

BEDMINSTER TOWNSHIP

LAND USE BOARD

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IN THE MATTER OF:

TRANSCRIPT

CASE LUB# 12-015 (BOA)  
KDC SOLAR SA55 LLC  
Solar Project  
Country Club Road  
Block 71.02, Lot 1  
Block 62, Lot 10  
Block 69, Lot 4

OF

PROCEEDINGS

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Thursday, July 10, 2014  
Bedminster, New Jersey  
Commencing at 7:03 p.m.

BOARD MEMBERS PRESENT:

LANCE BOXER, Chairman  
GEORGE RODELIUS  
NICK STRAKHOV  
DORN STEWART  
LOUIS DiGIOVINE

ALSO PRESENT:

ROBIN RAY, Acting Board Secretary  
FRANK BANISCH, Board Planner  
PAUL W. FERRIERO, Board Engineer

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1 APPEARANCES:  
 2  
 3 VOGEL, CHAIT, COLLINS and SCHNEIDER, P.C.  
 BY: THOMAS F. COLLINS, JR., ESQ.  
 Attorneys for the Board  
 4  
 5 McCARTER & ENGLISH, LLP  
 BY: GARY T. HALL, ESQ.  
 Attorneys for the Applicant  
 6  
 7 MICHELE R. DONATO, ESQ.  
 Attorneys for Objector Stop Somerset Hills  
 Power Plant  
 8  
 9 RICHARD M. SASSO, ESQ.  
 Attorneys for Objectors Steve and Sabina  
 Forbes  
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1 CHAIRMAN BOXER: We will immediately  
 2 go into the continued hearing of KDC Solar,  
 3 which is Land Use Board 12:015.  
 4 Mr. Hall, it's good to see you.  
 5 MR. HALL: Good evening. Thank you.  
 6 I have with me tonight my colleague, Lisa  
 7 Bonsall, who was here back in the winter.  
 8 CHAIRMAN BOXER: Good. It's nice to  
 9 have you guys. I know it's been a while.  
 10 MS. BONSALE: Good evening.  
 11 CHAIRMAN BOXER: So obviously there's  
 12 been a lot of memos and a lot of letters we've  
 13 received. We appreciate them. It's been  
 14 helpful. Mr. Collins and I have talked and we  
 15 think probably the very best way to proceed,  
 16 Mr. Hall, is for you to start and give us a  
 17 summary of where you are, and we'll deal with  
 18 the objectors next.  
 19 MR. HALL: Okay. All right. That's  
 20 fine. Yes, we were last here on March 13  
 21 actually. Time goes by. At that point our  
 22 engineer, Mr. Moschello, or one of our  
 23 engineers, presented on stormwater. Some  
 24 questions were raised about the level of detail  
 25 in his presentation. After some discussion,

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1 there was a suggestion that the engineers meet,  
 2 which we consented to, including the objectors'  
 3 engineer, to go over stormwater. And I believe  
 4 the discussion was anything else that might be  
 5 out there.  
 6 That meeting was held, I think it was  
 7 maybe in late March. But, anyway, it was late  
 8 enough to the April meeting that I sent you a  
 9 letter in early April saying, you know, we just  
 10 had the meeting. There's no point in  
 11 proceeding. I think April 8th was the meeting  
 12 date. But, anyway, at your April meeting.  
 13 And my letter at that time also said  
 14 that realistically in order to allow everybody  
 15 enough time, we requested that the May meeting  
 16 be carried as well and so we asked to be carried  
 17 to June, which was done.  
 18 On May 23rd, I believe, a revised  
 19 submission was made with the Board by  
 20 Mr. Moschello, revised plans, which made various  
 21 changes responsive to some of the concerns that  
 22 had been raised to date in the process. The  
 23 changes included eliminating completely the  
 24 proposed solar field in the corner of the  
 25 property facing Meadow and Country Lane. The

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1 proposal had been to lower the solar field and  
2 grade up so -- we called it a recontouring, not  
3 a berm.  
4 But, anyway, that whole part of the  
5 property was going to be left alone under the  
6 revised plans because there had been concern  
7 about the view of that changing the contour, et  
8 cetera. A decision was made to reduce the  
9 number of panels to accommodate that concern  
10 from the community.  
11 Also, the revised plans show a change  
12 in the attachment. We went away from the  
13 pole-mounted panels to what they call a ballast  
14 system, and our engineer will explain that. But  
15 basically it sits on the ground. There's no  
16 poles, posts, going into the ground. Some  
17 questions had been raised about that: Is it  
18 going to impact groundwater? Is it going to  
19 cause corrosion? Is there going to be noise  
20 when you put the pipes in, posts in?  
21 So that was changed as well. And in  
22 connection with that change, reduced the height  
23 of the panels from a maximum of 8 feet to 5  
24 feet. There had been some concern about  
25 visibility.

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1 So those were, I think, the major  
2 changes that were made in an effort to work with  
3 the community, which is what our client wants to  
4 do. KDC Solar, their offices are in Bedminster.  
5 They're just down the road. We recognize people  
6 have concerns about this, but it's a necessary  
7 thing, we think, an appropriate thing under the  
8 law and at the same time, trying to work with  
9 the community, there were some changes made.  
10 So that was on plans filed in May, May  
11 23rd. The filing letter from Mr. Moschello  
12 indicated that because of the decision to change  
13 the plans, the stormwater hadn't been finalized  
14 because, obviously, if you're making changes to  
15 the proposed like that, it would require some  
16 changes to the stormwater. But Mr. Moschello's  
17 letter indicated a desire to present the revised  
18 plans and then, you know, so you understand what  
19 we're doing. Because even with the revised  
20 stormwater, we'd have to do that first anyway.  
21 But we were advised that -- the  
22 application wouldn't heard in June, but it was  
23 rescheduled for tonight. I wrote a letter after  
24 that trying to understand why and saying we need  
25 to present the revised plans first anyway, no

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1 matter if the stormwater is done or not, because  
2 we made these changes in response to your  
3 questions and concerns. Sequentially you have  
4 to present the changes before you can say here's  
5 how the stormwater would work.  
6 So we were advised in early June, I  
7 believe, that we'd be on for tonight. I've  
8 renoticed for tonight. Since then there have  
9 been a flurry of letters from the objectors'  
10 attorneys saying the changes are significant so  
11 we treat it as a new application.  
12 Mr. Sasso is here. In a letter, and I  
13 think toward the later part of June, cited some  
14 cases which I looked at and cases he cited all  
15 dealt with sequential applications where someone  
16 got preliminary approval for something. Three  
17 years later, or in one case 13 years later, they  
18 come back to do something else and the question  
19 is: Do you need a new approval? Is it  
20 different?  
21 And in the cases as I read them say if  
22 you do less, if you reduce it, it's not really a  
23 different application. But if you do more --  
24 and that's the Macedonian Church case up in  
25 Morris County. And there, I was rereading it

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1 tonight, when they came back, it was 13 years  
2 later. And the Court said, well, you're doing  
3 more so you've got to start over.  
4 That's not what we're doing,  
5 obviously. It's a pending application, number  
6 one. Number two, we're doing less. And in  
7 Mr. Moschello's filing letter and my follow-up  
8 letter I acknowledged the changes are  
9 significant. They're significantly reducing  
10 what we want to do in response to concerns we've  
11 gotten. And in my experience, there's nothing  
12 unusual about that.  
13 And, frankly, in any major application  
14 or, to my experience, they normally change  
15 things. It's pretty rare for somebody in the  
16 application process to change things in order to  
17 do more because you try to work with the town  
18 and we reduce things. We say, all right, what can  
19 we do? You reduce, you accommodate. I mean,  
20 that's how it works in my experience. And I've  
21 never had someone say, well, start over, that's  
22 a new application. It's pending, you change it,  
23 and you move along.  
24 So that's where we are. And I guess  
25 then I was pretty surprised when I got by e-mail

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1 a report from Mr. Banisch, a memo. It was dated  
2 Tuesday, but the e-mail to me came at 11:57 last  
3 night. I think maybe I saw it on my BlackBerry.  
4 I didn't read it until today, which is July  
5 10th, not July 8th. Which I wondered if he was  
6 a lawyer instead of an engineer, the way I read  
7 that letter, saying you changed it and then I  
8 realized--  
9 MR. COLLINS: We always wonder about  
10 that about people. We'll just add a little  
11 levity there. I'm the attorney, so...  
12 MR. HALL: I understand. But be that  
13 as it may, that's not the issue really. The  
14 point is, when I saw that letter, I realized  
15 that the -- the bottom line was, well, if it's a  
16 new application, then the ordinance you did last  
17 year applies. And there was this time of  
18 application statute and that seemed to be the  
19 objective.  
20 I mean, we applied for a use variance  
21 from day one. We've acknowledged your ordinance  
22 doesn't address it. It's not allowed. So I  
23 don't know what that-- it struck me as -- I  
24 didn't know what that meant anyway, but I'm back  
25 to saying I've never heard of when you revise to

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1 make it less, the proposed less, and to  
2 accommodate and respond to concerns, I've never  
3 had somebody say that's a new application. I  
4 think maybe that's the trigger now with this new  
5 law. Well, it's three or four years old now, I  
6 guess. I'm not aware of any case law dealing  
7 with that.  
8 But be that as it may, I don't see say  
9 basis for any of that. Yes, we revised it in  
10 response to your concerns and we have our  
11 engineer and we'd like to have him present the  
12 changes to you so we understand what we've done  
13 and where we are now. I mean, it's still a  
14 solar energy project. We haven't changed that.  
15 We're not proposing something different. We're  
16 just proposing to do less and, hopefully, in a  
17 more acceptable way, recognizing that, you know,  
18 there are concerns still that it doesn't fit in  
19 Bedminster at all. But be that as it may,  
20 that's where we are.  
21 Thank you.  
22 CHAIRMAN BOXER: Thank you, Mr. Hall.  
23 Appreciate it.  
24 Mr. Collins, any comments?  
25 MR. COLLINS: Yes. Just one question,

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1 though, for Mr. Hall before we hear the other  
2 attorneys on their objections to them, the  
3 applicant, proceeding with their revised plans.  
4 Mr. Hall, a couple of things. One is,  
5 is this a proposed amendment or revision to the  
6 plans or is this just an alternate that's being  
7 presented?  
8 MR. HALL: No, it's a revision.  
9 MR. COLLINS: Okay.  
10 MR. HALL: Yeah, we're not --  
11 MR. COLLINS: And based upon what  
12 you've said just now, and I think the way you've  
13 characterized it in your letter, you expect that  
14 you will be providing full stormwater management  
15 reports and details for this before the hearings  
16 which continue after tonight's presentation.  
17 Is that true?  
18 MR. HALL: Well, I don't --  
19 MR. COLLINS: I mean, reasonably  
20 quickly.  
21 MR. HALL: Well, I certainly agree  
22 we'll provide it before we ask you to vote on  
23 it. We know we have to provide it. Now, I'm  
24 not sure about timing. We have-- this has moved  
25 pretty slowly. I know an adjournment was ours.

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1 We took two months and we had an extra month we  
2 didn't expect. But there are other witnesses,  
3 we recognize. We have a planner, we have an  
4 environmental person. There are other things to  
5 present. And whether-- we don't want to present  
6 a stormwater report before it's filed and your  
7 consultant has time to review it. I mean,  
8 there's no point in doing it prematurely.  
9 I guess what I'm saying is I'm not  
10 sure that will happen in time for the August  
11 meeting, if that's where we are. And it may  
12 make sense to present one of our other witnesses  
13 because I don't think what the environmental  
14 person says is going to overlap with that.  
15 I mean the one other thing I want to  
16 add, I forgot earlier. The one other change  
17 that was made was the service road from the  
18 front to the back area of the property, it was  
19 going to go along the north side of the  
20 property. And I think Mr. Kennedy at one point  
21 said we could change it. They did move it to  
22 the middle.  
23 And they've gotten, I believe, the  
24 approval or DEP support for that because it's  
25 their wetlands area. They were using the

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1 existing farm roads, you may recall. By doing  
 2 that it allows some additional buffering on that  
 3 side of the property. You may recall one of the  
 4 neighbors came to a meeting and was asking about  
 5 that. Not in the little neighborhood, but one  
 6 of the other neighborhoods.

7 So, anyway, back to your question. I  
 8 think we definitely will present stormwater.  
 9 Whether it's the next meeting or the next  
 10 witness, I can't commit on that and I don't  
 11 think we should have to. I don't know if that  
 12 normally-- the sequencing of witnesses, you try  
 13 to work with the Board but normally it's an  
 14 applicant's decision on how to proceed knowing  
 15 you have to meet all of the evidence at the end  
 16 of the day. And if it doesn't-- I think these  
 17 other witnesses are pretty independent of that,  
 18 frankly, because stormwater we'll have to  
 19 address, we know that, but there are various  
 20 other issues. We have a solar expert. You may  
 21 recall this has come up a few times.

22 CHAIRMAN BOXER: Right.

23 MR. HALL: He's going to talk about  
 24 the panels, the no glare, and this and that. I  
 25 think that's independent of stormwater, frankly,

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1 so.

2 MR. COLLINS: Well, I appreciate the  
 3 idea of independent witnesses. You know, in the  
 4 context of this case, though -- and we'll let  
 5 the parties address this argument, the two  
 6 attorneys and Mr. Hall, before I advise the  
 7 Board. But it just seems that we were in a  
 8 posture where we were asking for more detail  
 9 about stormwater management. The parties agreed  
 10 to meet and try to resolve it, at least to the  
 11 level of being able to present perhaps three  
 12 different engineers' opinions about the  
 13 stormwater management plans. And the revision  
 14 came after that technical meeting occurred.

15 So it would seem logical that the next  
 16 meeting would be to-- again, before the next  
 17 meeting have the same type of meeting about the  
 18 stormwater management plans for this  
 19 alternative, for this revised set of plans. And  
 20 from what I can tell, we have a revised set of  
 21 plans, sort of an overall site plan that has  
 22 some colored markings on it of the solar panels  
 23 dated May 31st --

24 MR. HALL: I think, actually, that's a  
 25 phasing plan that's an addition. I think one of

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1 the requests --

2 MR. COLLINS: There's a set of plans?

3 MR. HALL: Right. The colored plan is  
 4 a phasing plan. I mean, maybe it shows what's  
 5 changed. Mr. Kennedy is here and he can -- you  
 6 know, I'm not an engineer--

7 MR. COLLINS: I think we're going  
 8 to -- I'm going to recommend that we hear a  
 9 little bit about that.

10 MR. HALL: Okay.

11 MR. COLLINS: And I don't expect an  
 12 answer right this minute, but it seems logical  
 13 that that same sequencing that the Board was  
 14 expecting in March, I believe it was, would be  
 15 followed before the other witnesses would be  
 16 proceeding. But you have your argument and the  
 17 objectors have their argument.

18 MR. HALL: And I would suggest we hear  
 19 from Mr. Kennedy on that as we go along. He  
 20 can--

21 MR. COLLINS: That's fine.

22 MR. HALL: I'm not an engineer. He  
 23 can add to that subject.

24 MR. COLLINS: I think that will be  
 25 helpful to everyone. I expect people to object

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1 to it, but that may be something that they may  
 2 have to reserve their rights to object to.

3 But let's go back to my colleague and  
 4 planner and sometimes attorney-- no, I'm just  
 5 joking. He is a very knowledgeable planner. I  
 6 believe I got his e-mail or his report today, so  
 7 don't feel chagrined or saddened or in any way  
 8 insulted by the timing of his report. I'm sure  
 9 he's just trying to get his report out before  
 10 the meeting. And I think even in his report he  
 11 says this may not be that relevant depending  
 12 upon the status of the matter.

13 But doesn't it make sense to you,  
 14 Mr. Hall, that if you revise your application--  
 15 I mean, you're very familiar with the time of  
 16 application statute. You're very familiar with  
 17 the time of decision rule, which I know you are  
 18 very familiar with.

19 MR. HALL: Sure.

20 MR. COLLINS: Doesn't it make sense to  
 21 you, as a lawyer, that if someone makes an  
 22 application that substantially revises or amends  
 23 their application after they have previously  
 24 submitted that they would be subject to an  
 25 ordinance that is in effect after the submission

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1 of the initial application, but before their  
 2 case is decided? And if not, why not?  
 3 MR. HALL: Well, I think that would  
 4 fly in the complete face of the purpose of that  
 5 statute, which was to provide-- clearly it was  
 6 to the benefit of applicants to say, all right,  
 7 you shouldn't be able to change the rules as  
 8 you're going along. Now you're saying, well,  
 9 you made a change. And under that approach,  
 10 then an applicant -- you better not change your  
 11 application because then you're under the new  
 12 ordinance. That's a ridiculous disincentive to,  
 13 what I said, we changed it in response to your  
 14 concerns. Why should we be penalized for that?  
 15 I mean, I don't see-- we have a use variance  
 16 anyway, but--  
 17 MR. COLLINS: I was going to say, what  
 18 is it about the new ordinance that would somehow  
 19 be that different than the old ordinance? So  
 20 help me understand any negative effect upon the  
 21 applicant of my posturing of what the logical --  
 22 MR. HALL: Well, the negative effect  
 23 is that's the law. That's the simple answer. I  
 24 don't think --  
 25 MR. COLLINS: Well, why is that the

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1 law? Do we have a law yet that says what  
 2 happens if someone amends an application after  
 3 the time of application rule was established by  
 4 statute?  
 5 MR. HALL: No, but it makes no sense,  
 6 as I said, because it means you better not  
 7 change your application. As I said, it creates  
 8 a disincentive to a positive thing, which is the  
 9 process and the interplay between a board and  
 10 applicant, you know, to make changes. It  
 11 happens all the time. And to suddenly say --  
 12 MR. COLLINS: But if there's no  
 13 prejudice-- in the con-- maybe in some sort of  
 14 conceptual way I understand that. Help me  
 15 understand why that matters in this case. What  
 16 is it about this --  
 17 MR. HALL: Well, help me understand  
 18 why it matters to the town. And I'd like to  
 19 know, frankly, what prompted this memo from  
 20 Mr. Banisch at the eleventh hour. Because in my  
 21 experience consultants don't do things like that  
 22 unless somebody asks them to do it. So I'm  
 23 concerned about that. That bothers me, frankly.  
 24 MR. COLLINS: Well, don't be bothered.  
 25 Mr. Banisch is a very competent professional.

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1 And when and if he testifies about that, you can  
 2 certainly ask him those questions. But I assure  
 3 you that there's nothing untoward about  
 4 Mr. Banisch writing a report and delivering it  
 5 the day of the meeting. That is, unfortunately,  
 6 one of his practices. And so --  
 7 MR. HALL: Well, let me ask --  
 8 MR. COLLINS: And, by the way, it's a  
 9 very bland report, so I don't know why it  
 10 troubles you so much.  
 11 MR. HALL: As I said --  
 12 MR. COLLINS: Let's just go back to  
 13 what we were talking about, which is help me  
 14 understand the prejudice or the negative effect  
 15 upon the applicant of the application of the new  
 16 ordinance, if any.  
 17 MR. HALL: Well, because I don't know  
 18 what-- once they call it a new application, then  
 19 they're going to say, all right, well, you've  
 20 got to pay your fees again, you've got to go  
 21 back and --  
 22 MR. COLLINS: That's a different  
 23 subject, though.  
 24 MR. HALL: I think that's what they're  
 25 pushing for, frankly.

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1 MR. COLLINS: I understand. Well,  
 2 they want your case dismissed and not to be  
 3 heard at all, apparently, but certainly not in  
 4 its revised form without revisions or some  
 5 additional information. I'm not saying that  
 6 that's what I'm going to recommend to this Board  
 7 and I'm not saying what the Board's going to do  
 8 because we don't know yet, but I'm just trying  
 9 to focus in on what-- why is it prejudicial to  
 10 be subject to the new ordinance?  
 11 MR. HALL: Well, because let's start--  
 12 let me pull that out, because I was rereading  
 13 it. And, for example-- as I say, we applied for  
 14 a use variance. That stays on the table. But  
 15 the-- let's see what he says here.  
 16 MR. COLLINS: The report --  
 17 MR. HALL: I mean, for example --  
 18 MR. COLLINS: The report points out  
 19 it's a use variance, right?  
 20 MR. HALL: Yes.  
 21 MR. COLLINS: It's still a use  
 22 variance after the-- even if the ordinance is  
 23 applied.  
 24 MR. HALL: Yes, it's not accessory  
 25 either way. Here, for example, yard placement.

