

**MINUTES**

**7:30 PM**

<b>PRESENT:</b>	R. Dodds	<b>ABSENT:</b>	E. Niemann
	D. Haywood		M. Syrnick, Alt #1
	T. Kratzer		
	P. Lubitz		
	J. Mathieu		
	S. McNicol		
	L. Senus		
	J. Strasser		
	D. Banisch, Planner		
	T. Decker, Engineer		
	D. Pierce, Attorney		
	J. Slagle, Planner		

**CALL TO ORDER**

The meeting was called to order by R. Dodds at 7:35 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 Courier News, 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**

Perrotti/EffiSolar Energy Corporation – Block 23, Lot 11 – 796 County Road 519 – Public Hearing

D. Pierce stated he has been contacted by V. DeSimone and EffiSolar did not advertise for a hearing this evening and are not prepared to proceed. They are revising their plans and are requesting the Board to carry the matter.

Garden Solar – Blok 15, Lot 4.03 – Slacktown Road – Completeness Determination for Public Hearing

W. Wilson, attorney from Lebanon, New Jersey, co-applicant and co-owner of Frenchtown Solar LLC, was present this evening. He stated they have satisfied all the conditions of preliminary approval and have filed an application for final. They are present this evening for a determination of completeness. They have a number of waiver requests but all of the waivers are related to documents required on the checklist for final but have been previously submitted. They are hoping the Board can rely on the documents already submitted with the preliminary application.

T. Decker stated he has not prepared a completeness review for final. They have satisfied all the conditions of preliminary approval. They have satisfied the fire chief and all of his concerns. The final site plan submission is a dotting of the “i’s” and the crossing of the “t’s”. The plan content is the same as for preliminary approval. The documentation, for example the LOI, submission to Hunterdon County Planning Board and Hunterdon County Soil Conservation District, which are checklist items, had been provided with the preliminary application. Administratively, the taxes are current and the escrow is paid.

D. Pierce stated the appropriate procedure is to first act on the waiver requests from the applicant. They are requesting waivers of Item Nos. 45, 47, 49, 50, 53, 54, 56, 57 and 59. They have requested a waiver of Item No. 62 but it has been provided.

D. Banisch stated in terms of resolution compliance, the applicant has satisfied all of the conditions of compliance on the Township’s end.

It was moved by P. Lubitz, seconded by S. McNicol and carried to grant waivers for Item Nos. 45, 47, 49, 50, 53, 54, 56, 57 and 59. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by P. Lubitz, seconded by S. McNicol and carried to deem the application complete for final approval. All members present voted **AYE** on **ROLL CALL VOTE**.

The Board inquired if W. Wilson was willing to remove the berm on the property. W. Wilson stated he will discuss it with the contractor and advise the Board of the outcome.

Sundancer – Block 24, Lots 4 & 7 – Barbertown Point Breeze Road/Muddy Run Road – Determination of Completeness

D. Pierce advised the Board that Sundancer has filed an order to show cause in Superior Court which challenges the solar ordinance, Ord. 16-13-2011, adopted on April 25, 2011. Their position is that the ordinance is invalid for the reasons specified in the complaint. They believe it should not apply to their application. Their application was submitted on the same date as the adoption of the ordinance. Their position is that they are filing their application under the Time of Application Rule and it should be heard under the 2010 ordinance. He had a telephone conference with W. Harrison. He and W. Harrison agreed on a procedure of moving the matter forward. His agreement with W. Harrison was that the Board would proceed tonight on a determination of completeness with the application based on the 2010 ordinance. The applicant is requesting waivers. The Board will need to act on the waiver requests and then make a decision if it is complete under the ordinance. If the Court determines Ordinance No. 16-13-2011 is applicable and valid, the applicant would have to apply to the Board of Adjustment or amend their plans.

W. Harrison, attorney for Sundancer Capital, stated he has received T. Decker’s completeness review and there are a number of items from which they are requesting waivers.

J. Mathieu stated the application is going to proceed under the old application and the Board is going to hear the information under the old ordinance. If the Board approves or makes some motions and the court makes a decision that the ordinance is upheld, the Board will not hear the application. He stated it is a waste of the professionals’ time.

D. Pierce stated the reason he agreed on behalf of the Board was to avoid the necessity to ask the court to issue a ruling at this preliminary stage. There was no prejudice to the Township or Board to enter in this agreement.

It is preserving all the Township's rights. It is the applicant's money or escrow fees that are going to be used for the review. They are aware they are proceeding at their own risk.

W. Harrison stated the agreement was better than to have a decision this afternoon. The applicant would like to know how they stand in completeness. They sent an extensive brief to the judge which will provide a chance for the Township to respond. They are aware they are proceeding at their own risk.

T. Decker stated with regard to completeness, it is the same checklist. The beginning of his letter discussed the jurisdiction of the application. As he reviewed the plans, it was evident that the 50% open lands was not provided, which is one of the conditions or standards of a conditional use in Ordinance 16-13-2011. Since the standard was not met, the application would typically revert to the Board of Adjustment. After speaking with D. Pierce, they thought he would do the completeness review for everything else. The items are really the same whether before the Board of Adjustment or Planning Board and whether or not it is the original ordinance or the amendment to the ordinance.

