

BEDMINSTER TOWNSHIP
LAND USE BOARD

IN THE MATTER OF: : TRANSCRIPT
: :
CASE: LUB# 12-015 (BOA) : :
KDC Solar SA55 LLC : OF
Solar Project : :
Country Club Road : :
Block 71.02, Lot 1 : PROCEEDINGS
Block 62, Lot 10 : :
Block 69, Lot 4 : :
_____ X

Thursday, October 3, 2013
Municipal Building
One Miller Lane
Bedminster, New Jersey
Commencing at 7:06 p.m.

BOARD MEMBERS PRESENT:

LANCE BOXER, Chairman
NICK STRAKHOV
CAROL GUTTSCHALL
GEORGE RODELIUS
KENNETH OLSEN

ALSO PRESENT:

TRINA LINDSEY, Board Secretary
FRANK BANISCH, Board Planner
PAUL W. FERRIERO, Board Engineer

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(908) 704-7361 (fax)

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1 APPEARANCES:

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3 THOMAS F. COLLINS, JR., ESQ.
Attorney for the Board

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5 McCARTER & ENGLISH, LLP

6 BY: GARY T. HALL, ESQ.
Attorneys for the Applicant

7

8 MICHELE R. DONATO, ESQ.
Attorney for the Objectors - Stop Somerset Hills
Power Plant

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10 RICHARD M. SASSO, ESQ.
Attorney for the Objectors - Steve and Sabina Forbes

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1 CHAIRMAN BOXER: Good evening everybody.

2 Sorry to keep you waiting. Just trying to make sure

3 we've got the right counts in the audience.

4 So, if you can bear with us we have got a

5 couple of administrative things to do. I think what

6 I'll do is maybe spend a few minutes and talk about the

7 process, the proceedings, where we think it's going,

8 just to give everybody a sense, because some of you are

9 here for the first time, I suspect, and others are

10 frankly here many times and you know how we construct

11 the meeting. So we're going to try just to go over

12 that.

13 Are you guys able to hear me now? Okay.

14 Sorry about that. So what we're going to do is a quick

15 couple of administrative items and then I'll spend a

16 few minutes talking about the procedure and the process

17 just so everybody understands it, and we hope to

18 proceed with this meeting. The biggest issue is the

19 attendance and the size. We have 150 people that we

20 can handle tonight. If it does go over 150 people it's

21 very likely that we will have to adjourn the meeting

22 and find -- we're probably going to have it in a school

23 if we go forward. So if we have a large crowd we're

24 going to have to make accommodations for the citizens

25 so that everybody can be a part of this. So we'll

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1 explain that in a couple of minutes, so if you can bear

2 with me. Can we do a roll call, Trina?

3 SECRETARY LINDSEY: Mr. Strakhov?

4 BOARD MEMBER STRAKHOV: Here.

5 SECRETARY LINDSEY: Ms. Guttschall?

6 BOARD MEMBER GUTTSCHALL: Here.

7 SECRETARY LINDSEY: Mr. Rodelius?

8 BOARD MEMBER RODELIUS: Here.

9 SECRETARY LINDSEY: Do I count Mr. Martin

10 as absent?

11 CHAIRMAN BOXER: Yes, he's going to recuse

12 himself.

13 SECRETARY LINDSEY: Mr. Martin is absent,

14 Mr. Stewart is absent. Mr. Olsen?

15 BOARD MEMBER OLSEN: Here.

16 SECRETARY LINDSEY: Chairman Boxer?

17 CHAIRMAN BOXER: Here. Fahey and Martin

18 are going to be recusing because of conflicts. Okay.

19 Open Public Meeting Statement, please?

20 (Whereupon, the Board secretary reads the

21 Statement into the record.)

22 (Pledge of Allegiance.)

23 (Other agenda items on record.)

24 CHAIRMAN BOXER: Tonight we're going to

25 specifically focus on KDC Solar. We just have a couple

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1 more items before we go through the meeting and we'll
2 explain the difference between meetings and hearings in
3 just a couple of minutes.
4 (Agenda items.)
5 CHAIRMAN BOXER: Correspondence is all
6 related to KDC, and these correspondences that we've
7 received have to do with interpretation and procedural
8 matters that we'll get to in a few minutes. We have no
9 Resolutions.
10 We do have a time for public comments. Let
11 me explain the public comments section. This is for
12 anything that's not on the agenda tonight, so if you're
13 here and you'd like to make a statement or come up and,
14 you know, if you have something to say about something
15 that's not on the agenda. So anything that's not on
16 the agenda, which is KDC, you can come up at this time,
17 tell us who you are, your address, your name and you
18 can come up and make a statement.
19 If it's about KDC we're going to talk about
20 how that evolves in a few minutes once we go through
21 the procedures. (No response.) Okay. Great. Seeing
22 none. Board member comments, anything from anyone?
23 (No response.)
24 (Agenda items.)
25 CHAIRMAN BOXER: So tonight we're going to

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1 start the process with KDC Solar. I thought I would
2 just make a couple of comments that hopefully will help
3 those of you that have not been here, and those of you
4 that have participated in these hearings maybe it's
5 just a refresh.
6 The very best thing that we all can do as
7 citizens is just participate, and I'll talk about that
8 in a couple of minutes. There are going to be very
9 strong opinions, and that's okay, on both sides, so we
10 ask a couple of things from the people that are here.
11 Every applicant that comes before us gets a fair
12 hearing, that's just the way it is, and you'd want it
13 yourself. So we ask as this evolves, however long it
14 takes, and we don't know how long it will take. We ask
15 that you stay informed and you perform your diligence.
16 You can read the website. We'll have meeting minutes,
17 we'll have recordings. It's being transcribed.
18 There's many forms of information that will be
19 available to people and we encourage you to stay aware
20 of what's going on.
21 You'll be given ample opportunity,
22 everybody will be given ample opportunity to speak,
23 cross-examine witnesses. If you're an Objector
24 bringing experts there will be a process that we will
25 follow, and I can assure everybody that you'll get

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1 plenty of opportunity to speak in a way that's
2 productive and with the civility that we've always
3 applied in this hearing room.
4 In every big case that we've ever heard
5 I've told people this: The best thing to do is just
6 stay involved. Everything is very transparent, and if
7 you come to the meetings, and if you pay attention to
8 the websites for scheduling, and if you can get copies
9 of the records there's going to be nothing hidden from
10 the audience. It's all available, just like we have
11 it.
12 So we encourage you to stay involved. The
13 hearing is recorded. The applicant has a court
14 stenographer, so there's going to be a written record.
15 We know that many of you come with signs and we think
16 that's fine, but I'm going to ask you that while you're
17 in the hearing room to keep the signs down. It's not a
18 protest, it's a hearing, and we treat it as that. And
19 you certainly will have your say, but in this hearing
20 room having the signs up it's just not going to work
21 because it's just not courteous, and it's not going to
22 be helpful, but you can certainly have the signs with
23 you and there's plenty of ways for you to demonstrate
24 your opinions.
25 With respect to the evening, before we get

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1 into the hearing we have to take some other
2 administrative actions that Tom Collins, and the
3 applicant, and potentially some of the Objectors will
4 come up and have a number of arguments about the
5 procedure, some of the notices. There might be some
6 defects in the process, we're not sure yet. We just
7 have to go through a little administrative work before
8 we can proceed into the hearing.
9 Once we are clear to proceed the applicant
10 will come before us and they will have the floor. We
11 don't know how long this will take. It will not be
12 solved in one meeting, but we don't know how many
13 meetings it will take. It will all depend on the
14 applicant and the Objectors and just how many witnesses
15 are being called and the cross-examination times, so
16 all we can do is promise that people will get a fair
17 hearing, and you'll get plenty of opportunity to speak,
18 and we'll just have to let the time take its course.
19 So with that, Mr. Collins?
20 MR. COLLINS: Thank you, Mr. Chairman. And
21 I just ask for any attorneys or persons who would like
22 to make an appearance for purposes of jurisdictional
23 objections to come forward and maybe Mr. Hall could
24 come forward and make an appearance for the applicant.
25 So if we can focus on the attorneys and the persons who

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1 are actually raising a jurisdictional objection to the
 2 hearing proceeding.
 3 MR. HALL: Just for the record, Gary Hall
 4 with the law firm of McCarter and English representing
 5 the applicant.
 6 MR. SASSO: Richard Sasso on behalf of
 7 Steve and Sabina Forbes, 31 W. Mountain Boulevard,
 8 Warren Township.
 9 MS. DONATO: Michele Donato on behalf of
 10 Stop Somerset Hills Power Plant, also known as Preserve
 11 Bedminster.
 12 CHAIRMAN BOXER: Great. Nice to have you
 13 all here. Thanks for coming.
 14 MR. COLLINS: And I know that -- are there
 15 any persons in the audience who are not represented by
 16 an attorney who are raising a jurisdictional objection?
 17 Now, we're not talking about the substance of the case,
 18 but a procedural jurisdiction.
 19 No other persons has raised their hand or
 20 stood, so I will turn to the two attorneys to please
 21 express the objections that you would like to express
 22 as to jurisdiction. I know you've written some
 23 letters, and one of you have, maybe both of you have,
 24 and I think you've copied Mr. Hall, and you've copied
 25 the Board, so we have a copy of your letters. You

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1 don't have to read them or repeat them any lengthier
 2 than you would like to, and if you want to raise any
 3 other objections please raise them now and let Mr. Hall
 4 address them, raise all of your objections, both
 5 attorneys, and then Mr. Hall you address all of their
 6 objections and let's see where they lie, where the
 7 issues lie.
 8 MR. SASSO: Mr. Chairman, members of the
 9 Board, Mr. Collins, thank you. Richard Sasso on behalf
 10 of the Forbes. My objection is one of jurisdiction in
 11 that this particular project, which you know, is a very
 12 large commercial project, specifically involves
 13 construction work done not just on the lots that are
 14 set forth in the plans, but also across or under Route
 15 287 with significant construction there, all the way
 16 over to the Bridgewater lot that Sanofi leases.
 17 Our law, and I cited the main case from the
 18 Appellate Division, Brower Development versus The
 19 Planning Board in 1992, they had a situation where
 20 someone was putting in a development, but one of the
 21 requirements of the development, or one of the things
 22 that was needed for the development was putting in an
 23 access driveway on a third-party's lot. And the Court
 24 looking at the MLUL with the specific purpose behind
 25 the statute, which is to let all citizens who can be

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1 impacted at all have notice of what the application is
 2 so that they be given the opportunity to exercise their
 3 due process, just like everyone else is doing here this
 4 evening, and challenge or participate in the hearings.
 5 In this particular case because it is such
 6 a large development I can see how it got dropped off
 7 because it's a line, but the fact of the matter is it's
 8 our position that the law requires that the Bridgewater
 9 people be noticed.
 10 Now, when looking at the 200-foot list, and
 11 I have not seen the affidavit, but the property owner
 12 200-foot list, that one piece that's in Bridgewater
 13 that is part of the Kirby property but located in
 14 Bridgewater Township does, in fact, have a 200-foot
 15 list, but what's really apparent is that the other
 16 citizens of Bridgewater were not notified, namely, the
 17 people within 200 feet of Sanofi.
 18 Now, my adversary takes the position that,
 19 look, it's not a big construction job, we're just
 20 running a line, et cetera, but I think that kind of
 21 defeats the purpose of the case that I cited and the
 22 Appellate Division logic, which is you have to have
 23 strict compliance with the notice requirements under
 24 the MLUL to give the citizens their fair opportunity to
 25 participate.

