

**MINUTES OF THE HARDYSTON TOWNSHIP ZONING BOARD OF ADJUSTMENT
MEETING HELD NOVEMBER 3, 2011**

CALL TO ORDER: Chairman Murphy called the meeting to order at 7:30 p.m. and read the following Statement of Compliance:

STATEMENT OF COMPLIANCE: Pursuant to the Open Public Meeting Act, Chapter 231, P.L. 1975, adequate notice as defined in Section 3D of Chapter 231 P.L. 1975 was made to the New Jersey Herald, and a copy is posted on the bulletin board at the Hardyston Township Municipal Building.

ROLL CALL:

William Walsh – Present
Santo Verrilli – Present
Gerald Laughlin – Present
Candace Leatham – Present
Hugh Krone – Present
James Homa – Present
Mary Ann Murphy – Present

OTHERS PRESENT: Richard Briigliodoro, Esq., Michael G. Vreeland, P.E., P.P.

APPROVAL OF MINUTES:

A motion to approve the *Minutes of the Hardyston Township Zoning Board of Adjustment Meeting Held October 6, 2011*: A motion to approve was made by Candace Leatham and seconded by William Walsh. There were no comments. Roll Call: William Walsh – yes; Santo Verrilli – yes; Gerald Laughlin – yes; Candace Leatham – yes; James Homa – yes; Mary Ann Murphy – yes. The motion carried.

APPROVAL OF RESOLUTIONS: ZB-9-09-1(a.2), Edgewater Associates, Extension Request, “D” Variance – YMCA Sign, Block 67, Lot 2.01 and Lot 2.02: A motion to approve was made by Santo Verrilli and seconded by Gerald Laughlin. There were no comments. Roll Call: William Walsh – yes; Santo Verrilli – yes; Gerald Laughlin – yes; Candace Leatham – yes; James Homa – yes; Mary Ann Murphy - yes. The motion carried.

ZB-8-08-1C, SJZ, L.L.C., Extension Request, D Variance, Preliminary and Final Site Plan, Paradise Pools, Hardyston Township Block 14, Lot 21.02, and Hamburg Borough, Block 36 Lot 2: A motion to approve was made by William Walsh and seconded by Candace Leatham. There were no comments. Roll Call: William Walsh – yes; Santo Verrilli – yes; Gerald Laughlin – yes; Candace Leatham – yes; James Homa – yes; Mary Ann Murphy - yes. The motion carried.

APPLICATIONS: ZB-6-11-01, County Wicklow Holdings, LLC, “D” Variance, Preliminary and Final Site Plan, “C” Variance, Solar Energy Facility, Block 62 Lot 6: Please see the attached transcript.

PUBLIC PARTICIPATION: No members of the public addressed the Board.

DISCUSSION: There was no general discussion.

BILLS: A motion to pay the bills cited below was made by Santo Verrilli and seconded by William Walsh. Roll Call: William Walsh – yes; Santo Verrilli – yes; Gerald Laughlin – yes; Candace Leatham – yes; Hugh Krone – yes; James Homa – yes; Mary Ann Murphy - yes. The motion carried.

Richard Briadoro, Esq., Weiner Lesniak, LLP

Invoice 146375	ZB-6-11-01/ZBC-6-11-01, County Wicklow Holdings, LLC	\$405.00
Invoice 146374	ZB-11-10-1, Edgewater Commons Office Park, LLC,	90.00
Invoice 146373	Zoning OE	300.00

Michael Vreeland, P.E., P.P.

Invoice WO855G	Zoning OE	682.50
Invoice WO868C	ZB-6-11-06, County Wicklow Holdings,	262.50

CORRESPONDENCE: There was no correspondence received.

ADJOURNMENT: Having no further business, a motion to adjourn was made by Santo Verrilli and seconded by William Walsh. All were in favor. The motion carried. The meeting adjourned at 8:40 p.m.

Minutes respectfully submitted by:

Anne-Marie Wilhelm

Anne-Marie Wilhelm
Land Use Administrator

**RESOLUTION
TOWNSHIP OF HARDYSTON
ZONING BOARD OF ADJUSTMENT
IN THE MATTER OF EDGEWATER ASSOCIATES
APPLICATION NUMBER ZB-9-09-1(a.2)
DECIDED ON OCTOBER 6, 2011
MEMORIALIZED ON NOVEMBER 3, 2011
EXTENSION OF USE VARIANCE APPROVAL FOR SIGNAGE
(YMCA SIGN)**

WHEREAS, Edgewater Associates (hereinafter "Edgewater" or "Applicant") has made application to the Township of Hardyston Zoning Board of Adjustment (hereinafter "Zoning Board") for an extension of the previously granted use variance approval (YMCA sign) for property known and designated as Block 67.17, Lot 2.02 as shown on the tax map of the Township of Hardyston, located at Route 94 North at the Carlton Village rental office site and corner of Wits End Road, Hardyston, New Jersey. The property is also located in the B-1 neighborhood business zone district; and

WHEREAS, a public hearing was held on October 6, 2011 after the Board determined it had jurisdiction; and

WHEREAS, the Applicant was represented by Deborah Lynn Nicholson, Esq. (hereinafter "Nicholson") attorney for the Applicant; and

NOW, THEREFORE, the Zoning Board makes the following findings of fact based on evidence presented at its public hearing, at which time a record was made.

The application before the Board is a request for an extension of use variance approval in connection with the installation of a free-standing YMCA sign on the subject site. The Zoning Board previously granted use variance approval for signage for the YMCA sign on October 1, 2009, which approval was memorialized in a resolution adopted by the Zoning Board and memorialized on November 5, 2009.

The Zoning Board also granted additional land use approvals in connection with the subject site. More specifically, the Zoning Board granted minor subdivision, preliminary site plan approval and "c" variance relief on October 1, 2009, which approval was memorialized in a resolution adopted by the Zoning Board on November 5, 2009. The Zoning Board also granted an extension of the minor subdivision approval and "c" variance approval on May 6, 2010, which approval was memorialized in a resolution adopted by the Zoning Board on June 3, 2010. Furthermore, the Zoning Board granted final site plan approval as to Phase I of the development on November 4, 2010, which approval was memorialized in a resolution adopted by the Zoning Board on December 2, 2010.

In accordance with recent amendments to the Hardyston Township Code Section 33-21, variances now shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within one (1) year from the date of the entry of the judgment or determination of the Board of Adjustment. However, in the case of a variance which also involves a site plan approval, the variance shall extend for the full period of the statutory protection of the site plan approval. At the time of granting the application for a use variance for the YMCA sign, the variance did not automatically extend for the full period of the statutory protection for site plan approval.

The Applicant received final site plan approval as to Phase I which means the period of protection from subsequent zoning requirements is for a period of two (2) years from the date upon which the resolution of final approval was adopted. However, the Applicant is entitled to seek up to three (3) one (1) year extensions of final site plan approval against subsequent zone changes. Thus, the Applicant seeks to have the use variance for the YMCA sign extended to coincide with the period of protection for final site plan approval for Phase I and thus extend the use variance approval through December 2, 2012.

There were no members of the public present expressing an interest in this application.

NOW, THEREFORE, the Zoning Board hereby makes the following conclusions of law based upon the foregoing findings of fact.

The application before the Board is a request for an extension of time in regard to the granting of use variance approval for the YMCA sign relative to Block 67.17, Lot 2.01 formerly known as Block 67.17, Lot 2 on the Tax and Assessment Map of the Township of Hardyston and located at Route 94 North at the Carlton Village rental office site at the corner of Wits End Road, Hardyston, New Jersey. The property is also located in the B-1 neighborhood business zone district.

The Applicant seeks an extension of use variance approval for the construction of a free-standing YMCA sign on this site. The Board previously granted use variance approval for the YMCA sign on October 1, 2009, which approval was memorialized in a resolution adopted by the Zoning Board on November 5, 2009.

The Board notes that under Hardyston Township Code, Section 33-21, variances expire by limitation unless such construction or alteration shall have actually been

commenced on each and every structure permitted by the granting of said variance unless such permitted uses have actually been commenced within one (1) year from the date of entry of the judgment or determination of the Zoning Board except that in a case of a variance which involves a site plan approval, the variance shall extend for the full period of the statutory protection of the site plan approval. Thus, the Applicant seeks to extend the approval for the YMCA sign to run concurrently with the granting of final site plan approval for Phase I which was granted by the Zoning Board on November 4, 2010 and memorialized in a resolution adopted by the Zoning Board on December 2, 2010. Therefore, the final site plan approval for Phase I is subject to a period of protection from subsequent zoning requirements for a period of two (2) years from the date upon which the resolution of final approval was adopted. As to the granting of final site plan approval for Phase I, the period of protection against subsequent zoning ordinance changes would be in effect until December 2, 2012. Thus, the Applicant seeks to extend the approval for the YMCA sign through December 2, 2012 so that it runs concurrently with the period of protection relative to the granting of final site plan approval for Phase I through December 2, 2012.

The Zoning Board determines that it is appropriate to grant an extension of the use variance through December 2, 2012 so as to run concurrently with the granting of final site plan approval for Phase I.