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1 "No closer to side property line than existing  
2 side yard. The easterly arrays are between the  
3 existing farmhouse and side lot line." As I  
4 read that, that means if we're under the new  
5 ordinance, there's a variance we need that we  
6 didn't apply for.  
7 MR. COLLINS: Well, wouldn't that  
8 apply to accessory uses only since principal are  
9 prohibited?  
10 MR. HALL: Well, I don't know. You --  
11 MR. COLLINS: Well, what does it mean?  
12 What does-- are you asking for an accessory use?  
13 MR. HALL: No, it's a principal use.  
14 And it's a use variance --  
15 MR. COLLINS: So isn't that  
16 irrelevant?  
17 MR. HALL: But I'm sure it's going to  
18 be argued that it's not. I mean, I don't know  
19 why-- as I said, I don't know why this is even  
20 relevant. We knew from day one -- I think we've  
21 gotten a report from Mr. Banisch, your concern  
22 about it doesn't match up with the rural  
23 character, the Municipal Land Use Law goal for  
24 this and that, which is all independent of this  
25 ordinance.

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1 I don't know what this brings to the  
2 table. What's my concern? The unknown, number  
3 one. Number two, legally it's not required.  
4 And one other thing I overlooked. If  
5 we want to talk about the law and the statute,  
6 we refiled a revised application on May 23rd and  
7 we're more than 45 days past that. So if that  
8 was going to be-- if you're going to reclassify  
9 it, you should have done it before then, within  
10 45 days. It's complete as submitted.  
11 Now, that's a procedural issue. It's  
12 a legal issue. But I'm back to saying it  
13 shouldn't apply because, number one, the law is  
14 it's a revised application. It's not a new  
15 application. It's the ordinance in effect at  
16 the time you applied. A revised application is  
17 the same application that's been changed. It's  
18 not a new or different application. And by  
19 saying it's a new application, I think there may  
20 be a host of unknown issues that may be thrown  
21 at me needlessly and inappropriately. I guess  
22 that's my answer.  
23 MR. COLLINS: Okay. But in that  
24 answer you didn't say that the new ordinance  
25 specifically adds any burdens that you

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1 contend --  
2 MR. HALL: Oh, yeah, I did. It adds a  
3 burden. The objectors are going to claim it  
4 applies and waste a couple more nights of my  
5 client's time on arguments that we shouldn't  
6 have to visit. That's the prejudice.  
7 MR. COLLINS: But just listen to my  
8 question. But there's nothing you contend in  
9 the new ordinance, if applied, actually legally  
10 binds you to something that you object to. The  
11 new ordinance has no legal effect in your legal  
12 opinion.  
13 MR. HALL: Well, we've applied for a  
14 use variance. And the cases say, well, you get  
15 a use variance, it subsumes any "C" variances.  
16 I mean, I think if you know you have a "C"  
17 variance, you should apply for it. I mean, I  
18 don't know. Looking at this it says there's a  
19 side yard thing. Yeah, we're not accessory.  
20 None of it should apply.  
21 There's a statement here, critical  
22 areas. Nothing within the critical area slopes  
23 or wetlands, stream corridor. I mean, we've got  
24 an access road crossing the wetlands. And, of  
25 course, with wetlands there's a state statute

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1 which says DEP is supposed to be the sole  
2 regulator. I don't know without looking at it  
3 if somebody is going to say, oh, there's some  
4 little piece that violates that. It says farm  
5 soils.  
6 MR. COLLINS: Okay. Well, just maybe  
7 think about it because my initial instinct is  
8 that it might be best to treat a revision as an  
9 amendment that is subject to the new ordinance  
10 rather than dismiss-- rather than treat your  
11 revision as an amendment that has to be  
12 rethought as a whole new application and result  
13 in the same result.  
14 And I don't -- I'd agree with you that  
15 we should encourage people to make revisions,  
16 but we didn't write the Municipal Land Use Law  
17 changes about what is the time of application  
18 rule. And we're just now, I think, from my  
19 experience, maybe just dealing with it tonight.  
20 MR. HALL: Well --  
21 MR. COLLINS: And I don't know of a  
22 case on point, but one of my instincts is that  
23 it's good to encourage applicants to make  
24 revisions, but it's also good to have applicants  
25 comply with the new ordinances.

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1 MR. HALL: Well --

2 MR. COLLINS: That's just --

3 MR. HALL: I understand.

4 MR. COLLINS: -- simple legalese, but

5 it is legalese. I'm not hearing a tremendous

6 negative impact upon KDC, the applicant, if --

7 MR. HALL: Well, as I said, the

8 negative impact is the unknown. We shouldn't

9 decide it on negative impact. We should decide

10 it on the law and is this a revised application

11 or a new one? If it's a revised application, we

12 should be-- the new ordinance shouldn't apply.

13 I mean, we need a use variance anyway. And,

14 you're right, a use variance, it shouldn't

15 matter, but I just know if we go down that road,

16 this is going to get thrown at us.

17 And we're well aware of the town's

18 master plan goals and about where you build and

19 where you don't build. We're not saying that

20 anything here preempts that. We're talking

21 about this ordinance. Your master plan is out

22 there already. We're aware of-- we're aware

23 that we have to reconcile what we want to do

24 with the master plan.

25 But the only case I'm aware of, I

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1 think there was one case involving this time of

2 application rule, where actually the ordinance

3 changed to the benefit of the applicant. And

4 the objector said, Oh, no, no, you're stuck with

5 what was there when you applied for it. And the

6 Court said that's ridiculous. That's not what--

7 what, the applicant is supposed to withdraw,

8 file a new one to get the benefit of the new

9 ordinance?

10 I mean, that's not this situation, I

11 agree. But the Court looked at it from a common

12 sense point of view, that it was intended

13 specifically to benefit applicants. And to say,

14 well, unless there's no impact, what's the harm?

15 Well, the harm is the unknown, frankly. Yeah, I

16 agree, it shouldn't matter, but I will not

17 consent to that result.

18 MR. COLLINS: Okay. You don't want to

19 consent? Okay. That's what I wanted to-- well,

20 I want to hear the arguments of the objectors

21 and then I want you to check that with your

22 clients before we --

23 MR. HALL: I will.

24 MR. COLLINS: Because I think that for

25 the same reason that that case found that it's

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1 for the benefit of the applicant, I think it's

2 somewhat common sense that if you substantially

3 amend your application while it's pending, that

4 you would be subject to the new ordinance. I

5 think there's a common sense logic that if you

6 don't interpret it that way, then that would

7 mean you should dismiss applications that make

8 amendments and I don't think that that's common

9 sense either.

10 So think about that one and maybe

11 after you hear their arguments, you can assess

12 your judgment on that and talk to your client.

13 So now, Mr. Chairman-- Mr. Hall,

14 anything further you'd like to add for this,

15 whether to allow the witness to present his

16 presentation?

17 MR. HALL: No, that's really it. As I

18 said, it's an amendment. It's the same

19 application. We still want to build a solar

20 field. We're not trying to build a shopping

21 mall now.

22 MR. COLLINS: And it's just one

23 witness, Mr. Moschello, or is it Mr. Kennedy?

24 MR. HALL: No, we have Mr. Kennedy

25 tonight. He's the site engineer, not the

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1 stormwater engineer. He testified as to the

2 original layout proposal, et cetera, and he's

3 prepared to explain what changed.

4 MR. COLLINS: And even if he presents

5 that tonight, he and Mr. Moschello will be back

6 at least some future nights to go over the

7 details of the stormwater management and other

8 application details, is that correct?

9 MR. HALL: Yes. And there are other

10 witnesses. And back to the stormwater

11 Mr. Kennedy can bring us up to date. I don't

12 want to speak for him on where that is and the

13 timing and what I said before about when it

14 might be ready.

15 Based on what you said, it sounds like

16 when we file something, it probably makes sense

17 to have a sit-down between our engineer and

18 Mr. Ferriero and the objectors' engineer before

19 we come back here to try to winnow away any

20 issues further rather than off-line before we

21 come here. And having said that, that makes it

22 even less likely anything can happen in August

23 on that.

24 CHAIRMAN BOXER: I think the bigger

25 question is going to be if stormwater



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1 sequentially is needed before we proceed. And I  
2 think we're going to have to rely on the  
3 professionals for guidance here.  
4 MR. HALL: And I would suggest before  
5 you decide that that, that we should hear  
6 from --  
7 CHAIRMAN BOXER: Yeah, sure. That  
8 would be fine.  
9 MR. COLLINS: I think we're going to  
10 go in that direction because of the need --  
11 you're offering to do something that explains  
12 what you want to do. At a minimum we should let  
13 you present-- I'm not speaking for the Board  
14 yet, but I'm recommending to the Board and the  
15 objectors that we at least consider the  
16 possibility of hearing Mr. Kennedy describe the  
17 revised plans without getting into the  
18 stormwater management, which has not been  
19 provided yet.  
20 MR. HALL: Right. And I would suggest  
21 that -- suspect that with questions of the  
22 changes, that probably gets us through tonight  
23 and then we can figure out where we are rather  
24 than speculate now. I would make that  
25 suggestion to everyone.

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1 MR. COLLINS: Mr. Chairman, we should  
2 ask the objectors' attorneys to give their  
3 argument.  
4 CHAIRMAN BOXER: Sure. Mr. Sasso and  
5 Ms. Donato, I know we've received letters from  
6 you and we've obviously had a lot of  
7 discussions. So if either of you-- I'm not  
8 sure--  
9 MR. SASSO: I think both of us would  
10 like to address it, Mr. Chairman, if you don't  
11 mind.  
12 CHAIRMAN BOXER: No, no, not at all.  
13 MR. SASSO: Am I okay on the record?  
14 Is it being picked up?  
15 CHAIRMAN BOXER: Do you want us to --  
16 I know you're a little impaired. Maybe we can  
17 put the mic closer to you.  
18 MR. COLLINS: I think this mic can be  
19 brought over to him.  
20 MR. HALL: And we are doing a  
21 transcript. We have a court reporter as well.  
22 MR. CHADWICK: Do you want it or not?  
23 MR. COLLINS: Give it to him just in  
24 case.  
25 MR. HALL: I don't know about the

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1 public. That amplifies it.  
2 MR. COLLINS: Thanks, Mr. Chairman.  
3 MR. SASSO: Thank you, Mr. Chairman,  
4 members of the Board. When listening to the  
5 applicant's attorney, I was just wondering if we  
6 were actually talking about the same  
7 application. And the reason why I say that is  
8 if we realistically look at where this Board is  
9 in connection with this application, it's a  
10 totally different situation.  
11 Through many months of hearings -- and  
12 it wasn't because of any fault of the objector,  
13 but there were problems that the applicant had,  
14 including losing their first engineer, who had  
15 submitted incomplete and improper engineering  
16 data to Mr. Ferriero as part of the application.  
17 We have heard from the applicant,  
18 Mr. Lynch, including full cross-examination. We  
19 had Mr. Kennedy testify at length over multiple  
20 hearings and completed his cross-examination.  
21 We are then to the point in the  
22 application where the applicant had represented  
23 to the members of the Board and to the public,  
24 look, we're going to deal with these and let you  
25 know what our stormwater management evidence and

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1 data is. And you got what basically was a  
2 Reader's Digest version of an inaccurate and  
3 incomplete engineering opinion on stormwater  
4 management.  
5 It was at that time that Mr. Ferriero  
6 was questioned by the Board as to what was going  
7 on in this application in terms of stormwater  
8 management. This is not the situation that the  
9 applicant is trying to portray here tonight. If  
10 the Board remembers, Mr. Ferriero during the  
11 March meeting said, Hold it. Stormwater  
12 management, I've had questions since last year,  
13 September of 2013. In the Board's file is the  
14 review letter sent to the applicant consisting  
15 of eight pages of concerns and questions and a  
16 separate and distinct area completely devoted to  
17 stormwater management.  
18 What is it that we got as a result of  
19 that hearing? Well, everyone decided -- and,  
20 out of fairness, the Board dictated -- the  
21 objectors' engineer, the applicant's engineer  
22 and the township engineer would meet and discuss  
23 this stormwater management issue and the fact  
24 that what was brought up by the objectors is we  
25 had illegal data provided. In other words,

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1 unsigned testing sheets that were from Birdsall  
 2 that were submitted with the original  
 3 application.  
 4 It was then everyone's understanding  
 5 that after that point in time, this stormwater  
 6 management data would then be provided as part  
 7 of this application. What took place? Nothing,  
 8 right up until today. No stormwater management  
 9 information. No engineering data. None of the  
 10 test results have been given. Nothing.  
 11 Now, what do we have here in the  
 12 township that is required to support an  
 13 application? We know that a stormwater  
 14 management plan is required as part of an  
 15 application for site plan.  
 16 And, secondly, I remind the Board  
 17 that, different from the church case that he  
 18 wants to cite and 13 years later they went for  
 19 final approval, in this particular application  
 20 the applicant has decided to go not just for  
 21 preliminary approval, as he told you during the  
 22 first night. Preliminary and final approval of  
 23 the site plan in one. This is it.  
 24 So instead we get no engineering data  
 25 whatsoever. And on May 23rd we get a revised

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1 plan. Not a revised application. My office  
 2 called this week and asked the Board secretary,  
 3 was there ever a revised application filed? The  
 4 answer unequivocally is no. The only thing  
 5 they've dropped off here on May 23rd was a  
 6 completely different project.  
 7 And you're right, it's not a ShopRite  
 8 and it still is a solar project, but that's the  
 9 last thing that coincides with what is on file  
 10 with this Board. The application speaks to the  
 11 original proposal. And the May 23rd map has  
 12 been described by the applicant's own attorney  
 13 as having substantial changes.  
 14 The law that I put in my letter is a  
 15 common sense law under the MLUL. It basically  
 16 states that if there is a revision in the plan  
 17 that is substantial and material, it's only fair  
 18 that the applicant go back. And I don't care  
 19 about the-- he's saying we care about the  
 20 application fees. It's of no moment to the  
 21 objectors. They can make an application to this  
 22 Board to waive those fees, as he well knows.  
 23 The point of the matter is all of the  
 24 testimony that we took, the little Disney film  
 25 that we saw, all the exhibits that are over

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1 there, all the testimony over hours and  
 2 cross-examination over hours and days of  
 3 hearings, completely irrelevant. Nothing  
 4 applies to what they want now. It's completely  
 5 different.  
 6 Oh, we've only made a couple of  
 7 changes to accommodate comments. When you look  
 8 at Mr. Kennedy's own submission, he's very  
 9 thorough and he outlines the changes. Now we  
 10 have a completely different way of installing  
 11 the solar array posts. Remember all the nights  
 12 of testimony about the fracturing of the rock?  
 13 All of that is irrelevant. We have to address  
 14 all of that again. Everything that was said  
 15 before doesn't pertain to what they want now.  
 16 The berms that we looked at, we talked  
 17 about at length. The ones we showed with the  
 18 tape measure. Everything's changed. This is  
 19 not some inconsequential change. They go from  
 20 showing how many trees, from 76 trees to three  
 21 hundred. Let me see my notes. No. 144 was the  
 22 number of trees they originally were going to  
 23 kill and now they're going to destroy over three  
 24 hundred. Just a minor change.  
 25 The number of arrays has changed.

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1 They sat here and testified under oath to you  
 2 when questions were raised by the Board, do you  
 3 really need those number of panels, the 40,000?  
 4 Yeah, we need all of them. We need them to  
 5 satisfy Sanofi's energy needs. Now what do they  
 6 have? They reduced it to 33,000.  
 7 The layout of the arrays has changed.  
 8 The access road that we took all that testimony  
 9 on has totally changed. The size/height of the  
 10 berms have changed. The location of the  
 11 inverter pads that were described have changed.  
 12 The equipment -- remember all the testimony  
 13 about how big the equipment was, what it's going  
 14 to look like, where it's going to be on the  
 15 plans? All of that is out the window. Even the  
 16 size of the equipment has changed. The location  
 17 of the switchgear has changed.  
 18 It's just a completely, completely  
 19 different application. I'm not going to comment  
 20 with regard to whether it's better or worse. I  
 21 really don't know. But I do know this: That in  
 22 any application ever filed in Bedminster and  
 23 common throughout the entire Somerset County  
 24 zoning boards, when you file an application at  
 25 the beginning, the application has to state what

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1 you are applying for. Secondly, it has to be  
 2 accompanied by engineering data that supports  
 3 that you can do what you are proposing.  
 4 Here, they're leaving the Board in the  
 5 lurch. They won't even commit on when they're  
 6 going to get it. And they admit to you that  
 7 they don't have it.  
 8 So what do we have? A brand new set  
 9 of plans. No new application and zero  
 10 engineering data to back it up. You know, is it  
 11 the chicken or the egg? No. When you change  
 12 your application in a material and substantial  
 13 way from an engineering standpoint and make  
 14 wholesale changes, it's your burden to give the  
 15 Board and its professionals an access to the  
 16 public, the objectors, the information to be  
 17 reviewed, to be culled, to be tested.  
 18 Here, we have nothing. And this is as  
 19 a result not of what this Board has done, not  
 20 because of anything the objectors have done.  
 21 It's totally the result of the applicant's own  
 22 decisions.  
 23 So I think it's completely  
 24 inappropriate.  
 25 I know it's nice to say, well, we can continue on,

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1 you know, submit new things. We'll reinvent the  
 2 wheel. Look, Ron Kennedy is going to have to  
 3 start from scratch. He is. All the berms have  
 4 changed. Everything has changed. And we don't  
 5 know the engineering data on the wall. I don't  
 6 even know, quite frankly, with these new plans,  
 7 that we've had an opportunity to even talk about  
 8 these new solar arrays that they're going to  
 9 have to talk about and how they're going to be  
 10 put in. We have to go through all that again.  
 11 And it's unfair.  
 12 And I suggest to the Board it's  
 13 illegal and improper to have an application  
 14 change to this degree and allow all the other  
 15 now irrelevant, immaterial information to sit as  
 16 part of this record, as part of this  
 17 application. The applicant should be told that  
 18 a new application -- they know what an  
 19 application is; it isn't just the plan -- has to  
 20 be filed with the supporting engineering data as  
 21 required by your checklist here in town and as  
 22 part of the normal protocol and then we can all  
 23 start fresh with their new idea and then see  
 24 what happens from there.  
 25 Thank you.