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1 If we proceed tonight I think that it
 2 jeopardizes the application. We know from a practical
 3 standpoint there are only five that are here tonight.
 4 And this kind of dovetails on top of the other argument
 5 by the Citizens Group, which I don't represent, but Ms.
 6 Donato does, and namely -- and being the parent of four
 7 I can appreciate this with the wife who's a sixth-grade
 8 teacher, it's school night in Bedminster. It's
 9 parents' evening to go and meet the teachers and be
 10 directly involved with their kids' education. So when
 11 the issue came up this morning I really thought it was
 12 somewhat of a no-brainer, but there is opposition to it
 13 and I know they've waited some time to get started, but
 14 isn't it better to err on the side of safety than go
 15 forward when it truly is a jurisdictional argument that
 16 could taint the entire proceeding?
 17 The other question that I have that perhaps
 18 Trina can answer, was the Clerk of Bridgewater Township
 19 notified? Because it's not on the list, which is a
 20 requirement under the MLUL, as well as your specific
 21 ordinance that you have on the site 13-703.4 requires
 22 that "Notice be specifically given to the clerk of any
 23 adjoining municipality when the property's located
 24 within 200 feet." Now, I haven't seen the affidavit,
 25 and perhaps Trina can enlighten us, or Gary, as to

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1 whether or not the clerk was notified, but if the clerk
2 was not notified that's yet another reason why this
3 should not go forward tonight. And quite frankly,
4 again, for the parents who can't be here who think it's
5 more important to take care of their kids' education it
6 would give them the opportunity at the next hearing to
7 participate. And secondly, perhaps we'll have more
8 members then to hear the application rather than
9 reading the transcript without the benefit of seeing
10 the witnesses testify. That's my position. I guess we
11 can find out whether or not the clerk was notified or
12 not.

13 MR. HALL: The clerk was notified. I have
14 a stamped receipt, so that's not an issue. I wouldn't
15 comment on anything else, but let's set that aside.

16 MR. SASSO: Okay. That issue, it's not on
17 the 200-foot list, but it was done. So it leaves us
18 with the same issue; namely, there's heavy duty
19 construction work that's essential to this project.
20 This whole project of putting three-thousand plus
21 posts, 3,361 piles in a bucolic area of a farm here in
22 Bedminster is a commercial project that is specifically
23 for the construction work and the feeding of major
24 amount of electricity that will satisfy Sanofi's -- a
25 hundred percent of their electrical needs, requires

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1 construction across -- under 287, all the way to
2 Sanofi, and it's only fair and I think legally proper
3 to notify those people in Bridgewater within 200 feet.

4 Plus, let's not limit ourselves to that,
5 because in the public notice that gets put in the
6 newspaper there are other people of Bridgewater that
7 would see that that's affecting them on that side of
8 the highway in the area of Sanofi. So it's not just
9 limited to the 200-foot radius, it's also the
10 publication that would give people notice in
11 Bridgewater to participate, if they so chose. Thank
12 you, Mr. Chairman.

13 CHAIRMAN BOXER: Thank you, Mr. Sasso. I
14 will make just a couple of comments and ask Mr. Collins
15 for some clarity on Brower Development versus The
16 Planning Board 1992. I will tell all of you that we
17 have considered the postponement request for tonight
18 because of the open school night, so let me reflect a
19 little bit. We asked this applicant to delay the
20 entire month of August because we felt that we didn't
21 have a quorum available and we did not want to start
22 the case and then have to potentially delay it because
23 members were not available or members were unable to
24 hear it. It was just going to be a very choppy month,
25 so we asked the applicant to delay for the month of

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1 August.

2 We also chose not to have the hearing last
3 month during Rosh Hashanah. We were asked by a number
4 of citizens and we all agreed that it was an
5 appropriate and respectful thing to do, and the
6 applicant again was willing to accept that. But in
7 truth there's going to be many, many nights ahead of
8 us, and the very best thing we can do is get started.
9 There's going to be conflicts, and if it's not in
10 Bedminster it may be in Bridgewater. And we can take a
11 look at the major conflicts, but we might run into some
12 like tonight where we have to proceed and hopefully
13 people will catch up, but I want everyone to understand
14 that we did give it due consideration.

15 Mr. Collins, could I ask you a little bit
16 about Brower Development versus The Planning Board
17 1992?

18 MR. COLLINS: I believe Michele will also
19 address the subject, and then Mr. Hall will address
20 this. So why don't we hear from Michele?

21 MS. DONATO: Thank you. Shall I stay here
22 or --

23 CHAIRMAN BOXER: You can stay wherever
24 you'd like.

25 MR. HALL: You're welcome to sit next to

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1 me. I won't bite. Not yet, maybe later.

2 MS. DONATO: Good evening, Mr. Chairman,
3 members of the Board.

4 CHAIRMAN BOXER: Nice to have you here.

5 MS. DONATO: I, too, join in all of the
6 arguments that were raised by Mr. Sasso. And I think
7 that they're very significant arguments. And it
8 reminds me of a sign that my accountant had on his
9 wall, "Why is there always enough time to do something
10 over again, but never enough time to do it right in the
11 first place?"

12 There is a significant element here that is
13 part of this property. This site would not be
14 developed but for its connection to the Sanofi site.
15 And, in fact, this applicant has taken the position
16 that this Kirby Farm is contiguous to the Sanofi site.
17 It somewhat challenges the physical facts, but
18 nevertheless there is a direct and symbiotic connection
19 between this application and the Sanofi site. Without
20 the Sanofi site this site would not be developed for
21 this purpose. It is a net-metered facility. So you
22 cannot separate the two.

23 Now, your engineer very aptly noted that
24 the applicant had not shown the connection between this
25 site and the Sanofi site. When that would be like

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1 saying, well, we're not going to show you the other
 2 part of this puzzle, why we are proposing this, and
 3 therefore we don't have to give notice. And I think
 4 that that's kind of a shell game that we should really
 5 avoid from this perspective.

6 I also, you know, would want to stress that
 7 in the Brower Case the driveway that caused the court
 8 to overturn the approval was a secondary access, it
 9 wasn't the primary access. So it wasn't even the major
 10 impact that a primary access would have.

11 Now, with respect to the question of the
 12 school night that's going on this evening. I
 13 understand that you, for reasons that were quite
 14 legitimate, you had to call off both the August hearing
 15 and the September hearing, but I don't think that those
 16 two decisions should impact this decision. This is
 17 something that, as pointed out by your planner, Frank
 18 Banisch in his report, really dramatically changes the
 19 entire zone and what this township really has been
 20 involved in the forefront in farmland preservation.
 21 And people should be allowed to know that that is
 22 happening. They should be allowed to be here. Many of
 23 you have probably had to read a transcript in the past
 24 and you know that you really lose a lot by listening --
 25 by just reading a transcript or listening to the tape.

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1 You can't really judge credibility. You can't really
 2 see the maps up while the witness is talking. It
 3 becomes a very, very disjointed kind of way to
 4 understand the record.

5 So, you know, we do think that it would be
 6 best to start off on the right foot, have the proper
 7 notice, let everybody know what's going on. I'm so
 8 pleased to hear of your transparency, and I can only
 9 say that I have noted it myself in attempting to get
 10 information and in dealing with this application. And
 11 in furtherance of that policy we hope that you would,
 12 number one, require the notice, and number two allow
 13 this matter to go forward when everyone can be here.
 14 Thank you.

15 CHAIRMAN BOXER: Thank you, Ms. Donato.
 16 Appreciate it.

17 MR. COLLINS: Mr. Hall, would you like
 18 to --

19 MR. HALL: I'll be brief, if I could. I
 20 would like to comment, though. Mr. Sasso's concern for
 21 Bridgewater residents is touching, but misguided. I
 22 mean, there's no secret, and the notice says, it does
 23 mention Sanofi. It says, "We're net metering for an
 24 office complex on the other side of 287." That was a
 25 published notice. We're not trying to hide anything.

Page 20

1 And, frankly, from what I hear, you'd have to be living
 2 in a cocoon the past six months to not know that we're
 3 coming here. It's been in the paper. There's a web
 4 page, we'll talk about that and another points, but
 5 it's no a secret. And Mr. Sasso says, "Heavy duty
 6 construction on the Sanofi site." I don't know where he
 7 got that from. We didn't say it. We're giving them
 8 electricity. We've got to run a line over there and
 9 maybe a little transformer or something, whatever
 10 Bridgewater requires -- (laughing from the public.) If
 11 we needed an approval from Bridgewater we'll get it,
 12 but we're not there yet. And it's not impacting
 13 anyone.

14 The Brower Development Case said, I gave
 15 you a letter, I don't know if you got to read it, I
 16 quoted from that case. The bottom line from the
 17 Appellate Division says, "It is clear that property
 18 owners located near the secondary roadway would be
 19 significantly affected by its construction and should
 20 have been afforded notice."

21 In building a road that's -- not only
 22 building it but it's going to have traffic, yeah,
 23 that's a whole different animal. Cars are not going to
 24 drive on a power line. Whatever gets in, a little bit
 25 of stuff goes in, the building will function as an

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1 office building as it did before. We're not building
 2 new roads or anything like that.

3 So I think it's -- the analogy is not
 4 there. I mean, I don't know where you draw the line
 5 once you go there, I mean, the statute says notice
 6 people within 200 feet of the property that's the
 7 subject of the application. It's this property. At
 8 the request of Mr. Ferriero we said, yeah, we'll show a
 9 line. There's going to be a line here. We haven't
 10 engineered it, because we're not there yet. We hope to
 11 get your approval then we engineer and do that. We
 12 have to deal with New Jersey Department of
 13 Transportation to go under the highway. Those are all
 14 things we'll have to do in the future. We're not
 15 there. We're not seeking approval for that, and we
 16 don't have plans showing any of that.

17 So I think, as I said, we've noticed in
 18 accordance with the statute. We have the list from
 19 Bridgewater. We have the list from your tax office.
 20 We noticed everybody. We publish in the paper. We
 21 explain what we're doing. It's net metered to serve an
 22 office building on the other side of 287. And as the
 23 Chairman noted we understand August, all right,
 24 September, Rosh Hashanah, and as I think the Chairman
 25 said, we didn't complain but we'd really like to get

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1 started now.

2 We're ready to go, and the Chairman

3 acknowledged we're not going to be done in one meeting.

4 We all know that. I mean, I've been doing this long

5 enough to know we're going to be here for a while. And

6 people, you know, people are always going to have

7 things why they can't come. They miss it, why the

8 transcript. And I'm sure Ms. Donato will be reporting

9 to her clients about whatever happens tonight. So I

10 don't see the reason not to proceed. Thank you.

11 CHAIRMAN BOXER: Thank you, Mr. Hall.

12 MR. COLLINS: Mr. Chairman, you have two

13 main requests before you: One, is jurisdictional

14 allegation that the notice is defective. I will help

15 you with that. I've reviewed the subject. The

16 attorneys were kind enough to send their letters and to

17 address the subject to you in writing.

18 It is an interesting argument, and a very

19 important subject whether the notice was sufficient.

20 My opinion is that it is sufficient under the Municipal

21 Land Use Law, and under the Brower Case for reasons

22 that are clear from the facts of this particular case,

23 as opposed to the facts of the Brower Case, and because

24 of the Municipal Land Use Law it's fairly clear that

25 the notice is to be for the property that is the

Page 23

1 subject of the application. It says so in Section 12B,

2 and the only application that is before this Board is

3 the application in Bedminster Township. And the only

4 application before this Board is the application

5 located in Bedminster Township for property located in

6 Bedminster Township. So the subject of the

7 application, all of that land that is the subject of

8 the application, was included within the list from both

9 Bedminster and Bridgewater that were requested by the

10 applicant and were served.

11 The newspaper notice does, in fact, provide

12 compliance with the Municipal Land Use Law for

13 newspaper notices as published by the applicant. That

14 does not mean that the subject of what will happen with

15 the electricity will be irrelevant in the proceedings.

16 They may very well be relevant and there may very well

17 be issues that will require additional information to

18 be submitted about the Sanofi property, but the notice

19 for purposes of compliance with the Municipal Land Use

20 Law and the case law is adequate and sufficient and

21 does comply with the case law.

22 And one of the distinguishing features from

23 the Brower Case is that in that case the actual

24 secondary driveway was brought back into the

25 application by the applicant during the course of the

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1 hearings as a specific request for approval of the

2 same, and they did not notice for that addition to the

3 application of additional property.