D. Pierce stated the Board's review is for a completeness determination. It is to determine whether the applicant has provided the materials that are required on the checklist. It is not a review of the quality of that information or the detail of that information, which is something the Board can request in connection with the hearing. The Board has to determine whether the applicant has supplied the information on the checklist. D. Pierce stated T. Decker commented the items are not different except for the 50% set aside requirement.

D. Banisch stated the set aside it is not a checklist requirement.

D. Pierce stated the court has set a return date for arguments for May 23, 2011. There will be argument and resolution before the next meeting. He will know better or have a better idea, before the next meeting, of where this might be heading.

P. Lubitz stated he would be in favor of proceeding.

T. Decker stated his office has received today, Administrative Check List Item Nos. 4, 9, 11 and 12. In regard to Item No. 15, he has not received certification as to the Delaware & Raritan Canal Commission Review Zone or that the property is exempt.

W. Harrison stated they have not made a submission to the Delaware & Raritan Canal Commission. The checklist requires that certification as to Delaware & Raritan Canal Review zone be indicated on the plans. He will be submitting an application to them.

T. Decker stated under the Plan Requirements Item Nos. 1 and 2 regarding plan size and scale, his office has no objection to the granting of the waiver given the nature of the application. He has been supplied with Item No. 12. Item No. 22, dimensions of the existing building, is not shown on the plan.

W. Harrison stated only one of the existing buildings is remaining and the plans now show the dimensions on either sheet 4 or 5. He stated the applicant is requesting a waiver of Item No. 27. He stated both roads are straight and there are no curves or obstructions. The plan shows the relationship to the driveway across the street. The applicant thought it was enough information. The project would have an occasional vehicle for maintenance purposes and the vehicle can look up both of the roads and see the traffic. T. Decker stated the Township also looks at the road for emergency access and not just the horizontal but also the vertical features.

In regard to Item No. 33, T. Decker stated the proposed sign locations on not on the plan. The signage requirements are from both the old and new ordinances with regard to the identification of owners for access and emergency contact information. W. Harrison stated the ordinance does not provide the specifications of the size of the sign. He recommends the Board defers the requirement and make it a condition of approval. He could have shown a drawing but was not sure who the emergency contact would be and their contact information.

In regard to Item No. 35, T. Decker stated there is landscaping shown and the planting schedule is on the plan but there is no key as to what plants are on the plan. You cannot tell where the trees on the plan are located. The landscaping and planting schedule are shown which satisfies the checklist requirement. The professionals need the information in time for them to review it. If they do not receive it, it might be a comment on the review letter. W. Harrison responded most of the plan shows where the plantings are being installed. The same sequence continues throughout the project. He sees that the notations are missing on the corners.

In regard to Item No. 37, T. Decker stated the applicant is requesting a temporary waiver. Since there is no building out there, it is more a line of sight and so forth.

In regard to Item No. 38, T. Decker stated No. 38 goes hand in hand with No. 33. Typically the signs are mounted on the gate entrance.

In regard to Item No. 39, T. Decker stated the detail sheet has been provided but no details are given for the solar modules, inverters or racking system. W. Harrison stated there were details of the racking system. T. Decker stated the detail required is for the spacing of the racking system. T. Decker stated typically, a detail of the panel, what it is made of, how it is fastened and mounted is provided. He cannot review the material if it is not provided. Details that are pertinent to the application are missing.

In regard to Item No. 41, T. Decker stated the location of the conservation easements are not shown on the plans. W. Harrison stated the applicant will provide the conservation easements. He stated there are no current conservation easements on the property. He stated the applicant has been advised that they will be getting their LOI early next week. Once the applicant has received the LOI, the areas will be delineated on the plans.

In regard to Item No. 42, T. Decker stated the soil erosion and sediment control plans have not been provided. W. Harrison responded they are on the last sheet and an additional sheet has been submitted. T. Decker stated he has located it on sheet one of one, Supplemental Soil Erosion and Sediment Control Plan. The submission would satisfy the checklist item.

In regard to Item No. 49, T. Decker stated the property street address has not been provided. W. Harrison responded it was hidden in the title information. T. Decker stated it needs to be added to the plans.

D. Pierce stated, in regard to completeness, he sent W. Harrison a letter this afternoon indicating his position on the Time of Application Rule when it governs the development ordinances in effect when a complete application is file. He stated, it is clear beyond dispute, that the earliest date on which the application could be deemed complete is today. If it is under the Time of Application Rule, it is the development ordinance in effect today. His position, if Ordinance 16-13-2011 is upheld by the court, is that the ordinance will apply because it is in effect today. W. Harrison stated the Board's determining the application complete, by them submitting additional information, will not help their argument. They have a different view of things. The Board's action is not going to help them in the least.