NOW, THEREFORE, be it resolved by the Zoning Board of Adjustment of the Township of Hardyston that the application of Edgewater Associates bearing Docket No. ZB-9—09-1(a.2) requests an extension of time which respects use variance approval for the YMCA sign is granted by the Zoning Board subject to the following terms and conditions:

1. The Applicant represents that all of its representations and stipulations made either by the Applicant or on the Applicant's behalf to the Township of Hardyston Zoning Board are true and accurate and acknowledges that the Zoning Board specifically relied upon the said stipulations and the Boards granting of approval. If said representations and stipulations are false, this approval is subject to revocation.

2. The extension of time relative to the use variance approval for the YMCA sign shall be extended through December 2, 2012 so as to run concurrently with the period of protection granted in regard to final site plan approval for Phase I in the companion application.

3. Payment of all fees, costs and escrows due or to become due. Any monies are to be paid by the Applicant within twenty (20) days of said request by the Board Secretary.

4. Certification that taxes are paid current to date of approval.

5. All terms and conditions of the Board's previous Resolutions shall remain in full force and effect except as modified by this Resolution granting an extension of time for the use variance for the YMCA sign so as to run concurrently with the final site plan approval for Phase I period of protection through December 2, 2012.

6. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions of any prior approvals granted by the Township of Hardyston Zoning Board.

7. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Hardyston, County of Sussex, State of New Jersey or any other agency or entity having jurisdiction thereunder.

8. This approval is granted strictly in accordance with any recommendation set forth on the record by the Zoning Board at the time of the hearing on October 6, 2011.

The undersigned secretary certifies that the within Resolution was adopted by the Board of Adjustment on October 6, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 3, 2011.



Anne Marie Wilhelm
Land Use Administrator and
Board Secretary

IN FAVOR: William Walsh; Santo Verrilli; Gerald Laughlin; Candace Leatham; James Horna;
Mary Ann Murphy

AGAINST: 0

ABSTAINED: 0

BOARD MEMBERS ELIGIBLE TO VOTE: s/a

**RESOLUTION
TOWNSHIP OF HARDYSTON
ZONING BOARD OF ADJUSTMENT
IN THE MATTER OF
SJZ, LLC d/b/a PARADISE POOLS & SPA, INC.
APPLICATION NUMBER ZB-8-08-1C
DECIDED ON OCTOBER 6, 2011
MEMORIALIZED ON NOVEMBER 3, 2011
EXTENSION OF USE VARIANCE APPROVAL
AND FINAL SITE PLAN APPROVAL**

WHEREAS, SJZ, LLC d/b/a Paradise Pools & Spa, Inc. (hereinafter "SJZ" or "Applicant") has made application to the Township of Hardyston Zoning Board of Adjustment (hereinafter "Zoning Board") for an extension of the previously granted use variance and final site plan approval for property known and designated as Tax Block 14, Lot 21.02 as shown on the Tax Map of the Township of Hardyston, located at 93 Route 23 North, Hamburg, New Jersey, (Block 36, Lot 2, Hamburg, New Jersey) The property is also located in the in the MIDD-5 Zone; and

WHEREAS, the Zoning Board granted use variance approval as well as preliminary and final site plan approval to the Applicant in order to disturb approximately 12,100 square feet of land relative to the construction of a stormwater management system, which is partially located in the Borough of Hamburg as well as the Township of Hardyston. The Zoning Board granted the approval on November 6, 2008 which approval was memorialized in a Resolution adopted by the Zoning Board on December 4, 2008; and

WHEREAS, the Zoning Board granted an extension of the use variance and final site plan approval through December 4, 2011 on October 7, 2010 which was memorialized in a resolution adopted by the Zoning Board on November 4, 2010; and

WHEREAS, under the Municipal Land Use Law N.J.S.A. 40:55D-52 the period of protection for final site plan approval against zoning ordinance changes is for a period of two years after the date on which the resolution of final approval is adopted; and

WHEREAS, the Hardyston Township Code Section 33-21 provides in relevant part that variances expire by limitation unless such construction or alteration shall have actually been commenced on each and every structure permitted by the granting of said variance or unless such permitted uses have actually been commenced within one year from the date of entry of the judgment or determination of the Zoning Board except in those instances when the variance is granted in conjunction with a site plan approval

whereupon the variance is extended for the full period of the statutory protection of the site plan; and

WHEREAS, the Zoning Board considered this matter at a public hearing on October 6, 2011 after the Board determined it had jurisdiction; and

WHEREAS, the Applicant was not represented by legal counsel.

NOW, THEREFORE, the Zoning Board makes the following findings of fact, based on evidence presented at its public hearing, at which time a record was made.

The application before the Board is a request for an extension of use variance and final site plan approval permitting the disturbance of approximately 12,100 square feet of land relative to the construction of a stormwater management system, which would be partially located in the Borough of Hamburg as well as the Township of Hardyston. Approval of the application was granted on November 6, 2008 and memorialized in a Resolution adopted by the Zoning Board on December 4, 2008. In connection with the granting of use variance approval, the Applicant contemporaneously received preliminary and final site plan approval from the Zoning Board. In addition, on August 6, 2009 the Zoning Board granted an extension of time as to the use variance approval through December 4, 2010 so as to run concurrently with the period of protection in regard to the granting of final site plan approval.

The subject site is known and designated as Tax Block 14, Lot 21.02 as shown on the Tax and Assessment Map of the Township of Hardyston, located at 93 Route 23 North, Hamburg, New Jersey (Block 36, Lot 2, Hamburg, New Jersey). The property is also located in the MIDD-5 Zone District. Furthermore, pursuant to the Hardyston Township Code Section 33-21 variances shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every structure permitted by said variance or unless such permitted use has actually been commenced within one year from the date of entry of the judgment or determination of the Board of Adjustment, except in those instances when the variance is granted in conjunction with a site plan approval, whereupon the variance is extended for the full period of the statutory protection of the site plan.

The Applicant also received preliminary and final site plan approval on November 6, 2008 which approval was memorialized in a Resolution adopted by the

Zoning Board on December 4, 2008, and which final site plan approval therefore provides for a period of protection from subsequent zoning requirements for a period of two (2) years from the date upon which the Resolution of final approval was adopted. The Zoning Board granted an extension of the use variance and final site plan approval through December 4, 2011. The decision of the Zoning Board occurred on October 7, 2010 and was memorialized in a Resolution adopted by the Board on November 4, 2010.

The Applicant also discussed the financial hardships of the Applicant due to the downturn in the economy. The Applicant therefore requests an extension of time for the use variance and final site plan approval through December 4, 2012 as to the Hardyston Zoning Board Approvals. The Applicant also represented that the Hamburg Land Use Board has also extended its approvals.

There were no members of the public present expressing an interest in this application.

NOW, THEREFORE, the Zoning Board hereby makes the following conclusions of law, based upon the foregoing findings of fact.

The application before the Board is a request for an extension of time in regard to the granting of use variance approval by the Zoning Board on November 6, 2008 and memorialized in a Resolution adopted by the Zoning Board on December 4, 2008. The use variance approval was previously extended by the Zoning Board to run through December 4, 2010, which extension approval was granted; on August 6, 2009 and memorialized on September 3, 2009. The use variance and final site plan approval were further extended through December 4, 2011 in accordance with a decision by the Board on October 7, 2010 and memorialized in a Resolution adopted by the Board on November 4, 2010.

The Board concludes that this is a unique application because the property is bisected by the Municipal boundary line of the Borough of Hamburg and the Township of Hardyston. In addition, the entire tract of 4.8 acres is located within three (3) different zone districts within both municipalities. The Zoning Board also concludes that the land use approvals granted by each municipality are interrelated and that without a recognition of that fact and a cooperative response from both municipalities, the subject

site may not be developed. The Zoning Board also accepts the representations of the applicant that Hamburg has also granted an extension of the approvals. The Board has also determined that the applicant is entitled to the relief sought.

The Board also notes that in accordance with the Municipal Land Use Law pursuant to N.J.S.A. 40:55D-52, the Applicant can apply to the Zoning Board of Adjustment in order to seek up to three (3) one (1) year extensions of the final site plan approval either on or before the expiration of the period of protection from subsequent zone changes in regard to final site plan approval which will occur on December 4, 2011. The Zoning Board further notes that the granting of the final site plan approval terminates the period of preliminary approval. Thus, the Zoning Board determined that it is appropriate to grant an extension of the use variance and final site plan approval from December 4, 2011 through December 4, 2012 for the reasons expressed therein.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Hardyston that the application of SJZ, LLC d/b/a Paradise Pools & Spa, Inc. bearing Docket No. ZB-8-08-1C requesting an extension of time with respect to use variance approval and final site plan approval is granted by the Zoning Board subject to the following terms and conditions:

1. The Applicant represents that all of its representations and stipulations made either by the Applicant or on the Applicant's behalf to the Township of Hardyston Zoning Board are true and accurate, and acknowledges that the Zoning Board specifically relied upon the said stipulations in the Board's granting of approval. If said representations and stipulations are false, this approval is subject to revocation.
2. The extension of time relative to the use variance approval shall be extended through December 4, 2012, so as to run concurrently with the period of protection granted in regard to final site plan approval in this application.
3. The extension of time relative to Final Site plan approval shall be extended through December 4, 2012.