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1 CHAIRMAN BOXER: Thank you, Mr. Sasso.  
 2 (Applause)  
 3 CHAIRMAN BOXER: Ms. Donato, it's nice  
 4 seeing you. Why don't we ask you to provide  
 5 some comments.  
 6 MS. DONATO: Yes. And Mr. Sasso was  
 7 quite thorough in describing the changes and  
 8 they really are quite significant. You know,  
 9 the statute, the Land Use Law, says that if  
 10 there's a substantial amendment in the layout of  
 11 improvements, it shall be treated as a new  
 12 application. And if one reads the letters of  
 13 the applicant's attorney and engineer, it is  
 14 very clear, combined with the substantive  
 15 changes as described by Mr. Sasso, that this is  
 16 a substantial amendment in the layout of  
 17 improvements.  
 18 So the question is, so what's the  
 19 impact about? Well, the first thing is that we  
 20 look at whether or not the new ordinance  
 21 applies. And, yes, it's still a use variance,  
 22 but it is a use variance that has some  
 23 additional guidance in terms of this township's  
 24 commitment to assuring that solar energy is not  
 25 a principal use in any of the zones. And that's

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1 a very important consideration, but it also can  
 2 provide this Board with some guidance as to some  
 3 of the criteria and standards.  
 4 I think you could look at that  
 5 ordinance anyway for guidance regardless of  
 6 whether you treat this as a new application, but  
 7 I don't think that we should be judging how this  
 8 application is treated based on the applicant's  
 9 concern for prejudice.  
 10 Mr. Sasso pointed it out. The  
 11 problems with this application are not caused by  
 12 the objectors. They're not caused by this  
 13 township. They're caused by this applicant's  
 14 own engineering and own failure to really  
 15 consider the issues. They think it's a slam  
 16 dunk because solar facilities are inherently  
 17 beneficial that everything else is supposed to  
 18 just go away, and that's not the way it works.  
 19 The negative criteria are there. They are  
 20 substantial.  
 21 So the next question is, the ordinance  
 22 is one potential ramification of what I think is  
 23 a mandatory conclusion based on the substantial  
 24 changes to this application. And that is  
 25 whether the application, treated as a new

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1 application, should be reviewed again for  
 2 completeness.  
 3 And I'm less concerned about the fees  
 4 and more concerned about the fact that we have  
 5 spent months and months and months and we are  
 6 back where we started. And if the application  
 7 is incomplete and all the information is not  
 8 there, we're going to spend a lot more time just  
 9 trying to make this application proceed in the  
 10 right manner.  
 11 And then that leads me to what I think  
 12 is the most significant problem: With  
 13 proceeding at all with this application at this  
 14 time.  
 15 Stormwater management is not the tail  
 16 wagging the dog. When you design a piece of  
 17 property for use, for development, you have to  
 18 take stormwater management as a fundamental  
 19 component. Part of the stormwater management  
 20 regulations, that you must try to reduce the  
 21 impact on the land. And this is aggravated with  
 22 solar facilities because we have to deal with  
 23 the fiction that the panels themselves are not  
 24 impervious. That would be like saying roofs on  
 25 houses are not impervious because the water runs

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1 off the edge. It's not really-- it's a fiction.  
 2 Okay?  
 3 So we have a problem with the site in  
 4 terms of its soils and its capacity. Obviously  
 5 Mr. Kennedy -- it's taking a long time to  
 6 redesign this stormwater management plan, but  
 7 you can't separate that from the application.  
 8 It's like saying let's do this. Let's knock  
 9 down one issue at a time, in seclusion, in a  
 10 vacuum. Stormwater management is the beginning  
 11 of an analysis of proper utilization of land and  
 12 not something that can be subtracted and treated  
 13 separately and distinct from all of the other  
 14 issues that you need to consider.  
 15 And I think that it would be a  
 16 disservice, a true disservice, to this town,  
 17 which has been in the forefront of sound  
 18 planning, and to the objectors, who are spending  
 19 their money to try to deal with the fact that  
 20 this is something that's very clearly against  
 21 the master plan, very clearly against the  
 22 ordinances, and now we have to confront it in a  
 23 disjointed manner.  
 24 I would guarantee that you have never  
 25 allowed an application to come before you if the

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1 stormwater management plan wasn't intact. And  
 2 that's what this applicant is asking you to do  
 3 because of their own fault and because of their  
 4 own desire to have this proceed forward without  
 5 following the procedural steps that are  
 6 applicable to everybody else.  
 7 So I didn't want to have to come up  
 8 here tonight and I don't think that-- and I  
 9 understand this Board is proceeding extremely  
 10 fairly and very, very cautiously, and I truly  
 11 appreciate it, but I don't think we should add  
 12 any more injury to the situation by letting this  
 13 disjointed application move forward.  
 14 Thank you.  
 15 (Applause)  
 16 CHAIRMAN BOXER: Thank you,  
 17 Ms. Donato.  
 18 Mr. Collins, would you like to just  
 19 take a few minutes?  
 20 MR. HALL: Could I be heard first?  
 21 MR. COLLINS: Yes, Mr. Chairman, we  
 22 will hear Mr. Hall.  
 23 Before Mr. Hall goes, John Hansen, if  
 24 you can just confirm how long you think it would  
 25 take for the applicant to prepare stormwater

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1 management plans and designs.  
 2 CHAIRMAN BOXER: And before that also,  
 3 John, if I could ask you, I haven't had a chance  
 4 to spend a lot of time with you on this, I'd  
 5 like to get your professional opinion on  
 6 stormwater management. I'd like to go back to  
 7 Ms. Donato's statement just for a second. It  
 8 was sort of the tail wagging the dog. Good  
 9 stormwater management is sort of in the essence  
 10 of good master plan for any project.  
 11 Could you please comment on that for  
 12 me?  
 13 MR. HANSEN: Well, I think it  
 14 certainly is integral to a plan. It has to be  
 15 incorporated at some point and it has to be  
 16 designed correctly. This is what you call a  
 17 major development with respect to stormwater  
 18 because of the amount of disturbance. There's  
 19 very clear regulations on it. It has to either  
 20 be met or waivers have to be requested.  
 21 So I won't give any opinion as to the  
 22 timing.  
 23 CHAIRMAN BOXER: Right.  
 24 MR. HANSEN: It's very critical. I  
 25 think an application can certainly move forward

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1 and it's easier for the Board to focus if  
 2 there's a continuity there and it proceeds in a  
 3 logical order, but it certainly has to be  
 4 addressed. It certainly is integral with the  
 5 application and it has to be done before the  
 6 Board votes in my opinion.  
 7 CHAIRMAN BOXER: Thank you.  
 8 Mr. Collins, I'm sorry, go ahead.  
 9 MR. COLLINS: Okay. Mr. Hall, could  
 10 you now just check with your client about the  
 11 applicability of the ordinance? Because I  
 12 didn't hear an awful lot of negative impact,  
 13 even when espoused and argued in favor of the  
 14 finding a new ordinance by the objectors, and  
 15 I'm still not hearing from you anything that  
 16 says that it legally has a negative effect. And  
 17 I mean legally. I don't mean because somebody  
 18 says that it has an effect.  
 19 MR. HALL: You want me to --  
 20 MR. COLLINS: Controversy is not the  
 21 law, in other words. No.  
 22 MR. HALL: Well, a pragmatic result is  
 23 not how you interpret ordinances either. You  
 24 want me to just consult?  
 25 MR. COLLINS: Just consult and make

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1 sure that-- if you could get your consent to  
 2 apply the new ordinance to the application, I  
 3 think that would be helpful, but I'm not saying  
 4 you must. I am warning that the Board might  
 5 actually say that it does apply if your case is  
 6 continued.  
 7 MR. HALL: Okay. We'll take a break  
 8 then?  
 9 CHAIRMAN BOXER: Why don't we take ten  
 10 minutes.  
 11 MR. HALL: Okay.  
 12 CHAIRMAN BOXER: Thanks.  
 13 (Recess)  
 14 CHAIRMAN BOXER: Okay. We'll  
 15 reconvene. I appreciate it. It's a little bit  
 16 more than ten minutes, but we'll get back on  
 17 track.  
 18 Okay. Mr. Collins. Mr. Hall, I know  
 19 that we've asked you to go chat a little bit  
 20 with your clients. Do you have any comments?  
 21 any thoughts?  
 22 MR. HALL: Yeah, we did confer. But  
 23 before I respond to that, I have to say one  
 24 thing.  
 25 CHAIRMAN BOXER: Sure.

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1 MR. HALL: I was diplomatic and didn't  
 2 open my mouth, but I think Mr. Sasso made a lot  
 3 of factual assertions that are just wrong.  
 4 CHAIRMAN BOXER: Well, why don't we go  
 5 through them.  
 6 MR. HALL: Okay, we will.  
 7 MR. COLLINS: You have the floor now,  
 8 Mr. Hall, to reply to everything that--  
 9 MR. HALL: Why don't I reply to all of  
 10 them.  
 11 CHAIRMAN BOXER: As you guys know,  
 12 we're trying to -- and we intended to from the  
 13 very beginning -- be as transparent and as  
 14 thoughtful as possible because we know that this  
 15 is a complex case and we also understand that  
 16 there are-- there's a lot of negative criteria  
 17 that we're trying to just process. So the  
 18 reason why we're trying to be a little bit  
 19 sensitive to comments on both sides is it's  
 20 helpful to us to hear them.  
 21 MR. HALL: Well, most of it is, but  
 22 the one factual thing specifically --  
 23 CHAIRMAN BOXER: You can help us.  
 24 Take us through what you think is wrong.  
 25 MR. HALL: Well, Mr. Moschello's May

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1 23rd letter filing revised plans, on page 2 he  
 2 lists some of the changes. He said the total  
 3 number of trees being planted has been increased  
 4 from 144 to 313. And I think Mr. Sasso said  
 5 we're cutting down more trees. I don't know  
 6 where he got that from. I think he--  
 7 MR. SASSO: I did. I stand corrected,  
 8 Mr. Chairman, if that's what it says. I looked  
 9 at it as I thought they were being removed.  
 10 CHAIRMAN BOXER: We agree. We already  
 11 looked at the letter.  
 12 MR. HALL: That's a clear factual--  
 13 MR. SASSO: It's a minor issue  
 14 compared to the material changes.  
 15 MR. HALL: Right. Well, that's what  
 16 I'm talking about. I mean, I'm not going to  
 17 argue. They're subjective, saying we were at  
 18 fault, we were bad to do this or bad to do that.  
 19 I mean, I'm not going to argue that. I'm just  
 20 saying he said it; I disagree. Ms. Donato said  
 21 it; I disagree. I didn't interrupt them, but I  
 22 just don't want my silence to be --  
 23 MR. COLLINS: Understood.  
 24 MR. HALL: -- acceptance of anything  
 25 they said. I disagree.

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1 One other thing real quick on a legal  
 2 point. A statement was made about the Land Use  
 3 Law. I think it's Section 46. There's a  
 4 provision about substantial amendment. It  
 5 specifically says if the Board requires a  
 6 substantial amendment. And I don't have it with  
 7 me, but I know I've seen a case which pointed to  
 8 that to say, well, if the Board didn't require  
 9 it, it doesn't apply.

10 MR. COLLINS: That was cited by  
 11 Ms. Donato in her letter, wasn't it, Mr. Hall?

12 MR. HALL: She cited it tonight.

13 MR. COLLINS: She cited 46B and you're  
 14 quoting it and it says "if the planning board  
 15 required a substantial amendment to the layout."

16 MR. HALL: I mean, you didn't require  
 17 anything. We did it on our own.

18 MR. COLLINS: This Board didn't  
 19 require anything, did it?

20 MR. HALL: I'm saying literally that  
 21 does not apply. I just wanted to make that  
 22 clear, that the statute says that. And there's  
 23 a case, and I don't have it with me tonight,  
 24 which does note that in some context. But,  
 25 anyway, moving beyond that, I won't waste more

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1 time on this agreement. Everybody knows we  
 2 disagree.

3 Mr. Collins, could you repeat exactly  
 4 what we're being asked to do? I mean, as I  
 5 said, we've changed the plan. We submitted a  
 6 revised plan because we're trying to work with  
 7 people. But if --

8 MR. COLLINS: I think what we're going  
 9 to be asking, and maybe directing, is that your  
 10 engineers prepare their revised stormwater  
 11 management plans to the level of detail that's  
 12 expected to be brought back to the Board for the  
 13 prior set of plans after the meeting that you  
 14 had with Mr. Ferriero. And I believe, and I'm  
 15 somewhat knowledgeable, I think it was that you  
 16 were being expected to provide more information  
 17 about the stormwater detention and infiltration  
 18 systems, including some soils testing and other  
 19 types of testing about infiltration under the  
 20 stormwater management regs that are applicable  
 21 to all major projects under the laws of the  
 22 State of New Jersey.

23 And I think you're working on that, or  
 24 you were.

25 MR. HALL: Yeah.

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1 MR. COLLINS: And I believe you were  
 2 going to try to get that back to the Board  
 3 before our restart on the old set of plans, the  
 4 prior set of plans.

5 MR. HALL: At that time, yes.

6 MR. COLLINS: So what I think I'm  
 7 going to recommend to the Board, and I think  
 8 they're going to agree with me, is that you  
 9 should do that anew after tonight's  
 10 presentation, but before a date certain at which  
 11 we will have those revised plans in accordance  
 12 with your meeting with Mr. Ferriero that will  
 13 come in the future, and that those revised plans  
 14 will be back to the Board at least 21 days  
 15 before that next scheduled public hearing to  
 16 which the notice will be carried. That way we  
 17 would be back closer to the stage we were in  
 18 before this revised plan was submitted on May  
 19 23rd.

20 That's my suggestion to you. I think  
 21 it makes sense in the setting we were in, which  
 22 was Mr. Moschello had testified about stormwater  
 23 management of the prior set of plans and he did  
 24 not finish that. So I think it's something that  
 25 he ought to do.

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1 Then, on the second subject, it was  
 2 would you consent to the application of the new  
 3 ordinance to your revised plans even if the  
 4 Board does not deem it to be an amended-- a new  
 5 application, does not require you to file a new  
 6 application. And the reason I asked you that  
 7 was that I think the consequence of the new  
 8 ordinance is somewhat legalese more than  
 9 anything else. And I think that you would be  
 10 encouraging a decision to deem it to be--  
 11 require an amended application if you don't  
 12 consent. And it just makes sense in the setting  
 13 that we're in that, you're a year into your  
 14 application, that you're saying that you want to  
 15 revise it and that's your decision. That's what  
 16 you're saying you wanted to do.

17 So the Board didn't direct you to do  
 18 it. The Board is not directing you to do it.  
 19 It just makes common sense that in that type of  
 20 setting, where you seek to change your  
 21 application, that it applies. And I'm  
 22 struggling to understand the degree of  
 23 difficulty for the applicant in addressing that.  
 24 Because if it's a use variance under the old  
 25 ordinance and it's a use variance under the new

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1 ordinance, I don't hear a great legal argument  
2 why it shouldn't apply.  
3 MR. HALL: Well, I made an argument.  
4 I said it sounds like if I don't consent, then  
5 you're going to reach the same result anyway.  
6 MR. COLLINS: I don't know what the  
7 Board's going to do. They may say let's do an  
8 amended application. Or what the Chairman says.  
9 But my point is I asked you to check with your  
10 client.  
11 MR. HALL: We did.  
12 MR. COLLINS: I take it you don't  
13 consent and I appreciate your effort to find  
14 that out.  
15 MR. HALL: No, I mean, if it moves the  
16 thing forward, if that's the only way to move  
17 forward, we do consent, but we do have a problem  
18 with part one about stormwater. Because, as I  
19 said before, we have other witnesses. We want  
20 to get stormwater right and we're dealing with  
21 DEP. And I'm not an engineer, but if under that  
22 suggestion-- and wherever we were three months  
23 ago, that doesn't make it binding or  
24 precedent. Things have changed. We have a  
25 revised plan.

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1 We want to move forward and I'm not  
2 aware of any requirement that you can tell us we  
3 can't present other witnesses until the  
4 stormwater is revised. Are you telling me that?  
5 Because I said before, we have other witnesses.  
6 MR. COLLINS: I think we'd like to say  
7 that to you because we-- it's unfortunate that  
8 Paul isn't here himself, but John could help us.  
9 My understanding is that Paul is not satisfied  
10 with the prior stormwater management work. I'm  
11 not saying that he's --  
12 MR. HALL: No, he said that before.  
13 You don't need to --  
14 MR. COLLINS: And, therefore, we've  
15 reached the stage where we have more than just  
16 an issue of completeness. We have an issue of  
17 substance: Is the application conforming with  
18 all applicable legal standards or is a variance  
19 or waiver being requested from any applicable  
20 legal standards? As far as I understand it,  
21 there has never been, and there is not yet, a  
22 request for a waiver exception from the  
23 stormwater management regulations in the State  
24 of New Jersey.  
25 MR. HALL: Yeah.

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1 MR. COLLINS: By your applicant, by  
2 your client. In that setting, it is essential.  
3 And I think Mr. Soloway explained it a little  
4 bit, too. This is an important issue to be  
5 addressed. And now we have a revised set of  
6 plans and there isn't actually a stormwater  
7 management report or stormwater management set  
8 of plans in a fairly comprehensive set of  
9 drawings submitted I think with a date  
10 revised --  
11 MR. HALL: May 23rd, I believe.  
12 MR. COLLINS: Well, the date on the  
13 revised sheets, at least the ones I have, is May  
14 16th.  
15 MR. HALL: Well, maybe.  
16 MR. COLLINS: Maybe we'll hear  
17 something from Mr. Kennedy about this. And I'm  
18 going to caution the Board that I do think you  
19 should hear from Mr. Kennedy about their offer  
20 to present some information on what their  
21 revision is because I'm not really sure that --  
22 although I like attorneys and I like when they  
23 make arguments, I don't think we've received the  
24 full level of the factual proffer that Mr. Hall  
25 and the applicant would like to make and I'd

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1 like to get that proffer.  
2 MR. HALL: Could I make this request?  
3 If we could present Mr. Kennedy. Defer that  
4 issue for the moment.  
5 MR. COLLINS: If the Board will go  
6 with that, I would like to.  
7 MR. HALL: And, also, with  
8 Mr. Ferriero not here, even to have him  
9 participate in that conversation about --  
10 MR. COLLINS: Well, I don't know about  
11 that. I think the Chairman and the Board will  
12 want to deal with the scheduling and the  
13 stormwater management plans, but I think the  
14 fact is all we have now is legal argument. And  
15 if we could get a little bit more about what the  
16 revised plan is, just for the public's sake, for  
17 the Board's sake, for the record's sake. That  
18 will then be subject to cross-examination  
19 tonight, hopefully, but just as to that direct  
20 testimony. And that will help the Board know on  
21 the degree of change.  
22 MR. HALL: On the stormwater or just  
23 the change?  
24 MR. COLLINS: No, just on the revised  
25 plans, not the stormwater management.