R. Dodds stated the Board does not remember when an applicant was allowed to provide substantial plans on the day of the meeting. W. Harrison stated the applicant received the review letter on Monday. It was their choice to come here tonight without submitting the additional information. He stated the substantive piece of information the Board did not have is the Soil Erosion and Sediment Control Plan. The only other change was the dimensions of the building. The details of the Soil Erosion and Sediment Control Plan were on the detail sheet that was submitted. The other items that were submitted were the County Planning Board submission, the Hunterdon County Soil Conservation District application and the 200' certified property owners' list. He stated the question remains is what would the Board have done if they hadn't submitted anything and requested the waivers. There is no problem with submitting the information to the Board more than 10 days in advance of the meeting.

D. Pierce stated if the application is found incomplete by the denial of one or more of the waivers, the applicant would have to correct the deficiency and provide the information. The Board would have to hold another completeness determination once the materials have been provided. The Board is not being requested to approve the application this evening. The Board needs to determine if the applicant has supplied the information that is required. The Board is not determining the information submitted is sufficient to give an approval or denial on its merits.

After some discussion on the missing details of the plan, R. Dodds inquired if the applicant has shown enough information to be found complete or are there so many outstanding items that they are not complete. Does the Board have other applications that have this number of outstanding items and will the Board allow them in the future? The Board needs to be consistent.

D. Pierce stated unless the Board grants the waivers that are requested, the application is incomplete. The Board needs to grant the Administrative checklist waiver for Item No 15 and Plan Requirement Checklist waivers for Item Nos. 1 & 2, which T. Decker is in agreement should be waived. The applicant is seeking waivers for Checklist Item Nos. 22, 27, 33, 35, 37, 38, 39, 41, 42 and 49. He stated if the Board wants to make a determination based upon the information that was submitted 15 days prior to today, which has been its consistent past practice, there is no alternative but to deem the application incomplete. The applicant needs to know if any or all of the waivers are being denied or approved. They are not part of the ordinance but part of the instructions for the application. W. Harrison stated on the D & R Canal Commission, Item No. 15, the checklist does not require the applicant to submit an application but to certify as to whether it is subject to their review. The certification was on the plan from day one. D. Pierce would agree with the comment and for the purposes of waivers, it should not be considered.

It was moved by J. Strasser, seconded by S. McNicol and carried to grant a waiver for completeness of Checklist Item No. 49. All members voted **AYE**.

It was moved by J. Strasser, seconded by S. McNicol and carried to grant a waiver for completeness of Checklist Item No. 41. All members voted **AYE**.

It was moved by J. Mathieu, seconded by D. Haywood and carried to grant a waiver for completeness of Checklist Item No. 47. All members voted **AYE**.

It was moved by J. Strasser, seconded by S. McNicol and carried to grant waivers for completeness Checklist Item Nos. 33 & 38. All members voted **AYE**.

It was moved by S. McNicol, seconded by P. Lubitz and carried to grant a waiver for completeness of Checklist Item No. 37. All members voted **NAY**.

It was moved by S. McNicol, seconded by D. Haywood and carried to grant a waiver for completeness of Checklist Item No. 27. All members voted **NAY**, except D. Haywood, who voted **AYE**.

It was moved by P. Lubitz, seconded by S. McNicol and carried to grant waivers for Administrative Checklist Item Nos. 1 and 2. All members voted **AYE**.

It was moved by S. McNicol, seconded by J. Mathieu and carried to deem the application incomplete. All members present voted **AYE** on **ROLL CALL VOTE**.

D. Banisch stated the waivers for Administrative Checklist Item Nos. 1 & 2 were granted outright but the others were granted for completeness on a temporary basis. The additional information must be submitted at least 15 days prior to the Board's next meeting.

Horseshoe Bend, LLC – Block 14, Lot 30 – Horseshoe Bend Road – Amendment to Minor Subdivision

D. Pierce stated the application this evening is for an amendment to the minor subdivision approved by the Planning Board. As a result of the original negotiations to purchase the property in conjunction with Lot 28.02, the applicant/seller would subdivide one lot, 9 acres in size. The purchase of Lot 30.01 by the County fell through and after a year, a new contract has been signed to purchase Lots 28.02 and 30.01. The closing is scheduled in escrow on May 26 and funded on June 7. One of the conditions of closing is that the minor subdivision be amended to increase the size of the remaining lands, Lot 30, which is being retained by the seller to 14.3 acres. It was agreed upon as a way to reduce the purchase price and still get almost all of the land that was available. This application is an amendment to the prior approval. The applicant has requested that the Board recognize his right in the resolution to construct a second dwelling for a residential employee on the remaining lands, which is consistent with the Township's ordinance. The new lot would contain the old helipad and the applicant requests the Board recognize its presence and his right to utilize the helipad.

P. Lubitz stated he thinks it is commendable that the Township was able to finally close on the property.

It was moved by J. Mathieu, seconded by S. McNicol and carried to approve the amendment to minor subdivision. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by J. Mathieu, seconded by D. Haywood and carried to adopt **Resolution No. 2011-05 Granting Amended Minor Subdivision Approval to Horseshoe Bend, LLC, Block 14, Lot 30 and Proposed Lot 30.01**. All members present voted **AYE** on **ROLL CALL VOTE**.

