lengthy discussion between the members of the public and the Board members, a suggestion was made to make it a site line issue. A question was asked could a person rather put in a taller tree than create a berm. D. Banisch responded it is possible and text could be added to the ordinance so the net effect is the same. The ordinance would call for one of the three or a combination of the three such that from no vantage point offsite should there be a line of site of visibility of the installation. The onus would be on the applicant to provide a visual impact analysis. Landscaping is required by the MLUL for a one year guarantee. In most applications, it is a concession the applicant makes that they guarantee the survival of the landscape for two years. In the case of an installation as this where visual impact is important, he thinks it should be a continuing condition of any approval the Board may grant that the buffer be maintained.

W. Wilson stated there was no objection to the size of the trees. He stated there is a difference between maintaining an approved site plan and providing a maintenance guarantee or a replacement guarantee. The

two year replacement guarantee relates to the posting of a bond. It is different than saying five years down the line they could not go with a chainsaw and cut a 12' swath through it and say we don't have to do that anymore since our maintenance guarantee has expired. You still have an approved site plan and any conditions of the approval.

D. Banisch stated on sites such as these that are not going to be occupied by residents, municipal experiences have been such that it is difficult to get performance out of the owners of the sites. W. Wilson inquired how can the approval require a maintenance bond beyond the statutory time. A Board member suggested the same language as the basin requirements.

(11) Major solar and photovoltaic energy facilities and structures and alternative energy systems shall not result in reflective glare as viewed from **(a height of 30' above)** ground level on adjoining properties. All panels, frames, and racking systems utilized on major solar or photovoltaic energy facilities and structures shall be color matched and of an earth-tone so that the color of all components of the system are uniform.

The Board was not concerned with an earth-tone color since it cannot be seen. D. Banisch stated the ordinance will reference the existing Township glare standards.

(14) Permitted height – the maximum permitted vertical height above ground for solar and photovoltaic energy panels shall be 8'.

W. Wilson stated he has no problem with 12'.

(15) Major solar energy systems and facilities including all components thereof shall be designed to withstand a ground level wind velocity of 130 mph, or greater.

D. Banisch stated he will obtain the information of the rating of the standard building code rating.

(17) Abandonment and removal of solar energy systems. Prior to removal of solar energy systems a permit for removal activities shall be obtained from the Kingwood Township construction official. Removal of solar energy systems shall be conducted by an electrician licensed in the State of New Jersey.

- (a) Solar and photovoltaic energy facilities and structures (roof or ground) which have not been in active and continuous service for a period of one (1) year shall be removed from the property to a place of safe and legal disposal.
- (b) If the applicant ceases operation of the energy project for one year; or begins, but does not complete, construction of the project within 180-days of receipt of final site plan approval, the applicant shall restore the site according to a plan approved by the Board. The applicant shall submit a plan that ensures that the site will be restored to a useful, non-hazardous condition without significant delay, including but not limited to the following:
 - (i) Removal of aboveground and underground equipment, structures and foundations to a depth of at least three feet below grade. Underground equipment, structures and foundations need not be removed if they are at least three feet below grade and do not constitute a hazard or interfere with agricultural use or other resource uses of the land. The plan shall describe the means by which all equipment and components of the system(s) shall be disposed of in an environmentally responsible manner and in accordance with prevailing federal, State and/or local regulations.
 - (ii) Restoration of the surface grade and soil after removal of aboveground structures and equipment.
 - (iii) Restoration of surface grade and soil.
 - (iv) Revegetation of restored soil areas with native seed mixes, plant species suitable to the area, which shall not include any invasive species.

- (v) The Plan may provide for the retention of access roads, fences, gates or buildings in place or regarding restoration of agricultural crops or forest resource land.
- (vi) The plan must provide for the protection of public health and safety and for protection of the environment and natural resources during site restoration.
- (vii) The plan must include a schedule for completion of site restoration work.
- (c) Before beginning construction of the energy project, the applicant must submit a bond in a form and amount satisfactory to the Township Attorney, which shall be based upon an estimate approved by the Board Engineer, assuring the availability of adequate funds to restore the site to a useful, non-hazardous condition, if the operator fails or is otherwise unable to restore the site as required by the permit.
- (d) The amount of the bond shall be adjusted for inflation using the U.S. Gross Domestic Product Implicit Price Deflator. The applicant shall increase the amount of the bond annually by the percentage indicated to adjust for inflation.
- (e) The certificate holder shall describe the status of the bond in an annual report submitted to the Township Attorney.
- (f) The bond shall not be subject to revocation or reduction before retirement of the energy project site.

W. Wilson stated the applicant will provide a decommissioning plan. The part of the problem is the amount of the bond. D. Banisch stated it is adjusted for future inflation. W. Wilson stated the removal is addressed in the lease of the property. C. Graybar stated they will post the land as a conditional deed to the Township in the event the applicant defaults on a decommissioning and/or given to the Township after 30 years. D. Pierce stated it is unusual. He also stated it cannot be included in the conditions of approval. D. Pierce stated if the applicant is a sole purpose entity, has no other assets and the only income is a cash stream that the facility is generating where does the Township obtain the funds for decommissioning. The transient nature of the sole purpose entity is his concern. D. Pierce suggested the applicant provide financial statements at the approval stage, demonstrate that they have sufficient assets to decommission the facility and provide a yearly certification on their financial status. If the yearly certification does not meet the objective requirements that the Township has established, they would be required to post a bond. D. Pierce stated the Township has an issue that it needs to confront and create a solution. If the Township decides it is appropriate to plan for the obsolescence and the removal of these facilities, it has the ability to write legislation to address the issue. The Board agreed to the need for a decommissioning plan along with the conservation plan.

As a result by a comment from a member of the public, the Board decided it did not want to allow panels with cadmium telluride in the Township.

D. Banisch will provide the Board with a revised copy of the proposed ordinance prior to the special meeting.

The Board scheduled a special meeting for October 25, 2010 beginning at 7:00 PM.

Windpowered Generation Towers

The matter was tabled to the November 9, 2010 meeting. D. Banisch will provide some suggestions for the meeting.

Approval of Minutes

It was moved by J. Mathieu, seconded by D. Haywood and carried to approve the minutes of September 14, 2010 with the following change:

All members present voted **AYE** on **ROLL CALL VOTE**, except S. McNicol who abstained.

APPLICATION STATUS

CORRESPONDENCE

PRIVILEGE OF THE FLOOR

ADJOURNMENT

It was moved by L. Senus, seconded by S. McNicol and carried to adjourn the meeting at 11:20 PM. All members present voted **AYE**.

Respectfully submitted,

Diane Laudenschick, Secretary