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1 MR. HALL: I think that makes sense.  
 2 We're all speculating. Let's hear some facts.  
 3 CHAIRMAN BOXER: Mr. Hall, let's take  
 4 two minutes because I don't want Mr. Collins to  
 5 be the only one sending a message. I think for  
 6 the time line, just for the record, we're not  
 7 trying to delay this hearing. In fact, if  
 8 anything, we'd like to advance it and we'd like  
 9 to try to render opinions based on as much  
 10 information, good information, as we can  
 11 possibly have.  
 12 So, you know, where we are, when we  
 13 think about it is-- and I'm not suggesting that  
 14 Ms. Donato or Mr. Sasso had better arguments  
 15 than you, but I'll just tell you, as I sort of  
 16 think about the time line.  
 17 What I remember was we saw a video  
 18 that was a little bit of a fantasy. We spent a  
 19 long time hearing Mr. Kennedy talk about a plan  
 20 and we thought it was obviously-- it wasn't good  
 21 or bad. It was a factual presentation that he's  
 22 very competent at giving. He was cross-examined  
 23 exhaustively by Mr. Sasso and Ms. Donato and the  
 24 public.  
 25 Mr. Moschello -- at the time when

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1 Mr. Kennedy was complete with his presentation,  
 2 Mr. Moschello came up and within an hour we  
 3 concluded that there was just simply not a  
 4 stormwater management plan supportable. It  
 5 wasn't there.  
 6 And if you remember, I'm sure you do,  
 7 we asked you to take a break and to rethink the  
 8 way the stormwater management plan would be  
 9 developed and presented, to meet with  
 10 Mr. Ferriero and Princeton Hydro, which you did.  
 11 But what's important, what's material  
 12 to me, is we went through a lot of material.  
 13 This is a Board that has to process a lot of  
 14 information in a very important application and  
 15 I think where we are is in a very awkward place.  
 16 Not legally, just it's an awkward place.  
 17 Because we are almost a year into this and we're  
 18 now, I think, rewinding even though you say it's  
 19 still a solar facility, which it is. Virtually  
 20 every piece of information which we had now has  
 21 to be reprocessed and recalculated.  
 22 And in truth, in most big  
 23 applications, stormwater is integral to it.  
 24 There are very few applications that I've seen  
 25 that does not come with a stormwater management

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1 plan for us to assess. And I think in this  
 2 case, because it is such a-- it's a  
 3 controversial, difficult application. So we're  
 4 trying to give it as much attention as we can.  
 5 I think you're placing this Board in  
 6 an awkward position. And I'm not sure what the  
 7 answer is, but you're placing us in an awkward  
 8 position. It's certainly perfectly fine to hear  
 9 Mr. Kennedy, he's usually very informative, but  
 10 I'm not convinced that going forward without a  
 11 stormwater management plan is an appropriate  
 12 step. So I just want you to understand how I  
 13 feel. I don't know what my colleagues think  
 14 yet, but I'm sure that they'll chime in here any  
 15 minute.  
 16 MR. HALL: And hopefully Mr. Kennedy  
 17 can contribute to that subject, Mr. Boxer.  
 18 CHAIRMAN BOXER: Sure. Thank you.  
 19 MR. COLLINS: Okay. So, Mr. Chairman,  
 20 we'll call Mr. Kennedy for this limited review  
 21 of the revised plan.  
 22 CHAIRMAN BOXER: We will.  
 23 MR. COLLINS: And for  
 24 cross-examination on that purpose.  
 25 R O N A L D K E N N E D Y, having

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1 been previously duly sworn, remained under oath  
 2 and testified as follows:  
 3 MR. COLLINS: Mr. Kennedy, you  
 4 understand you're still under oath.  
 5 THE WITNESS: I am.  
 6 MR. COLLINS: Please state your name  
 7 and address for the record.  
 8 THE WITNESS: Ronald Kennedy, 265 Main  
 9 Street, Gladstone, New Jersey.  
 10 MR. COLLINS: Go ahead.  
 11 CONTINUED DIRECT EXAMINATION  
 12 BY MR. HALL:  
 13 Q. Now, Mr. Kennedy, you testified, I  
 14 guess back in the winter at some point, about  
 15 the plans here and those plans have now been  
 16 revised?  
 17 A. Yes.  
 18 Q. Can you tell the Board what changes  
 19 have been made and why and go from there?  
 20 A. Certainly.  
 21 THE WITNESS: Tom, do you know the  
 22 last exhibit number?  
 23 MR. HALL: It looks like A-12 was a  
 24 sight line profile.  
 25 Did Mr. Moschello not present any



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1 exhibits or he used what we already had?  
2 CHAIRMAN BOXER: I don't think he  
3 presented any.  
4 MR. COLLINS: Let's go with A-13 with  
5 tonight's date.  
6 MR. HALL: Actually, I have A-11 last.  
7 MR. COLLINS: Let's go A-12 with  
8 tonight's date. And if we have to renumber them  
9 because of --  
10 MR. HALL: It will be A-12 prime if  
11 need be.  
12 MR. COLLINS: Okay. Now maybe  
13 Mr. Kennedy can just identify what he's going to  
14 present if there's multiple drawings or  
15 exhibits.  
16 Mr. Kennedy, let's go down a list and  
17 just give us a number, today's date, identify  
18 what it is and then go into your testimony.  
19 THE WITNESS: Certainly. First is  
20 A-12 entitled "Existing Neighborhood with  
21 Proposed Site Plan Rendering Exhibit." The  
22 original date was November 14th and it's revised  
23 through 7/10 of '14.  
24 The second exhibit, A-13, would be  
25 "Proposed Site Plan Rendering Exhibit," same

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1 dates.  
2 And then A-14, which would be  
3 "Construction Details," and the date is May  
4 31st, 2013, with the revision through 5/18 of  
5 2014. And actually that's sheet 31A of 31 in  
6 the submission that was given to you in the last  
7 month.  
8 Let's start with those three.  
9 Is that good, Tom?  
10 MR. COLLINS: Yes. Please go ahead.  
11 **A. Okay. So as we've been talking about,**  
12 **the substantive part of the changes, as we look**  
13 **at Exhibit A-12, it's in the same orientation as**  
14 **we had in the other exhibits. Again, for**  
15 **reference, 287 up and down on the sheet,**  
16 **north-south, Route 78 east and west. The**  
17 **property outlined in yellow is the prime 32**  
18 **acres. And the Country Club Road is in the**  
19 **right section of the tract of land, and then the**  
20 **intersection of Meadow Road is down on the lower**  
21 **section of the tract of land.**  
22 **And you can see the relationships of**  
23 **the solar panel areas that are on this**  
24 **exhibit -- and I'll have some comparisons to the**  
25 **other exhibit -- but this exhibit showing the**

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1 **overall context of the solar panels. I'll say**  
2 **generally in the same areas they were before,**  
3 **but with the differences in the front field that**  
4 **they're not in.**  
5 **If I go to Exhibit A-13, which is just**  
6 **a blown-up version, we can get into some of the**  
7 **details of what we're really talking about here.**  
8 **As has been stated before, and that**  
9 **was in our cover letter, it's just the project**  
10 **itself has the same output, still in that**  
11 **10-megawatt output, but the panel design has**  
12 **been changed to reduce the physical number of**  
13 **panels. And I think the number was 40,400 to**  
14 **33,960. So the panels changed themselves.**  
15 CHAIRMAN BOXER: What was that number?  
16 THE WITNESS: 40,400.  
17 CHAIRMAN BOXER: 40,400.  
18 THE WITNESS: To 33,960.  
19 CHAIRMAN BOXER: And it's still a  
20 10-megawatt facility?  
21 THE WITNESS: It's still 10 megawatt,  
22 and the details of the panels have changed.  
23 When we get into the panels--  
24 CHAIRMAN BOXER: So they become more  
25 efficient effectively?

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1 THE WITNESS: Yes, they have. Again,  
2 I want to say the words right. I'm not an  
3 electrical engineer. They're more-- they have  
4 different output.  
5 The orientation of the panels are  
6 generally the same as far as to the sun. I'll  
7 show you some details of how we're going to  
8 install -- propose to install these that are  
9 different. And the panels, the arrays, or the  
10 long linear elements from side to side, have a  
11 different configuration. In the original  
12 configuration they were 9 foot from one panel to  
13 the next series of panels. Now they are 5 foot  
14 with the changes that are being proposed.  
15 The other element with these panels is  
16 they're much lower. Instead of -- the original  
17 panel height was a maximum of 8 foot in height.  
18 Now we're talking about a panel that has a  
19 maximum height of 5 foot off the grade.  
20 The other elements that we did to the  
21 plan was we took the roadway that was connecting  
22 what we called the west side or the west field  
23 arrays that connected to the east side. That  
24 was on the northern side of the property. We've  
25 now put that in the center as a proposed new

<p style="text-align: right;">Page 66</p> <p>1 driveway crossing. And we have a slightly  2 different configuration of that path. Moved the  3 inverters, made what I'll call a more efficient  4 layout and we've actually dropped about a  5 thousand linear foot of that driveway off the  6 original plan.  7 The number of inverters and the  8 inverter pads and the transformers, they're the  9 same. They've slightly moved around. Generally  10 they're the same sizes that were on the original  11 plan.  12 We've taken what is the switchgear and  13 slightly relocated it farther away from the  14 northern property line and to have its own  15 driveway out to Country Club Road. And, again,  16 the primary objective was to reduce the length  17 of the various drives on the property.  18 The other element that was done was  19 based on the reconfiguration, based on the lower  20 height of the panels, the limits of the berm  21 have substantially reduced. And the berm-- and  22 I'm going to point to this on Exhibit A-13 -- is  23 extended along the northern property line and it  24 extends more to the west, behind lot 3 on block  25 65, lot 3, and extends in an east-west direction</p>	<p style="text-align: right;">Page 68</p> <p>1 green mesh fabric that you would typically see  2 at a tennis court type of installation that we  3 propose along there. Again based on some of the  4 input, we thought that was a little more  5 blending of the trees and that fabric behind it.  6 It's certainly up for debate, but that's what  7 we're proposing right now. And that would be  8 around the perimeter that's exposed to the  9 neighborhood and to Country Club Road.  10 Soil movement that we talked about at  11 the last application process that we had, where  12 we had a significant cut that was in the front  13 field towards Meadow and Country Club Road.  14 We've eliminated that cut obviously, eliminated  15 that berm that was towards the corner of Meadow  16 Road and Country Club Road. And essentially the  17 cuts and fills now will consist of the cut for  18 the stormwater management features, the  19 detention basins and the water quality features,  20 and the fill will be in the berms that I just  21 described before. The site will still be  22 balanced by virtue of the cut of those  23 stormwater management features to the fill.  24 Underneath the panels themselves there'll be no  25 change in those grades.</p>
<p style="text-align: right;">Page 67</p> <p>1 to where it did in the previous application and  2 I'll say turns in a southerly direction where my  3 pointer is now.  4 And the berm height has been lowered  5 because of the panel height being lowered. And  6 it varies. A maximum, I believe it's 7 foot  7 right near the area of Somerset Terrace. And as  8 it gets towards Preston, it goes down to 2 to 3  9 foot high. I'll show you that in the  10 cross-sections.  11 More trees have been planted around  12 it, the berm itself. And we've moved the berm  13 that was generally more towards that neighboring  14 property line or that neighborhood of Somerset  15 Terrace and Preston Terrace and moved that much  16 closer to the panels themselves. So I'd say  17 there's about 140 feet away from the property  18 line now is the berm, where it was 20 or 30 feet  19 off the property line in the original plan.  20 We still have the enclosure of the  21 fence around both the east sector of panels and  22 the west sector of panels, 7 foot high. What we  23 did do is change up -- instead of the wood  24 fence, we're showing on the plans a chain-link  25 that's 7 foot high with a mesh fabric, like the</p>	<p style="text-align: right;">Page 69</p> <p>1 If I refer to Exhibit A-14-- and,  2 again, this is what was in your drawing set,  3 Sheet 31A, the lower right-hand corner shows the  4 proposed system that's being proposed for the  5 posts and the ballasts type of system. And if I  6 could describe it correctly, the ballast systems  7 will be for every array of panels -- and this  8 would, again, be one high and in this case five  9 across. So one panel high, five across. Much  10 lower height. They would have -- each of those  11 would be two posts, and you can see the two  12 vertical posts. They would have a series of  13 twin channels that would actually have  14 concrete -- precast concrete portions that would  15 be placed inside of each one of these panels.  16 The panels themselves, or the skids,  17 would be put on existing grades. They would not  18 be bored into the ground at all, so they  19 literally sit on existing grade that would be  20 there. And there's twins on each one of these  21 series of racking systems.  22 The general dimensions of that panel  23 with the concrete in it would be just under 2  24 foot, 1.92 foot by 4 foot. As I said, there'll  25 be twins of those on each one of the panel</p>

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1 arrays. In the previous application we were  
 2 talking about digging into the ground. In this  
 3 case, we'd be putting it on the surface.  
 4 I'll say, generally, the inverter pads  
 5 stay the same as far as the configurations of  
 6 those. We're still doing all of those same  
 7 components. The only other change that we have  
 8 on here is based on technology changes, I think  
 9 we had a 12-foot-high switchgear. Now you can  
 10 get something that's 8.6 foot high. So that's  
 11 lower. That was the highest structure that we  
 12 talked about on the property. We can get  
 13 something lower, in that 8.6-foot range.  
 14 The racking system itself is all  
 15 galvanized. The channel inside of it which  
 16 holds the wires will be stainless steel.  
 17 Generally operates like the other systems that  
 18 we talked about at the last meeting, but this  
 19 racking system allows a lot of the wires to be  
 20 in a channel as opposed to going down into the  
 21 ground. And, again, when we have the electrical  
 22 person here talking about the panels, they can  
 23 get into a lot of those specific details.  
 24 As far as the overall site numbers,  
 25 the total limits of the project would be 41

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1 acres now, 41.17, where the previous application  
 2 was 53 acres. The grading disturbance that's  
 3 being proposed right now, 4.9 acres as opposed  
 4 to 15.5. And some of that-- and without getting  
 5 into the stormwater detail-- will change when we  
 6 finalize the stormwater management features. I  
 7 know that. I mean, there's no debate about  
 8 that. That will change up or down, it's going  
 9 to go up somewhat, but that has not been  
 10 finalized, as has been discussed earlier in this  
 11 meeting.  
 12 Balance cut and fill. The tree  
 13 clearing is the same. There's no difference or  
 14 delta in the tree clearing. The number of tree  
 15 units that we're talking about was per the first  
 16 application. No change to that. We are  
 17 planting more by virtue of the discussion that  
 18 we had at the last meeting, the last series of  
 19 meetings. And we talked about additional  
 20 plantings. We just show them on the plans, what  
 21 we committed to at the last discussion.  
 22 As far as some of the numbers, by  
 23 virtue of this plan, the actual element that  
 24 will go up is -- lot coverage will go down based  
 25 on your definition. And the original plan was

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1 17 percent. I forget the exact number, 17  
 2 point -- and I'll get that in a second --  
 3 percent and it's now down to 15.9 percent. But  
 4 by virtue of using this panel installation, or  
 5 actually the ballast installation, our  
 6 impervious coverage will slightly go up because  
 7 each one of those little concrete ballasts will  
 8 count towards impervious coverage that we'll  
 9 have to address from a stormwater management  
 10 standpoint.  
 11 Ballast width, there will be a  
 12 reduction in the road length that will reduce  
 13 some of that impervious coverage for stormwater  
 14 calculations, but it will still be a net  
 15 increase in that coverage because those ballasts  
 16 will be taking up more surface area to the  
 17 ground than a 4-inch post or a 3-inch post that  
 18 we'll be drilling. And we'll have to address  
 19 that in the stormwater management.  
 20 The landscaping essentially is the  
 21 same as far as materials underneath there that  
 22 we talked about with the grasses. Again, we  
 23 just increased some of the landscaping that we  
 24 talked about at the last meeting.  
 25 Lastly is on construction timing, the

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1 Board asked for a detail. We've presented a  
 2 plan from the consultant that's worked-- the  
 3 construction consultant that's worked with KDC  
 4 in the past, Whiting-Turner, and we've presented  
 5 that in the application package. And it lays  
 6 out all those times and it's fairly consistent  
 7 to what we've talked about at the last meeting,  
 8 or series of meetings, about the construction  
 9 timing and the detail phasing.  
 10 That's a review of it. I mean, again,  
 11 we can get into more details of it, but I wanted  
 12 to give you the overview of -- that's the bulk  
 13 of the changes that we're talking about here.  
 14 We're putting the pads on the ground as opposed  
 15 to going through the ground. Rearranged the  
 16 type of panel, the racking system, the  
 17 separation between the two. Rearranged the road  
 18 network that was proposed on the property. Same  
 19 inverters, generally same location, little  
 20 shifts around there, but essentially it's the  
 21 panels in the same area except for this front  
 22 field and using this field that's just to the  
 23 north and the center property that we didn't use  
 24 previous to that.  
 25 CHAIRMAN BOXER: Mr. Hall, is the

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1 applicant still controlling the use of that  
 2 field? There's no solar panels on it, right?  
 3 MR. HALL: The lease is for the entire  
 4 property, yes.  
 5 CHAIRMAN BOXER: Okay.  
 6 MR. HALL: I mean, the most activity,  
 7 I guess somebody may have it. I don't know. It  
 8 wouldn't be available for other development to  
 9 my knowledge.  
 10 CHAIRMAN BOXER: Fair enough. Thank  
 11 you.  
 12 Okay. Ms. Donato or Mr. Sasso, do you  
 13 have any questions of Mr. Kennedy?  
 14 MR. SASSO: I do.  
 15 CHAIRMAN BOXER: Do you need the mic,  
 16 Mr. Sasso? You'd probably be more comfortable  
 17 sitting.  
 18 MR. SASSO: I'll keep my voice up so  
 19 it will be able to carry.  
 20 CROSS-EXAMINATION  
 21 BY MR. SASSO:  
 22 Q. Ron, I know that we're just going  
 23 through the changes that you have on these plans  
 24 that were submitted on May 23rd. Just some  
 25 general questions.

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1 MR. SASSO: I assume, with regard to  
 2 the Board, that depending on how we decide to  
 3 proceed, we will be able to get into the details  
 4 of what he's talking about, the new berm and  
 5 things of that nature. And I would rather just  
 6 ask a few quick questions on things that I  
 7 didn't hear.  
 8 CHAIRMAN BOXER: Sure.  
 9 MR. SASSO: Or perhaps failed to hear.  
 10 Q. One would be, Ron, I don't think you  
 11 spoke to the size of the panels being different.  
 12 I tried to take pretty good notes. Orientation  
 13 is the same. Nine feet was the distance between  
 14 the panels. Now they're going to be closer,  
 15 right, 5 feet?  
 16 **A. Between the rows of panels they'll be**  
 17 **closer, 5 feet instead of 9 feet.**  
 18 Q. Right. So as you're looking at it,  
 19 there would have been a space of 9 feet between  
 20 the rows?  
 21 **A. That's correct.**  
 22 Q. And now they're going to be more  
 23 condensed?  
 24 **A. Five feet.**  
 25 Q. Five feet.

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1 And you told us about how they were  
 2 going to be held, but I didn't -- I didn't  
 3 understand anything in terms of the specs as to  
 4 the size of the panel versus the old panel that  
 5 was proposed.  
 6 **A. Let me get that. Let me confirm that**  
 7 **right now.**  
 8 Q. Yeah.  
 9 **A. I want to say they're about the same**  
 10 **size, but let me just confirm that, the exact**  
 11 **dimensions, on our plans.**  
 12 **The original testimony that I had was**  
 13 **the width of the panel, an individual panel, 39**  
 14 **inches wide and I said somewhere between 65 and**  
 15 **70 inches based on the manufacturer. Right now,**  
 16 **with these new panels, I'm saying 39 inches by**  
 17 **70 inches. That's what it's been designed for.**  
 18 **So essentially it's the longer of the variable I**  
 19 **gave last time. Thirty-nine wide by 70 inches**  
 20 **long.**  
 21 Q. Thirty-nine by 70.  
 22 And do we know the manufacturer or the  
 23 model number or anything in terms of specs?  
 24 **A. I believe in the application**  
 25 **resubmission there was a whole series of specs**

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1 **that were given, okay, in a binder. And I don't**  
 2 **know the details of those, but I know that a**  
 3 **whole series of specs were given that has the**  
 4 **detailed panels and I think there was two or**  
 5 **three different manufacturers and racking**  
 6 **systems.**  
 7 Q. Okay. You mentioned application.  
 8 Has Gladstone Design ever revised the  
 9 application to include all this data that you  
 10 gave us tonight?  
 11 **A. The --**  
 12 Q. The application form itself submitted  
 13 to the Board.  
 14 **A. I did not, no. Gladstone Design did**  
 15 **not.**  
 16 Q. Okay. As far as you know, it's still  
 17 the original application that was filed with  
 18 your original submission?  
 19 **A. Yes.**  
 20 Q. Okay. Now let's talk about the berm  
 21 that you showed us on A-13. And it has now  
 22 moved closer to the panels, you said?  
 23 **A. That's correct.**  
 24 Q. Okay. And you talked about the  
 25 height, 8 feet down to 5 feet?