4. Payment of all fees, costs and escrows due or to become due. Any moneys are to be paid by the Applicant within twenty (20) days of said request by the Board Secretary.
5. Certification that taxes are paid to date of approval.
6. All terms and conditions of the Board's previous Resolutions shall remain in full force and effect except as modified by this Resolution granting an extension of time for the use variance and final site plan approval through December 4, 2012.
7. The granting of this application is subject to and conditioned upon the Applicant complying with all terms and conditions of any prior approvals granted by the Borough of Hamburg Land Use Board.
8. Subject to other applicable rules, regulations, ordinances and statutes of the Township of Hardyston, County of Sussex, State of New Jersey, or any other agency or entity having jurisdiction thereunder.
9. This approval is granted strictly in accordance with any recommendations set forth on the record by the Zoning Board at the time of the hearing on October 6, 2011.

The undersigned secretary certifies that the within Resolution was adopted by the Board of Adjustment on October 6, 2011 and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on November 3, 2011.

Anne-Marie Wilhelm
Land Use Administrator and
Board Secretary

IN FAVOR: William Walsh; Santo Verriilli; Gerald Laughlin; Cardace Leathan; James Horn;
Mary Ann Murphy

AGAINST: 0

ABSTAINED: 0

BOARD MEMBERS ELIGIBLE TO VOTE: s/a

CERTIFIED
TRANSCRIPT

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HARDYSTON TOWNSHIP LAND USE BOARD

IN THE MATTER OF APPLICATION : TRANSCRIPT
ZB-6-11-01, County Wicklow : OF
Holdings, LLC, D variance, Preliminary : PROCEEDINGS
and Final Site Plan, C variance, Solar :
Energy Facility, Block 62, Lot 6, :
(240 North Church Road) :

Hardyston Municipal Building
149 Wheatsworth Road,
Hamburg, NJ 07419
DATE: Thursday, November 3, 2011
7:30 p.m.

B E F O R E :

MARY ANN MURPHY, CHAIRWOMAN
CANDACE LEATHAM, VICE CHAIRWOMAN
JAMES HOMA
HUGH KRONE
GERALD LAUGHLIN
SANTO VERRILLI
WILLIAM WALSH

BY: LINDA S. ROBINSON, CCR, RPR

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A P P E A R A N C E S :

GEORGE F. SWEENEY, ESQUIRE
20 Main Street, suite 101
Sparta, NJ 07871
973-729-6400
Attorney for the Applicant

A L S O P R E S E N T :

RICHARD BRIGLIADORO, ESQUIRE, BOARD ATTORNEY
MICHAEL G. VREELAND, P.E., P.P.
ANNE-MARIE WILHELM, LAND USE ADMINISTRATOR

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I N D E X

Examinations

Page

JASON DUNN

BY MR. SWEENY

5,10

KENNETH D. DYKSTRA

BY MR. SWEENY

7, 24

E X H I B I T S

No.

Description

Page

A-3

Site Layout plan

6

1 THE CHAIRWOMAN: Application
2 ZB-6-11-01, County Wicklow Holdings, LLC, for a D
3 variance, preliminary and final site plan and C
4 variance, Solar Energy Facility, Block 62,

5 Lot 6 and it's 240 North Church Road.

6 MR. SWEENEY: Thank you, Madam Chair.
7 George Sweeny again on behalf of the applicant. We
8 have with us tonight the same witnesses we had at the
9 prior meeting, namely Mr. Kevin Byrne, who is
10 principal of the applicant, County Wickow, and also
11 Kenneth Dykstra, of the firm of Dykstra Walker Design
12 Group.

13 We also have a third witness tonight
14 I'd like to have the board swear in, also have him
15 qualified. The gentleman's name is Jason Dunn. He
16 is with the firm of Dykstra Associates, I-N-C. Mr.
17 Dunn is not only a professional planner, but he is
18 also a certified landscape architect. I'd like to
19 have him sworn in and obviously address any concerns
20 the board has to have him qualified.

21
22 JASON DUNN, from Dykstra Associates, Inc., having
23 been duly sworn, testifies as follows:

24 MR. BIGLIADORO: Please state your
25 name and spell your last name for the record.

1 THE WITNESS: It's Jason Dunn,
2 D-U-N-N.

3 EXAMINATION BY MR. SWEENEY:

4 Q. Mr. Dunn, would you briefly review for the
5 board your educational background and your work
6 experience in the area of planning and landscape
7 architecture?

8 A. Yes. I have a bachelors degree from
9 Rutgers University Environmental Planning and Design,
10 concentration in landscape architecture. I have been
11 a licensed landscape architect in New Jersey for ten
12 years, and also a professional planner for about six
13 years, being in the land design industry for about 15
14 years.

15 I have worked for -- I'm working at
16 Dykstra Associates, Incorporated doing engineering,
17 landscape architecture and planning. I have also
18 worked for Harold Pellow & Associates in Frankford
19 doing municipal reviews. And I have provided expert
20 testimony in matters of planning and landscape
21 architecture for zoning boards and planning boards,
22 in mostly Sussex County, but also in Morris and
23 Warren County as well.

24 Q. Thank you.

25 MR. SWEENEY: Madam Chair, unless

1 anyone from the board has any questions, I'd like to
2 have him recognized as a professional planner and as
3 a certified landscape architect.

4 THE CHAIRWOMAN: Okay.

5 MR. SWEENEY: Thank you. What I'd like
6 to do tonight is, we have obviously been here, I
7 guess it's been two months ago. Since that time we
8 have had an opportunity to hear various comments from
9 the board. In concern we have had conversations with
10 your engineers. And as a result the applicant has in
11 an attempt to resolve some of the concerns perhaps
12 the board members have, and yet still maintain the
13 economic viability of this project, we have amended
14 it.

15 And I'd like to call Mr. Kenneth
16 Dykstra up to review for the board, and I guess there
17 is no one from the public tonight, the proposed
18 changes to the application. And with the board's
19 permission and with counsel's permission I'd like to
20 have this marked, I believe, A-3.

21 (Exhibit A-3 Site Layout plan is marked.)

22 MR. BRIGLIADORO: A-3, Mr. Sweeny.

23 The record should reflect that Mr.
24 Dykstra was previously sworn in at the
25 September 1st hearing in regard to this

1 application. And Mr. Dykstra remains under oath
2 as he is about to testify here tonight before
3 the board.

4 MR. SWEENEY: Yes, absolutely. We
5 recognize that, as well as Mr. Byrne.

6
7 KENNETH D. DYKSTRA, from Dykstra Walker Design Group,
8 having been previously sworn, testifies as follows:

9
10 EXAMINATION BY MR. SWEENEY:

11 Q. Ken, could you review for the board the
12 proposed amendments to the original site plan that
13 were brought before the board in September?

14 A. In September we presented the plan and
15 since that time we've revised it rather
16 substantially. Exhibit A-3, we also submitted a
17 small version to each of the board members, I
18 believe, Anne-Marie.

19 MS. WILLHELM: Yes, everybody has one.

20 A. So you might be able to view one. This is
21 basically an exhibit which is from the site plan set.
22 It's effectively a site layout plan, which shows the
23 panels. And it's highlighted with colors. The
24 primary change that was made is in the area, I'll
25 call it just northwest of the building. We removed

1 490 of the ground mounted solar panels, so that
 2 basically we have cut the project back about 13
 3 percent overall. We are now at a total of 3,270
 4 panels, which includes the ground mounted panels and
 5 the roof mounted panels. Previously we were at 3,260
 6 panels, so it's about a 13 percent reduction in the
 7 size of the project. Went from about a, from a
 8 megawatt standpoint, 0.81 megawatt project to a 0.71
 9 megawatt project. Still, still a good project for
 10 the applicant, economically. Provides enough power
 11 to support approximately 100 homes in terms of
 12 electricity.

13 The other major change to the plan was the
 14 landscape enhancements to the site. Mr. Dunn was
 15 retained. We understand the visibility on North
 16 Church Road as you come toward Hardyston from
 17 Franklin. And he provided a rather significant
 18 landscaping feature that dresses up the existing
 19 site. It doesn't so much block the solar panels,
 20 which are up on the slope behind the project, up on
 21 the hill, but it does substantially improve the
 22 visibility of the existing site and the existing
 23 building. We also provide some landscaping buffering
 24 for the panels that are in the lower area of the
 25 site. So those are the major changes that were made.

1 Also our inverter enclosure, that was
 2 actually lowered in grade to ensure that it will not
 3 be visible whatsoever from the roadway, and will be
 4 shielded by the building. And we've added some notes
 5 about other site improvements such as top coursing
 6 the whole -- top course pavement on the entire
 7 parking lot, addition of a couple of more lights that
 8 were required previously, buffering the dumpster
 9 enclosure. And all that work, all that, those items
 10 are also listed on the revised plans. So I think we
 11 have gone a long ways to addressing the concerns that
 12 the board had about the visibility.

13 And basically, as I stated before, this
 14 property is zoned industrial. And what we are
 15 proposing is only, it's a passive solar facility,
 16 rather than expanding the site with more industrial
 17 development. Right now the site is underdeveloped.
 18 It's only ten percent impervious coverage. This zone
 19 allows up to 50 percent. So we could have expanded
 20 the site with more industrial development.

21 Instead we are proposing a passive solar
 22 facility. This is actually harmonious with the
 23 adjacent cemetery use, which is a goal of your Master
 24 Plan, having harmonious uses. This is passive.
 25 There will be no noise other than the periodic

1 maintenance.