4 There is no proposal here for this land in

5 Bridgewater to be included within the property for the

6 purpose of the Bedminster approval. Therefore, notice

7 has been done in accordance with the Municipal Land Use

8 Law. The hearing can start if the Board wants to start

9 the hearing.

10 The next subject that you have to call is

11 whether you would like to grant the request of Ms.

12 Donato and Mr. Sasso for a postponement. That is a

13 matter that's within your discretion. You make that

14 decision based upon all the facts and circumstances,

15 and you must act in a manner that is reasonable.

16 I will point out to you that you have only

17 26 more days or so on the -- I'm sorry, 36 more days on

18 the time period for making a decision on a 120 day time

19 clock that arises from the requirements of the

20 Municipal Land Use Law. I'm sure the applicant will

21 work with you on extensions of that, but it is

22 important to try to start cases and try to finish them

23 within 120 days of their completeness. It rarely

24 happens on extensively complicated cases like this and

25 it probably won't happen in this case, but that is the

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1 time period that the statute says cases should be --

2 use variances should be heard within.

3 Another factor to consider in extensions is

4 whether there will be another night. The answer to

5 that is there absolutely will be another night, or at

6 least one, maybe many more. It will be many months.

7 And as a matter of fact their consider is that the

8 interested parties are substantially represented by

9 counsel, very competent counsel, Michele Donato and Mr.

10 Richard Sasso, who will be here to observe the case, to

11 present objections, to present positions, and many of

12 the other people here tonight are also here and able to

13 take their own positions as interested parties if

14 they're not represented by counsel.

15 So, there's nothing that in the law

16 prohibits you from starting the hearing tonight, and

17 for not postponing it, but you should vote on whether

18 you would like to postpone it because of the reasons

19 requested by the two attorneys and anyone who wrote or

20 to ask orally to the Board about postponing because of

21 back-to-school night. So the Board should really vote

22 on that.

23 CHAIRMAN BOXER: Thanks, Mr. Collins. You

24 know, in the question of postponement I think that we

25 have all looked at this very closely, and even though I

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1 understand the argument I think there will be many
 2 nights where there could be conflict and it's our view
 3 to take a vote, but it is our view that we should
 4 proceed forward. We have given this applicant enough
 5 delaying that -- we think we have really delayed this
 6 enough that we have to go forward. And if there is, in
 7 fact, no jurisdictional defects or no application
 8 defects then --
 9 (Public asks the Chairman to speak louder.)
 10 CHAIRMAN BOXER: If you guys can't hear me
 11 just let me know. What I was going to say is that
 12 we've given careful consideration of the idea of
 13 postponements, specifically for the arguments that Ms.
 14 Donato and Mr. Sasso mentioned, and it's our belief
 15 that we need to proceed forward. We've given this case
 16 the entire month of August and we delayed it a month
 17 because of the Jewish holiday, and there will be many
 18 nights and conflicts that we have to look at. It is
 19 our view that we're just going to have to live with
 20 that as this will go on for a number of meeting and we
 21 really don't know how long. I can promise all of you,
 22 though, that it is a substantial religious holiday or
 23 if there's a meaningful town event that we believe is a
 24 true conflict and there won't be adequate
 25 representation then that will be a very different

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1 issue.
 2 Let me ask Mr. Collins. Do we need to
 3 vote, Mr. Collins, on proceeding?
 4 MR. COLLINS: I just find in light of
 5 granting a postponement request or not.
 6 CHAIRMAN BOXER: And do we need a roll
 7 call?
 8 MR. COLLINS: A roll call will be good. So
 9 is there a motion to -- whoever wants to make a motion
 10 to grant or deny you should just pick which.
 11 BOARD MEMBER OLSEN: I make the motion.
 12 MR. COLLINS: So that's to deny the
 13 postponement request, Ken?
 14 BOARD MEMBER OLSEN: Yes.
 15 MR. COLLINS: Motion to deny the
 16 postponement request. Is there a second?
 17 CHAIRMAN BOXER: I second.
 18 SECRETARY LINDSEY: Who was the first?
 19 BOARD MEMBER OLSEN: I was.
 20 SECRETARY LINDSEY: Mr. Strakhov?
 21 BOARD MEMBER STRAKHOV: No.
 22 SECRETARY LINDSEY: Ms. Guttschall?
 23 BOARD MEMBER OLSEN: I'm sorry, how is the
 24 motion phrased?
 25 MR. COLLINS: Motion to deny the

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1 postponement request. Is that what you wanted, Ken?
 2 BOARD MEMBER OLSEN: Correct.
 3 MR. COLLINS: Nick, do you want to grant
 4 the postponement request?
 5 BOARD MEMBER STRAKHOV: No. I want the
 6 meeting tonight.
 7 MR. COLLINS: So this is a motion to deny,
 8 so a vote of yes would mean you're denying the
 9 postponement request.
 10 BOARD MEMBER STRAKHOV: Okay.
 11 MR. COLLINS: Then you want to vote yes on
 12 that?
 13 BOARD MEMBER STRAKHOV: Yes.
 14 SECRETARY LINDSEY: Ms. Guttschall?
 15 BOARD MEMBER GUTTSCHALL: Yes.
 16 SECRETARY LINDSEY: Mr. Rodelius?
 17 BOARD MEMBER RODELIUS: I want to vote yes,
 18 but I also want to point out that the applicant
 19 postponed the meetings also.
 20 UNIDENTIFIED PUBLIC VOICE: We cannot hear.
 21 BOARD MEMBER RODELIUS: I just said I want
 22 to proceed, but I just want to point out, too, that the
 23 applicant postponed for months this hearing, so...
 24 UNIDENTIFIED PUBLIC VOICE: So then why are
 25 you --

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1 MR. COLLINS: Ma'am, you're out of order.
 2 No speaking from the audience out of order.
 3 SECRETARY LINDSEY: Mr. Olsen?
 4 BOARD MEMBER OLSEN: Yes, I would like the
 5 meeting this evening.
 6 SECRETARY LINDSEY: And Chairman Boxer?
 7 CHAIRMAN BOXER: Yes.
 8 MR. COLLINS: The hearing will now start.
 9 And the applicant should make an opening statement, and
 10 if the interested party's attorneys would like to make
 11 an opening statement it might be helpful to shape this
 12 case.
 13 MR. SASSO: Excuse me, Mr. Collins, just
 14 from a housekeeping standpoint, when you say the
 15 hearing is to commence we have a dual application here:
 16 One, is for interpretation of the coverage ordinance of
 17 Bedminster versus an application for preliminary and
 18 final site plan. Traditionally, an application for an
 19 interpretation tells the applicant and the members of
 20 the public whether or not that particular variance is
 21 going to be a variance required by the applicant.
 22 MR. COLLINS: Mr. Sasso, I'm going to ask
 23 you to hold your horses a little bit. It is a good
 24 argument to make, but I'd like you to make that in your
 25 opening statement about the case, and add it to all the

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1 other statements that you would like to shape about
 2 what you intend to prove in the case. And then, but
 3 why don't you let Mr. Hall go first, and you, and then
 4 Ms. Donato about your substantive arguments about the
 5 case, including that argument. I don't think that's
 6 jurisdictional. I agree with you, though, you should
 7 bring it up.
 8 MR. HALL: Thank you. Actually, I was
 9 going to suggest that we deal with that initially as a
 10 separate procedure before I get into my opening
 11 statement. I will defer to the Chair.
 12 CHAIRMAN BOXER: It's fine with us.
 13 MR. HALL: Because I did have a
 14 conversation with Mr. Collins today about this, and the
 15 options were, and I said, well, do we want to do that
 16 first or we can do it at the end on the full record,
 17 and I've been leaning towards doing it first.
 18 CHAIRMAN BOXER: We're fine with that, if
 19 that's the way you want to proceed.
 20 MR. HALL: But he's leaning towards the
 21 full record, which makes sense to me as well. So I
 22 don't have a strong feeling --
 23 MR. COLLINS: I'm willing to hear arguments
 24 from all attorneys on the subject. My inclination
 25 after reading Mr. Sasso's letter is to recommend that

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1 the Board keep jurisdiction over all of the issues as
 2 one group of issues for one case to be decided at the
 3 end of the case.
 4 The reason I recommend that is that there's
 5 so many of the factual -- so much of the factual
 6 information is interrelated with the subject matter of
 7 the interpretation of whether -- the interpretation is
 8 an issue of whether lot coverage under the Bedminster
 9 Ordinance has a different meaning than impervious
 10 coverage under the exemption language of the Municipal
 11 Land Use Law. It's a very significant issue, but it's
 12 also very intricately related to the facts that are
 13 going to be presented by both the applicants and the
 14 objectors and the persons of interest. It isn't
 15 something to decide, in my opinion, on a mere legal
 16 argument, it is something to decide based upon all the
 17 facts and evidence that you hear in the case.
 18 If you deny the interpretation, in other
 19 words, conclude that a "C" Variance is necessary, the
 20 application includes an application in the alternative
 21 or a "C" Variance from the Bedminster ordinance for lot
 22 coverage. That has all been addressed in the next
 23 further explanation in Mr. Ferriero's review report is
 24 an issue of this case. The "C" Variance might be
 25 needed for that, if we were to conclude that as

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1 required, and yet that also requires all of the
 2 information in the case to determine whether you would
 3 want to grant that. And that issue may be related to
 4 your conclusions about the negative criteria on the "D"
 5 Variance case that the applicant will be seeking to
 6 demonstrate.
 7 That being said, it's a legal argument.
 8 Applicant should make their legal argument. Ms. Donato
 9 should make hers. I think she shares in Mr. Sasso's
 10 argument but they should make the argument. And if
 11 they would like you to hear that first they should tell
 12 the Board that that's what they want. I'm still likely
 13 to have that same opinion, but they know where I'm
 14 heading.
 15 MR. HALL: On reflection I concur with Mr.
 16 Collins. Just so we're clear, as he said, the issue
 17 is, does the lot coverage include the area of the solar
 18 panels? There's legislation that says impervious. It
 19 doesn't affect -- I mean, our presentation will cover
 20 both parts of it. We did notice for a variance that's
 21 required. It's not one of these things where -- well,
 22 you have a combined Board, but where it affects Board
 23 jurisdiction. It doesn't. Either we need a "C"
 24 Variance, or we don't. We have covered it both ways,
 25 and on reflection let's hear the whole case. So on

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1 that issue I agree.
 2 I have one other procedural matter I want
 3 to raise before -- and I guess perhaps your counsel and
 4 then I'll do it in my opening, but Ms. Donato has
 5 entered an appearance on behalf of a group, Stop the
 6 Power Plant or she gave another name. Generally, when
 7 an attorney represents a group you want a list of the
 8 members because people that are represented by an
 9 attorney speak through the attorney not through
 10 themselves. I think actually it's better. I'd rather
 11 have an attorney asking questions or 20 neighbors or
 12 members of the public.
 13 So my request is that she provide a list of
 14 who she represents and the members of that group, you
 15 know, not question -- questions go through her and not
 16 through them.
 17 MR. COLLINS: And I think -- I would like
 18 to hear from Michele, but generally speaking that is a
 19 good rule to follow to keep the meeting organized.
 20 Michele, are you in agreement with Mr.
 21 Hall's request on that list of members and your
 22 representation of a group of people?
 23 MS. DONATO: We don't really have a
 24 membership organization, as far as I know. What I'd
 25 like to be able to do is speak to the clients. Does

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1 the Board have a rule that requires such disclosure so
2 that I can at least be able to explain to them the
3 basis for it? I just think it's an unincorporated
4 association and we really don't have membership, as far
5 as I know. So I don't know how practical the request
6 is, but I will like the opportunity to present our
7 positions fully at the next hearing on that question.

8 MR. COLLINS: I think that's fine. Explain
9 it at the next hearing, but as people get up tonight
10 and you represent them they shouldn't get up.