Point Breeze Solar Farm – Block 21, Lot 1 – 550 Barbertown Point Breeze Road – Public Hearing

D. Pierce stated he has reviewed the affidavit of service and publication and the applicant has complied with the notice requirements of the MLUL and Township ordinances.

M. Peck, attorney with Florio, Perrucci, Steinhardt and Fader, is present this evening on behalf of his client, Alethea Cleantech Advisors, LLC (Alethea). The property is a 45.95 tract located at the intersection of Route 12 and Barbertown Point Breeze Road at 550 Barbertown Point Breeze Road. MEL is located west and south of the property, vacant land to the east and Route 12 to the north. It is known as Block 21, Lot 1 on the tax map. It is located in the BP Zone. The application is a conforming application. It is cleaner application than what was presented to the Board of Adjustment. The applicant is seeking preliminary and major final approval. The solar facility is a permitted principal use in the BP Zone. There is an existing farm house which will be

removed. The property will contain no structures except for the solar facility. The application is not seeking any variances. He has received and reviewed the planner's comments and the technical comments from the engineer. They are confident they can address all the comments.

J. Slagle left the meeting at this point.

D. Pierce swore in E. Hill, engineer. E. Hill provided his credentials and experience. The Board accepted E. Hill as an expert.

E. Hill testified the applicant is applying for preliminary and final major site plan approval for an 8.46 megawatt solar farm. It is located in the BP Zone and the use is permitted by ordinance and state statute. The property is just under 45.95 acres. On sheet 2 of 12, the overall existing conditions are indicated. The property is currently being used agriculturally. There is an existing farm house and other structures in the center of the property. The property grades from the road to the south. A pocket in the southeast corner of the property has wetlands delineated. The LOI is pending and is expected to be received within the next week. The applicant does propose that all of the existing structures on the property plus 2.2 acres of vegetated brush and trees will be removed. The applicants will fully comply with the wetlands as the DEP dictates as well as the buffers. If the DEP comes back with a more favorable delineation, the applicant does not propose a larger project than shown on the plans. If the DEP comes back with more wetlands, the applicant will comply. The applicant will not encroach on any wetlands or environmentally sensitive areas. It is a fixed tilt solar farm. The panels are oriented to a southerly direction. They are stacked five high in a landscape mode. They are proposing numerous inverter structures. There is perimeter access around the farm for maintenance purposes and emergency access. There is a gravel driveway from Barbertown Point Breeze Road. The property is heavily vegetated with woods on the perimeter. Landscape buffers will be installed along Barbertown Point Breeze Road, Route 12 and to the east along the tree line. The darker line is the proposed landscape buffer. The existing tree line currently surrounds the wetlands and is located along the back and west side of the property.

D. Banisch stated the one leg of landscaping in the southerly direction of Route 12 is an attempt to address the visibility from the west bound traffic when the hedgerow would be visible from the highway.

E. Hill stated during the winter months the triangular island is heavily wooded and the site would not be noticeable if you travel east on the road. Going west, the applicant is proposing to keep the hedgerow and supplement it with a 50' landscape buffer behind the existing hedgerow. They are not proposing any significant grading of the site. They will be utilizing the existing grades. They will re-vegetate the property with low maintenance meadow grass seed mixture. The landscape buffer will contain a wildflower mixture. The entire array and all the improvements will be behind an 8' black clad chain link fence along the roadways. A galvanized chain link fence will be utilized along the rest of the property. There will be a Knox box for emergency services. There will be additional gates installed in order for emergency vehicles to gain access to the tree line in the back. There will be a fixed light fixture, powered by a solar panel, which will be motion activated. There will be a dusk to dawn timer. There will be a double stagger of evergreen trees. All of the plantings are consistent to the ordinance requirements. The applicant had suggested white pines but the planner indicated they tend to grow in an uncontrolled manner and the branches die off as they grow. The planner suggested a more suitable species. The applicant is willing to work with the planner to find a more suitable species. The Soil Erosion and Sediment Control Plan is indicated on sheet 16 of 17. The detail sheet includes the construction details, identifies the plant materials, landscaping schedule, quantity of trees and species of trees and site identification sign. They have had a discussion with the fire and safety officials and comply with their requests and requirements. The purpose of the sign is not for advertisement but contains the owner's contact information, the name of the facility and the address and emergency contact. It is 3' x 5' x 6'. The sign does not require a variance. It is fully conforming. The construction sheet contains the specifications for the