2 So anyway, those are the major changes.
 3 And I could entertain questions.

4 Q. Ken, is there also fencing? You realize
 5 that there is a fencing requirement that was not in
 6 the original plan?

7 A. Well, we have shown a proposed four foot
 8 fence around part of the facility. However, we may
 9 have to close in the entire solar array, because of
 10 an electrical code requirement. So that fence may,
 11 may be extended, but it will be a conforming fence
 12 per your ordinance.

13 MR. HOMA: What is the height of the
 14 shrubs, the narrow row of shrubs, the mature height?

15 MR. DYKSTRA: Well, Mr. Dunn can
 16 probably explain that. Is that the row you are
 17 talking about?

18 MR. HOMA: It's the narrow row in
 19 front of the -- that one, yes.

20 MR. SWEENEY: Well, perhaps to make it
 21 easier, if we make it somewhat of a team
 22 presentation, we can ask Mr. Dunn to state for the
 23 board the other addition to this, which is his work
 24 and why he was retained.

1 JASON DUNN, previously sworn, testifies as follows:
 2 EXAMINATION BY MR. SWEENEY:

3 Q. Jason, could you run through the
 4 landscaping, proposed landscaping, on this project?

5 A. Yes.

6 Q. That was not shown to the board
 7 previously.

8 A. After Kevin and Ken contacted me, I
 9 visited the site and did an evaluation analysis of
 10 the condition of the woods behind here, and also the
 11 visibility of the building as you head, I guess it
 12 would be eastbound.

13 MR. DYKSTRA: Westbound.

14 A. I'm sorry, as you head westbound from
 15 Franklin toward Hardyston and Route 94. This
 16 building is very visible as we all know. So what I
 17 was asked to do was to try to find some ways to make
 18 that blend into the surrounding landscape a little
 19 better.

20 One of the things I did was, as Ken
 21 mentioned, provide diverse planting and rather dense
 22 planting in front of the building, partially
 23 evergreen, partially deciduous shade trees, and also
 24 some flowering ornamentals.

25 Now, Mr. Homa asked about this row, this

1 band of junipers here. This is, the purpose of that
 2 is to try to screen the bottom, say, two to three
 3 feet of the racking system, but choose, and I chose a
 4 plant that wouldn't grow too high so that it would
 5 shadow the solar panels. What I chose was a Chinese
 6 juniper, which could grow up to six feet, no higher
 7 than that, but more likely it wouldn't bypass about
 8 four. It's an evergreen shrub, so it would be there
 9 year-round. That way anybody either pulling in the
 10 drive or taking a look out of the side of their car,
 11 whatever, they wouldn't see all the lower rack
 12 systems of the paneling. It would be kind of
 13 screened by this row of junipers.

14 MR. VERRILLI: How high, I don't
 15 remember, how high is the paneling supposed to be
 16 from the ground?

17 MR. DYKSTRA: Panels, on the, on the
 18 lower end toward North Church Road, two feet. And
 19 then they go up to eight feet on the back end, eight
 20 plus feet up to ten feet basically. And there may be
 21 some sections all the way back, in the very back part
 22 of the property, because of the slope and the
 23 topography where we could be slightly over ten feet,
 24 but no more than 12 feet. That's your absolute
 25 maximum.

1 And the way these are, you will not
 2 see the underlying structure. You are going to see
 3 the rows of panels.

4 MR. VERRILLI: So the shrubs that you
 5 are talking about, that you say could grow up to,
 6 eight feet you said?

7 MR. DUNN: Up to six foot.

8 MR. VERRILLI: Up to six feet. Is
 9 that just going to be in the front of the panels or
 10 is that going to be up where, as you get higher up?

11 MR. DYKSTRA: No. That's just in this
 12 front row.

13 MR. DUNN: Just here. Right. My goal
 14 was to just take care of the visibility from the
 15 roadways, not so much from the interior of the site.

16 MR. WALSH: What is the height of the
 17 trees by the building, the mature height?

18 MR. DUNN: These here?

19 MR. WALSH: Yes.

20 MR. DUNN: I specified some oak and
 21 maple and also some spruces, so they could grow up to
 22 60 feet over the years.

23 MR. VERRILLI: What sizes are you
 24 going to put up?

25 MR. DUNN: I did try to choose some

1 bigger caliper maples, three and a half to four inch
 2 calipers, which are about 14 to 16 foot in height at
 3 planting. And white pine, six foot to eight foot in
 4 height. So it will be, it will be -- it will make an
 5 immediate difference. They are not small trees.
 6 Because we know the board was looking to upgrade the
 7 looks of the site.

8 One other thing I just wanted to
 9 mention while I have the floor here is the
 10 applicant's decision to leave this woods in place is
 11 going to help the overall visibility, because it's
 12 going to have a backdrop of woods in this area.
 13 There is still going to be a significant buffer
 14 between the two property lines of the existing wood
 15 line.

16 I evaluated the condition of those
 17 woods. It's a mix, hardwoods, cherries, ashes, some
 18 oaks. And most of them are in fair and dense
 19 condition.

20 MR. WALSH: Do you know how many trees
 21 you're taking down in order to put this up?

22 MR. DUNN: We didn't do an exact
 23 inventory of the amount of trees in the woods we are
 24 taking down. However, I will say we are adding 50
 25 trees, including the evergreen white pines and the

1 deciduous trees, not including all the shrubs, just
 2 50 trees alone.

3 The woods condition in this area is
 4 not, I wouldn't say is as --

5 MR. WALSH: It's not as thick.

6 MR. DUNN: It's not as thick as what's
 7 behind the building, where you are finding more
 8 species like sumacs and, or pioneer species like
 9 cedars.

10 MR. VERRILLI: And you don't know how
 11 many trees you are going to take down?

12 MR. DUNN: We didn't do a count, no.

13 MR. HOMA: A rough acreage do you
 14 know?

15 MR. DYKSTRA: Yeah, the acreage, well,
 16 2.9 acres of -- 4.1 acres of disturbance.

17 MR. WALSH: What is that going to do
 18 to the runoff on that hill when you take all those
 19 trees out and you still have the hill there?

20 MR. DYKSTRA: Well, we happen to have
 21 excellent soil conditions here. It's all sand and
 22 gravel. And what we have done is we created a
 23 depressed area that will actually be under the
 24 panels. And all our water from that hillside will go
 25 into that depressed area and infiltrate.

1 MR. WALSH: It's going to bring some
2 soil down with it. In the storms we have had
3 recently --

4 MR. DYKSTRA: Well, once we get, you
5 know, once you get the trees out, you are going to
6 have some runoff. We have to get the site properly
7 stabilized. And then we are going to cut all that
8 runoff, and if there is some soil that comes down, we
9 are going to have to maintain the site obviously.

10 MR. SWEENEY: You are going to be
11 subject to soil conservation.

12 MR. DYKSTRA: That's right. You can
13 stabilize a three to one slope, which is what it is.

14 MR. WALSH: You are not going to
15 adjust it?

16 MR. DYKSTRA: No, we are. We are
17 regrading this area to a constant uniform slope, and
18 then stabilizing it, and then installing the panels,
19 and then final stabilization after the panels are in.
20 Because there will be -- when you install the panels,
21 the equipment will create more disturbances. So it's
22 a combination. You have to do it during and after.

23 MR. LAUGHLIN: What do you mean by
24 "final stabilization"?

25 MR. DYKSTRA: Well, at some point

1 after, once all the panels are in, we have to make
2 sure the grass is -- has taken, and is growing, so
3 it's got to be finally stabilized. We can't have an
4 erosive condition, especially once the panels are in.

5 MR. LAUGHLIN. Well, how close
6 together are these?

7 MR. DYKSTRA: There is room. There
8 is, there is nine feet between the rows on the slope,
9 so there is room to maintain them, maintain between
10 the panels and under the panels.

11 MR. WALSH: It's all going to be
12 grass?

13 MR. DYKSTRA: All grass, low growing
14 and a turf mix.

15 MR. WALSH: Someone will be mowing it?

16 MR. DYKSTRA: Yes, it has to be
17 periodically mowed. And also I guess string trimmers
18 also to get underneath the panels.

19 MR. WALSH: And if anything washes
20 out, they will be replaced?

21 MR. DYKSTRA: Absolutely. That's
22 essential.

23 MR. VERRILLI: The other question I
24 would like to ask you is assuming when you put these
25 panels up, and the reflection, assuming there is a

1 reflection, I'm assuming there is a reflection, and
2 you are telling me that there won't be any
3 reflection, from the, from, from going from south to
4 north on Church. Okay. Assuming there is a
5 reflection, I want it in writing that you are going
6 to have to come back here and we are going to have to
7 talk again.

8 MR. DYKSTRA: If there is a
9 reflection, yes. As I mentioned before, that because
10 the panels are angled 30 feet to the sky, and the
11 site is above the road, there will be no glare or
12 impacts to any of the neighbors.

13 MR. VERRILLI: That's why I want
14 that --

15 MR. DYKSTRA: We are willing to, if
16 you need that as part of resolution, we are not
17 objecting to that.

18 MR. HOMA: Are the panels on the roof
19 pitched at all?

20 MR. DYKSTRA: They are just matching
21 the pitch of the roof, which is fairly minor. And
22 the panels on the back of the roof, they are
23 actually, they are actually lifted, so they match the
24 same pitch as the front panels.