11 MS. DONATO: Mr. Collins, I don't know who
12 I represent.

13 MR. COLLINS: That's a problem for you. I
14 feel sorry for you.

15 MS. DONATO: I don't feel sorry for me,
16 it's -- there's a lot of people here who are supporters
17 and --

18 MR. COLLINS: I understand. So you're
19 going to be finding that out for sure. I think it will
20 just help you and help people, because then others who
21 are not represented by you will understand that they
22 might have to ask their own questions or make their own
23 statements without you directing them. But people who
24 are represented by you they can testify but they shall
25 testify upon your calling them at the time that you

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1 want to call them, and upon your questions, not upon
2 mere narrative, okay?

3 MS. DONATO: I understand. Thank you very
4 much.

5 MR. HALL: Can I proceed with an opening
6 statement?

7 MR. COLLINS: Well, let's make sure Mr.
8 Sasso might want to address his argument.

9 MR. HALL: I'm trying to keep it separate.

10 MR. COLLINS: I understand. Mr. Sasso,
11 anything further you want to add to the Board to
12 convince them to split the interpretation case from the
13 "C" and "D" Variance and site plan case?

14 MR. SASSO: I would just renew my request
15 that it makes -- to me, and it's normally done before
16 the Boards procedurally, that you know what variances
17 are involved in the application before the hearing
18 starts so you know before you get going whether it's a
19 variance or not a variance. And I understand what
20 counsel is saying, but I would suggest to the Board
21 that this is, in fact, a legal interpretation. That's
22 what interpretations are all about. You have your
23 ordinance, you have reports from both your planner, as
24 well as your engineer on the issue, and I think when we
25 say that and acknowledge that this is a "significant

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1 issue" then it should be resolved now so that everyone
2 knows whether it's a variance or not. You know,
3 coverage particularly in a farmland residential setting
4 is right, I mean, he's correct. It's a very important
5 argument when you're going from a five percent max to
6 17.15 percent. And the issue is the statute speaks to
7 impervious coverage and your ordinance does not. It
8 speaks to coverage, which includes things such as
9 decks, et cetera, that has spaces in between them.

10 So, I really would suggest to the Board
11 that it makes more sense from a practical standpoint to
12 address that issue tonight instead of waiting six
13 months or whatever number of meetings the applicant
14 envisions plus our experts, and we have several experts
15 also, to decide that issue.

16 MS. DONATO: Yes. And I was just
17 responding on the membership, so if I may join in on
18 that. When a Board renders a decision on an
19 interpretation of the ordinance as a matter of law the
20 standard of review by a Superior Court is a de novo
21 standard of review. On the other hand, when the Board
22 is handling a variance request that variance request,
23 if granted or denied, is coupled with the presumption
24 of validity. So that presumption of validity doesn't
25 attach to the interpretation. By allowing these two

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1 issues to be intermingled in this way that the
2 interpretation is then kind of intertwined with the
3 facts of the case on a variance it is then going to
4 cause a difficulty in being able to separate out where
5 the presumption of validity applies and where it does
6 not. I think it would be best if that issue is
7 determined in advance so that it is clearly one that is
8 in advance. And I do not think it meets the facts to
9 the extent that we'll be going through these lengthy
10 hearings or that extent of facts in order to make that
11 decision. Thank you.

12 MR. COLLINS: I stand by my prior opinion
13 and I'm actually more convinced now than ever that you
14 need to hear the facts and apply those facts to the law
15 to make that interpretation. And it's in the best
16 interest of the Board to hear those facts, all of them
17 from all witnesses on that subject before you make the
18 determination. And it is not normal, there's no normal
19 or customary requirement to separate the
20 interpretations from CD and site plan cases, and no
21 case has been cited to you to say otherwise by any
22 attorney.

23 CHAIRMAN BOXER: Mr. Collins, I think that
24 this case -- I think the Board is going to have to
25 defer to you.

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1 MR. COLLINS: That's fine. We can always
2 decide in the middle of the case whether you would like
3 to proceed with some interpretation issue.
4 Mr. Hall, please go ahead with your
5 argument.
6 MR. HALL: Thank you. Again Gary Hall with
7 the law firm of McCarter and English representing KDC
8 Solar SA55 LLC, which is an entity created by KDC Solar
9 which has offices in your town here. But it's an
10 entity created for purposes of this project. We're
11 glad to be here and acknowledge -- we first filed in
12 December and there were some delays on our end, and I'm
13 not, I didn't mean to imply there weren't. We don't
14 need to go there, but when we did file in June and
15 July, we're ready to go now and we don't need to talk
16 about that.
17 We're glad to be here finally, and as you
18 know, and as Mr. Collins will tell you, this is a
19 development application. The process, as by statute,
20 we present witnesses, you've all been through it, we
21 make a record. And as we sit here today we filed
22 papers with you, but there's no record. I'm sure your
23 attorney will tell you whatever you've seen on the
24 Internet or heard or seen the flyers and the signs
25 that's not in the record. We're starting fresh. We're

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1 making a record and the public, the Objectors, the
2 lawyers, everybody can bring their facts in, questions
3 or witnesses, it's all there, but we're starting fresh.
4 And also, as we all know, it's not a popularity
5 contest. T-shirts and signs that doesn't go to the
6 merits of this. We're going to present the facts and
7 you're going to make your judgment. We think under the
8 law this is a very good thing, it's solar energy. The
9 state policy encourages it. The statute says it's
10 inherently beneficial. I didn't say you have to prove
11 it, but it's important, and we'll tell you why as we go
12 forward. And it is net metered to serve the Sanofi
13 project. So to the extent that people may be afraid to
14 say, well, gee, this will open the flood gates and
15 then, you know, the farmlands in Bedminster are all
16 going to be turned into solar fields. That's not the
17 case. This is here at this location to serve the
18 Sanofi facility. And I don't know that further west in
19 this town I don't even think the same type of facility
20 could be built.
21 And you'll hear that legislation about not
22 putting solar on farmland, that focus is on what are
23 called grid-connected projects, which this isn't.
24 Projects that are providing energy. It goes into the
25 grid and it goes out to whoever uses it. Net metered

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1 goes only to the one user, and as far as BPU is
2 concerned it is contiguous. That's a BPU term, and
3 zoning may be contiguous as something else. For that
4 purpose it has been determined that it qualifies as
5 that type of project, which is to provide energy up to
6 the maximum usage of the user over the course of a
7 year, the goal being that -- it's average over the
8 course of the year. That doesn't happen day-to-day.
9 In the summer you're probably producing "X" on a day
10 more energy than they use. What happens is as the
11 meters spin backwards they get a credit against their
12 energy charges in the winter when they're not
13 generating so much solar, because the sun's at a lower
14 angle, and the sun's not out that long, but over the
15 course of the year the goal is to average it out to
16 meet the able demands.
17 The goal is to do that as close as you can,
18 because that reduces the demand for other sources of
19 power. And the other thing people may not think about
20 with this type of use is that it really is important
21 that the peak solar production in the summer on a hot
22 sunny summer day coincides with peak demand for
23 electricity. Everybody's running their
24 air-conditioners.
25 So to the extent that the solar is cutting

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1 into that it's cutting into the peak demand where, as I
2 think people know, building that power plant, the one
3 that has smoke stacks and things like that, not the one
4 that's solar panels, that power plant to meet that peak
5 demand on a hot summer day that's the most expensive
6 and environmentally undesirable source of energy. So
7 you're tapping in not only through over the course of
8 time to reduce energy demand, you're also tapping in
9 and reducing the need for more facilities just for peak
10 demand.
11 So we're certainly well aware of
12 Bedminster's concern about its agricultural history
13 and character. And, you know, I mean, this property,
14 it was farmed. I think if you've been by it, it hasn't
15 been too actively farmed in a while as far as a highly
16 productive way. Actually, this project in recognition
17 of that has been designed to improve agricultural
18 yield, be above what's going on there now. And it's
19 designed so that you won't even see the solar panels,
20 and you'll hear all of that from our experts.
21 So it's not going to stick out like a sore
22 thumb. You won't see it. It will be more productive.
23 So I think when you hear all the facts you'll conclude
24 -- it's actually consistent in advancing your goals.
25 It's not some horrible thing that we want to inflict on

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1 your town.
2 So, as I said, we're glad to be here. We
3 want to make the record. We have nothing to hide.
4 You'll hear all the facts and then we think you'll
5 conclude that this is a really good project. And like
6 I said, so far whatever information, or supposed
7 information that's been provided, it's not before us.
8 Let's start and we'll hear all the facts and then we'll
9 make the judgment. So with that I'll start with my
10 first witness, Mr. Tom Lynch.
11 MR. COLLINS: Excuse me, Mr. Hall, but
12 we'll proceed to Mr. Sasso and Ms. Donato, any opening
13 statements that you would like to make? You don't have
14 to but you may.
15 MR. SASSO: I don't think it's too smart to
16 ask a lawyer whether or not he wants to talk. In my
17 case I wish I could charge by the pound rather than the
18 word.
19 Mr. Chairman, members of the Board, again,
20 representing the Forbes. I understand what my
21 adversary is saying. Unfortunately, it's not quite
22 accurate. In other words, the record in a zoning case
23 consists of both the filings, as well as the testimony
24 that you hear during the course of the hearing. So it
25 is not just what is heard at the hearing. You're

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1 evaluating the application as well as the maps that
2 have been filed with the Board, and we have that. They
3 are a matter of public record. We have obtained
4 copies. They've been evaluated by your experts.
5 Mr. Collins suggested I tell you what we
6 expect to prove during the course of the case, or the
7 application, and I can do that.
8 You know, you have a situation where in a
9 bucolic setting up off of Country Club Road and Meadow
10 Road you're now going to have some 3,908-foot high
11 piles with solar panels on top of them. What is
12 telling in particular, despite the representations that
13 nothing will be seen, is the site plan which you will
14 be presented with by the applicant and is part of the
15 filings.
16 All of you are familiar with the area that
17 we're talking about, which is an agricultural
18 residential area. If you go to page four of 31, this
19 is the site plan. What you see checked off is what
20 they're going to be presenting to you as being these
21 8-foot high piles with the solar --
22 MR. HALL: I object. That's not true.
23 MR. SASSO: It's right here --
24 MR. HALL: The panels are 8-foot, they're
25 not 8-foot piles, and I have to object. He's

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1 misrepresenting the facts.
2 MR. SASSO: Well, it's not misrepresenting.
3 MR. HALL: You said it's 8-foot high piles,
4 it's not --
5 MR. SASSO: It's the top height, which is
6 specifically on your construction details. I can
7 actually help you out. It's in your plans that you
8 submitted.
9 MR. HALL: No, it's not.
10 MR. SASSO: It shows a total -- a max total
11 of 8-foot high. That's in your construction details.
12 MR. HALL: Okay.
13 MR. SASSO: In any event, despite the
14 interruption, this is what you're talking about here in
15 this application, all of these panels. It is going to,
16 in essence, severely affect the Township of Bedminster,
17 and it flies in the face of your master plan and the
18 intent of your zone which is the R-10 Zone. We suggest
19 and we will present the Board with testimony from a
20 planner, as well as other experts, and talk about how
21 the R-10 District has an objective to being promoting
22 the countryside portion of Bedminster. That what we're
23 trying to do is "Conserve open space, and by that I
24 mean the township, protecting the scenic vistas of the
25 rural countryside and the villages and the hamlets that

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1 impart the special character of Bedminster." This is
2 out of Bedminster's materials. "To preserve farmland
3 and promote the industry of farming."
4 And I guess in terms of the evidence that
5 we'll be presenting you have to compare that to what
6 the application is. Sure, solar energy in the statute
7 may be beneficial, but it's supposed to be located in
8 an area that's not going to have a severe negative
9 impact on the rolling hills of Somerset County. We
10 will produce evidence that it's completely
11 inappropriate.
12 Secondly, in terms of the presentation by
13 the applicant I believe he's misreading and misstating
14 the purpose of the statutes that he's talking about
15 that talk about limiting the solar panels from
16 farmland. They really have to make a complete stretch
17 to make that or reach that conclusion. We will show
18 that the energy act passed by the state which is not
19 mentioned at all by the applicant, it is the New Jersey
20 Act that applies, specifically states that one of the
21 goals is "Not to have these solar panels on open space
22 farmland." That is not mentioned by the Board -- or
23 rather by the applicant to the Board, and we certainly
24 will be presenting that type of testimony.
25 You're taking good farmland area in

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1 Bedminster and turning it into a commercial power
 2 facility. It's not just, you will see in this
 3 application, the solar panels, you also have large
 4 inverter stations and additional structures that are
 5 going to be built on the property. This is not running
 6 a small 210 line from these thousands and thousands of
 7 panels without these other additional structures, which
 8 I believe, and Mr. Collins is up on the details for the
 9 construction, so I believe they're 8-foot high or so
 10 also, these large rectangular or square boxes that they
 11 use as inverters. So don't be misled in terms of what
 12 is involved in terms of the application.