1 **A. I think it was 7 foot at the max.**  
 2 Q. All right. Now we're at 8 foot.  
 3 **A. It goes down to 2 to 3 foot in some**  
 4 **areas.**  
 5 Q. Oh, I'm sorry, you know what? I'm  
 6 reading off the-- the panels themselves had a  
 7 max of 8 feet?  
 8 **A. The original?**  
 9 Q. The original panels.  
 10 **A. Yep.**  
 11 Q. And now the max is 5 feet, correct?  
 12 **A. That's correct.**  
 13 Q. Okay. Good. I see.  
 14 All right. So 7 feet by Somerset and  
 15 then 2 to 3 feet by Preston. That's what we're  
 16 talking about in terms of the berm?  
 17 **A. That's correct.**  
 18 Q. Now, previously when you described the  
 19 berm, it was the berm plus the fence, correct?  
 20 **A. Yes.**  
 21 Q. Plus-- and trees and plantings on top  
 22 of that?  
 23 **A. Correct.**  
 24 Q. Are we still talking about that?  
 25 **A. Yes. Yes.**

1 Q. So if I'm in that neighborhood, right,  
 2 and let's say I'm by Somerset and I'm looking  
 3 towards the panels, I am still going to see a  
 4 berm --  
 5 **A. Seven foot.**  
 6 Q. -- plus a 7-foot fence?  
 7 **A. Correct.**  
 8 Q. Okay. So we're up to 14. Plus we're  
 9 going to have trees planted on top of the berm,  
 10 correct?  
 11 **A. That's correct.**  
 12 Q. And these trees, what are you  
 13 proposing? Just generally.  
 14 **A. They'll be planted at 6 to 8 foot in**  
 15 **height.**  
 16 Q. All right. That's original height?  
 17 **A. Yeah, they'll be the original**  
 18 **evergreens and then they'll grow.**  
 19 Q. All right. Whatever. What's the  
 20 average height that you'd say full grown?  
 21 **A. After 20 years, they'll be in the**  
 22 **20-foot, 30-foot range.**  
 23 Q. All right. So that 20 feet or 30 feet  
 24 will be on top of the 14 feet?  
 25 **A. No, because we're not putting them on**

1 **top of the fence.**  
 2 Q. Okay.  
 3 **A. We're putting them on top of the berm.**  
 4 Q. So we're taking--  
 5 (Indisciperable crosstalk; reporter  
 6 requests one speaker).  
 7 Q. Go ahead.  
 8 **A. So 7 feet plus whatever the height of**  
 9 **the trees.**  
 10 Q. Which you say is up to 30. So we're  
 11 talking it could be 23 feet above that.  
 12 **A. Yes.**  
 13 Q. Right? Seven foot on the fence. And  
 14 then the fence is a see-through fence. Before  
 15 it was a wooden fence that you couldn't see  
 16 through, but now we're going to have this green  
 17 mesh as if I were looking at a tennis court?  
 18 **A. That's correct.**  
 19 Q. Okay. I see. And how long is that,  
 20 by the way? If I'm over at Somerset and I'm  
 21 looking down this tennis court-type fence, what  
 22 kind of distance are we talking about?  
 23 **A. A thousand feet.**  
 24 Q. All right. So in this residential  
 25 neighborhood, I'm at Somerset, I'm looking

1 towards the panels, I'm going to see this  
 2 thousand-foot-long tennis fence?  
 3 **A. Well, again, there's going to be trees**  
 4 **in front of that, filtered in front of that.**  
 5 Q. Is the fence proposed to be along the  
 6 entire 1000 feet?  
 7 **A. You asked me if you could see the**  
 8 **thousand-foot fence. I'm saying that there's**  
 9 **going to be trees in front of that fence. You**  
 10 **will not see a continuous thousand-foot fence.**  
 11 Q. Well, the fence is going to be there.  
 12 My question is, is the fence going to be there?  
 13 **A. Yes.**  
 14 Q. Okay. And as the trees grow, we're  
 15 talking about branches and everything exceeding  
 16 that height of the 7-foot fence, correct?  
 17 **A. No, because there'll be trees that**  
 18 **will still have low branches to them the way**  
 19 **they're proposed.**  
 20 Q. I see.  
 21 **A. And we have shrub masses that are also**  
 22 **infilled in there as well.**  
 23 Q. Okay.  
 24 **A. So it's a mixture. It's not just a**  
 25 **bunch of single trees.**

1 Q. All right. And this tennis  
 2 fence/berm, what's its width? You can  
 3 approximate.  
 4 **A. It will vary, but at the top of it it**  
 5 **will be somewhere between 6 and 10 foot in**  
 6 **width.**  
 7 Q. Okay.  
 8 **A. And then it will have 3-to-1 side**  
 9 **slopes on it.**  
 10 Q. Okay. And compare that view that we  
 11 just discussed to what's there now for the  
 12 residents by Somerset. When they're looking in  
 13 that same direction, what are they seeing now  
 14 versus what you're proposing?  
 15 **A. Well, as we talked about at the last**  
 16 **hearing, or the last sets of hearings, they have**  
 17 **a tree row that's up along the road or up along**  
 18 **the property line and the tract boundary, and**  
 19 **then they see into the field.**  
 20 Q. Okay.  
 21 **A. And now they'll still have that same**  
 22 **tree line and they'll look into the portion of**  
 23 **the field that's in the first 130 feet and then**  
 24 **they'll have the berm, the fence and the trees.**  
 25 Q. Then the berm and the 7-foot fence on

1 top of that and then some trees?  
 2 **A. Yes.**  
 3 Q. Okay. You said the switchgear height  
 4 is lowered, but it's still going to be 8 foot 6  
 5 inches, is that correct?  
 6 **A. That's correct.**  
 7 Q. All right. And the lot coverage, what  
 8 is allowed, based on your long-time experience  
 9 here in Bedminster, in terms of the coverage?  
 10 What-- let's visit that issue. You told us that  
 11 it went down basically a percentage point. It  
 12 was 17 percent and now, based on at least what  
 13 you have so far, without doing any of the water  
 14 management, wastewater-- any calculations for  
 15 the water, you're down to 15.9, basically 16  
 16 percent.  
 17 What does the ordinance allow?  
 18 **A. Five percent.**  
 19 Q. Five percent. Okay.  
 20 You made a comment before that with  
 21 regard to these ballasts, the impervious  
 22 coverage will go up. Can you be a little more  
 23 specific?  
 24 **A. From a stormwater management**  
 25 **standpoint, the panels are not considered**

1 **impervious coverage.**  
 2 Q. But in Bedminster there is no  
 3 impervious coverage ordinance, correct?  
 4 **A. Correct. There's a lot coverage**  
 5 **ordinance.**  
 6 Q. But there are a lot of towns that do  
 7 have an impervious coverage ordinance, but here  
 8 in Bedminster you're not governed by one?  
 9 **A. Correct, but we still have to deal**  
 10 **with it from a stormwater management standpoint.**  
 11 Q. I see.  
 12 **A. So that's the relevance to that.**  
 13 Q. I see.  
 14 **A. Okay? So --**  
 15 Q. Part of that plan that hasn't been  
 16 submitted yet.  
 17 **A. That's correct.**  
 18 Q. Okay. All right. So explain to me  
 19 that those panels then are going to block, in  
 20 essence, right, the flow of rainfall down onto  
 21 the ground into pools in particular areas?  
 22 **A. Well, at the drip edge of the panel.**  
 23 Q. Right.  
 24 **A. But, again, from the stormwater**  
 25 **management rules that we have to account for any**

1 **of the posts -- and in this case these**  
 2 **ballasts -- we will have to account for as**  
 3 **impervious coverage in our stormwater management**  
 4 **design.**  
 5 Q. Could you explain to the Board how we  
 6 got from taking these machines that basically  
 7 you described before as like fractionary into  
 8 the rock, the metal that would hold these panels  
 9 versus what you're saying now, in the new plan,  
 10 you simply put them down on the ground?  
 11 **A. It's a different alternative system**  
 12 **that are ballast systems for panels. And**  
 13 **instead of drilling it into the ground, you put**  
 14 **ballasts on the ground and have counterweights**  
 15 **for that.**  
 16 Q. All right. Have you ever been  
 17 involved in a project that involved those?  
 18 **A. Yes.**  
 19 Q. With those very ballasts?  
 20 **A. Not this identical type--**  
 21 Q. That's what I'm talking about.  
 22 **A. -- but ballasts. Similar, but not the**  
 23 **same manufacturer. Sure, ballast panels are**  
 24 **common.**  
 25 Q. Okay. Now, construction timing, you

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1 said that the subcontractor came up with the  
2 list of the proposed timing for the  
3 construction?  
4 **A. Yes. That was submitted as part of**  
5 **that package back in May.**  
6 Q. As part of the submission.  
7 **A. Yes.**  
8 Q. All right. Thank you. Thanks, Ron.  
9 CHAIRMAN BOXER: Thank you very much,  
10 Mr. Sasso.  
11 Ms. Donato, would you like to go?  
12 CROSS-EXAMINATION  
13 BY MS. DONATO:  
14 Q. Mr. Kennedy, when did you say that the  
15 plans, A-13-- what was the last revision date?  
16 **A. I had 7/10/14.**  
17 Q. So that plan, 7/10 -- today is 7/10,  
18 is it not?  
19 **A. Correct.**  
20 Q. Was that plan on file here prior to  
21 this meeting this evening?  
22 **A. This plan?**  
23 Q. The plan, that A-13 that I just asked  
24 you about.  
25 **A. No.**

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1 Q. It was not.  
2 **A. It was not.**  
3 Q. So it hasn't been filed here for  
4 anybody to see?  
5 **A. No.**  
6 MR. HALL: We're not seeking approval  
7 of that plan so I didn't think it had to be  
8 filed. It's an exhibit.  
9 Q. What's the revision date on A-14,  
10 please?  
11 **A. 5/16 of 2014.**  
12 Q. And that was not filed with the Board  
13 either?  
14 **A. It was.**  
15 Q. It was.  
16 **A. That Sheet 31A of 31, that was**  
17 **submitted in the packet in May to this Board.**  
18 Q. Okay. And you have an A-15 as well?  
19 **A. No.**  
20 Q. All right. So I'm a little confused.  
21 You have the blown-up -- oh, you have A-12.  
22 That's the one I missed. Okay.  
23 So when was A-12 filed?  
24 **A. It wasn't. Today's date was the**  
25 **revision date.**

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1 Q. So this was not a plan that was  
2 reviewed by any of the township's professionals  
3 either?  
4 **A. No. They're just the rendered**  
5 **exhibits of the aerial.**  
6 Q. Okay. So what's the purpose of  
7 presenting something this evening? I mean, is  
8 there an idea that you're going to get some kind  
9 of feedback or is this just to say here's what  
10 we're presenting?  
11 **A. I mean, it's just-- in our view it's a**  
12 **better way for a public hearing to present a**  
13 **view of the landscape that's not the detailed**  
14 **engineering drawings that were submitted in the**  
15 **package in May.**  
16 Q. You think it's-- okay. So you think  
17 it's a better way to present it, when the  
18 township professionals haven't had a chance to  
19 review it in advance?  
20 **A. Again, it's the same layout, it's the**  
21 **same details. It's just on the aerial of the**  
22 **neighborhood, the base aerial map.**  
23 Q. So what plan sheet would those-- give  
24 me A-12. What plan sheet would that be?  
25 **A. It would be a series of the four site**

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1 **dimension plans-- or, excuse me, six site**  
2 **dimension plans: 5 of 31, 6 of 31, and we go**  
3 **all the way to 10 of 31. And then it would also**  
4 **add on it the landscape elements that are shown**  
5 **on Sheets 17 of 31 through 22 of 31.**  
6 Q. Okay. Now, directing your attention  
7 to the berm that's up in the northeast corner,  
8 you say that's the berm that's alongside the  
9 residential community there, right?  
10 **A. That's correct.**  
11 Q. Okay. So in doing this, what view  
12 were you attempting to shield from the  
13 residential neighborhood? From what components  
14 of those residential properties?  
15 **A. I have the updated cross-sections if**  
16 **you -- the ones that we talked about at the last**  
17 **series of meetings, and I have updated ones. I**  
18 **can put those --**  
19 Q. Without going to the cross-sections,  
20 do you know verbally what you were trying to  
21 block? What were you trying to block?  
22 **A. I mean, similar to the purpose in the**  
23 **last series of berms and fencing and**  
24 **landscaping, it's the view from the residential**  
25 **elements towards the panels themselves.**

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1 Q. Was there any intention to address  
 2 views from the second story of any of those  
 3 houses?  
 4 A. Yes.  
 5 Q. And in your opinion, this will do so?  
 6 A. We looked at the first, I'd say, two  
 7 sets of houses back from the property line. We  
 8 didn't go and look on the other side of Victory  
 9 Drive for those, but we looked in the first two  
 10 sets of houses in there and on the second  
 11 stories. That's why the berm at the end of  
 12 Somerset is actually raised higher to 7 foot  
 13 high.  
 14 Q. And do you recall at the last design  
 15 we considered what would be the view if someone  
 16 was looking towards the east of this property as  
 17 opposed to straight out at the panels on the  
 18 west side? I mean, I'm sorry, to the west. I  
 19 take that back. To the west, yes.  
 20 A. And, again, the response to that was  
 21 we extend the berm and the landscaping along the  
 22 same section and we just extended that to the  
 23 west.  
 24 Q. Okay. And there's no berm on the west  
 25 side at all, is there?

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1 A. On this side of the property?  
 2 Q. Yes.  
 3 A. The only thing we did there, as we  
 4 talked about at the last meeting, is there's an  
 5 old service road in there or path that we then  
 6 filled back with landscaping.  
 7 Q. Okay. Now, someone is traveling down  
 8 Country Club Road and they come down closer to  
 9 what's Meadow. Okay? Like where we take the  
 10 property boundary there.  
 11 A. So Country Club to Meadow?  
 12 Q. Let's say somebody's walking or  
 13 driving-- strike that. They're driving up  
 14 Country Club Road heading north and they're  
 15 looking into the field. What are they going to  
 16 see?  
 17 A. The first series of panels that are  
 18 located where my finger is now. That is the  
 19 most--  
 20 UNIDENTIFIED SPEAKER: Excuse me,  
 21 could we all see?  
 22 THE WITNESS: Sorry.  
 23 UNIDENTIFIED SPEAKER: Thank you.  
 24 A. The first series of panels that are on  
 25 the southern end, I'll call it the top of the

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1 landscape area, as this is generally low. All  
 2 right? High is just before this driveway here,  
 3 this proposed driveway, and then it drops  
 4 somewhat, it doesn't drop a lot, but it drops  
 5 somewhat down here, is the first row of the  
 6 panels. We put a fence in front of that and  
 7 then we have the fabric in front of the fence.  
 8 That's in front of there.  
 9 But the goal is, and the plan shows  
 10 that being met, that when you drive down here,  
 11 you won't see the panels. You'll see across the  
 12 field and you'll see the top, I'd say, 2 or 3  
 13 feet of the fence.  
 14 Q. Okay. And where will your stormwater  
 15 management components be?  
 16 A. They haven't been finalized yet. We  
 17 talked about that. They will generally be in  
 18 the same areas or similar areas to where they  
 19 were previous to that.  
 20 Q. So someone driving down the road will  
 21 see a stormwater basin wherever you eventually  
 22 decide to put it?  
 23 A. Yeah. Again, these are 2 to 3 foot in  
 24 height and then they drop down 2 to 3 foot in  
 25 depth. You wouldn't be able to see in it, but

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1 you'd see a 2- to 3-foot-high berm.  
 2 Q. You're going to have a berm around the  
 3 basins?  
 4 A. Well, just the fill around the basins  
 5 to create the water impoundment area. That's  
 6 not a berm, but, yeah, the impoundment area of  
 7 the stormwater management--  
 8 Q. Well, what's there now as you drive  
 9 down there in this space?  
 10 A. That particular space is the old barn,  
 11 so there's a concrete pad there. But it's  
 12 generally a meadow there now.  
 13 Q. So instead of a meadow they're going  
 14 to see some kind of basin?  
 15 A. Well, again, the berm will be planted  
 16 with meadow grasses.  
 17 Q. Okay. So you already planned that far  
 18 ahead that you're going to plant the berm with  
 19 meadow grasses?  
 20 A. That would be how we would be planting  
 21 that, yes.  
 22 Q. Have you ever presented an application  
 23 to this Board where you didn't have your  
 24 stormwater management design?  
 25 A. I've had applications where we've



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1 **changed stormwater management during the**  
 2 **application.**  
 3 Q. I didn't ask you that. I said, did  
 4 you ever present an application and a plan to  
 5 this Board where the stormwater management was  
 6 not shown on the plan?  
 7 **A. Not at the beginning of an**  
 8 **application, no. We've always had it.**  
 9 Q. Did you ever -- so you've always had  
 10 stormwater as part of the plan presented to this  
 11 Board?  
 12 **A. Yeah. It's a completeness item. Yes.**  
 13 Q. Okay. And do you agree with the Board  
 14 engineer that stormwater is integral to the  
 15 design of the site?  
 16 **A. I do.**  
 17 Q. Now, this green mesh that you're  
 18 referring to, the kind that you say is  
 19 ordinarily kept on a tennis court, is it  
 20 maintained on a tennis court during the winter  
 21 usually?  
 22 **A. Yes.**  
 23 Q. All winter long they have it?  
 24 **A. In some cases, yes.**  
 25 Q. And what's, like, the shelf life of

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1 this stuff?  
 2 **A. Ten to 15 years.**  
 3 Q. Ten to 15 years?  
 4 **A. Yes.**  
 5 Q. Without tearing? ripping? fading?  
 6 **A. Again, I'm looking at the**  
 7 **manufacturer's information. That's what they're**  
 8 **showing, 10 to 15 years for that.**  
 9 Q. Now, if one is traveling north  
 10 approaching the site from Meadow, where-- just  
 11 give me an idea where the view of the western  
 12 array will be protected.  
 13 Is there-- is there something around  
 14 the western array that I'm not seeing with that  
 15 plan?  
 16 **A. From what perspective? From here?**  
 17 Q. Yes, from-- yes.  
 18 **A. There's not-- we're not proposing**  
 19 **anything new. It's the existing vegetation**  
 20 **that's here.**  
 21 Q. So it would be intended to be screened  
 22 by the wetlands area that's in the middle of the  
 23 site as you speak?  
 24 **A. Yes. And it's a mixed area of some**  
 25 **hardwoods and some evergreens and cedar trees**

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1 **that are there.**  
 2 Q. Okay. You said that the use of  
 3 ballast was common. Is that what you said?  
 4 **A. I did.**  
 5 Q. Common in what types of applications?  
 6 **A. The one that uses it most is in**  
 7 **landfill applications where you would be putting**  
 8 **that on top of an area that you wouldn't be**  
 9 **putting posts into. That's the most common that**  
 10 **we've worked on.**  
 11 Q. What would you use ballasts for in a  
 12 landfill? I'm a little confused.  
 13 **A. On solar installations in landfill**  
 14 **applications, we've used ballasts for the**  
 15 **solution instead of driving piles into the**  
 16 **landfill.**  
 17 Q. Okay. And how many times have you  
 18 been involved in solar installations in  
 19 landfills?  
 20 **A. Three different times that we've**  
 21 **worked on.**  
 22 Q. You call that common?  
 23 **A. Yes.**  
 24 Q. All right. Did you end up finding out  
 25 that there was shale that would have caused you

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1 difficulty with the driven posts that you  
 2 previously proposed?  
 3 **A. No.**  
 4 Q. You just decided you didn't feel like  
 5 drilling through shale or what was the...?  
 6 **A. The genesis of it was that there was a**  
 7 **lot of comments by the Board of concerns of,**  
 8 **issues of galvanized piping into the ground.**  
 9 **And rather than go through a lot of discussion**  
 10 **and debate about those types of things, we**  
 11 **thought this was a simpler alternative to put on**  
 12 **the property that would be, at least in our**  
 13 **view, responding to the concerns and have less**  
 14 **of an impact.**  
 15 Q. Now, with respect to the western  
 16 array, the visibility of that western array from  
 17 the properties to the north, is there anything  
 18 that's protecting those properties in terms of  
 19 the view?  
 20 **A. A series of -- the properties to the**  
 21 **north, you have a large wetland area that is not**  
 22 **obviously going to be touched and the transition**  
 23 **area that is associated with that. You have**  
 24 **cedars that are along the area between the**  
 25 **panels and a tract boundary of about 200 feet.**

1 **And then, as I stated previously, there's an old**  
 2 **drive area that we're proposing to infill with**  
 3 **some more trees, evergreen trees, along, I'd**  
 4 **say, about 600 feet of a distance.**  
 5 Q. But you don't extend it all the way to  
 6 the west. You stop at that little black line  
 7 there, right? You kind of stopped it?  
 8 **A. Right here?**  
 9 Q. Yes.  
 10 **A. Yes.**  
 11 Q. Is there a reason why?  
 12 **A. It's the end of the path. I'm not**  
 13 **going to go knock down trees to plant trees.**  
 14 **That's the end of the opening.**  
 15 Q. And I don't really quite remember  
 16 because it's been quite a long time since we  
 17 looked at the environmentally constrained map  
 18 that you had. You're saying that there's also  
 19 wetlands up in that corner?  
 20 **A. There is.**  
 21 Q. In the northwest corner?  
 22 **A. Yeah.**  
 23 Q. That's all delineated wetlands?  
 24 **A. It is.**  
 25 Q. Okay. And that's, again, the mix of