25 MR. HOMA: They're parallel with the

1 roof pretty much.

2 MR. DYKSTRA: Yes.

3 MR. WALSH: What part of this whole
4 project are you asking for the adjustment on the
5 pitch? Is it the 17 percent? We are in a code.

6 MR. DYKSTRA: The height of the panels
7 on the roof cap?

8 MR. WALSH: Yes.

9 MR. DYKSTRA: That's the back half of
10 the roof, where the roof slopes away. There we need
11 the panels, I think your ordinance allows, if I'm not
12 mistaken, 12 inches in maximum, maximum height. And
13 then on the back slope part of the roof the panels
14 will reach a height of 18 inches.

15 MR. HOMA: Just to maintain the plane?

16 MR. DYKSTRA: Just so that they are
17 facing. Otherwise --

18 MR. DUNN: The panels on the back of
19 the roof would be useless. They'll be facing
20 northwest.

21 MR. SWEENEY: Those panels will be
22 visible from what angle?

23 MR. DYKSTRA: They're really not
24 visible at all, because they are on the other side of
25 the roof.

1 MR. WALSH: Is this roof going to be
2 totally covered with panels?

3 MR. DYKSTRA: Except for where the --
4 there is some, there is some equipment that comes
5 through the roof that we have to avoid, but other
6 than that, yes.

7 MR. WALSH: My concern then is for the
8 firefighters, if there is a problem in this building
9 where there could be a fire, it's very dangerous for
10 them to go anywhere near these panels. Is there room
11 up there for them if they have to do any work, cut a
12 hole in the roof, or whatever?

13 MR. DYKSTRA: We would be willing to
14 meet with the fire department, and if there is a
15 section where we can't put panels for fire and safety
16 reasons, then we'll take some panels off in that
17 area. If they need to get up on the roof and chop a
18 hole through the roof, in other words.

19 MR. WALSH: We don't want to do that.

20 MR. DYKSTRA: No, but I know that's a
21 concern of fire departments occasionally.

22 MR. WALSH: It's a, it's a new product
23 and it's always a problem with the electric currents
24 running through it, you can't turn it off. So that's
25 basically my concern if they have to mount the roof,

1 the individual firemen, can be in jeopardy.

2 MR. SWEENY: Well, will you have
3 automatic or kill switches on this project?

4 MR. DYKSTRA: Well, yeah. There has
5 to be a shutoff switch for the entire facility so the
6 fire department can turn it off, but you're correct,
7 that doesn't stop the panels from generating any --

8 MR. WALSH: You can't shut the panels
9 off if the sun is on them.

10 MR. DYKSTRA: If the sun is on the
11 panels, they're still trying to generate electricity.

12 THE CHAIRWOMAN: Mr. Vreeland, do you
13 have any questions for Mr. Dunn or Mr. Dykstra?

14 MR. VREELAND: I think Rich has got a
15 couple.

16 THE CHAIRWOMAN: Okay, Mr.
17 Brigliadoro.

18 MR. BRIGLIADORO: Right. Just for
19 clarification purposes, Mr. Verrilli, Ken, asked you
20 a question in regard to if there is any glare from
21 the panels, and I know you mentioned something about
22 how the panels were faced in terms of surrounding
23 properties. Is that fair?

24 MR. DYKSTRA: That's right.

25 MR. BRIGLIADORO: Okay. But from a

1 traffic safety standpoint for traffic traveling along
2 North Church Road, would there be any glare to
3 drivers on that road?

4 MR. DYKSTRA: Absolutely not.

5 MR. BRIGLIADORO: And the same, the
6 same holds true, Mr. Verrelli asked you if the board
7 were to approve this, would you be able to meet with
8 a condition that in the event it's determined that
9 there is any glare that impacts motorists traveling
10 on North Church Road, that you would remediate that
11 problem.

12 MR. DYKSTRA: That's correct.

13 MR. BRIGLIADORO: So whether there is
14 any glare that impacts neighbors, or glare that
15 impacts vehicles traveling along North Church Road,
16 you would remediate that problem if it arises?

17 MR. DYKSTRA: That's correct. Yes, we
18 would have no objection.

19 MR. BRIGLIADORO: Okay.

20 For now I just want to clarify that.

21 THE CHAIRWOMAN: Okay. Mr. Vreeland,
22 is there anything?

23 MR. VREELAND: I mean, we've heard a
24 lot over the last couple of meetings about this being
25 inherently beneficial. And I think counsel has

1 provided you some information with regard to
2 inherently beneficial uses, but there is still the
3 negative criteria that the applicant needs to
4 address. And it's two prong.

5 MR. BRIGLIADORO: There is two prongs
6 to the negative criteria. One is that, that the
7 application can be granted without substantial
8 detriment to the public good. And I think the
9 testimony, as I understand it, provided by Mr.
10 Dykstra was that the approval of this application
11 would be a public benefit.

12 It is determined to be inherently
13 beneficial under law in New Jersey, in that in
14 addition to providing electrical energy for the
15 principal use on this property, they would be able to
16 sell excess energy, or sell energy to the power
17 company, which would benefit surrounding neighbors.

18 The second prong of that test is if the
19 board were to grant it, grant a variance relief, that
20 it would not be -- it would not substantially impact
21 the zone plan or be substantially detrimental to the
22 zone plan and zoning ordinance. Now, I don't know
23 that that's been totally addressed.

24 MR. SWEENY: No. We have every
25 intention of addressing that next.

1 MR. BRIGLIADORO: Okay.
2 MR. SWEENEY: I just really wanted to
3 try to, any open questions, Rich, as far as the
4 amended plan.

5 MR. BRIGLIADORO: That's fine. That's
6 fine.

7 MR. SWEENEY: And then we segway into
8 the landscaping. I have questions for both Mr. Dunn
9 and Mr. Dykstra. Both of them are professional
10 planners.

11
12 KENNETH D. DYKSTRA, having been previously sworn,
13 testifies as follows:

14 EXAMINATION BY MR. SWEENEY:

15 Q. Starting with you, Ken, in your
16 professional opinion what effect would this solar
17 farm have on the adjacent properties?

18 A. In my opinion this, this is a harmonious
19 use with respect to the cemetery use. So it would
20 have -- be actually a good use for them as compared
21 to a higher intensity industrial use.

22 Q. Would this be a --

23 A. No detriment to the neighbor to the --
24 immediately to our east. That's the large, I guess
25 the Day property, which is, includes a big gravel

1 operation. There is some residential homes nearby.
2 And I don't see any substantial detriment to them.
3 They are going, they are going -- they will have a
4 view of some of the panels on the slope, but in my
5 opinion the view will be attractive, not detractive.

6 It's, the panels, you are going to see the
7 front of the panels on a nice uniform slope. And
8 they are going to give you basically a nice blue
9 appearance. It's not too much difference than
10 viewing a water body. So visually it's going to be
11 low impact and not impacting the neighbors.

12 They are not going to have anymore traffic
13 generated. This project basically generates zero
14 traffic except for the occasional maintenance
15 vehicles.

16 There is no impact to the -- I know the
17 Master Plan is concerned with retaining water quality
18 and environmental resources. Well, this project does
19 not need a septic system, so we are not going to, we
20 are not going to pollute the groundwater, we are not
21 going to draw any water from the aquifer. So we are
22 protecting those resources.

23 Q. Are there other aspects of this
24 application and how it might affect Hardyston's
25 overall Master Plan for this area of the town?

1 A. Well, I know there is some concern about
2 the various gateways into Hardyston and the views
3 into -- this is one of the directions where you enter
4 Hardyston through Franklin. But I think this use as
5 compared to us putting a second industrial building
6 would be, it would be more attractive, for one, and
7 less intensive. And with the substantial
8 improvements in landscaping, especially on the front
9 of the site, I think you are -- visually you are
10 going to drive up North Church Road now and this
11 site, which is now, that building is very apparent
12 when you drive on North Church Road to the north.

13 With the landscaping proposed by Mr. Dunn,
14 I think that view is going to be substantially
15 improved. And that basically allows you to have a
16 nice entrance into the township.

17 In my view this is not going to be a
18 detriment, seeing the solar panels. You are not
19 looking at the back of the solar panels in the
20 racking system. You are going to be looking at the
21 front of the panels, which will have a nice,
22 interesting appearance.

23 Q. And Ken, since this property is already
24 zoned light industrial, in your professional opinion
25 does this have any substantial impact on the zone

1 plan?

2 A. No substantial impact in my opinion.

3 MR. SWEENEY: Thank you.

4 MR. BRIGLIADORO: What's the
5 composition of those solar panels? What are they
6 made of?

7 MR. DYKSTRA: Well, silicon and a
8 combination of aluminum.

9 MR. HOMA: There is no toxic materials
10 used? If one gets broken, it is not going to leach
11 into the ground?

12 MR. DYKSTRA: No.

13 Q. Just, your testimony is there is no toxic
14 chemicals in any of these?

15 A. Not that I'm aware of.

16 MR. SWEENEY: Mr. Byrne, can you
17 address that question?

18 MR. BYRNE: In the production of
19 making the individual cells they use some toxic
20 chemicals, but those are not resident in the finished
21 product, number one.

22 Number two, by weight it's 65 percent
23 glass, the facing plate of the panel itself. It's
24 got some aluminum and some other pieces of plastic on
25 it, but any of the product that is made in the

1 production process by using these toxic chemicals are
2 encapsulated in an Ethyl Vinyl Acetate, which
3 basically is kind of like glue. And it keeps
4 everything in the property.