13 From a planning standpoint, from a zoning
 14 standpoint this application is inappropriate. Our
 15 experts will confirm that. It also will have a real
 16 negative effect on the values of the homes in the area.

17 So I just ask that as much time and
 18 courtesy you extend to the applicant, which I know you
 19 will, you also extend that same courtesy to the
 20 opposition group who will have their own expert,
 21 because we'd like to give you a full and complete view
 22 through the experts of why this application should not
 23 be granted. Thank you.

24 CHAIRMAN BOXER: Thank you, Mr. Sasso. Mr.
 25 Collins, would it be possible to get copies of the

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1 State NJ Act?

2 MR. COLLINS: Yes. I will send you a copy.

3 CHAIRMAN BOXER: If you can do that that
 4 will be great.

5 MS. DONATO: Yes, good evening again. The
 6 application before you really poses such an unfortunate
 7 conflict of public goals. I don't think any of us
 8 would really oppose the idea of solar energy. It's
 9 very valuable, it's very important. We need it for our
 10 future global condition, but to place solar panels on
 11 productive farmland poses an unnecessary conflict, and
 12 one that really deprives this community of the sense of
 13 praise that has been so critical and really a statewide
 14 notoriety. You have defended this particular site in
 15 very lengthy litigation all the way up through the
 16 Appellate Courts, and defended the R-10 zoning because
 17 you planned so thoroughly to preserve your agricultural
 18 resources, your open space, and the scenic and
 19 aesthetic values that they carry.

20 This is a power plant. If one looks at any
 21 of the studies that have been done they call solar
 22 facilities of this size power plants, and that is what
 23 they are. And this application poses this difficult
 24 conflict when it would be really desirable to put the
 25 solar panels on the Sanofi site and let the Kirby Farm

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1 which is number one priority acquisition for farmland
 2 preservation remain as a farm.

3 The fact that it may not now be farmed may
 4 be a combination of any number of circumstances, none
 5 of which have anything to do with the value of this
 6 site as a farm, and may have more to do with the
 7 property owner's intention to proceed forward with the
 8 solar facility than thereby let the farming operation
 9 become unused.

10 The State Energy Master Plan of 2011
 11 doesn't just address the grid supply. The grid supply
 12 is only with respect to the fact that the state will
 13 not give any of the economic incentives that it has to
 14 support grid supply on farmland, but it very, very
 15 clearly states that "It is the policy of encouraging
 16 the development of renewable resources and should not
 17 impact the preservation of open space and farmland."

18 So while the state will not subsidize solar
 19 facilities on farmland it has clearly expressed its
 20 policy which is currently being implemented before the
 21 Board of Public Utilities Commissioners in a variety of
 22 ways.

23 It's been an unfortunate -- I guess it's
 24 the easiest place to go, is to go to a farm and take it
 25 and put up these panels.

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1 So we will be presenting evidence from a
 2 professional planner, and we will be also presenting
 3 other evidence to you as to why this proposal flies in
 4 the face of a long-term planning efforts of this
 5 community to preserve its farmland and open space. The
 6 negative criteria must be evaluated, must be balanced,
 7 and must be considered. And we feel confident that
 8 this Board that has been part of this long
 9 institutional commitment to farmland preservation in
 10 this community will continue in that same vein once it
 11 hears the evidence that we will present.

12 This application is not an innocuous or
 13 harmless application. The state of New Jersey in the
 14 Municipal Land Use Law has said that the panels shall
 15 not be considered impervious. However, that doesn't
 16 mean that from a practical and reality perspective they
 17 are not impervious. They, in fact, are impervious, and
 18 have many negative impacts that we will present to you
 19 and show why this is not an innocuous beneficial
 20 application for this community or for any community
 21 with farmland of not just farmland of this character
 22 and quality but any farmland, because there are
 23 stormwater management impacts that can be very, very
 24 detrimental. We will also show you that this area
 25 already has existing drainage problems, so that by

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1 adding to them it will only make it worse for the
2 community.
3 So without further ado I thank you for the
4 opportunity to make this presentation.
5 CHAIRMAN BOXER: Thank you very much.
6 (Applause.)
7 CHAIRMAN BOXER: All right. I know it's
8 going to be difficult and I apologize, but part of what
9 we would need to be is not -- I know you guys are going
10 to be emotional at times, but I would really ask
11 everybody to just try to keep your clapping to sort of
12 a zero, which is not fair to the applicant. I know
13 that you guys want to demonstrate and support your
14 cause, but we really need to keep these hearings in a
15 very civil manner. It's only going to be right for the
16 record because that's how you want it. So bear with us
17 and, again, we'll get this done right.
18 Okay. Mr. Collins?
19 MR. COLLINS: Mr. Hall, please let me swear
20 in the witnesses who you will be presenting so that we
21 don't miss anybody, and get their names and addresses,
22 and then later on when each testifies they can give
23 their qualifications. That will be convenient.
24 MR. HALL: Okay. We can do that for now.
25 We may add some, whatever, but Mr. Lynch, Mr. Spinnato,

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1 Mr. Tobia, and I think that will probably do it for
2 now.
3 MR. COLLINS: Gentlemen who might testify
4 tonight please stand, raise your right hands.
5 MR. HALL: Oh, tonight. He won't be here.
6 We won't get to him. Thank you.
7 MR. COLLINS: Gentlemen, do you swear or
8 affirm to tell the truth, the whole truth, and nothing
9 but the truth so help you God?
10 T H O M A S L Y N C H, is duly sworn.
11 J O H N S P I N N A T O, is duly sworn.
12 MR. COLLINS: Please state your names and
13 addresses, business addresses is sufficient.
14 MR. SPINNATO: I'm John Spinnato. And my
15 business address is 55 Corporate Drive in Bridgewater.
16 MR. COLLINS: And how do you spell your
17 last name?
18 MR. SPINNATO: S-p-i-n-n-a-t-o.
19 MR. COLLINS: Thank you, sir.
20 MR. LYNCH: Thomas Lynch, L-y-n-c-h, 1545
21 U.S. Highway 206, Bedminster, New Jersey.
22 MR. COLLINS: Thank you, gentlemen.
23 DIRECT EXAMINATION BY MR. LYNCH OF MR. HALL:
24 Q. Okay. Mr. Lynch, why don't you come up
25 here and I know you have a statement, but why don't you

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1 tell the Board just first your connection to the
2 applicant, KDC Solar?
3 **A. I am the Executive Vice President of KDC**
4 **Solar.**
5 Q. And you're familiar with this project?
6 **A. Very.**
7 Q. And by the way, your offices are here in
8 Bedminster; correct?
9 **A. Yes, sir.**
10 Q. Why don't you, rather than me interrupt
11 you, do you want to just tell the Board an introductory
12 level what this project's about and why you are
13 pursuing it?
14 **A. Sure. Good evening, Mr. Chairman, members**
15 **of the Board. My name is Tom Lynch. I am the**
16 **Executive Vice President of KDC Solar. KDC Solar and**
17 **its predecessors have been New Jersey based companies**
18 **and actually have maintained a headquarters here in**
19 **Bedminster for an excess of 20 years. We were one of**
20 **the first tenants, actually we co-developed the**
21 **building at 1545.**
22 **I, like you, reside in Bedminster. I along**
23 **with my sons have been active in the Far**
24 **Hills/Bedminster Fire Department. My children went to**
25 **the Bedminster Township School. We were involved in**

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1 **the little league and Rec basketball, so what happens**
2 **in this town is of importance to me. And I take the**
3 **development in this town very seriously.**
4 **I've been with KDC Solar since our**
5 **inception in 2009. And from our beginnings we have**
6 **focused and promulgated legislation that is consistent**
7 **with the Governor's energy master plan. Solar**
8 **development needs to have a dual benefit. And that**
9 **dual benefit is the reduction of our dependence on**
10 **fossil fuel, while also providing clean, economic**
11 **energy especially in the state of New Jersey which is**
12 **still one of the highest electric cost states in the**
13 **nation.**
14 **As such, all of our operating projects and**
15 **the projects that we have under construction are net**
16 **metered. What does net metered mean? It means we**
17 **build a project such that the electrical annual output**
18 **from that project is equal to or less than what the**
19 **consumption is of our electric customer. So we don't**
20 **build five percent more than the customer needs, we**
21 **don't build 20 percent more than the customer needs,**
22 **and every one of our projects has a customer at the**
23 **other side. We do not, and have never done, these grid**
24 **supply projects.**
25 **Given the strong desire to states**

1 administration for development on landfills and ground
2 fills, which is part of the Energy Act that got passed
3 in 2012, we have started to develop some grid supply on
4 landfills, but that's the only area that we're involved
5 in grid supply.

6 Since I was last before you when we
7 received approval to do the solar facility at 1545,
8 which is a combination of ground mount, carport, and
9 roof mount, we have built 17 systems at nine locations
10 throughout the state of New Jersey. We provide
11 electric to the Lawrenceville School, the Boarding
12 School down in Lawrenceville, New Jersey, where we meet
13 about 98 percent of all their electrical requirements.

14 Our corporate clients beyond Sanofi also
15 include Williams Sonoma, North Jersey Media Group, which
16 is the owner and publisher of the Bergen Record, along
17 with the publisher, the printer I should say, of the
18 USA Today for this Tri-State area, and White Rose
19 Foods. You might see one of their trucks coming around
20 town. They're one of the wholesale food distributors.

21 Our largest operating system is actually
22 providing electricity to the county in Middlesex, where
23 we have built a ground-mount system where the adult
24 detention facility, the politically correct way of
25 calling it the jail, along with the juvenile detention

1 facility and other facilities down in North Brunswick
2 is supplied with electric energy generated from our
3 solar facilities.

4 We're currently in construction along US
5 Route 202 in Branchburg of a system of similar size to
6 the one we're proposing here. That system will provide
7 electricity to Imclone's system for one of their clean
8 buildings. That is only one of five buildings that
9 they have there, so they are reducing their dependence
10 on fossil generated fuel, or fossil fuel generated
11 electricity, but by no means are they going a hundred
12 percent, and we could not go a hundred percent solar
13 for them.

14 KDC started working with Sanofi on this
15 project following our selection to provide solar
16 generating electricity to their facilities along
17 202/206. The development quickly focused on their
18 electric requirements at 55 Corporate Drive as they
19 vacated the buildings further south on 202/206. At 55
20 Corporate Drive Sanofi leases four buildings and
21 employs approximately 3,000 people. As we assess the
22 ability to meet as much of their electric demand as
23 possible we identified the property across 287 known as
24 the Kirby Farm. The Kirby Farm was the only place that
25 met the contiguous requirements of the legislation such

1 that the project could be net metered while still
2 providing the maximum amount of electricity for the
3 requirements of Sanofi.

4 We are only able to provide enough
5 electricity for buildings A, B, and C. There was
6 subsequent development on that campus at Building D,
7 and our facility is not large enough to be able to
8 provide 100 percent of their electric consumption
9 on-site. We -- after identifying the property and
10 being selected by Sanofi, we executed a para-sales
11 agreement with Sanofi, and simultaneously entered into
12 a lease arrangement with the Kirby Family with regards
13 to the property along Country Club Road.