solar panels and the various elevation views of the solar arrays. The solar panels are installed a maximum of 2' off of the ground and 9.5' off the ground in the back. The applicant is requesting permission for the height of the panels to be a maximum of 12' since the topography varies slightly. The tilt angle remains constant. The power generated by the solar panels is conveyed by wires to the panels or by direct bury underground wiring. There will be combiner boxes and those wires run into the inverters. The inverters change the power from DC to AC power. The inverters, which are fully containerized, are proposed to be installed on a concrete slab. The height of the inverters should be 10.5' from grade. The inverters have an interior heating and cooling system. The HVAC system maintains optimum temperature for the inverters. It is a small mini split system. It contains a small bank of exterior cooling fans similar to the type of system for a small dwelling. The levels of noise are comparable to a dwelling unit of 65 decibels at 5'. The applicant has performed a geotechnical investigation and it is favorable for installation to be done by driven posts. They will not require concrete footings but they will be screwed into the ground. There will be six inverters throughout the site. The size of the equipment varies. They will be 7' to 8' high and 4' wide. All the equipment is designed to meet the utility company's requirements for safety and disconnect. If a repair is required on the inverters, the whole hut is removed and a new one installed. The overall size of an inverter hut is 36' x 11' x 10.5'. The security cameras will be powered by the facility itself. At no time will the cameras be facing outside of the facility. The solar field is remotely attached to a monitoring facility. There will be one light at the entrance at the access gate which will be solar powered and motion activated. It will be programmed to turn on from dusk to dawn for motion activation. It has an internal battery which is long lasting with a low draw. The technicians will visit the site two times a month. If a repair has been determined to be required, the technicians will be at the site within 24 hours.

E. Hill offered the following testimony in regard to the planner's review letter:

In regard to #2, the applicant has performed a wetlands delineation and is awaiting the LOI.

In regard to #3, the application does meet all the area and yard requirements. There is a 50' landscape and security buffer and they have provided a maintenance plan. He will work with D. Banisch to come up with a suitable replacement for the white pine trees. The existing hedgerow on the property, quantified in acres, is 2.1 acres.

The applicant agrees with #17.

In regard to #18, the solar panels which were chosen for this project have a low non -reflective glare glass covering, brushed aluminum frame and a plastic backer board. The solar cells within the panel are dark colored. They are constructed of reflective glass and absorb the sunlight. There is no appreciable glare from these panels.

Nos. 19, 20 and 21 have already been addressed by testimony.

On Page 5, #10, the construction will meet the international building and electrical codes. The minimum wind design speed is 90 mph. It falls under the State DCA for the building and electrical codes. They are obligated to comply with code requirements.

Nos. 11 and 12 have been addressed in prior testimony.

In regard to #13, there is a residential dwelling across the road. They will utilize the existing buffer with an additional 50' landscape buffer. The evergreen trees should provide adequate screening and buffer. They are proposing to install 8'-10' high trees throughout the project. If an issue arises in regard to a direct view from



the residential dwelling across the street, the applicant will install supplemental landscaping if required. The applicant will meet with the planner and supplement the planting if necessary.

On page 7, the applicant is not proposing a berm. He stated the site grades to the south. The highest points will be the fence and landscaping. For that reason, the applicant does not feel a berm is necessary. It would take numerous truckloads to fill in the site or a boat load of site disturbance at the site. They do not like to move soil if they do not have to.

No. 17(d) is dictated by code.

No. 17(e) - Interior signage will be done in accordance with the design code requirements.

No 17(f) - All of the design aspects will meet the IBC 2009 and National Electrical Code requirements.

No. 17(g) - The MSDA sheets will be included within the emergency plan filed with the emergency officials.

No. 18 - The gravel entrance is 20' in width. There will be 14.2' between the rows. The spacing is not meant for a large vehicle to get through but would allow a small pickup truck. It is more than adequate for their purposes and wider than others he has seen. They have met with the fire and safety officials and continue to work with them to design a maintenance emergency plan. The interior drive aisles throughout the site are 20' and the gravel road is 20', which have been approved by the fire department.

No. 19 - The gravel access road is also acceptable.

No. 23 - They are not proposing any lead acid batteries.

No. 24 - They have submitted a decommissioning plan.

The engineer had some comments requesting some clarification points and the applicant agrees to submit.

On page 5 of 9 of T. Decker's review, No. 2 addresses site identification. The applicant's sign is not an advertising sign and no variance is required. The applicant agrees to work with the Board on the appearance of the sign.

D. Pierce marked as Exhibit A-1, consisting of 8 pages, a view of the existing conditions photo and proposed engineer's rendering.

E. Hill stated the view is an aerial image from MSN and Bing showing the farm and homestead as it currently exists. It shows the current conditions and the proposed conditions.

In regard to T. Decker's memo:

No. 3 – Was addressed in prior testimony.

No. 4 - The applicant agrees to comply. The system is essentially self-cleaning. There is no physical need to clean the panels. If potable water is required, it will be brought on site. If cleaning is necessary, they will comply with any environmental issues.

No. 5 - He testified that the mixture has been around for 40 years and has been used by farmers or orchards and vineyards. It is drought tolerant and only requires mowing once a year. It is a perennial grass mixture which is not native to the area. Native grasses grow too tall.

Testimony was already given for Nos. 6, 9, 11, 15, 16, 19, 20, and 21.

The applicant agrees to Nos. 7, 10, 24 and 25.

Nos. 8 and 26 are a statement of fact.

No. 12 - They have already given testimony and agree with the submission of the requested additional information.

No. 14 - The electrical equipment does not provide any interference. It is all medium voltage equipment.

No. 17 - The existing gravel drive will be removed and the proposed drive will be located in the same area with a security gate.

No. 18 - The inverters are the only items making noise so they will be kept internal and it will still provide more than adequate access for emergency vehicles accessing the site.