5 MR. HOMA: So nothing will leach out?

6 MR. BYRNE: No, sir. It does not
7 migrate at all.

8 MR. BRIGLIADORO: And the record
9 should also reflect --

10 MR. WALSH: Based on the project
11 here --

12 MR. BRIGLIADORO: Bill, Bill, I just
13 want to say, I just want the record to reflect that
14 Mr. Byrne also testified on September 1st under oath.
15 And he remains under oath as he testifies here
16 tonight in regard to the continuation of this matter.

17 MR. SWEENEY: So acknowledged.

18 MR. BRIGLIADORO: Sorry, Bill.

19 MR. WALSH: I think this would be a
20 wonderful project if it was on some piece of farmland
21 that had no trees. But I'm really upset with people
22 who tell me this is great for the environment, it's a
23 wonderful thing, but we have to cut down a thousand
24 trees to put it up to generate electricity.

25 I just want to let you know what I'm

1 looking at when I see all this. There is a bigger
2 piece of farmland, they have corn across the road
3 from this, that it would have been a perfect project
4 for this, nice spot, low to the ground. You wouldn't
5 even notice it as you go by. As you are going on
6 this road, you are traveling from a height above the
7 building. And this is going to stand out no matter
8 how many trees you put in there, and how tall they
9 are coming down the road.

10 I know you don't have to tell us
11 anything about the other end of your story, and
12 everything has to be rosy, but that's the facts. And
13 a lot of people didn't come in here probably because
14 they don't understand what we are talking about.

15 Everybody in the area, all they do is
16 put them on their roof, and all they want to do is
17 cover their expenses for their building. This is a
18 solar farm. Instead of growing beans, you are
19 growing electricity and selling it out to the public.
20 And that's what I look at.

21 And I haven't made up my mind yet, so
22 if you can convince me the other way around.

23 MR. SWEENEY: Well, Mr. Walsh, I think
24 the testimony also is though that this is not
25 farmland, it's industrial zoned. So instead of

1 looking at inert blue panels, you could be looking at
2 an operation with trucks, pollution, and all the
3 other attendant --

4 MR. WALSH: We wouldn't be looking at
5 trucks, because there has already been a project that
6 was trying to be put onto this property, and the DOT
7 said you couldn't have that many trucks coming out of
8 that road.

9 MR. SWEENEY: Understood, but there is
10 also --

11 MR. WALSH: We are used to seeing the
12 building. We've seen this building everyday from
13 when it was built and it's there.

14 MR. VREELAND: I mean, that would be a
15 different situation. That would be a permitted use
16 that's contemplated by the Master Plan.

17 MR. WALSH: You wouldn't be here
18 talking to us about it.

19 MR. VREELAND: And a portion of this
20 site that they are proposing the panels on couldn't
21 support an industrial use, because of the steep
22 slopes. So I don't think it's fair to say that you
23 are trading an industrial use for solar panels here.
24 I think some of the panels are located certainly
25 where it would be suitable to put a second industrial

1 lease, but not all the disturbance and all the
2 panels.

3 MR. WALSH: That's basically my
4 problem with the disturbance.

5 MR. SWEENEY: Do you want to address
6 that, Ken?

7 MR. WALSH: It won't happen, but I
8 have seen roads wash out, I have seen many things get
9 washed out by the rains we have had recently, along
10 with the snows. You take away all of the trees and
11 the shrubbery and the low lying grass, and all you
12 put back is grass, I'm sure at some point this is all
13 going to get washed away.

14 MR. DYKSTRA: Well, again, I point out
15 that we are creating a depressed area so that
16 anything that washes will stay on the site.

17 MR. WALSH: So you are going to lower
18 this whole thing or are you going to put a retaining
19 wall up to protect the cemetery?

20 MR. DYKSTRA: We are grading this
21 area.

22 MR. WALSH: Just the bottom area.

23 MR. DYKSTRA: We will regrade the
24 slopes so that we can install the panels, but that
25 slope is not going to change that much. It's just

1 going to be a regrading so it's uniform.
 2 MR. WALSH: So it's still a pretty
 3 steep slope.
 4 MR. DYKSTRA: That's right. Those
 5 panels are on the slope, but as I mentioned, a lot of
 6 the tree clearing, if we had the second industrial
 7 use, a lot of that tree clearing would occur for the
 8 industrial use also. Maybe not the exact same
 9 amount, but I mean, I'm just pointing out that tree
 10 clearing on this site, if fully developed, would
 11 occur, more development.
 12 MR. WALSH: This is about a 570 up to
 13 630 feet, that slope.
 14 MR. DYKSTRA: There is a rise there.
 15 It's a three to one slope that we are proposing to
 16 finish grade.
 17 MR. WALSH: That's the part, I'm
 18 talking about the runoff.
 19 MR. DYKSTRA: Right, but it's all
 20 running off into a depression that we are creating on
 21 the site.
 22 MR. WALSH: As things run off, it
 23 takes material.
 24 MR. DYKSTRA: Well, we are going to,
 25 this site -- in order for this solar field to be

1 maintained, we can't allow it to erode, so we have to
 2 maintain the site.
 3 Q. And in your professional opinion that can
 4 be done?
 5 **A. Absolutely. It's a three to one slope**
 6 **that's maintainable.**
 7 MR. DUNN: That's also molded.
 8 MR. VERRELLI: Why couldn't you come
 9 here tonight and figure out before you came here and
 10 tell us how many trees you are going to take away
 11 compared to how many you are going to put up?
 12 MR. DYKSTRA: Well, I don't think
 13 anyone asked us to do that, but we could have.
 14 MR. VERRILLI: I mean, we are not the
 15 engineers. That's why I'm asking that question now.
 16 MR. DUNN: The ordinance didn't
 17 require that in our check list, to do a tree
 18 inventory, although we do have to address the impact
 19 as it relates to the zone plan, which we have
 20 analyzed, short of counting every tree over a certain
 21 diameter or whatever.
 22 The other side of that is there is no
 23 criteria as to how to measure that, that the board
 24 would put on us, or has put on us. So we didn't know
 25 how to measure or how to compare, except to do

1 analysis as far as density, general density of the
 2 tree cover, and the quality of the plants that are
 3 out there, which is not really a great stand of
 4 forest that we are taking down. And also to mitigate
 5 it by doing substantial plantings around the site and
 6 to try to keep that also by stabilizing the slope
 7 with the grass. And I think that Ken did a
 8 stormwater analysis, which proves that the stormwater
 9 issues and eroding issues are mitigated.
 10 Another thing I wanted to point out as
 11 it relates to the Master Plan and blending into the
 12 landscape and the neighborhood, this area of trees
 13 here is located on a substantial knob. I mean, it's
 14 got a rise probably 80 feet from the lowest point to
 15 the highest point, so that the view of these panels,
 16 this block of panels, would be substantially narrow
 17 to just this right here.
 18 So you would not see, especially since
 19 we took these panels out, you would not see all these
 20 coming from that higher elevation of the road just
 21 south of the site. That's one thing that concerned
 22 me when they brought this project to me, was the
 23 visibility of the panels that were being proposed
 24 here.
 25 Now, as a matter of addressing the

1 board's concern and mitigating some of the negative
 2 impacts, the applicant has agreed to take out all
 3 this.
 4 MR. SWEENEY: What is the elevation of
 5 the road at the time that you can actually see the
 6 panels?
 7 MR. DUNN: Elevation of the road, if I
 8 could take a look at the grade plan.
 9 MR. SWEENEY: Well, it's important,
 10 because some of the board members were concerned
 11 about the height of the road.
 12 MR. DUNN: Right.
 13 MR. SWEENEY: But your testimony is
 14 that you are not going to really see these panels
 15 until you pass that knob, and therefore, at least
 16 down, partially down that hill.
 17 MR. DUNN: So the top of this knob at
 18 the south of the site is about six, between 590 and
 19 600. And at the top edge of the panels it's about
 20 equal. That's a little higher, about ten foot
 21 higher.
 22 MR. DYKSTRA: Jason is correct. There
 23 is a knob here that will be retained and it does
 24 block the view from the highest point of North Church
 25 Road that I think you are referring to. It's a

1 bit --

2 MR. WALSH: The high point isn't even
3 on these maps.

4 MR. DYKSTRA: No. It's east of us off
5 of the map. It's at around elevation 650, which is
6 equivalent to the back end of our site by the parking
7 lot.

8 MR. VREELAND: I mean, looking at the
9 photographs that they have submitted, and the photos
10 were taken back on June 15, 2011, I believe those
11 photos were taken from the direction of concern.

12 MR. DYKSTRA: That's right.

13 MR. VREELAND: And it looks like, you
14 know, there is, you can see the white house that's
15 located to the south of the property, and also I
16 guess the driveway located to the south of that white
17 house, and there is a rise there that will, I
18 believe, block, you know, a large portion of the
19 panels that are located on the western most portion
20 of the property.