14 We are fully aware that Bedminster regards
15 Country Club Road as one of the gateways into this
16 township. And as you will see through the exhibits and
17 testimony of our experts we firmly believe that we have
18 kept with that regard.

19 As will be presented the solar facility
20 will not be visible from Country Club Road, from Meadow
21 Road, from the homes north of the property, the homes
22 south of the property on Country Club Road.
23 Importantly, it is our design that the rural farming
24 characteristic of the property will be maintained. As
25 many of you know our project had no impact upon the

1 barn being asked -- the barn being taken down. That
2 was a requirement of the township because of the
3 deterioration of the barn and health and safety
4 concerns that the township had for that property. We
5 have worked with some local farmers, and our plans are
6 to actually increase the agricultural yield off that
7 property when we are finished. We have also worked
8 with our engineers and consultants to create
9 state-of-the-art buffering, landscaping, and grading to
10 ensure and enhance the property's exterior visual.

11 At this time I'd like to show you a
12 90-second conceptual video we had commissioned in
13 concert with our professionals incorporating our
14 designed intent that should give you a perspective of
15 what we'll be presenting in detail over the remaining
16 meetings. The video covers all of the street frontage
17 and it is at a camera height of 5 foot 6 inches. It
18 starts along Meadow Road, runs to the intersection with
19 Country Club, and then proceeds north to the end of our
20 property line.

21 MR. COLLINS: So this will be A-1. And
22 you'll have to provide a copy of it for the secretary.

23 MR. HALL: Yes. We have three disks for
24 the file that I'll give to the secretary.

25 MR. COLLINS: So it will be Exhibit A-1,

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1 Trina.
 2 (Exhibit A-1, conceptual video, was
 3 received and marked.)
 4 MR. HALL: For the benefit of the members
 5 of the public, it will be available on the web page, as
 6 well.
 7 MR. COLLINS: That's fine. Thank you.
 8 MR. HALL: So they can see that.
 9 (Whereupon, the video is played.)
 10 THE WITNESS: So again, this is -- you're
 11 at Meadow.
 12 MR. HALL: That's probably good enough.
 13 THE WITNESS: Moving towards Country Club.
 14 MR. HALL: That's the Kirby house,
 15 farmhouse?
 16 THE WITNESS: So this is as we're now
 17 starting to get to the intersection, this is the
 18 landscaping and berming that we made reference to. To
 19 give a reference there was -- and the street sign along
 20 with the person there are done at proportional levels.
 21 Now we're moving up Country Club Road. Again, this is
 22 if you were in, say, an SUV looking out the driver's
 23 side window.
 24 MR. HALL: The engineers will go into the
 25 details of this, right?

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1 THE WITNESS: Yes, sir.
 2 MR. HALL: Okay.
 3 THE WITNESS: This video is available on
 4 our website that will go live this evening. The
 5 website is www.Bedminstersolarproject.com.
 6 UNIDENTIFIED VOICE: Is this the way it
 7 looks now? Are we in the right town?
 8 (Video ends.)
 9 MR. HALL: That's good. As I said, our
 10 engineers will go into the details. We wanted to at
 11 least start out with that conceptual presentation. Did
 12 you have anything else, Mr. Lynch?
 13 THE WITNESS: No. Just, again, we
 14 appreciate all the time, the effort that will be
 15 ensuing all of us as we go through this, this
 16 opportunity, this application. Again, I, like you,
 17 reside at Bedminster. I know the importance of it. I
 18 know the challenges you have before you and I thank you
 19 for your time.
 20 CHAIRMAN BOXER: Thank you, Mr. Lynch. Let
 21 me just ask you a question. Can you spend a few
 22 minutes to explain to me?
 23 (Public asks the Chairman to speak louder.)
 24 CHAIRMAN BOXER: Sorry about that. Just
 25 jump in if you can't hear me, I apologize. This is not

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1 working? I'm not really sure what's going on, but
 2 anyway, spend a few minutes and talk about the math
 3 that you use with respect to the increasing yield when
 4 so much of the property will be effectively consumed by
 5 solar panels. How do you get from your statement to
 6 the consumption of property?
 7 THE WITNESS: So, there is currently, Mr.
 8 Chairman, approximately 15 acres that are being hayed.
 9 And what our intention is is to continue the haying
 10 activities along the perimeter of the property, along
 11 with looking at other vegetation and possibly livestock
 12 within the fenced areas of the solar arrays.
 13 CHAIRMAN BOXER: Got it. Thank you. But
 14 you would agree that if there were no solar panels the
 15 yield would be a hundred percent not effectively what
 16 you're proposing.
 17 In other words, my point is, and I
 18 understand what you're saying, but your statement is a
 19 little bit misleading, right? Because you're
 20 effectively saying that you're taking the significant
 21 portion of the property, applying it to solar coverage,
 22 which I understand, and because the property isn't
 23 being farmed adequately today we're going to get more
 24 yield. My logic is, if the farm was completely
 25 dedicated to agriculture it will effectively have a

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1 hundred percent of it under agricultural yield. Would
 2 you agree with that logic?
 3 THE WITNESS: I do agree with the logic,
 4 but I think if we look over to the last ten years, and
 5 clearly we've only approached the owners of the
 6 property within the last 12 months, but if we go back
 7 over the last decade, and actually if we go back even
 8 further than that there's been diminishing activity on
 9 that property for approximately two, if not maybe
 10 closer to three decades. So my reference in my math is
 11 as it compares to what's being done over the last
 12 number of years.
 13 CHAIRMAN BOXER: I appreciate that. Thank
 14 you very much.
 15 UNIDENTIFIED VOICE: Farmland assessment --
 16 CHAIRMAN BOXER: I'm sorry, Ma'am. Just
 17 give us a couple of minutes. Any questions from my
 18 colleagues? (No response.) Mr. Collins, I don't know
 19 how you want to do this.
 20 MR. COLLINS: I would recommend the
 21 attorneys first, and then people who are not
 22 represented ask questions.
 23 CHAIRMAN BOXER: Fair enough. That's
 24 great. So, again, what we're going to try to do is
 25 this is going to be an ongoing process, where as

1 witnesses come up the attorneys will have a chance to
 2 cross-examine the witnesses. This is where we can't
 3 predict time, but we're going to give everybody
 4 adequate opportunity to cross-examine the witnesses.
 5 The attorneys are obviously equipped and
 6 prepared for this. If you are a citizen not
 7 represented and if you are going to come up at some
 8 point and question a witness my recommendation would be
 9 to think about the question, listen to the questions
 10 that are going to be asked before you get up. And this
 11 is not personal, you know, this is really all about
 12 trying to follow the facts and trying to make decisions
 13 that are based on a number of complicated issues. And
 14 we'll give everybody plenty of time, I promise, to
 15 access these witnesses. So let me have the attorneys
 16 come up. Mr. Sasso, are you coming up first?
 17 MR. SASSO: Yes, please.
 18 CHAIRMAN BOXER: Nice to have you back. Is
 19 that mic live? It's probably better if we can --
 20 MR. SASSO: Is it wireless?
 21 CHAIRMAN BOXER: You can take it out, Mr.
 22 Sasso.
 23 MR. SASSO: I'll go into New York New York
 24 rendition. No one wants to hear it. My wife covers
 25 her ears when I'm in the shower.

1 CHAIRMAN BOXER: You look a little
 2 uncomfortable. Just grab a chair and whatever is
 3 comfortable for you.
 4 CROSS-EXAMINATION BY BY MR. SASSO:
 5 Q. Mr. Lynch, I appreciate the service you've
 6 rendered in the town fire department and participating
 7 in little league and what have you, but you're familiar
 8 with this area of farmland along Country Club Road
 9 because you are, in fact, a resident and you've been
 10 here for years; correct?
 11 A. Yes, sir.
 12 Q. How long have you lived here?
 13 A. I think we moved in in 2005.
 14 Q. All right. And 2005, okay. But with
 15 regard to this area you understand that the intent of
 16 the ordinance in town is to preserve farmland; correct?
 17 A. Yes.
 18 Q. You know that from being in town. In fact,
 19 when you drive down past the area in question all the
 20 way down Country Club Road into Bridgewater you only
 21 have some single-family homes on large lots, and this
 22 farm as well as the farm across Meadow Road; correct?
 23 It's a single-family home farm area?
 24 A. Okay.
 25 Q. Well, is that true?

1 A. I believe so, yes.
 2 Q. Well, you're familiar with the area where
 3 you planned this project of 3,000 -- over 3,000 piles
 4 per pound; correct?
 5 A. Yes.
 6 Q. You walked the lot?
 7 A. I am not completely familiar with the
 8 makeup of the homes, whether they're all single
 9 families, for example, in the development north of the
 10 property.
 11 Q. Okay. When you say north of the property
 12 you're talking about on Country Club Road all the way
 13 up to Burnt Mills?
 14 A. I am talking about Bedminster Terrace in
 15 the property -- the homes in the development.
 16 Q. All right.
 17 UNIDENTIFIED VOICE: Wrong section of
 18 Bedminster.
 19 CHAIRMAN BOXER: Please.
 20 BY MR. SASSO:
 21 Q. I didn't see that when I drove by.
 22 CHAIRMAN BOXER: I need everyone in the
 23 audience to respect the cross-examination process. I
 24 know that people have opinions, but it's very important
 25 that we let the attorneys deal with this directly.

1 This is an on-the-record hearing and it's critical that
 2 we get it that way, okay. So if you guys can kind of
 3 cooperate with us it will go a long way. Thank you.
 4 BY MR. SASSO:
 5 Q. So, Mr. Lynch, you're telling the Board
 6 that you believe that it's a beneficial use of this
 7 prime farmland to stick to your project for over 3,000
 8 solar panels, that's what you're telling us?
 9 A. Yes, I am.
 10 Q. Okay. And you understand that in
 11 connection with the state and master plan that you're
 12 talking about, you actually participated with the
 13 government in some -- in forging some of the provisions
 14 of the master plan?
 15 A. We were very much involved in the Energy
 16 Act of 2012. The governor's energy master plan was
 17 conducted and put out by folks at Rutgers University.
 18 Q. Okay. And are we talking about the same
 19 thing? And I'm going to reference the 2011 New Jersey
 20 Energy Master Plan. Do you know what I'm talking
 21 about?
 22 A. I do know what you're talking about, yes.
 23 Q. Is that the plan that you were involved
 24 with?
 25 A. No.