1 hardwoods and evergreens--  
 2 **A. Yes.**  
 3 Q. -- to which you indicated?  
 4 Do you happen to have, like, an idea  
 5 of what the visibility is for those-- that would  
 6 apply to the wetlands in the center of the  
 7 property and the wetlands up in that corner, as  
 8 to what's the visibility during the winter when  
 9 there's no leaves on the trees?  
 10 **A. Again, you can see the discolorations**  
 11 **here. The darker areas are the cedar trees.**  
 12 **The lighter areas are the large hardwood trees.**  
 13 **So it's a mix. In this case, in the wetland**  
 14 **areas, there's less cedars. As you get closer**  
 15 **to the panels, there's more cedars.**  
 16 Q. Okay. So you're saying that there are  
 17 cedars in that northwest corner, for example?  
 18 **A. Yeah. Again, the darker area that you**  
 19 **see on this image is cedar trees.**  
 20 Q. But what I'm trying to clarify is it  
 21 depends on what area you're referring to. If  
 22 you just look at the corner where you have that  
 23 light blond coloration, in there--  
 24 **A. Less cedars.**  
 25 Q. There's very little cedars there,

1 correct?  
 2 **A. Yes.**  
 3 Q. So in the wintertime there's very  
 4 little evergreen to screen views.  
 5 **A. Correct.**  
 6 Q. So you're not going to try to screen  
 7 those views or do anything with respect to the  
 8 properties to the north?  
 9 **A. Again, what our objective was, no, we**  
 10 **weren't proposing that. Okay? We have some**  
 11 **evergreen/cedar areas along there. If the Board**  
 12 **thinks we should put screening in, we can put**  
 13 **screening in there, but we thought there was a**  
 14 **significant enough wooded area, again a**  
 15 **combination of hardwoods and evergreens or**  
 16 **cedars there. If there's a concern about it, we**  
 17 **can screen. And whether it's trees and whether**  
 18 **it's fence, whether it's a mesh fence or a**  
 19 **different type of fence that the Board or the**  
 20 **public feels more appropriate, we can look at**  
 21 **that.**  
 22 Q. What kind of cedars are they?  
 23 **A. Eastern red cedars.**  
 24 Q. Eastern red. Okay.  
 25 And the Eastern red cedars are also

1 interspersed in the wetlands area in the center  
 2 of the site as well?  
 3 **A. They are.**  
 4 Q. So have you evaluated the impact on  
 5 viewshed by having-- in a wintertime scenario  
 6 without having anything other than your proposed  
 7 natural buffering of that western array?  
 8 **A. Again, I'm going to just say by the**  
 9 **distance that we have through here, is about 400**  
 10 **feet, is the mixture itself would provide**  
 11 **screening. If the Board feels that by the time**  
 12 **the trees were cleared in the area of the**  
 13 **proposed development, and that they felt that**  
 14 **they could see something that's in there, we**  
 15 **could put a condition that we would put**  
 16 **screening up there.**  
 17 Q. So I was just trying to circle back  
 18 one more time on the stormwater because it is  
 19 kind of very unusual to have a plan with no  
 20 stormwater components shown.  
 21 There's no intention on putting any  
 22 stormwater features into the area of that field  
 23 which is the one that you removed all the panels  
 24 from?  
 25 **A. The front field?**

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1 Q. Yes.

2 A. No. No.

3 Q. So it's going to remain a field?

4 A. It will. And I can say that it's--

5 again, we haven't designed it. We're going to

6 design it when we finish some elements that are

7 on the project. When we start designing that,

8 we will keep in those general areas that we show

9 disturbance with the previous plan. If we have

10 to move a couple of panels around because of

11 that, we'll move some panels. But we're not

12 intending to all of a sudden push that out, push

13 that into the field, for stormwater management.

14 Q. So this is really kind of more of a

15 concept. This is a concept plan.

16 A. No, it's more than that. Again, I'd

17 say that the perimeter areas around these basins

18 that are here now may change for the detailed

19 stormwater management. I'll agree on that. But

20 the fact that our driveway's proposed where it's

21 proposed right now, where the inverters are

22 proposed now, that in my view won't change based

23 on our stormwater management plan; that the

24 changes will be around the areas where we have

25 those features on the plan today. They'll be --

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1 Q. Well, I mean, what if you-- what if

2 you discovered through your soil testing that

3 areas where you're proposing panels are areas

4 where the soil types have a higher permeability?

5 A. Then we'll come back with a revised

6 stormwater plan. I mean, again, our objective--

7 well, if we can find those areas, great, because

8 I'm looking for those areas. Our problem is we

9 can't find those areas. So if we can find those

10 areas that have permeability, I can tell you

11 right now within three weeks I can submit the

12 plans to this Board for the stormwater

13 management.

14 Q. But you are testing --

15 A. I don't have that.

16 Q. Okay. But you are conducting soil

17 testing on all areas of this site including

18 where you have these proposed panels.

19 A. Yes, I will. I haven't. I will.

20 Q. So that this Board can actually if

21 they want to-- if they're evaluating this, they

22 can actually do it in an intelligent manner and

23 place the panels in the proper location.

24 A. Correct. And, again, for the board's

25 edification with the stormwater and the

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1 timing -- because I don't want to get into a lot

2 of the details. I just want to get into the one

3 element, what we're stuck on. We have to prove

4 that we don't have permeable soils in the upper

5 horizons of the soil out here for infiltration.

6 That's what we're struggling with. It's not

7 finding something affirmative, it's finding

8 something negative. That we haven't found

9 anything that has that permeability for

10 infiltration.

11 So we have to -- I think as Ms. Donato

12 was stating, we have to look around the property

13 to find those areas. We haven't found that. If

14 we find that, we have to put infiltration in

15 those areas. But our presumption is we're not

16 going to find that and we have to go through

17 that correct testing procedures.

18 Q. And if you had less of an intense use,

19 like let's say a use as permitted by the

20 ordinance with the ten-acre zoning, would you

21 have the need for as much recharge?

22 A. You would have less recharge, but the

23 issue is we don't have this-- we haven't proven

24 that we have soils to recharge. And that's the

25 area that we've been, I'll say, stuck with in

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1 resubmitting an application of stormwater back

2 to this Board.

3 Q. So why did you bring the first plan to

4 this Board and why did we spend night after

5 night going over some of these issues when the

6 data really doesn't support recharge?

7 A. Until we met with your consultant and

8 went through a certain aspect of that with the

9 town engineer on this size of a site to show

10 that we need to do something with that, we

11 didn't feel we needed to do that.

12 Q. You didn't think you needed to do

13 recharge? Isn't that one of the mandatory

14 components of the stormwater management plan?

15 A. Not if you have soils of a certain

16 type that we couldn't find the recharge.

17 Q. But your reports and what you

18 submitted to this Board and what you testified

19 to had to do with the fact that there were

20 statements that there was sufficient

21 permeability in the soil.

22 A. I don't think I said that.

23 Q. I'll rely on the record, Mr. Kennedy.

24 A. Okay. But that could be the case.

25 Again--

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1 Q. Otherwise, what were we doing here all  
2 these months?

3 **A. We have to go through that. We're**  
4 **going through that in a process. We met with**  
5 **the consultants. We've met with DEP. And now**  
6 **we're going to get the testing finalized so we**  
7 **can submit a report back to this Board.**

8 Q. So I've rearranged my schedule for  
9 almost a year so that I could find out about a  
10 plan that really wasn't feasible because you  
11 couldn't have recharge and you hadn't looked at  
12 the right data. And here we are again looking  
13 at a plan, spending another night, and you don't  
14 know what the recharge is.

15 **A. I don't know what the rate is. I do**  
16 **not.**

17 Q. You don't know what the rate of  
18 recharge is?

19 **A. I do not.**

20 Q. Thank you.

21 CHAIRMAN BOXER: Why don't we take a  
22 five-, ten-minute break. We'll then ask the  
23 public to come up.

24 Mr. Hall, Mr. Sasso, Ms. Donato, just  
25 for housekeeping, 10 or 15 tonight probably is

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1 the limit, but we'll need a few minutes to talk  
2 about schedules and next steps because I think  
3 they're going to be important before we proceed.

4 Okay. So if we could be back promptly  
5 at 9:30 that would be great.

6 (Recess)

7 CHAIRMAN BOXER: So we're going to try  
8 and continue on for maybe another 30, 45  
9 minutes, but a hard stop at 10:15. Probably  
10 about 10:00 we'll just see where we are on  
11 public comments and we'll need just a little bit  
12 of time to do the next steps with the attorneys.

13 So let me ask, is there anybody from  
14 the public that would like to come up? Okay.  
15 Maybe we can just start in the front and work  
16 our way back.

17 Come on up, sir, and you'll have to be  
18 introduced.

19 MR. COLLINS: This is for  
20 cross-examination of Mr. Kennedy only.

21 CHAIRMAN BOXER: Right. Is this for  
22 cross-examination of Mr. Kennedy?

23 MR. HICKEY: I believe so, yes.

24 MR. COLLINS: Yes, you can come  
25 forward, sir. Come to the mic.

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1 CHAIRMAN BOXER: If you have questions  
2 for Mr. Kennedy, we're going to have you come  
3 up, state your name and address, and get sworn.

4 MR. HICKEY: It's R. Colin Hickey, 3  
5 Desiree Court in Bedminster.

6 R. COLIN HICKEY, having  
7 been duly sworn, testified as follows:

8 MR. COLLINS: Thank you. Please go  
9 ahead.

10 MR. HICKEY: My question, speaking as  
11 a lay person, these look like wholesale changes  
12 to the plan. What was the impetus driving all  
13 these significant changes? I know you didn't  
14 wake up one morning and say, you know, the hell  
15 with it, I just want to change it all out.

16 THE WITNESS: I think the primary  
17 issue is the panel layout efficiency, when we  
18 looked at that, we saw that we could get rid of  
19 the panels in the front here. That's the  
20 primary issue that drove it.

21 We had some secondary issues about the  
22 type of ballast systems versus the mounted  
23 systems that we originally had that were bored  
24 into the ground. There were concerns of the  
25 Board and the public with those, so we said we'd

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1 use the other systems.

2 There were some issues about the  
3 driveways that were up closer to the property  
4 line, the berm that was closer to the property  
5 line. We moved the berm back in, extended the  
6 berm. We took the drive that was up here and  
7 moved it down to the center of the site.

8 So that's the genesis of the changes,  
9 why we made the changes to there. But it was --  
10 the cornerstone of it is the efficiencies in the  
11 layout.

12 MR. HICKEY: Now, did the failure of  
13 the stormwater management plan have anything to  
14 do with rearchitecting the engineering design  
15 and the layout?

16 THE WITNESS: The only thing that that  
17 did was the delay of time caused that -- that  
18 look. So not necessarily because we didn't have  
19 it finished, but with time--

20 MR. HICKEY: I guess I'm asking -- my  
21 other question is, you had an original  
22 engineering design. Did you try to do a  
23 stormwater management plan and realize it's not  
24 going to work with this plan and, therefore, we  
25 have to change this plan out entirely?

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1 THE WITNESS: No. No, it's not in  
 2 that vein. Just with the passage of time, we  
 3 realized there was a different layout, there  
 4 were some concerns of the Board, let's go  
 5 address it and change these elements that we can  
 6 get before the Board now while we were finishing  
 7 the stormwater design to submit that.  
 8 MR. HICKEY: And as the technology  
 9 changes, will this change again? Because, you  
 10 know--  
 11 THE WITNESS: I can't tell that. I  
 12 don't know.  
 13 MR. HICKEY: Okay.  
 14 THE WITNESS: I just don't--  
 15 technology changes every day.  
 16 MR. HICKEY: Well, exactly. I mean,  
 17 I'm thinking, you know, the footprint has  
 18 changed. The way they're packed has changed.  
 19 The way they're mounted has changed. It seems  
 20 like a lot of things have changed significantly  
 21 and that's in part because you said you wanted  
 22 to address the public's comments and the Board's  
 23 concerns.  
 24 But at the same time, how rapidly is  
 25 this going to turn over once again? Six months

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1 from now is it changed because you've got new or  
 2 better technology?  
 3 THE WITNESS: You know, I can't answer  
 4 that. There will be a solar person here that  
 5 may be able to give you some guidance to that,  
 6 but, again, you're looking at a crystal ball  
 7 what the changes are going to be.  
 8 MR. HICKEY: Do you know even how  
 9 often this stuff historically has changed now in  
 10 terms of technology? Did you go from, like,  
 11 panels that used to have to be 15 feet wide to  
 12 generate the same amount of power that they do  
 13 with 9 feet wide now or something?  
 14 THE WITNESS: I don't. I mean that's  
 15 better for someone that really understands that  
 16 side of the power industry better.  
 17 MR. HICKEY: Fair enough.  
 18 By the way, does this have to be wind  
 19 rated in terms of the way you've mounted them  
 20 with the ballasts?  
 21 THE WITNESS: Yes.  
 22 MR. HICKEY: What's the wind rating on  
 23 those?  
 24 THE WITNESS: I don't know the  
 25 standard. There are standards for them, both in

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1 an upload as well as a download.  
 2 MR. HICKEY: Right, because they're  
 3 proximate obviously to the neighborhood, so if  
 4 you've got a substantial wind these things  
 5 become kites at some wind speed.  
 6 THE WITNESS: There's standards that  
 7 have to comply with codes for that, absolutely.  
 8 BOARD MEMBER STRAKHOV: I happen to be  
 9 looking at the material you gave us and it says  
 10 that the wind load of 90 to 120 miles per hour,  
 11 but it doesn't say how it's measured or which  
 12 direction the wind is in. There's a lot more  
 13 detail one might want to know precisely about  
 14 that. At what point do these things start  
 15 tipping over?  
 16 MR. HICKEY: Tipping over or go  
 17 airborne.  
 18 BOARD MEMBER STRAKHOV: Well, that  
 19 would really be bad, yes.  
 20 MR. HICKEY: Thank you.  
 21 CHAIRMAN BOXER: Thank you very much,  
 22 sir. We can just work our way back.  
 23 Come on up, sir. Just introduce  
 24 yourself and we'll get you sworn in.  
 25 MR. ALLEN: Hi. Rich Allen, 934

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1 Ardsley Lane, Bridgewater, New Jersey.  
 2 MR. COLLINS: Rich, were you  
 3 previously sworn? Were you previously sworn in  
 4 this hearing?  
 5 MR. ALLEN: No.  
 6 R I C H A R D A L L E N, having been  
 7 duly sworn, testified as follows:  
 8 CHAIRMAN BOXER: Mr. Allen, if you  
 9 could just talk into the mic so we can hear you.  
 10 We'd appreciate that.  
 11 MR. ALLEN: Sure. Sure. My question  
 12 also was on the wind rating on the temporary  
 13 bases that are just going to be sitting on the  
 14 ground. You know, we had 60-miles-an-hour gusts  
 15 here the other day. What's going to happen to  
 16 these temporary stands?  
 17 THE WITNESS: That's a fair question.  
 18 I think when we get the solar person here that  
 19 can talk about that. I know there's literature  
 20 on it, but I really don't know if there's an  
 21 ANSI standard or what the specific standards. I  
 22 know the National Electrical Code controls a lot  
 23 of the electrical systems on here. I'm sure  
 24 there's standards for this. I just don't know  
 25 what they are.

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1 MR. ALLEN: And would you know if the  
2 wind should tip these over, break the wires,  
3 will there be live wires on the ground?  
4 THE WITNESS: Again, when we get into  
5 the electrical, let's confirm that with the  
6 person that can talk more about electrical  
7 currents and what they are and whether they're  
8 high voltage, low voltage. I just don't know.  
9 MR. ALLEN: And now that the plan has  
10 changed, the panels are getting closer together?  
11 The solar panels.  
12 THE WITNESS: Well, not the panels.  
13 There was a different configuration before for  
14 the panels. Now between the lines of panels  
15 they're only one row high. Before they were  
16 four panels high per array. So they changed.  
17 But between the rows they were 9 foot and now  
18 they're 5 foot. The rows are much narrower now.  
19 MR. ALLEN: So they're getting closer  
20 together, the panels?  
21 THE WITNESS: Well, again, a row of  
22 panels is a row of panels. But before it was  
23 four panels, then 9 foot, then four panels, then  
24 9 foot. Now it's one panel, then 5 foot, one  
25 panel, then 5 foot. So, again, I'll say it's a

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1 different configuration. The aisle is smaller.  
2 MR. ALLEN: So what's going to happen  
3 underneath these panels? I mean, is grass going  
4 to be able to grow underneath there or dirt?  
5 THE WITNESS: It's a good question.  
6 It was debated a lot at a subsequent -- a  
7 previous hearing about that. We have seed  
8 mixers that are there that have been used on  
9 other projects that will be shade-tolerant  
10 grasses that will grow underneath it.  
11 MR. ALLEN: But if it doesn't grow,  
12 you're going to get erosion especially on the  
13 drip lines, right?  
14 THE WITNESS: No doubt. And it's  
15 maintenance. We talked about a maintenance  
16 plan. We talked even about the town engineer  
17 having a yearly inspection of it so that it's  
18 kept up to a certain standard.  
19 MR. ALLEN: That was it. Thank you.  
20 CHAIRMAN BOXER: Thank you, sir.  
21 Appreciate it.  
22 Ma'am, come on up. And I saw somebody  
23 else out there.  
24 MS. SMITH: I feel like saying I'm  
25 back.