No. 22- The engineer wanted some additional information about the seeding of the site. All the wires are underground or mounted to the bottom of the arrays. The obstacles are the posts and arrays. A note will be added to the plan to establish ground cover prior to installation. A note will be added to the plan stating any damage to the area during construction will be repaired.

No. 23 - There are no existing easements and none proposed. T. Decker stated the Township has a Conservation Easement Ordinance which requires the marking of the environmentally sensitive areas with a 4 x 4 post. The Township has a standard placard which identifies the area as being environmentally sensitive. The applicant agrees to a formal easement. The applicant agrees to identify the areas on the plan and work with the language required by the ordinance.

No. 27 - The applicant has performed a Phase I environmental study. It identified the typical areas of concern. There are two above ground storage tanks in good condition and the presence of farm vehicles. MEL is a registered site. There are various debris piles around the residential dwelling. All the debris will be cleaned up. The existing septic and well will be abandoned according to the regulations. He testified the applicant has obtained a Habitat Assessment Report and it recommends the hedgerows be preserved. The stone rows, which were a man made barrier, have been present forever. The areas have been actively farmed. S. McNicol stated 40% of the property is a habitat for wood turtles, which are a threatened species. She inquired if there was a possibility in the area where there is a potential for wood turtles that the chain link fence could be raised 4" to 6" for access. E. Hill testified the fence will be raised 1.5" to allow for rabbits and other wildlife. The 1.5" raise is the maximum for security purposes. He testified the applicant might consider raising it a little more along the back but will have to have a discussion with the safety squad.

T. Kratzer inquired about the stormwater mounding around the perimeter buffer. E. Hill stated the ordinance requires a berm. In order for the applicant to create a berm they would have to import a significant amount of fill or regrade the site to get the berm. Because of the topography of the site and the existing vegetation of the site, a berm will serve no purpose. They have agreed to increase the size of the trees from 4'-6' to 8'-10'. T. Kratzer stated it is not visual but stormwater control he is concerned with since the DEP, with this type of

project, does not consider stormwater control an issue. E. Hill stated the development is not increasing the runoff but decreasing it. The slope of the property is 1.5 – 3%. Barbertown Point Breeze Road drains onto the property. If a berm is installed it will restrict the flow from the road. T. Kratzer stated the southern edge of the property has a steeper slope. E. Hill testified they will agree to pre-plant the site and further vegetate it at closing. They will have a silt fence which will trap the sediment or run off. The construction time is eight months. After the site is stabilized with permanent vegetation, less run off will occur. T. Kratzer stated that 3% may be acceptable if properly vegetated. T. Kratzer further stated there is a lot of impervious surface created when the panels are installed. He just wanted to bring it to the Board's attention. In response to a question by a Board member concerning the changing of the ownership of the property or project, E. Hill stated the applicant would agree to an inspection if the property should change hands so the emergency information is correct on the signage. He stated the panels are warranted for 25 years. E. Hill further testified Alethea is contracted for 20 to 35 years.

F. Floyd, Chief Kingwood Township Volunteer Fire Co., was sworn in by D. Pierce. F. Floyd stated the fire company and the rescue squad have met with the applicants. They have agreed to the requests of the fire company and rescue squad.

G. Kotzias, President and CEO of Alethea Cleantech, was sworn in by D. Pierce.

In response to a concern by a Board member regarding the transfer of ownership of a system, G. Kotzias testified it never changes prior to seven or eight years due to tax consequences. He testified it is important to look who the builders are of the facility.

R. Dodds opened the meeting to the public for comments. No comments were given.

R. Dodds inquired if anyone from the public wanted to provide testimony. No response was given.

R. Dodds closed the public comment portion of the hearing.

D. Pierce stated there are a couple of preliminary issues. With respect to allowing the fire company practice and training on the structures that are going to be removed, it is not appropriate as a condition of approval. He inquired how quickly would the emergency contact information be changed on the sign. F. Floyd indicated two weeks of change of ownership or operator.

After some discussion, the Board decided the sign should indicate "In case of emergency call" in larger letters.

D. Pierce stated the first thing the Board should consider is a variance to having the sign visible from the road.

It was moved by S. McNicol, seconded by D. Haywood and carried to grant a variance to having the sign visible from the road. All members present voted **AYE** on **ROLL CALL VOTE**.

It was moved by S. McNicol, seconded by D. Haywood and carried to grant a design waiver from the requirement that the applicant construct a berm for the landscape buffer. All members present voted **AYE** on **ROLL CALL VOTE**.