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1 Q. Okay. Well, you understand as someone in
2 the business that there is a New Jersey Energy Master
3 Plan that governs New Jersey?
4 **A. Is that a question?**
5 Q. Sure. Are you familiar with it?
6 **A. The answer to that is yes.**
7 Q. You're in the business. Okay. Why don't
8 you tell the members of the Board what the master plan
9 says with regard to using solar panel facilities in
10 open space or on farmland?
11 **A. I do not have the master plan in front of**
12 **me, so...**
13 Q. I asked you if you were familiar with it,
14 are you familiar?
15 MR. HALL: You're badgering the witness.
16 **A. Well, familiar and knowing it are a little**
17 **different.**
18 MR. SASSO: I'm not badgering anyone, I
19 just needed an answer.
20 MR. HALL: You got an answer, you just
21 didn't like the answer.
22 BY MR. SASSO:
23 Q. Well, we'll ask the next question.
24 Are you familiar with the fact that the New
25 Jersey Energy Master Plan that you claim to be familiar

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1 with says that "As a policy solar projects should be
2 directed away from open space and farmland," yes or no?
3 **A. Yes.**
4 Q. Okay. Yet you are proposing this project
5 in what clearly is farmland here in Bedminster;
6 correct?
7 **A. Yes.**
8 Q. All right. With regard to the actual
9 structures themselves, I know there were some comments
10 earlier on the panels, and by the way you said there's
11 another similar project going in down in Branchburg.
12 How high are these panels?
13 **A. At which project are you questioning,**
14 **Branchburg?**
15 Q. Well, you said they're similar, so I assume
16 that the heights are pretty much the same?
17 **A. No.**
18 Q. Let's talk about your proposal here in
19 Bedminster?
20 **A. I would need to make reference to the pages**
21 **you have in front of you, and I believe our engineers**
22 **will be testifying to the actual heights. I think we**
23 **have proposed that there will be no panel height**
24 **greater than 8-foot.**
25 Q. Okay. And around these 3,361 panels will

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1 be a chain-link fence; correct?
2 **A. There will be -- yes, there will be a**
3 **chain-link fence around the arrays.**
4 Q. Okay. And that's a 7-foot-chain-link fence
5 based on what I've reviewed?
6 **A. I believe that's what we have proposed,**
7 **yes.**
8 Q. Now, in addition to the 3,361 piles you
9 also have inverter units; correct?
10 **A. Yes.**
11 Q. Do you know how many?
12 **A. I do not recall right at the moment.**
13 Q. Do you know how big they are?
14 **A. They are -- my expectation would be they**
15 **are going to probably be in the 8-foot height range and**
16 **the pads which they will sit on are probably, I'm going**
17 **to -- it's all in -- the details are in the submittal,**
18 **but I'm going to suggest that they're probably 12-foot**
19 **by maybe 20-foot pads.**
20 Q. I'm just asking you since you're so
21 familiar with the solar applications that KDC is
22 building. With regard to the inverter units they
23 create noise, don't they?
24 **A. Yes, inverters do create noise.**
25 Q. And how many inverters are proposed for

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1 your project?
2 MR. HALL: If you know.
3 BY MR. SASSO:
4 Q. Well, anything that I ask you, sir, is only
5 if you know. I would not expect you to make anything
6 up.
7 **A. I don't know as I sit here right now,**
8 **exactly how many inverters we have proposed for this**
9 **project.**
10 Q. All right. In addition to the inverters
11 there are other facilities or structures that have to
12 be built on-site; correct?
13 **A. No.**
14 Q. You don't have a jacking pit and things of
15 that nature where all of the panels and wires get --
16 **A. Well, there is a jacking pit, but that's --**
17 **it's not 8-foot -- I thought you meant a structure as**
18 **far as a height structure.**
19 Q. No, no, no. Any type of structure?
20 **A. Yes, a jacking pit will need to be built**
21 **along with then the conduit that takes the wiring from**
22 **the arrays to the inverters, then from the inverters to**
23 **the jacking pit.**
24 CHAIRMAN BOXER: Can you explain what a
25 jacking pit is?

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1 THE WITNESS: It is where -- we are
 2 proposing to go underneath Country Club Road and 287.
 3 So the jacking pit, as it's being referred to, is that
 4 entry point where the wire will go down and under the
 5 ground to go under to Country Club and 287.
 6 CHAIRMAN BOXER: Thank you. Appreciate it.
 7 Sorry, Mr. Sasso.
 8 MR. SASSO: That's all right.
 9 BY MR. SASSO:
 10 Q. Mr. Lynch, in terms of the noise from the
 11 inverters have you ever done any type of study in
 12 connection with this application, in other words, hired
 13 a noise expert, for instance, that rendered any opinion
 14 as to what will someone hear out on Meadow Road or
 15 Country Club Road if the facility were built?
 16 A. **We have not done -- we have not retained**
 17 **the services of a sound consultant with regards to this**
 18 **application. We have used a consultant with regards to**
 19 **another application and have based, based on that work,**
 20 **along with the tear sheets, which are the product**
 21 **details that the inverter manufacturers put together,**
 22 **have been able to analyze and conclude what the decibel**
 23 **levels are at both Country Club and Meadow.**
 24 Q. Okay. And was there a conclusion reached
 25 in terms of whether you'd be able to hear the inverters

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1 on Country Club or Meadow?
 2 A. **There was a conclusion reached and the**
 3 **conclusion was you would not hear along the property**
 4 **line these inverters.**
 5 Q. And the project that you say you're
 6 building is very similar on Route 202 in Branchburg. I
 7 did not catch the name?
 8 A. **The customer on that project is Imclone.**
 9 Q. Can you spell that, please?
 10 A. **I-m-c-l-o-n-e.**
 11 Q. And where is that along 202, any kind of
 12 landmark?
 13 A. **It is just -- I'm assuming 202 is running**
 14 **south?**
 15 Q. Yes.
 16 A. **West at that point. So it's southwest of**
 17 **the intersection where the Branchburg Municipal**
 18 **Building is located. Imclone is on the south side of**
 19 **202, our project is on the north side of 202. And when**
 20 **I say "similar" I mean similar in size. The land, the**
 21 **contour of the land in Branchburg is very different**
 22 **than the contour of the land here.**
 23 Q. All right. Just so I understand, when you
 24 list in your application that you have 3,361 piles on
 25 top of the pile going up to a height, maximum height of

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1 8 feet, are there more than one panel on top of the
 2 pile, each pile?
 3 A. **I think when you're making reference to**
 4 **piles you mean the posts that are going into the**
 5 **ground?**
 6 Q. That's correct. I'm just going by what
 7 your engineer listed as piles. If you want to call it
 8 a pole that's fine. On top of the pole is it just one
 9 solar panel or multiple?
 10 A. **So the pile will -- is a vertical piece of**
 11 **steel. There will be horizontal racks, what we call**
 12 **them, and on that will be multiple solar panels going**
 13 **on that.**
 14 Q. All right. Which is why I asked you. So
 15 if I were to ask you then, because then I can't go by
 16 poles or piles. How many panels are we talking about
 17 in this proposed project of yours?
 18 A. **We're proposing between 45,000 and 48,000**
 19 **panels.**
 20 Q. I'm sorry, say that again. 45,000 and --
 21 A. **I don't have in front of me the exact**
 22 **number of panels.**
 23 Q. Give me an approximate.
 24 A. **I am giving you an approximate.**
 25 Q. I didn't hear the second number, sir.

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1 A. **Somewhere between 45,000 and 48,000.**
 2 Q. Okay. And how big are each of the panels?
 3 A. **They're roughly the size of this table. So**
 4 **3-foot by somewhere between five and a half and 6 foot.**
 5 Q. Right. So three by five and a half or 6
 6 feet, times 45,000 or 48,000, depending on what it
 7 would be; correct?
 8 A. **Yes, sir. Panels are very similar to the**
 9 **panels that are out here in the back lot of the**
 10 **township building in size.**
 11 Q. Okay. Are they on the ground or are they
 12 on top of something?
 13 A. **These back here are on a carport.**
 14 Q. Right. Which is one of the methods for
 15 utilizing solar panels, isn't that correct?
 16 A. **That is correct.**
 17 Q. In fact, you in this case have reviewed the
 18 professional planner's report from the township; isn't
 19 that right?
 20 A. **That is correct.**
 21 Q. And you see where he indicates that there's
 22 nothing that would prevent, that he's aware of,
 23 alternatives on the Sanofi site such as roof-mounted
 24 systems and carport structures in large parking lots,
 25 because they're clearly preferred and readily available

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1 to the applicant on the Bridgewater office campus site,
 2 you read that; correct?

3 **A. I did, sir.**

4 Q. Did you ever do a study on behalf of KDC as
 5 to the feasibility of mounting solar panels on the
 6 Sanofi site which is located in Bridgewater rather than
 7 Bedminster?

8 **A. We did, sir.**

9 Q. Okay. And in connection with that was the
 10 -- was using that type of procedure a viable
 11 alternative for providing solar power to one or more of
 12 the buildings?

13 I know you said A, B, C, and now there's a
 14 D, but would that be available or would that be a
 15 possible alternative for supplying at least one of
 16 those buildings?

17 **A. No, sir.**

18 Q. Why is that?

19 **A. Because the landlord and the owners of both**
 20 **the buildings and the parking lot property would not**
 21 **make it available to us, sir.**

22 Q. And you've asked them?

23 **A. Yes, sir. Let me restate that. The**
 24 **communication with the property owner, the building**
 25 **owners was conducted by Sanofi.**

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1 Q. Okay. So you weren't directly involved
 2 with that?

3 **A. Correct.**

4 Q. All right. So let's talk about now that
 5 you have at least seen that area, seen the square
 6 footage, have seen the buildings. If it were allowed
 7 could you provide solar power using roof-mounted
 8 systems in carport structures over there if the
 9 landlord had agreed?

10 **A. Our number one objective was to maximize**
 11 **the amount of electric production available.**

12 Q. I understand that, but that's not what I'm
 13 asking you, sir. Is -- was that a possible alternative
 14 if the landlord had agreed?

15 **A. We never went -- when we were told that the**
 16 **landlord would not allow us to make use of that**
 17 **property we ceased at that time any further analysis.**
 18 **So we never got to that final conclusion, so I cannot**
 19 **answer your question.**

20 Q. Well, as executive vice president you went
 21 and visited the Sanofi site; correct?

22 **A. I have.**

23 Q. And in connection with the possible
 24 providing of solar panels you looked at how much land
 25 they had and the size of the buildings; correct?

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1 **A. We did a preliminary analysis.**

2 Q. Sure. And based on the preliminary
 3 analysis you can't tell this Board whether or not you
 4 could have provided some solar power on the Sanofi site
 5 for this Bridgewater company?

6 **A. What I'm telling you as the executive vice**
 7 **president who is pretty thorough we were told to cease**
 8 **the analysis. The analysis was never completed, sir.**

9 Q. I understand that, but that's not, again,
 10 what I'm asking you. I'm asking you based on what you
 11 saw without having done a formal detailed technical
 12 evaluation could you put solar power panels on the
 13 Sanofi site in Bridgewater to service Sanofi?

14 **A. I don't know if we could have, sir. I told**
 15 **you we cannot complete the analysis.**

16 Q. All right. So what you decided to do is
 17 come to Bedminster and use the Kirby property; correct?

18 **A. When we were told that that property was**
 19 **not available to us we looked for alternative sites.**
 20 **The Kirby property was, so saw it, and we decided that**
 21 **that would be to maximize the amount of electricity,**
 22 **there was a property owner there who is looking to**
 23 **maximize his property rights, and we entered into a**
 24 **lease with him on that property, sir.**

25 Q. All right. Subject to the approval of this

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1 Board; correct?

2 **A. No. The lease is in place. Obviously,**
 3 **building the project is subject to the approval of the**
 4 **Board, yes, sir.**

5 Q. Tell us how large the Kirby property is in
 6 total?

7 **A. It is about 110 acres, sir.**

8 Q. And out of 110 acres why don't you tell the
 9 Board the number of acres that will be covered by these
 10 panels that are 3 feet by approximately 6 feet?

11 **A. Approximately 29 percent of the property,**
 12 **or 38.4 acres. Seventy-one percent of the site will**
 13 **remain unrestricted.**

14 Q. Well, you mentioned before, and I know the
 15 Chairman picked up on this, I know I made some notes,
 16 you said that, "Well, this plan is going to increase
 17 the amount of farming and use of farming on the
 18 property," Mr. Lynch. I went by it the other day. It
 19 looks like the property is in disrepair. No one's in
 20 the house; correct?