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1 CHAIRMAN BOXER: We're glad you're  
2 back.  
3 MR. COLLINS: Were you previously  
4 sworn?  
5 MS. SMITH: Yes, I was.  
6 MR. COLLINS: Okay. Then you're still  
7 under oath. Pleads go ahead. State your name,  
8 though.  
9 MS. SMITH: Michelle Smith.  
10 MR. COLLINS: Thank you.  
11 MICHELLE SMITH, having  
12 been previously duly sworn, remained under oath  
13 and testified as follows:  
14 MS. SMITH: I have a couple of  
15 questions. Previously you had talked about a  
16 decommission plan for the panels because it was  
17 talked about the life expectancy is about 20  
18 years. Now you're talking about a different  
19 type of panel apparently because it's going to  
20 be different configurations.  
21 Is there going to be a decommission  
22 plan?  
23 THE WITNESS: Yes.  
24 MS. SMITH: And that would be?  
25 THE WITNESS: Well, again, it will be

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1 something that will be outlined that we've  
2 talked about at this meeting where, if panels  
3 are no longer on this property, it has to be  
4 restored to a certain standard. And we talked  
5 about monies that would be set aside for those  
6 things.  
7 MS. SMITH: Okay. So these new panels  
8 will not be recyclable, just like the old panels  
9 would not be recyclable?  
10 THE WITNESS: I don't know. I mean--  
11 MS. SMITH: Oh, that's right because  
12 we don't know what they're going to be made of  
13 yet.  
14 THE WITNESS: You're going to have to  
15 talk to the panel person that really understands  
16 that better than I.  
17 MS. SMITH: Okay. Now it's just a  
18 really curious question: How do you know what  
19 the view's going to be from the second floor of  
20 private residents? Because somehow I can't  
21 picture people saying, Oh, yeah, come on in.  
22 Come on up into the bedroom and look at our  
23 view.  
24 THE WITNESS: The elevations around  
25 the house, each of those houses, we have. It's

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1 on aerial topography mapping. So we know those.  
 2 And we're making a gross assumption that floor  
 3 to floor is somewhere about 10 foot from floor  
 4 to floor. So we're making some observations  
 5 based-- we know what the grade is around the  
 6 house. We're making assumptions of first floor  
 7 and second floor based on that.  
 8 MS. SMITH: Okay. Now, this is the  
 9 first time I've heard of the wind rating, but it  
 10 had me thinking that we had some damage to our  
 11 house during one of the earthquakes. Are  
 12 these-- like, what's the safety with an  
 13 earthquake? Because, unfortunately, we are  
 14 getting them.  
 15 THE WITNESS: Again, I'm going to say  
 16 they'll have to be designed to the standard for  
 17 those things. It's the same design standard  
 18 that would be in other more earthquake-prone  
 19 areas of the country. It has to comply with  
 20 those elements. We can get to those standards.  
 21 We can talk about that with that person, but  
 22 it's going to have to comply with those.  
 23 MS. SMITH: Okay. And I'd also like  
 24 to urge the Board to consider the doctrine of  
 25 unclean hands when trying to --

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1 MR. HALL: I object. That's not a  
 2 question.  
 3 MR. COLLINS: That's correct. The  
 4 objection is sustained. You must focus on  
 5 questions for this witness.  
 6 MS. SMITH: Okay. So --  
 7 MR. COLLINS: There'll be other days  
 8 when there is public hearings with public  
 9 comments and those are the days when that will  
 10 be possible.  
 11 MS. SMITH: Okay. So how much longer  
 12 do you-- and I know you can't make a real  
 13 personal or a real accurate, but how much longer  
 14 do you think that the citizens that you  
 15 indicated in your testimony will be coming back  
 16 here?  
 17 THE WITNESS: I don't understand the  
 18 question. How many more meetings?  
 19 MS. SMITH: Yeah. Well, let me just  
 20 change that. If I can just take a deep breath  
 21 and change my whole question.  
 22 How come you changed the plans?  
 23 Because you keep on saying you're changing them  
 24 for the citizens, for listening to comments.  
 25 How come we're still going through this if you

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1 really care what the public says?  
 2 THE WITNESS: Well, obviously there's  
 3 sentiment that you don't want it at all. I get  
 4 that. But based on the comments that we heard  
 5 from the public, from the Board, that were  
 6 specific, that we can control with the project,  
 7 not without a project, here are some of the  
 8 things that we think are enhancements over some  
 9 of the concerns that were brought up.  
 10 Does it take care of every concern?  
 11 No. I mean, obviously most of the concerns is  
 12 don't build it. I understand that. But those  
 13 elements that we can move and we can move  
 14 around, we have. We've taken those and enhanced  
 15 that. I understand your viewpoint and what you  
 16 want to see in there, but we're trying to  
 17 make -- if this project is going forward, here's  
 18 enhancements that we've made to it.  
 19 MS. SMITH: Okay. Thank you.  
 20 CHAIRMAN BOXER: Thank you, ma'am.  
 21 Anybody else? Come on up, sir.  
 22 MR. YINGLING: Good evening.  
 23 MR. COLLINS: Sir, were you previously  
 24 sworn?  
 25 MR. YINGLING: Yes.

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1 MR. COLLINS: Thank you. You're still  
 2 under oath. Please just state your name.  
 3 MR. YINGLING: Jeff Yingling,  
 4 Y-i-n-g-l-i-n-g.  
 5 J E F F Y I N G L I N G, having  
 6 been previously duly sworn, was examined and  
 7 testified as follows:  
 8 MR. YINGLING: I have a couple  
 9 questions for you. The ballasts themselves that  
 10 are now being proposed for the panels, what size  
 11 are they in relation to the panel size?  
 12 THE WITNESS: The actual ballasts  
 13 themselves?  
 14 MR. YINGLING: The ballasts. Are they  
 15 concrete? What type of weight do they have?  
 16 And are they surface mounts? Foundation mounts?  
 17 THE WITNESS: There's actually two--  
 18 on each post that comes down, there's two trays,  
 19 twin trays. Combined they're 4 foot long and  
 20 1.92 foot wide. And inside those twin trays are  
 21 little segments of concrete ballasts that are  
 22 placed inside of that to make basically a  
 23 4-foot-long ballast. Two sets, or twin,  
 24 4-foot-long sets of ballasts. If I add just the  
 25 size of that and the normal weight of concrete,

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1 they're about a thousand pounds each set.

2 MR. YINGLING: In previous meetings we

3 discussed the amount of cedar trees that are

4 being removed.

5 Did you establish what the count was

6 on that?

7 THE WITNESS: The physical number?

8 MR. YINGLING: Yes.

9 THE WITNESS: No, I just have physical

10 area, acres. I didn't go out and count

11 individuals trees for that.

12 MR. YINGLING: And how many acres

13 would that be?

14 THE WITNESS: Well, I don't have it

15 broken out that way. We have a total

16 disturbance of 51 acres for the whole site over

17 there, but I don't have it broken out to regions

18 of each individual areas of trees that would be

19 removed from there. Some areas are truly--

20 MR. YINGLING: Are you stating that 51

21 acres of trees are being removed or--

22 THE WITNESS: No, that's total area.

23 So that would include areas like this field.

24 There's some type of product in there. I mean,

25 I don't think it's hay. Some sorghum or

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1 something that's in there now. So that wouldn't

2 have cedars to be removed. This area is

3 primarily cedars with some open areas.

4 MR. YINGLING: That was the primary

5 area?

6 THE WITNESS: Yeah. And this area is

7 about 25 acres. Okay? And, again, there's a

8 couple of hardwoods. We have those in the

9 count. There's a couple of open areas in this

10 area, but I'd say it's primarily a cedar wooded

11 area.

12 MR. YINGLING: Okay. The 5-foot

13 aisles that are now being proposed, how do you

14 plan on maintaining them or servicing the panels

15 with such a narrow area?

16 THE WITNESS: They just have smaller

17 equipment that would go up and down there to

18 maintain those areas. For maintenance, for

19 taking down a panel that had to be taken out.

20 MR. YINGLING: Okay. Just to clarify,

21 Mr. Hall made a statement earlier that you're

22 not seeking approval based on the plan being

23 presented. If that's the case, why is that plan

24 being presented?

25 THE WITNESS: I don't know what

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1 context that was in.

2 MR. HALL: That's a legal question. I

3 meant that particular piece of paper is not

4 something we're asking the Board to approve. I

5 didn't mean the layout. We're asking the layout

6 to be approved. The layout is on the other--

7 MR. COLLINS: It's a technical

8 objection. It was a technical objection. It

9 has to do with these particular --

10 MR. HALL: Pieces of paper.

11 MR. COLLINS: -- exhibits, yes.

12 MR. YINGLING: So the layout is

13 being --

14 MR. COLLINS: They are not the -- they

15 are not the site plan drawings that are in a set

16 of drawings like this. They are graphic

17 exhibits for tonight's presentation.

18 MR. YINGLING: But essentially this is

19 what's being proposed even though it's not in

20 the blueprint format.

21 MR. COLLINS: That's correct. But

22 there's no aerial photo, for example, in these

23 plans. They're technical exhibits.

24 THE WITNESS: The reverse of that,

25 though, the detailed plans, are submitted. This

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1 is just a representation of taking layers of

2 those plans and putting it on this exhibit.

3 MR. YINGLING: Okay. One just last

4 comment or statement, if I may. Builders

5 typically when they present a project like this

6 tend to oversize the project and eventually

7 scale back based on public comment, Board

8 review. Bridgewater Commons, as an example, was

9 originally 1.2 million square feet. It was

10 built out at between, like, 8 and 900,000 square

11 feet with options to have future expansions.

12 The front field that's on here now,

13 Mr. Hall indicated that that was going to remain

14 as open field area. Are there any plans to

15 expand into that area in the future?

16 THE WITNESS: No. No, not in any of

17 our designs. We basically took the same amount

18 of energy and rearranged it in this location.

19 MR. YINGLING: Okay.

20 THE WITNESS: We have no plans in this

21 application for fields or arrays in that area.

22 MR. YINGLING: Okay. The application

23 currently, to my understanding, was issued

24 incomplete to the Board as it does not have the

25 stormwater runoff application or information



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1 that goes along with a normal application  
 2 process. The application is still currently in  
 3 conflict with the zoning ordinance.  
 4 And at this time I would just ask the  
 5 Board to either --  
 6 MR. HALL: I have an objection.  
 7 That's not a question.  
 8 MR. COLLINS: Sir, it's not a-- your  
 9 time now is to ask questions of Mr. Kennedy.  
 10 MR. YINGLING: Okay. Just one final  
 11 statement for Mr. Hall. He indicated that his  
 12 client's time is being wasted because of the  
 13 number of meetings being held and the amount of  
 14 questions--  
 15 MR. HALL: I don't think that's a  
 16 question for this witness.  
 17 MR. COLLINS: Sir, you have to ask  
 18 questions of Mr. Kennedy.  
 19 MR. YINGLING: Okay. That's it for  
 20 now. Thank you.  
 21 CHAIRMAN BOXER: Sir, come on up.  
 22 How many more do we have? Is that it?  
 23 MR. CIRONA: Joseph Cirona.  
 24 MR. COLLINS: Mr. Cirona, have you  
 25 been previously sworn?

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1 MR. CIRONA: Yes.  
 2 MR. COLLINS: You understand you're  
 3 still under oath?  
 4 MR. CIRONA: Yes.  
 5 MR. COLLINS: Just state your name and  
 6 address.  
 7 MR. CIRONA: Joseph Cirona,  
 8 C-i-r-o-n-a, Country Club Road.  
 9 J O S E P H C I R O N A, having been  
 10 previously duly sworn, remained under oath and  
 11 testified as follows:  
 12 MR. CIRONA: My question, Mr. Kennedy,  
 13 first question, with this higher concentration  
 14 of the panels, isn't that more of a dense  
 15 development with the panels close together?  
 16 Isn't it a higher dense of development?  
 17 THE WITNESS: Again, I'm going to say  
 18 it's rearranged. Before the panels were four  
 19 high by six long. Now they're only one high and  
 20 rotating them and five long. So they take each  
 21 array or series of attachments that will be in  
 22 one series of arrays are physically smaller, but  
 23 they're closer together.  
 24 MR. CIRONA: Closer together. So  
 25 wouldn't you say that's more dense development?

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1 THE WITNESS: Again, if I was--  
 2 MR. CIRONA: I'm not trying to play on  
 3 words.  
 4 THE WITNESS: I don't know. Again, if  
 5 I take a circumference around here or take that  
 6 area and add up all the panels, the nonpanel  
 7 area versus the panel area, I didn't do a  
 8 calculation if that density is different than a  
 9 six in this density. Because this has more  
 10 panels per row even though opposing rows have  
 11 less distance to each other.  
 12 MR. CIRONA: Well, I would call that a  
 13 higher density.  
 14 THE WITNESS: I don't know that.  
 15 Mathematically I don't know that.  
 16 MR. CIRONA: Okay. So isn't there a  
 17 greater cost difference in the way you're  
 18 presenting this now as to prior?  
 19 THE WITNESS: I didn't look at that.  
 20 I don't know that. I didn't do a cost estimate  
 21 of the old plan versus the new plan to see if  
 22 there was a savings cost. I didn't look at that  
 23 in the design.  
 24 MR. CIRONA: Okay. My next-- having  
 25 lived there for 41 years, I've walked the

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1 property a lot.  
 2 Would you say that the flow of  
 3 rainwater, runoff, runs from north to south,  
 4 southeasterly, towards the pond?  
 5 THE WITNESS: Again, the best way I  
 6 can describe it is there's a high point right  
 7 where my pointer is at the end of Somerset. The  
 8 water that is to the southeast of that offloads  
 9 towards the pond.  
 10 MR. CIRONA: Okay.  
 11 THE WITNESS: Okay? The water that--  
 12 or the area that is to the southwest of that  
 13 offloads this direction towards the stream--  
 14 MR. CIRONA: And it basically comes  
 15 south.  
 16 THE WITNESS: Correct. And it comes  
 17 into two different watersheds: One comes into  
 18 Chambers Brook on the other side of the pond; it  
 19 comes to this other brook that comes down by the  
 20 Bridgewater border and comes into--  
 21 MR. CIRONA: Right.  
 22 THE WITNESS: So the high point is  
 23 here--  
 24 MR. CIRONA: Right, and --  
 25 (Indisciperable crosstalk; reporter

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1 requests one speaker)

2 THE WITNESS: The field towards

3 Somerset flows in a southwest direction-- or

4 southeast direction, I'm sorry, and then

5 westerly it flows in a southwest direction.

6 MR. CIRONA: Right. So we're

7 basically agreeing that it flows in a southerly

8 direction. Southeast, southwest.

9 THE WITNESS: Yeah.

10 MR. CIRONA: Okay. Now, the berm is

11 going to be you said, what, a thousand feet

12 along the north end?

13 THE WITNESS: Correct.

14 MR. CIRONA: Now, doesn't that have a

15 reverse effect as to preventing water from

16 flowing naturally? Where does that water go?

17 It's diverted with the berm.

18 THE WITNESS: That's a fair question.

19 And at Somerset Terrace, in that area where the

20 berm is, okay, that's the high point of the

21 property. So along the berm the water that will

22 be around the berm on the residential side, that

23 will flow down to, I guess, the east corner of

24 the berm and then flow across there. There'll

25 be a swale along that area. Likewise, there'll

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1 be a swale along the western side of that berm

2 that will flow down towards this stream

3 corridor.

4 So it will have to be matched. We'll

5 have to make sure the berm is stabilized and

6 will be--

7 MR. CIRONA: Well, I understand what

8 you're saying. What I'm alluding to is that the

9 water flowing naturally in heavy storms or

10 whatnot, that berms acts then as a block,

11 doesn't it?

12 THE WITNESS: Again, we're at the top

13 of the watershed. If it was farther down in the

14 middle of a field, then it would be worse. But

15 it's still -- any berm you put up--

16 MR. CIRONA: There's a lot of water

17 comes from north of that berm.

18 THE WITNESS: And we're going to have

19 to match that.

20 MR. CIRONA: That's it.

21 CHAIRMAN BOXER: Thank you very much,

22 sir.

23 Anybody else?

24 MR. GRAVEN: Bob Graven, Country Club

25 and Meadow.

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1 MR. COLLINS: Mr. Graven, were you

2 previously sworn in this matter.

3 MR. GRAVEN: Yes.

4 MR. COLLINS: You're still under oath.

5 Go ahead.

6 B O B G R A V E N, having been

7 previously sworn, remained under oath and

8 testified as follows:

9 MR. GRAVEN: Thank you for a smaller

10 footprint. Thank you very much.

11 Let's go on. What's there now, I see,

12 is a continuation of your "Lamington Road"

13 appearance and--

14 CHAIRMAN BOXER: Mr. Graven, could you

15 just talk into the mic, please? We're having

16 trouble hearing you. Thank you very much.

17 MR. GRAVEN: The previous

18 presentations had a "Lamington Road" appearance

19 that you're trying to maintain.

20 Would the appearance of a Lamington

21 Road be an open field on both sides of the road?

22 THE WITNESS: Well, certainly this

23 layout, because the field wouldn't be disturbed,

24 would have more of that Lamington feel than the

25 old layout. I was trying to invoke something

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1 new into the landscape to try to make that

2 field. In this case I'm doing nothing in the

3 landscape in that front field so it's going to

4 be what it is today.

5 MR. GRAVEN: There are a few trees

6 along the southern edge there of Meadow Road--

7 yeah, the southern edge of the property.

8 THE WITNESS: Right where my pointer

9 is?

10 MR. GRAVEN: Correct. And there's

11 trees to the right between Country Club Road and

12 287, that entire area where the pond is full of

13 trees. There's also trees on Country Club Road

14 coming to the south from the northeast corner,

15 from there, on the west side of Country Club

16 there's trees coming down. These trees are on

17 this side here. And where the barn was, that's

18 now a little open spot.

19 Could trees be completed along this

20 edge of Country Club Road such that there's more

21 shielding of the entire site with vegetation?

22 THE WITNESS: Yes, it can be. I mean,

23 as we all know in Bedminster is you let fields

24 go for a number of years, this is what you get.

25 You get cedars that grow up. And if we look at

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1 aerial photos from 10 or 20 years ago, these  
 2 areas are thinned out less than they are now.  
 3 So if you let those areas go and don't hay them,  
 4 they'll naturally get cedar growth that will  
 5 occur.  
 6 MR. GRAVEN: Well, the only place  
 7 we're haying right now is down in this part of  
 8 the corner and here where the house and-- this  
 9 is the part where it's being hayed.  
 10 THE WITNESS: Yeah, they're also doing  
 11 something in this field--  
 12 MR. GRAVEN: That's in--  
 13 THE WITNESS: -- but I don't think  
 14 it's hay. I think it's sorghum or something  
 15 else. I'm not sure what it is. It's something  
 16 else.  
 17 MR. GRAVEN: The vegetation you  
 18 propose is called "meadow mix." Meadow mix is a  
 19 mixture of wheats -- small wheats, medium  
 20 wheats, high wheats -- which are also called  
 21 flowers or wildflowers by those who like wild  
 22 weeds. To maintain the farming and to maintain  
 23 our hay, we fight weeds all day, every day.  
 24 It's an expense. It's an enormous expense of  
 25 time and effort and energy.

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1 Could you not plant meadow mix and  
 2 plant something else even if it's just hay or  
 3 something that doesn't have a fire ladder result  
 4 and the growth of the higher weeds and/or  
 5 wildflowers?  
 6 THE WITNESS: Underneath the panels  
 7 are being proposed a mix that has been  
 8 successful on other properties under panels that  
 9 don't grow too high, that need heavy maintenance  
 10 but still allow good ground cover. That's the  
 11 balance that you're looking for here and that's  
 12 what we're proposing. If there's a different  
 13 mix that you know of that works better in there,  
 14 show it to us. We'll look at it.  
 15 MR. GRAVEN: Bluegrass.  
 16 THE WITNESS: Bluegrass is a little  
 17 different.  
 18 MR. GRAVEN: Bluegrass grows maybe 6  
 19 inches; rye grows maybe 6 feet. On the adjacent  
 20 property, I have two patches: One with  
 21 bluegrass and I get 6 inches of growth; and  
 22 right next to it I have ryegrass and I get 6  
 23 feet of growth. And next to that on winchite  
 24 (ph), which now have, fortunately, decayed and  
 25 produced very good soil, I can get 6, 7, 8, 10

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1 feet of weeds -- oh, sorry, meadow mix.  
 2 It's not a good solution. It's a fire  
 3 hazard. I've spent an enormous amount of time  
 4 and effort and energy to keep that-- prevent  
 5 those weeds from growing and overtaking and  
 6 blowing into my fields.  
 7 THE WITNESS: So, again, if we can  
 8 talk off-line about a mix that you think is  
 9 good, we'll show it to our people to see if  
 10 that's something that we can use there.  
 11 MR. GRAVEN: So to confirm, it is  
 12 possible to have trees and more shielding rather  
 13 than the meadow-- rather than the Lamington Road  
 14 look of an open field to help with the shielding  
 15 from a two-story house that doesn't exist.  
 16 You've done the analysis of housing that does  
 17 exist. What about for housing that does not  
 18 exist on adjacent properties at a height of 35  
 19 feet, which is the height of the-- actual height  
 20 of the zoning for now for residential even  
 21 though this isn't residential?  
 22 THE WITNESS: It can be-- again, if  
 23 the Board asks us to look at those types of  
 24 things, we can look at that. And it's a balance  
 25 of how they want that viewscape along the two

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1 road systems as opposed to an open meadow versus  
 2 having areas that are going to grow up and be  
 3 cedars.  
 4 MR. GRAVEN: Thank you.  
 5 CHAIRMAN BOXER: Thank you,  
 6 Mr. Graven.  
 7 Okay. We haven't had a chance to  
 8 solicit my colleagues. Thanks, Mr. Kennedy.  
 9 Mr. Strakhov, I'd like to just get  
 10 your thoughts and any questions that you might  
 11 have. And then I'd like to just go down the row  
 12 here.  
 13 BOARD MEMBER STRAKHOV: Yeah, I don't  
 14 have any questions for Mr. Kennedy, or do you  
 15 mean any comments?  
 16 CHAIRMAN BOXER: Any comments of  
 17 Mr. Kennedy or otherwise.  
 18 BOARD MEMBER STRAKHOV: Oh, okay.  
 19 Well, otherwise my only other thought is that  
 20 somehow I have this feeling that without the  
 21 stormwater management, this is not a complete  
 22 application. That's just my view. And I would  
 23 really like to see a complete application before  
 24 we proceed further.  
 25 CHAIRMAN BOXER: Mr. Rodelius?