21 But the panels that are proposed
22 behind the parking lot will still be visible, but
23 that --

24 MR. DUNN: Here.

25 MR. VREELAND: Yeah, there. But that

1 knob will eliminate --

2 MR. DYKSTRA: That will block some of
3 the view.

4 MR. VREELAND: Block some of the views
5 on the western most portion of the proposed plan.

6 THE CHAIRWOMAN: How much land is
7 actually covered by the panels?

8 MR. DYKSTRA: Well, we have, I'm going
9 to say out of our 4 point -- I don't have the exact
10 figure, but it's approximate, to be 4.1 acres of
11 disturbance, but some of that is just clearing and
12 grading. Probably three acres.

13 THE CHAIRWOMAN: Three acres is going
14 to be panels?

15 MR. DYKSTRA: About three.

16 MR. SWEENEY: But you have nine feet
17 between the rows?

18 MR. DYKSTRA: Nine feet between the
19 rows on the slope. The panels in the level area will
20 be, once we put in the, I think the junipers that
21 Jason mentioned, those panels are basically on a flat
22 plain essentially, so you are really not going to see
23 -- and they are above the road. So visually you are
24 really not going to see those panels. You are going
25 to see -- you are really only going to be looking at

1 the panels that are on the slope, because they're the
2 ones that are rising up.

3 MR. WALSH: Is there a way that where
4 the junipers are, down further from them, by the --

5 MR. DYKSTRA: Detention basin.

6 MR. WALSH: -- detention basin, that
7 you could put in a few larger trees that won't affect
8 the panels?

9 MR. DYKSTRA: We could expand this.

10 MR. WALSH: That's what I'm talking
11 about.

12 MR. DYKSTRA: To some extent.

13 MR. WALSH: I mean, I don't want you
14 to make it too high that it's in the shadow of the
15 panels.

16 MR. DYKSTRA: That's the main thing,
17 we don't want to shadow the panels.

18 MR. WALSH: Just something that
19 might --

20 MR. DUNN: We are allowed to do
21 plantings in that area, but not any grading, because
22 of the 300 foot buffer. But the DEP does allow us to
23 plant.

24 MR. DYKSTRA: If the applicant is not
25 opposed, we could --

1 MR. BYRNE: Would you just explain to
2 the rest of the board the fact that that buffer is
3 there, which is a major cause of problems on that
4 site, which is why we ended up doing what we have?

5 MR. DYKSTRA: Well, we do have a 300
6 foot buffer that we have to respect on the pond on
7 the adjacent site. That has to do with the Walkill
8 River, which is classified as a C1 stream and this is
9 a tributary to it. So that line is actually
10 reflected on the map. We are not proposing any
11 panels or grading inside that line. So the whole
12 project is behind that.

13 But we are allowed to install
14 landscaping as long as we don't change the grade, so
15 we could at --

16 MR. WALSH: You could put some types
17 of tree or something like that that wouldn't grow too
18 high to block the panels, but it could be to help a
19 little bit more than the junipers.

20 MR. DUNN: Right. Did you have some
21 type of trees in mind?

22 MR. WALSH: I'm not an expert in how
23 tall the trees are.

24 MR. DUNN: Right, right.

25 MR. WALSH: I could tell you maybe a

1 cherry tree or something like that, but different
2 types could grow tall.

3 MR. DYKSTRA: You have to have some
4 tree that doesn't get 60 feet high.

5 MR. WALSH: Right.

6 MR. DUNN: I would plant spruces then.
7 They will eventually --

8 MR. WALSH: I'm not opposed to any
9 type of tree.

10 MR. DUNN: In 25 to 30 years they'll
11 be 60 feet high.

12 MR. WALSH: You don't want it that in
13 20 years they'll be too high for the panels. You
14 want something that will fit, but just block a little
15 bit more than the junipers are.

16 MR. DUNN: I do think that's feasible
17 based on what you told me, the shadow lines. I think
18 that will work here.

19 MR. DYKSTRA: And I did have a
20 conversation with Mr. Vreeland just before the
21 meeting. He suggested that we take up three more
22 rows of panels on the slope and move them to the
23 lower area by the existing detention basin. And that
24 will also reduce the visibility and allow us to move
25 this tree line, proposed tree line over about 50

1 feet.

2 MR. DUNN: So that would be another
3 enhancement.

4 MR. WALSH: That would be nice.

5 MR. DUNN: We are offering that also.

6 THE CHAIRWOMAN: Mr. Vreeland, do we
7 have, we don't have a shade tree permission in this
8 town?

9 MR. VREELAND: No, no. If I could
10 just make a couple of comments.

11 MR. HOMA: Didn't we put a tree
12 clearing ordinance in effect after Richfield Commons?

13 MR. VREELAND: Not one that I'm aware
14 of.

15 MR. HOMA: I think we did, because of
16 the outpour of cutting down all those trees. I think
17 there is a tree ordinance in the town.

18 MS. WILHELM: You can't clear-cut.
19 You can't just go in and clear everything down.

20 MR. VREELAND: Right. But this, this
21 limited disturbance would be associated with the site
22 plan. And the tree removal would be associated. I
23 think the concern there is that if you just go in and
24 clear-cut a piece of property with no intended use.

25 If I could just make a couple of

1 comments. Mr. Dykstra mentioned some of the goals
2 and objectives of the Master Plan. And when the
3 first site plan, original site plan, was submitted,
4 some of the goals and objectives are to minimize
5 disturbance, protect steep slopes, in addition to
6 protect other resources. And there is a section in
7 the Master Plan that talks about the nine gateways
8 into the community, and that they should receive
9 special attention.

10 And the original plan that was
11 submitted, I think, proposed a number of concerns and
12 issues that we didn't feel could be rectified to meet
13 those goals and objectives. But the applicant has
14 scaled back the project, has pushed the panels
15 further away from the road, and I think has made
16 great strides to try to reach and meet those goals
17 and objectives in the Master Plan.

18 I think there still is some room for
19 some improvement, like Mr. Dykstra mentioned. I
20 understand that there is an economic balance here and
21 that, you know, originally the applicant indicated
22 they came to try to get as many panels as they could.
23 And because of the concerns raised by the board, they
24 scaled the site back and there is a certain economic
25 point where the product isn't viable any longer.

1 But I think they've done a good job
2 trying to address the concerns. And if at all
3 possible, I would suggest maybe taking a look at if
4 they need to increase the yield on the number of
5 panels, to try to do that in maybe a little more
6 confined area toward the rear of the site, like Ken
7 was mentioning, and trying to preserve more of the
8 trees on the slope behind the building to increase
9 that buffer. And also I think on Mr. Wash's
10 suggestion of adding some additional landscaping in
11 that area to the west of the parking lot, I think,
12 will aid the visual impact on this site.

13 But certainly that area where the
14 existing detention basin is on the hill, that area
15 has already been disturbed and cleared. So if they
16 were able to get some additional panels in that area,
17 there wouldn't really be any need to remove any
18 additional trees.

19 MR. DYKSTRA: We will put some panels
20 there and take some off the slope and move our,
21 reduce our tree clearing. So we are willing to agree
22 to that.

23 THE CHAIRWOMAN: Is there anymore
24 discussion?

25 MR. LAUGHLIN: Just one thing. When

1 you said that you were going to regrade it at the top
2 of the slope toward the cemetery property, how are
3 you going to leave that all? Is that going to be
4 from the cemetery property, is it going to be a
5 gradual slope down?

6 MR. DYKSTRA: Yeah. We are going to
7 pass the existing slope at a point that's 23 feet
8 from the cemetery property. And then we are going to
9 create a nice uniform slope for the panel
10 installation. So from there down, it's not going to
11 be much different than the slope that's there today,
12 but it will be uniform when we are done.

13 And then we are going to maintain it
14 at full 23 foot nondisturbed buffer to the cemetery
15 line. And there is one gap actually caused by the
16 cemetery. They have been, I don't know, they're
17 filling and dumping over onto the property in one
18 area. And there is -- so we are going to revegetate
19 that area. That's a point right up here. It's a
20 note on the plans. So there is actually a little bit
21 of a gap.

22 I don't know when it occurred, but
23 probably many years ago. But it's definitely a
24 filled area right over the line and it's soil and a
25 mix of things actually.

1 MR. DUNN: Compost.

2 MR. DYKSTRA: Compost. It's a
3 combination. There is old flowers and pots and all
4 kind of things.

5 MR. VREELAND: One point I'd like to
6 just maybe get some clarification on, Ken, is with
7 regard to the fence.

8 MR. DYKSTRA: Yes.

9 MR. VREELAND: There was a couple of
10 issues with the fence, one being the height and two
11 being its location. Certainly if we pull the panels
12 back and the solar farm now will be located behind
13 the rear property, the rear building setback line,
14 then one of those nonconforming conditions with
15 regard to the fence, the location of it specifically,
16 will be a nonissue.

17 MR. DYKSTRA: That's right.

18 MR. VREELAND: Is that something that
19 you can accomplish?

20 MR. DYKSTRA: Well, yeah. The fence
21 can be entirely behind the building. We'd have to,
22 I'm fairly certain now from the electrical code
23 requirements that it has to be closed in entirely.
24 So effectively we are just going to close in the
25 solar array with a chain link fence. But if

1 anything, that will block the view rather than -- and
2 it's really just a black chain link fence, so it's
3 not going to be a negative visual impact.