D. Pierce suggested the Board only act on the request for preliminary site plan approval.

It was moved by P. Lubitz, seconded by D. Haywood and carried to grant preliminary site plan approval with the following conditions:

1. Replacement of the proposed white pines with a more suitable species approved by the Board planner.
2. Receipt and submission of approval from the Hunterdon County Planning Board.
3. Receipt and submission of approval from the Hunterdon County Soil Conservation District.
4. Receipt and submission of approval from the Delaware and Raritan Canal Commission.
5. Receipt and submission of a Letter of Interpretation from the Department Of Environmental Protection confirming the location, extent and boundaries of fresh water wetlands, transition and buffer areas and special resource protection areas as depicted on the Plat.
6. Compliance with the sign requirements specified by the Chief of the Kingwood Township Fire Company.
7. Submission of the final design dimensions of the switch gear equipment.
8. Continued maintenance of the landscape buffer area in accordance with the landscape maintenance plan.
9. Immediate removal and off-site disposal of all woody material (brush and trees) removed for purposes of this project.
10. Satisfaction of item # 17 of the Memorandum of David Banisch dated May 11, 2011.
11. Installation of evergreens that are 8 to 10 feet high at the time of planting.
12. The security fence and landscape buffer shall be installed before any other site improvements may be made.
13. This approval is subject to a post-construction inspection of the landscaping by the Board's planner and any modifications to the quantity and location of landscaping required, to be consistent with the density and diversity of the proposed plantings along Route 12, where deemed reasonably necessary by the Board planner to adequately screen the facility.
14. The facility shall conform to the National Electrical Code and the IBC 2009 Code.
15. The submission and approval by the Fire Company and Rescue squad of an Emergency Management Plan shall be a condition of the issuance of a Certificate of Occupancy for the facility and required before it may commence operations.
16. Submission of a Decommissioning Plan revised to comply with item # 13 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
17. Satisfaction of item # 4 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
18. Satisfaction of item # 10 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
19. Satisfaction of item # 12 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
20. Satisfaction of item # 17 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
21. Satisfaction of item # 23 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
22. Submission of a baseline conditions report for the area subject to the Conservation Easement.
23. Satisfaction of item # 24 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
24. Satisfaction of item # 25 set forth in the review letter prepared by Thomas Decker, P.E. and dated March 31, 2011.
25. Submission of a Phase I Site assessment report for the property.
26. Removal of all debris piles from the property.
27. Submission of documentation verifying the proper abandonment of the existing septic system and potable well.

28. Submission of a Threatened and Endangered Species Report that confirms the testimony that no threatened or endangered species are present on the property.
29. The bottom of the chain link security fence shall be raised to a height off the ground that is greater than 2 inches if approved by the Board planner and the Kingwood Township Fire Company and Rescue Squad.
30. The emergency information sign shall be revised and updated within 14 days of any change in the identity of the owner or operator of the facility.
31. Recordation of a Memorandum of Lease reciting the requirement that the emergency information sign must be revised and updated within 14 days of any change in the identity of the owner or operator of the facility.
32. Revision of the sign detail to include the legend: “In Case Of Emergency Call” and to delete the phrase “Making a Difference With Solar”
33. Submission of plans revised to:
  - a. Note the replacement of white pines with a species agreed upon with the Board Planner;
  - b. Show the sign revised in accordance with the requirements of the Chief of the Kingwood Township Fire Company;
  - c. Show the final design dimensions of the switch gear equipment;
  - d. Show the installation of evergreens that are 8 to 10 feet high at the time of planting;
  - e. Note the requirement for a post-construction inspection of the landscape buffer by the Board planner and the potential requirement for supplemental plantings if deemed necessary;
  - f. Show the location of emergency disconnect locations within the facility;
  - g. Note specifying, to the satisfaction of the Board’s professionals, a plan for the sequencing and timing of tilling and seeding the property prior to installation of the racking system supports;
  - h. Note the height above ground for the bottom of the security fence;
  - i. Show the revisions to the sign detail required by condition number 32 of this Memorializing Resolution.
34. The Township of Kingwood is dedicated to providing affordable housing and has established an affordable housing program with supporting land use ordinances and a housing trust fund based on the Fair Housing Act of 1998. In the event that the calculation to be performed under the growth share ordinance determines that there is no growth share obligation associated with the proposed development, then the development fee ordinance shall be applicable. The development fee ordinance requires a developer, pursuant to 132-13 of the Kingwood Township Code, to pay a development fee to the Kingwood Township Affordable Housing Trust Fund. The applicant shall pay fifty percent (50%) of the estimated developer’s fee, if any, to the Kingwood Township prior to the issuance of building permits based on the Tax Assessor’s estimated assessed value and his determination of the appropriate developer’s fee. Building plans and as-built building plans for each development subject to payment of the developer’s fee must be provided to the Tax Assessor and the remaining portion of the developer’s fee shall be paid at the time of issuance of a Certificate of Occupancy for the new development. This paragraph does not constitute any determination by the Board as to whether the applicant is required to pay a developer’s fee.
35. Neither the Board nor its employees or professionals will perform any service in furtherance of this approval if there is a deficiency in any escrow or inspection fee account. The applicant shall be under a continuing duty to maintain a positive balance in all accounts until all conditions have been satisfied and all charges have been paid. This memorializing resolution shall not be released to the applicant unless all outstanding escrow fees have been paid and the applicant’s escrow account contains sufficient funds to cover anticipated unbilled expenses.