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1 BOARD MEMBER RODELIUS: Mr. Kennedy,  
 2 the ballasts are two per panel? Is that--  
 3 THE WITNESS: Let me--  
 4 BOARD MEMBER RODELIUS: How many  
 5 panels are supported by the ballast system?  
 6 THE WITNESS: All right. Let's go  
 7 back and look at each one of these elements.  
 8 And this detail that's on the plan, that's  
 9 Exhibit A-14, there's two posts.  
 10 BOARD MEMBER RODELIUS: Right.  
 11 THE WITNESS: The bottom of the posts,  
 12 there's two trays per post.  
 13 BOARD MEMBER RODELIUS: No, I'm  
 14 talking about the panels. How many panels does  
 15 that support?  
 16 THE WITNESS: Five panels, one hop.  
 17 So five panels.  
 18 BOARD MEMBER RODELIUS: Okay. So you  
 19 have roughly-- well, I have to do the math, but,  
 20 okay.  
 21 You know, as far as other comments, I  
 22 think back in March we asked the applicant to  
 23 come forth with stormwater management plans  
 24 before we continue. They were supposed to have  
 25 a meeting. I guess that was not done.

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1 MR. HALL: There was a meeting, yes.  
 2 BOARD MEMBER RODELIUS: Yeah, but the  
 3 plans were never produced.  
 4 MR. HALL: Because they--  
 5 BOARD MEMBER RODELIUS: I have a  
 6 problem with the stormwater management not being  
 7 here, also. I think it's very difficult to--  
 8 for the objectors, for the Board to get a grasp  
 9 of what's going on and to be able to question  
 10 and look at the complete project. You know, it  
 11 seems like we're doing it piecemeal. So, you  
 12 know, I mean for a year it just seems like  
 13 there's no plans. It seems very disjointed.  
 14 You know, I guess I have a couple  
 15 other comments, too, maybe. No, that's it for  
 16 now.  
 17 CHAIRMAN BOXER: Thank you.  
 18 Mr. Stewart.  
 19 BOARD MEMBER STEWART: Well, I have a  
 20 few comments and questions, too, but I think I'm  
 21 just going to stick with the common theme of the  
 22 stormwater management plan. And not having it,  
 23 it almost seems senseless to go on. It seems  
 24 incomplete to me.  
 25 BOARD MEMBER DiGIOVINE: I have a

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1 question for Ron.  
 2 Ron, when you submitted those plans on  
 3 May 16th, which were revised plans, did you  
 4 include a new stormwater management plan in  
 5 those plans that are sitting there on the desk?  
 6 THE WITNESS: No.  
 7 BOARD MEMBER DiGIOVINE: So you  
 8 submitted to us plans for a completely revised  
 9 project with the old stormwater management plan  
 10 included in that?  
 11 THE WITNESS: Yes.  
 12 BOARD MEMBER DiGIOVINE: Okay. So I  
 13 kind of feel that's submitting something that's  
 14 not-- you know, it's incomplete. It's  
 15 erroneous. It doesn't make a lot of sense in my  
 16 mind to do that.  
 17 So my feeling at this point is that  
 18 there have been so many changes to your existing  
 19 project. Mr. Ferriero sent-- did a seven-page  
 20 review of your submitted plans, revised plans,  
 21 on May 16th. And in that seven-page review, he  
 22 listed dozens of questions, details, information  
 23 that he might need to get to make-- or the Board  
 24 might need to get to make a more informed  
 25 decision.

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1 So I think there's just so much more  
 2 to get that at this point we really need that  
 3 information. And if the stormwater plan helps  
 4 answer some of this, that might be helpful.  
 5 CHAIRMAN BOXER: Thank you.  
 6 Yeah, I mean, I think maybe I can try  
 7 to summarize my own thoughts. You know, to me  
 8 it's not like a better, it's just a different  
 9 plan. The problem is for me, like my  
 10 colleagues, I'm a little bit lost right now. I  
 11 understand that the general nature of the  
 12 application is still a solar generation  
 13 facility, but I think not having-- you know, I  
 14 think there's a chain of events here. Plans  
 15 being submitted with old stormwater management  
 16 information, no stormwater management  
 17 information, months away from potentially having  
 18 it done. We have a meeting with the engineers.  
 19 We thought we would see it at some point. We  
 20 haven't.  
 21 You've chosen to revise the plans,  
 22 which is perfectly fine. It's your prerogative  
 23 to do so. But as we sit here, we're still being  
 24 guided by it's a preview. It's not quite a  
 25 plan. I'm not sure what we're trying to do

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1 here. And I really think we've got to get to--  
 2 in order to help you get this moving, we don't  
 3 want to be here any longer than we have to, but  
 4 we're also not going to be in a position to-- we  
 5 don't want to be placed in a position to hear a  
 6 case and render an opinion without enough  
 7 information. And I think that's what you're  
 8 placing us in.

9 So I'll mention it to you,  
 10 Mr. Collins. I mean, from my point of view,  
 11 this plan still hinges on needing a stormwater  
 12 management plan. And I don't believe it's  
 13 acceptable to move forward unless we have a  
 14 stormwater management plan that's presented to  
 15 our town engineer so he can guide us. Right now  
 16 we have nothing.

17 MR. COLLINS: Yeah, why don't we-- why  
 18 don't we get some dates, Mr. Hall, where -- why  
 19 don't you suggest a date. Tell us a date out in  
 20 time on which you're certain that Mr. Kennedy  
 21 and Mr. Moschello could provide their stormwater  
 22 management plan and the infiltration  
 23 calculations to Mr. Ferriero at least 21 days  
 24 before a public hearing.

25 So my thought is maybe you're looking

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1 at submitting something in September and you'll  
 2 try to get on for the October public hearing.  
 3 But you've got to get it to Paul at least 21  
 4 days before that public hearing. And I really  
 5 think you have to meet with Paul and Mr. Miller  
 6 from Princeton Hydro and Mr. Moschello either  
 7 before that submission or with more detail  
 8 before you submit.

9 So you need some time for preparation  
 10 of the drawings, meeting with Paul and  
 11 Mr. Miller, and submission. And Mr. Ferriero  
 12 can do a full review on that set of plans and  
 13 then continue the public hearing.

14 So do you want to get a date from Ron?  
 15 MR. HALL: Well, I can't be certain of  
 16 any date. I mean, I don't know.  
 17 Mr. Kennedy?  
 18 THE WITNESS: Again, depending on the  
 19 results of this, but I would say that the case  
 20 that I'd look at now is Labor Day.  
 21 MR. COLLINS: For submission?  
 22 THE WITNESS: For submission, yeah.  
 23 MR. COLLINS: So that's 30 days. No,  
 24 that's not quite 30 days.  
 25 MR. HALL: And we will do that. I

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1 mean, there's no guarantees. But if you're  
 2 going to adjourn it --  
 3 MR. COLLINS: You can always schedule  
 4 it, carry to a date certain, you can postpone it  
 5 to a date. We can have a meeting for that night  
 6 for that purpose or for other cases to postpone  
 7 it. But I really think we need to fix a date  
 8 where Ron and Mr. Moschello are going to get  
 9 this information to Paul. And I think since you  
 10 were supposed-- you know, you had that one  
 11 meeting with Mr. Ferriero and I think Mr. Miller  
 12 from Princeton Hydro and Mr. Moschello or  
 13 Mr. Kennedy. Have another one.

14 MR. HALL: Oh, I agree, there should  
 15 be another meeting. One other thing, though. I  
 16 mean, I totally hear you on storm --  
 17 CHAIRMAN BOXER: You're not going to  
 18 be able to make any comments right now. You'll  
 19 have to wait. I'm sorry.  
 20 Go ahead.  
 21 MR. HALL: Oh, I'm sorry. The one  
 22 question-- one request, and I appreciate that  
 23 and I think that's the best we can do, but as I  
 24 said before -- and you heard from some of the  
 25 public questions. The solar panel expert-- I

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1 understand you're saying the plan, well, it  
 2 might change. The panels aren't going to  
 3 change. We have that person lined up. We'd  
 4 like to present him.

5 CHAIRMAN BOXER: I don't agree. I'm  
 6 sorry, I just don't agree. I don't think this  
 7 case has been particularly well organized and  
 8 it's making it difficult for this Board to even  
 9 follow it. And until we have some organization,  
 10 it's very difficult for us to advance this.

11 It's not our problem. We're not  
 12 creating it. We started with a case that's  
 13 completely different. We started with a Disney  
 14 World presentation. We started with Ron Kennedy  
 15 coming in here. We went through a presentation  
 16 that, frankly, doesn't apply. We thought we  
 17 were going to get stormwater management. We  
 18 didn't. Now we have a revised plan. We still  
 19 don't have stormwater management and we just  
 20 keep going in circles.

21 BOARD MEMBER RODELIUS: And you heard  
 22 Mr. Kennedy say that he's never been before this  
 23 Board without a stormwater management plan on  
 24 prior applications.  
 25 CHAIRMAN BOXER: And you submitted a

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1 plan with an old stormwater management plan.  
 2 MR. HALL: And we explained that.  
 3 CHAIRMAN BOXER: The whole thing is  
 4 ridiculous, frankly.  
 5 MR. HALL: We submitted a plan with  
 6 the application. It's not like we submitted  
 7 with nothing.  
 8 CHAIRMAN BOXER: I mean, I think  
 9 you're bordering on almost a situation where it  
 10 is substantial. So you almost have to make some  
 11 choices here.  
 12 MR. HALL: It sounds like we're  
 13 looking at if we can carry to October.  
 14 MR. COLLINS: Yeah. Do you want to  
 15 go --  
 16 MR. HALL: The first Thursday. I  
 17 assume you're still on--  
 18 MR. COLLINS: Yeah, that's October  
 19 2nd.  
 20 MS. DONATO: Mr. Chairman, may I  
 21 address on that point? I know that Mr. Hall has  
 22 a conflict on the second Thursday. And I  
 23 totally rearranged my schedule from the time  
 24 that this application because I have a regular  
 25 planning board that I represent. I have to go

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1 back to them. I have to be there on the first  
 2 and the third Thursday. And given these  
 3 circumstances, I would ask that you put it on  
 4 the second Thursday.  
 5 MR. SASSO: Second Thursday.  
 6 MS. DONATO: Because it's hot-- it's  
 7 really unfair. We've spent all of this time  
 8 running around in circles and we're nowhere.  
 9 You're right. I don't blame you for feeling the  
 10 way that you do.  
 11 CHAIRMAN BOXER: I'm not saying we're  
 12 nowhere, but we certainly have some work to do.  
 13 MR. HALL: And we've missed a number  
 14 of months with no meetings. So I have to say  
 15 it's unfair. I mean, I disagree and--  
 16 CHAIRMAN BOXER: No, I understand.  
 17 MR. HALL: But I'm making that  
 18 request. And, frankly, I've never heard of a  
 19 schedule being changed at the request of an  
 20 objector where the applicant has his own--  
 21 CHAIRMAN BOXER: I understand.  
 22 Mr. Collins, how do you want to proceed with  
 23 scheduling? Do you have a sense?  
 24 MS. DONATO: If I may address the  
 25 point. There are several cases involving the

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1 reasonableness of a Board's decision as to  
 2 whether to adjourn a proceeding. And any  
 3 decision regarding scheduling is subject to the  
 4 same standard whether the Board's decision is  
 5 reasonable or not.  
 6 CHAIRMAN BOXER: I understand.  
 7 MS. DONATO: And to have a rule that  
 8 always goes with the applicant's attorney I  
 9 don't think is reasonable. That would be like  
 10 saying we never adjourn a case.  
 11 CHAIRMAN BOXER: Well, certainly I  
 12 think in the first year we tried to give  
 13 Mr. Hall the benefit. We thought the applicant  
 14 needed to have some flexibility. I think we're  
 15 a year into this. Maybe we need to work through  
 16 some alternate dates. I don't think we can  
 17 potentially do it the same day every month.  
 18 Maybe the attorneys can work through a schedule  
 19 that might work, but we're not going to be able  
 20 to satisfy everybody. I don't know how the  
 21 schedule's going to have to work here.  
 22 MS. DONATO: And your Honor-- your  
 23 Honor. Mr. Boxer, I also understand that the  
 24 planner for Mr. Forbes, it's a second Thursday  
 25 situation for him, too. He has difficulties,

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1 the same ones that I have on a Monday night-- I  
 2 mean on the first Thursday.  
 3 CHAIRMAN BOXER: Mr. Hall, how do you  
 4 feel about-- well, let's do one thing at a time.  
 5 We'll deal with that one next. Let's go back to  
 6 Mr. Collins.  
 7 MR. COLLINS: So I think we're agreed  
 8 that the submission of the revised plans shall  
 9 be-- the goal shall be by Labor Day, which is  
 10 early September. That would be enough to have  
 11 it at least 21 days before the October 2nd  
 12 meeting. The Board determines what's on its  
 13 agendas, and you've been reasonable as always in  
 14 determining your agendas.  
 15 Generally speaking, you do defer to  
 16 the applicant's attorney, not the objector's  
 17 attorney, for their schedules because they can  
 18 accommodate schedules by getting substitutes.  
 19 And this is -- first Thursdays is our regular  
 20 meeting night and second Thursday is the second  
 21 regular meeting night. So everybody in the  
 22 world knows that we meet those nights.  
 23 So the Chair has been very reasonable  
 24 about that always and is probably going to be  
 25 tonight.

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1 CHAIRMAN BOXER: Well, look, I don't  
 2 know what we could do. Look, if everybody  
 3 agrees, we can certainly alternate dates. I  
 4 don't think we could make this -- I think to be  
 5 fair to both of you, given the length of this  
 6 hearing, it's possible that we can alternate  
 7 dates if Mr. Hall would work with us on that.  
 8 And I'd be willing to certainly adjust the  
 9 schedules accordingly, but I certainly  
 10 understand your point.  
 11 So, Mr. Hall, think about that a  
 12 little bit.  
 13 MR. HALL: Okay.  
 14 CHAIRMAN BOXER: Maybe we can, again,  
 15 just work through that, try to be cordial to  
 16 everybody on the schedules.  
 17 I do want to ask Mr. Collins about one  
 18 other issue, if you wouldn't mind, and I'd like  
 19 to just discuss the ordinance a little bit and  
 20 maybe get your thoughts, Mr. Collins, on how  
 21 this ordinance applies before I give you my own  
 22 thoughts.  
 23 MR. COLLINS: Well, we don't have a  
 24 consent from Mr. Hall, but the objection to me  
 25 was not sufficient to convince me that the new

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1 ordinance wouldn't apply to this, what is deemed  
 2 to be a substantially revised application even  
 3 according to Mr. Hall.  
 4 What I disagree with is I don't want  
 5 you to dismiss this case or to carry out the  
 6 theory of Mr. Sasso that the whole prior set of  
 7 hearings is irrelevant to this case. I am  
 8 convinced that the whole set of prior hearings  
 9 is absolutely relevant to this case and must  
 10 remain intact in this case for the Board to be  
 11 able to make a proper decision.  
 12 So, in other words, this is a revised  
 13 application. It's still the application and it  
 14 should continue after tonight to another date  
 15 certain because we are not yet finished hearing  
 16 this case and this revised application, which is  
 17 probably a substantially revised application.  
 18 There's no magical requirement to  
 19 produce a revised application form when somebody  
 20 amends their application before a board. As  
 21 this Board well knows, we get amended plans on a  
 22 regular basis and we review amended plans on a  
 23 regular basis, even substantial amendments to  
 24 plans. And you have historically encouraged  
 25 people to revise their plans to comply more

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1 closely with your goals and objectives of your  
 2 ordinances.  
 3 So that's the historic nature of the  
 4 Board. I would recommend that you continue that  
 5 historic nature. You should not deem the  
 6 application as being dismissed. I don't even  
 7 think there's any authority to do that.  
 8 The applicant would like to proceed  
 9 with the revised plans. That's their  
 10 discretionary determination, and they've made  
 11 it. They've submitted 31 sheets of plans which  
 12 are very comprehensive in many respects. They  
 13 do use the old stormwater management diagrams  
 14 and drawings, but they do show stormwater  
 15 management basins and they do show how the  
 16 stormwater will be managed.  
 17 Mr. Ferriero is not yet satisfied with  
 18 that information, but that does not mean that  
 19 they can't present more information about it.  
 20 It actually means they should present more  
 21 information about it. So I think you should  
 22 deem the application as substantially revised by  
 23 the applicant by their own decision; that you're  
 24 not directing that to happen. That the  
 25 applicant has done that.

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1 And in the face of that substantial  
 2 amendment by the applicant, that the new  
 3 ordinance does apply to the application. And I  
 4 would urge you to make that motion and schedule  
 5 this matter for a date certain of October 2nd at  
 6 7 p.m. with no additional notices and with the  
 7 applicant being charged with the duty to produce  
 8 the stormwater management plans and reports and  
 9 the infiltration data requested by Mr. Ferriero  
 10 at least 21 days before that October 2nd  
 11 meeting.  
 12 CHAIRMAN BOXER: Okay.  
 13 MR. COLLINS: And to meet with  
 14 Mr. Ferriero, as well, and Mr. Miller or whoever  
 15 from Princeton Hydro.  
 16 CHAIRMAN BOXER: Okay.  
 17 MR. COLLINS: Is there such a motion?  
 18 CHAIRMAN BOXER: I make that motion.  
 19 MR. COLLINS: Is there a second?  
 20 BOARD MEMBER DiGIOVINE: Second.  
 21 CHAIRMAN BOXER: We'll do a roll call  
 22 vote.  
 23 BOARD SECRETARY: Mr. Strakhov?  
 24 BOARD MEMBER STRAKHOV: Aye.  
 25 BOARD SECRETARY: Mr. Rodelius?

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1 BOARD MEMBER RODELIUS: Aye.  
 2 BOARD SECRETARY: Mr. Boxer?  
 3 CHAIRMAN BOXER: Aye.  
 4 BOARD SECRETARY: Mr. Stewart?  
 5 BOARD MEMBER STEWART: Aye.  
 6 BOARD SECRETARY: Mr. DiGiovine?  
 7 BOARD MEMBER DiGIOVINE: Aye.  
 8 CHAIRMAN BOXER: Aye.  
 9 BOARD SECRETARY: Thank you.  
 10 CHAIRMAN BOXER: Thank you.  
 11 MR. COLLINS: So the case is carried  
 12 without additional notices to October 2nd, 2014.  
 13 Mr. Hall, can you confirm an extension  
 14 until the end of October 2014?  
 15 MR. HALL: Yes. It's been deemed  
 16 incomplete. I mean, you want the stormwater and  
 17 we'll do that.  
 18 CHAIRMAN BOXER: Thank you very much,  
 19 everybody.  
 20 Motion to adjourn?  
 21 BOARD MEMBER RODELIUS: I'll make that  
 22 motion.  
 23 BOARD MEMBER STEWART: Second.  
 24 BOARD MEMBER STRAKHOV: Second.  
 25 (Voice vote taken; unanimous approval

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1 to adjourn)  
 2 (Whereupon, the hearing is adjourned  
 3 to October 2, 2014, at 7:00 p.m.)  
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1 C E R T I F I C A T E  
 2  
 3 I, BRIDGET LOMBARDOZZI, Notary Public  
 4 and Certified Shorthand Reporter of the State of  
 5 New Jersey, do hereby certify that the foregoing  
 6 is a true and accurate transcript of the  
 7 testimony as taken stenographically by and  
 8 before me at the time, place and the date  
 9 hereinbefore set forth.  
 10 I DO FURTHER CERTIFY that I am neither  
 11 a relative nor employee nor attorney nor counsel  
 12 of any of the parties to this action, and that I  
 13 am neither a relative nor employee of such  
 14 attorney or counsel, and that I am not  
 15 financially interested in the action.  
 16  
 17 -----  
 18 BRIDGET LOMBARDOZZI,  
 19 Certified Shorthand Reporter  
 C.S.R. License No. XI01201  
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