4 MR. VERRILLI: Are you going to put
5 the green plastic up around the fence?

6 MR. DYKSTRA: No, no. I don't think
7 that's wise. Usually that deteriorates and it
8 becomes unsightly over time.

9 MR. BRIGLIADORO: Ken, the fence
10 height is four feet? Is that what you testified?

11 MR. DYKSTRA: Proposed at four feet,
12 yes, which is what the ordinance -- the ordinance
13 allows four feet if you are within the rear of, rear
14 or side setbacks. And part of this fence is, so we
15 are going to maintain it at four feet.

16 THE CHAIRWOMAN: Are there anymore
17 questions, anyone? A motion, do you agree? Open to
18 the public. And there is no public, so close to the
19 public.

20 MR. WALSH: I make a motion to approve
21 with the adjustments that we discussed here; the
22 extra trees, the discussion with the fire department
23 to make sure they have access to the roof of the
24 building. And I can't remember all the rest of them
25 offhand, so I would have to go by the record.

1 MR. BRIGLIADORO: Bill, the issue that
2 Santo raised in terms of any particular glare,
3 whether it impacts traffic on North Church Road, or
4 the surrounding neighbors, they would remediate that.

5 MR. WALSH: Right, that's correct.
6 They would remediate that problem.

7 MR. SWEENEY: Could I just have Rich
8 give one clarification. Originally you asked the
9 applicant if there was going to be any glare that
10 caused a driving hazard on North Shore Trail, which
11 the applicant was not objecting to.

12 MR. BRIGLIADORO: Right.

13 MR. SWEENEY: But now you are saying
14 objection of the neighbor. I think that becomes very
15 subjective in a neighbor, not that we are saying it
16 would. But neighbor, if the neighbor was objecting,
17 the neighbor should have been here tonight to raise
18 those concerns.

19 So what I'm saying is you may be
20 creating a very subjective -- you know, the neighbor
21 gets mad at Mr. Byrne, and says, Oh, there is a
22 glare, I want you to take that project down, versus
23 if we have glare on the road is road safety. That's
24 something that's measurable. So I would like, you
25 know, originally the applicant said no problem with

1 the road.

2 MR. VREELAND: Mr. Byrne may be
3 saddled by the issue of glare on a neighbor by the
4 nuisance part of the ordinance anyway.

5 MR. SWEENEY: Then they can raise it,
6 they can raise it as a nuisance, but not as a
7 condition of the approval.

8 MR. VREELAND: Are you comfortable
9 with that?

10 MR. VERRILLI: Yes.

11 MR. VREELAND: I think certainly
12 traffic is a health and safety issue.

13 MR. SWEENEY: Absolutely. And the
14 applicant has no objection to that.

15 MR. VREELAND: I feel strongly should
16 be in the condition of approval. But glare, you
17 think glare on neighbors we can handle as a nuisance?

18 MR. BRIGLIADORO: Yes.

19 MR. VREELAND: Under the nuisance part
20 of the ordinance.

21 MR. BRIGLIADORO: Sure. Right.

22 MR. WALSH: And you have the condition
23 with the fire department?

24 MR. BRIGLIADORO: Yes.

25 MR. WALSH: Access to the roof.

1 MR. VREELAND: Can I just go through a
2 couple of the conditions that we had talked about
3 during some of the prior meetings, just to make sure
4 we are all clear on those. One, another condition
5 being that an amended grading plan needs to be
6 prepared and submitted to show how access to the
7 inverter building is going to be accomplished.

8 MR. DYKSTRA: Right.

9 MR. VREELAND: Another one, another
10 condition that we were recommending is that prior to
11 any start of construction the limits of disturbance
12 be staked in the field.

13 MR. DYKSTRA: There is a note on the
14 plan to that effect already.

15 MR. VREELAND: And we would also
16 recommend as a condition of approval that a
17 preconstruction meeting be required with the
18 construction official and our office.

19 MR. SWEENEY: No objection.

20 MR. VREELAND: We had recommended that
21 the provisions regarding system abandonment be
22 included as a condition of approval in the ordinance.

23 MR. BRIGLIADORO: Right. We can add
24 that.

25 MR. HOMA: That means if he ever

1 vacates the property, they go with him. Explain
2 that.

3 MR. BRIGLIADORO: Under our ordinance
4 if the -- there is a 12 month period. If there is no
5 activity, it's then deemed to be abandoned. If there
6 is no service for a continuous 12-month period, then
7 it's deemed to be abandoned.

8 MR. VERRILLI: We'll get that in
9 writing.

10 MR. BRIGLIADORO: Right. And
11 basically under the ordinance the owner, at the
12 owner's cost and expense has six months from the date
13 of being given a notice of abandonment to remove the
14 system, so that's all in the ordinance.

15 MS. WILHELM: I may have missed it,
16 Michael. Is there anything about a sign? Are you
17 going to put who is running the solar panels, are you
18 putting that KC Solar sign up?

19 MR. VREELAND: I think he put a note
20 on the plan.

21 MR. DYKSTRA: We just have a note on
22 the plan about there is a sign required for the
23 facility for, basically for emergency responders
24 primarily. We don't have a -- we haven't proposed
25 any site identification sign for the solar facility

1 at this point in time.

2 MR. BYRNE: No.

3 MR. SWEENEY: So there will be no
4 signage other than danger signs?

5 MR. DYKSTRA: That's right. Not that,
6 I mean Mr. Byrne is entitled to a freestanding sign
7 on the site as it is. So I imagine if he wanted to
8 amend that sign for some reason, he probably could,
9 but I don't know if that would need approval from the
10 board necessarily.

11 MS. WILHELM: Well, you were given a
12 time for the plan. Mike, what do you think, if he
13 comes in for a zoning permit for a sign, and it's not
14 on the site plan.

15 MR. VREELAND: Then we'll see Mr.
16 Byrne again. I mean, as far as this application is
17 concerned, the only thing that I'm specifically
18 concerned about is the ordinance has a requirement
19 for the warning sign. And as long as, there is no
20 other plan indicating a sign, and the board ordinance
21 requirements is going to be provided, I'm satisfied
22 with that.

23 MS. WILHELM: So you would say he
24 couldn't have a second sign. He is going to have one
25 business sign, but not a second sign for the solar

1 farm. Right? Is that what you are saying?
 2 MR. VREELAND: Like an advertisement
 3 sign for the solar farm?
 4 MS. WILHELM: Yes. Sometimes you see
 5 the solar, they'll have whoever, their solar array.
 6 MR. VREELAND: They are not proposing
 7 that.
 8 MR. SWEENEY: We are not proposing
 9 that.
 10 MR. VREELAND: And if they decide to
 11 change their mind --
 12 MR. SWEENEY: And we recognize that
 13 we'd have to come back for an amended site plan if we
 14 wanted to put a sign up for the solar farm, but I
 15 believe under ordinance he is entitled to one sign, a
 16 certain dimension.
 17 MR. VREELAND: Yes, that's correct.
 18 That's all I have in my notes for conditions that we
 19 spoke about earlier.
 20 THE CHAIRWOMAN: Is anybody okay with
 21 that? Do you have anything, Rich?
 22 MR. BRIGLIADORO: I think we covered
 23 everything; the additional plantings, the traffic
 24 issue, the access to the roof for fire safety. They
 25 have eliminated the variance for the fence height.

1 The board still would be granting a use variance,
 2 because this system is designed to generate excess
 3 power, in addition to providing power for the
 4 principal use on the property. And then you have the
 5 variance for the height of some of the solar panels
 6 on the rooftop.
 7 And I guess the other thing, Mike,
 8 just for clarification purposes, there was also a
 9 variance for the ground arrays not permitted in the
 10 front yard.
 11 MR. VREELAND: They've been approved.
 12 MR. BRIGLIADORO: That's been
 13 eliminated, right, so that's no longer a variance.
 14 So from the point in time when the application was
 15 filed, two variances have been eliminated. The
 16 ground arrays not permitted in the front yard, that's
 17 been eliminated. And the fence height has been
 18 eliminated based on the testimony here tonight.
 19 So it's just the use variance and the
 20 height of the rooftop solar panels, those are the
 21 only two variances.
 22 MR. VERRILLI: So you have a motion
 23 already. All right. So I'll second the motion.
 24 THE CHAIRWOMAN: Okay. Roll call.
 25 MS. WILHELM: William Walsh?

1 MR. WALSH: Yes.
 2 MS. WILHELM: Santo Verrilli?
 3 MR. VERRILLI: Yes.
 4 MS. WILHELM: Gerald Laughlin?
 5 MR. LAUGHLIN: Yes.
 6 MS. WILHELM: Candace Leatham?
 7 MS. LEATHAM: Yes. James Homa.
 8 MS. WILLHELM: James Homa?
 9 MR. HOMA: Yes.
 10 MS. WILHELM: Hugh Krone?
 11 MR. KRONE: Yes.
 12 MS. WILHELM: Mary Ann Murphy?
 13 MS. MURPHY: Yes.
 14 MS. WILHELM: Motion carries.
 15 MR. SWEENEY: Thank you all very much.
 16 (Whereupon, the hearing concluded at
 17 8:35 p.m.)
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CERTIFICATE

I, LINDA S. ROBINSON, a Notary Public and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically, to the best of my ability, by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action and that I am neither a relative nor employee of such attorney or counsel and that I am not financially interested in the action.

DATED: November 23, 2011


 LINDA S. ROBINSON, CSR, RPR
 License No. 30XI00106000

Notary Public of New Jersey
 ID NO. 2082850
 My commission expires:

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