36. Approval of this application by the Planning Board shall not and is not to be considered as an approval of any other requirements or approvals of permits as may be necessary to allow construction.
37. The within approval, and the use of all property subject to the within approval, are conditioned upon and made subject to any and all laws, ordinances, requirements, and/or regulations of and/or by any and all Municipal, County, State and/or Federal governments and their agencies and/or departments having jurisdiction over any aspect of the property and/or use of the property. The within approval and the use of all property subject to the within approval are also conditioned upon and made subject to any and all approvals by and/or required by any and all municipal, county, State and/or Federal governments and their agencies and/or department shaving jurisdiction over any aspect of the property and/or the use of the property. In the event of any inconsistency between the terms and/or condition of the within approval and any approvals(s) required by the above, the terms and conditions of the within approval shall prevail unless and until changed by the Board upon property application.
38. The Kingwood Township Planning Board reserves the right to revoke and withdraw any approval hereby granted in the event that there is any deviation from or alterations of the plan hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Planning Board. Minor deviations and field changes may be authorized in writing by the Township Engineer.
39. All improvements shall conform to building standards and other regulations as set forth in Federal, State, County and Municipal Statues, Regulations, Codes and Ordinances, at the time of installation of the said improvement.
40. The acceptance by the applicant of this approval and reliance thereon by the applicant for the purpose of commencement of construction of improvements within the project in accordance with the approval, shall operate as an acknowledgment and agreement by the application, its successors and assigns, that it accepts the official action herewith memorialized as being subject to the terms and conditions as contained herein, and agrees to fully comply and be bound thereby.

All members present voted **AYE** on **ROLL CALL VOTE**.

Resolution No. 2011-02 -Open Space and Recreation Plan Element

D. Banisch stated there were a few changes that came forth after the ten day availability which are not substantive but technical in nature:

1. Appendix A (Page 33), Index #14, Block 28, Lot 4 was removed from the table. This was a typo that was carried forward from a previous version of the Plan. The correct identification is Block 28, Lot 2.01 (Item #25) on the table.
  - a. Block 28, Lot 4 was also placed on Figure 2: Open Space System Map, and has been removed from the map. This parcel is a privately owned residential property.
2. Appendix A (Page 33) was supplemented with two parcels (newly designated as Items 14 and 15); Block 33, Lot 14.10 and Block 40, Lot 23. Both parcels were identified in the text and map but were not depicted in Appendix A of the filed version of the plan.
3. Figure 4: Preserved and Targeted Farmland identified several preserved open space

parcels as preserved farmland. This was an error in GIS layering and was not an error in identification of parcels in the text or other mapping in the Plan. The map has been revised accordingly.

D. Pierce stated the changes were not substantive changes.

R. Dodds opened the meeting to the public. No comments were heard.

R. Dodds closed the public portion of the hearing on the Open Space and Recreation Plan.

It was moved by S. McNicol, seconded by P. Lubitz and carried to adopt the Open Space and Recreation Plan Element. All members present voted **AYE** on **ROLL CALL VOTE**.

### **Re-Examination Report of the Master Plan**

D. Pierce stated the governor signed into law the period of time which a municipality must re-examine their Master Plan and extended it from six years to ten years on May 4<sup>th</sup>.

### **Approval of Minutes**

It was moved by S. McNicol, seconded by D. Haywood and carried to approve the minutes of April 14, 2011 with the following changes:

*Throughout the minutes the term "packaging plants" should be amended to read "package plants" (Note: Correction was made in the original set before posting);*

*Page 8 - T. Kratzer stated the following should be added to the second paragraph from the bottom: He stated and emphasized there are studies that have been done for surface and ground water in these areas. These should be reviewed to see exactly what resources would be available there as far as water supply.*

T. Decker and D. Banisch were excused from the meeting at 11:17 PM.

### **PRIVILEGE OF THE FLOOR**

### **RESOLUTIONS**

#### **RESOLUTION NO. 2011-04**

**WHEREAS**, Section 7 of the Open Public Meetings Act, Chapter 231 P.L. 1975 (R.S. 10:4-13) permits the exclusion of the public from a meeting or a portion of a meeting of this public body in certain circumstances; and

**WHEREAS**, this public body is of the opinion that such circumstances presently exist;

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Kingwood, County of Hunterdon, State of New Jersey as follows:

1. The public shall be excluded from the meeting or a portion of a meeting at which this public body discusses the hereinafter specified subject matter.

2. The general nature of the subject matter to be discussed is as follows:

**Litigation**

3. The time when the circumstances under which the discussions conducted in closed session of this public body can be disclosed to the public is as follows:

The minutes of the closed session will be made public upon conclusion, dismissal or settlement of litigation; or final resolution of agreements or personnel matters; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and -13.

4. This resolution shall take effect immediately.
5. The Planning Board may take additional action upon returning to regular session.

It was moved by D. Haywood, seconded by S. McNicol and carried to adopt the foregoing resolution. All members present voted **AYE**.

R. Dodds announced the Board's return to regular session.

**CORRESPONDENCE**

**ADJOURNMENT**

It was moved by J. Strasser, seconded by S. McNicol and carried to adjourn the meeting at 11:34 PM. All members present voted **AYE**.

**Respectfully submitted,**

**Diane Laudenschick, Secretary**