21 **A. That is correct.**

22 Q. And there is an area that is being used to
 23 grow hay and the hay bales are out there right now;
 24 correct?

25 **A. Yes, sir.**

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1 Q. What would prevent a farmer from taking
 2 this property that has not been used and is owned by
 3 some Trust with an address in Morristown, from farming,
 4 you know, the whole thing or a good portion of it, 90
 5 acres of it, for instance?
 6 **A. I don't think I'm qualified to answer the**
 7 **question as I'm not a farmer.**
 8 Q. All right. But in other words, you're
 9 saying we're going to increase the farming, but as I
 10 look at it --
 11 **A. Well, we're prepared to make the investment**
 12 **in preparing the property or the land with the proper**
 13 **fertilization and nutrients in order to increase the**
 14 **farming activity.**
 15 Q. From what is basically almost an abandoned
 16 piece of farmland consisting of over a hundred acres?
 17 **A. Yes, sir.**
 18 Q. It was owned by a Trust, it's not owned by
 19 a farmer, there's no active cattle farm there?
 20 MR. HALL: Is that a question or a
 21 statement?
 22 MR. SASSO: Yes, I'm asking him if that
 23 exists, Mr. Hall.
 24 MR. HALL: I think he already answered
 25 those questions. We're getting --

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1 MR. SASSO: That's fine, because I don't
 2 remember asking him whether there were any type of
 3 other farming activities on the land, but if you want
 4 to keep objecting.
 5 **A. I have not witnessed anything beyond the**
 6 **hay activity that's been going on for a number of**
 7 **years.**
 8 Q. All right. So, if it was utilized by a
 9 farmer who took over the 110 acres that would, in
 10 essence, in all probability result in an increase in
 11 the farming on the property by itself while remaining a
 12 farm, do you agree?
 13 **A. Well, I believe the property has been made**
 14 **available to a farmer, and the farming activity has**
 15 **over the number of years continued to diminish to what**
 16 **we see there today.**
 17 Q. And that's an individual farmer who simply
 18 uses it to grow some hay based on what you've observed;
 19 correct?
 20 **A. That's my observation, yes.**
 21 Q. Okay. Now, talk to us about the jail that
 22 you were telling us about, because that's another
 23 project that KDC built. Are they ground-based systems
 24 there?
 25 **A. Yes, they are ground-mount systems.**

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1 Q. No poles or pilings, whatever you want to
 2 call them?
 3 **A. Yes.**
 4 Q. That's the Middlesex Juvenile Detention
 5 Facility down on Route 130; correct?
 6 **A. It's on Route 130. The juvenile detention**
 7 **facility is one of the seven projects that we have**
 8 **right in that location.**
 9 Q. Okay. And there's also an adult facility
 10 there; correct?
 11 **A. There is.**
 12 Q. In fact, you can't even see the facilities
 13 as you go down 130; isn't that right?
 14 **A. Which facilities?**
 15 Q. The youth facility or the adult facility
 16 off of Route 130. You have to go down a rather long
 17 driveway to even reach the site; correct?
 18 **A. No, I believe you can see the juvenile**
 19 **facility because I think it borders Route 130. You are**
 20 **correct in your statement that you have to go down a**
 21 **road to get to the adult facility.**
 22 Q. Okay. And the panels there, just so I know
 23 where they're located, are they behind the facility, to
 24 the side of it?
 25 **A. They are along the side of it, they're**

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1 **behind. If you go to that location you will see some**
 2 **panels from Route 130. You will see it as you go down**
 3 **the road to the adult facility.**
 4 Q. Okay. And those panels, if I were to go
 5 down there and take a look, are they similar to the
 6 panels and the installation that you're proposing here
 7 in this application?
 8 **A. The panels are similar, yes.**
 9 Q. Okay. And if I went to the Branchburg
 10 facility also same panels?
 11 **A. The Branchburg facility is currently under**
 12 **construction. The panels have yet to be installed.**
 13 **What has been installed to date are the pilings, or I**
 14 **guess we'll agree to call them pilings, along with the**
 15 **racks which are running the horizontal pieces that run**
 16 **from piling to piling. So that part -- that's as far**
 17 **as we progressed at this time on the construction.**
 18 Q. All right. But once you go forward and put
 19 the panels on there if we took a look at that that's
 20 similar to what you're proposing here?
 21 **A. It is. I believe we made -- both of those**
 22 **facilities I don't recall a hundred percent if panels**
 23 **are portrait or landscaped in their mounting, but it is**
 24 **going to be a similar facility, yes.**
 25 Q. And how about these panels, if there's a

1 difference between portrait or landscaped, what are you
2 proposing here?

3 **A. I don't recall. It's just the way that**
4 **they're situated, meaning whether the panels are**
5 **running along like this or they're turned up.**

6 Q. All right. And just so I understand the
7 net-metered aspect of your testimony versus the grid?

8 **A. Yes.**

9 Q. The grid would be that you were providing
10 power to everyone involved or connected to the grid,
11 whether it's public service or Jersey Central or any of
12 these power companies you get letters from; correct?

13 **A. No.**

14 Q. What is it?

15 **A. A grid supply project is a project that**
16 **sells into the PJM Interconnect System. PJM is the**
17 **regional electric transmission organization located in**
18 **Valley Forge that runs basically from Chicago all the**
19 **way east to the seaboard north to the New York states,**
20 **so the northeastern-most city, and then all the way**
21 **down through and including Virginia.**

22 Q. Okay. My understanding is that power
23 companies then buy electric from them?

24 **A. Power companies -- when you refer to power**
25 **companies you mean the regulated utilities?**

1 Q. Sure.

2 **A. So the regulated utilities only buy**
3 **electricity to serve what's called their basic**
4 **generation service. The state of New Jersey allows**
5 **commercial, industrial and now residential to choose**
6 **who their energy provider is. It's not to say that you**
7 **will replace your electric utility as the transmitter**
8 **of the electrons, but you can choose whether you want**
9 **to buy your electricity, in this case, or in Bedminster**
10 **from JCP&L, or you can buy it from Direct Energy or**
11 **Hess, or whoever you so desire.**

12 Q. But just conceptually speaking, if you were
13 delivering energy to the grid some of that electric
14 could be used in Bedminster, for instance; correct?

15 **A. Theoretically, that's correct.**

16 Q. But versus a net-meter situation where the
17 only business, the only entity or person that is going
18 to benefit from the electricity that is going to be
19 generated in Bedminster is in Bridgewater; correct?

20 **A. I would disagree with that, and let me tell**
21 **you why. So the direct kilowatt hours on a net-metered**
22 **project, two kilo to one customer. That customer now**
23 **has been taken off, if you will, the supply**
24 **requirements of PJM and others. So, therefore, the way**
25 **power or electricity, I should say, is priced is what**

1 **that last unit cost is to produce.**

2 **So, if you reduce the amount of electricity**
3 **that's being sought at from PJM or your local utility**
4 **that takes one of those more higher cost generators off**
5 **the stack. So there will be an indirect benefit for the**
6 **customers within PJM for net-metered projects. You**
7 **will not be able to tie it specifically, but instead of**
8 **ten megawatts possibly needed, now you only need 98,**
9 **that number of units to produce the 98 megawatts could**
10 **be cheaper than the number of units required to produce**
11 **that last two megawatts.**

12 Q. All right. When you say "could be
13 cheaper," in other words, are you telling this Board
14 that if this is granted that our electric bills in
15 Bedminster are going to go down?

16 **A. No, I am not.**

17 Q. I didn't think so.

18 MR. SASSO: That's all I have, Mr.
19 Chairman.

20 CHAIRMAN BOXER: Mr. Sasso, thank you. I
21 think what we'll do is we'll take about a 10-minute
22 recess just to give everybody a break. In terms of
23 housekeeping for the evening, I think we're going to
24 try to go to 10, 10:15 and we'll see how things
25 progress, and we'll see where we are with

1 cross-examination. We'll take 10 minutes.

2 (Recess is taken at 8:55 p.m.)

3 (Back on the record at 9:04 p.m.)

4 THE WITNESS: Mr. Chairman, if I can make a
5 correction --

6 CHAIRMAN BOXER: Just give us a couple of
7 minutes. Just bear with us. We'll try to get everyone
8 together.

9 Ladies and gentlemen, if we can have our
10 seats we're going to reconvene the hearing, please.

11 MR. HALL: Did we lose a member?

12 CHAIRMAN BOXER: Oh, where did George go?
13 All right. Welcome back, George.

14 Ladies and gentlemen, now we can officially
15 get started. So we're back on the record. Thank you
16 very much.

17 CHAIRMAN BOXER: Mr. Lynch, you have
18 something to say?

19 THE WITNESS: Yes, Mr. Chairman. During
20 the recess I was able to confirm the actual number of
21 panels and I would like to make a correction and be
22 more specific.

23 CHAIRMAN BOXER: Yes, of course.

24 THE WITNESS: So, our application has the
25 installation of 40,484. So I'd like to withdraw my

1 statements of 45 to I believe I said 48.
 2 CHAIRMAN BOXER: 40,484 panels?
 3 THE WITNESS: Yes.
 4 CHAIRMAN BOXER: Okay. Thank you. Ms.
 5 Donato, are you ready to go?
 6 MS. DONATO: Yes, thank you. With the
 7 Board's permission I think it's easier to sit since I
 8 don't have a table.
 9 CROSS-EXAMINATION BY MS. DONATO:
 10 Q. Okay. You don't have to sprain your neck.
 11 You looked forward for Mr. Sasso. If you want to look
 12 forward you can do that. I appreciate it, but I don't
 13 want to see you get a stiff neck.
 14 CHAIRMAN BOXER: If you want to turn
 15 around, Mr. Lynch, whatever you want to do, whatever
 16 you're comfortable with.
 17 MS. DONATO: I think for the stenographer
 18 it will work better this way.
 19 BY MS. DONATO:
 20 Q. Are you aware that the National Renewal
 21 Energy Laboratory holds solar facilities generating
 22 more than one megawatt of power as a power plant?
 23 **A. I was not, no.**
 24 Q. Now, I will ask you some questions about
 25 Sanofi. Do you know how long the lease is that Sanofi

1 has at its Bridgewater facility?
 2 **A. I do not, but I believe our next witness**
 3 **probably has that information.**
 4 Q. So you don't know what would happen if
 5 Sanofi didn't occupy that site any longer what would
 6 happen with the solar power plant that you're proposing
 7 on the Kirby Farm?
 8 **A. Well, our power purchase agreement would**
 9 **still have the power going over to that location.**
 10 Q. But you have the agreement with Sanofi, do
 11 you not?
 12 **A. Yes, we do.**
 13 Q. So if Sanofi was not there what would you
 14 propose that would happen to the power at that point?
 15 MR. HALL: I think he just answered that
 16 question, didn't he? I mean --
 17 MS. DONATO: I don't think he did, that's
 18 why I --
 19 **A. The power will continue to be delivered to**
 20 **that location.**
 21 Q. To an unwilling recipient?
 22 **A. Well, it would go to that meter.**
 23 Q. Well, you said the landlord didn't want to
 24 allow you to put in solar panels in any other way, you
 25 wouldn't do ground mounted, roof mounted, or in, you

1 know, the carports in the parking lot. So what would
 2 make you think that the landlord would allow the power
 3 to continue to be delivered there if Sanofi wasn't
 4 there?
 5 **A. The meter is in the name of the tenant, not**
 6 **the landlord.**
 7 Q. I understand that, and if Sanofi was not
 8 there then how -- what would happen to the power at
 9 that point?
 10 **A. At that point it would go through that**
 11 **meter and it would go into what would be used in**
 12 **that -- the power would be used still for those three**
 13 **buildings, and then anything that's in excess of that**
 14 **would then go back to the local utility.**
 15 Q. Perhaps you don't understand the question.
 16 What I'm trying to understand is, if Sanofi was not at
 17 that location, if its lease -- maybe it broke its
 18 lease, you said it moved from another location, maybe
 19 its lease expired, your lease arrangement for the solar
 20 facility is with Sanofi, is it not?
 21 MR. HALL: He's answered this question.
 22 And if you don't like the answer that's fine, but I
 23 think it's been answered three times, already.
 24 MS. DONATO: I don't think he's answered
 25 the question. I just want to know --

1 MR. HALL: You've asked the question
 2 already. If I'm wrong, I apologize.
 3 BY MS. DONATO:
 4 Q. What happens if Sanofi is not there, to
 5 whom is the power delivered? It just doesn't go to
 6 some anonymous person, or some other occupant. What if
 7 there's no occupant of the building?
 8 **A. If there's no occupant of the building**
 9 **whatever power is necessary to keep on the emergency**
 10 **and whatever other electrical draws are necessary on**
 11 **the other side of that meter on the customer side -- on**
 12 **the customer side of that meter would be serviced by**
 13 **the solar facility. Anything excess of that then would**
 14 **go under net metering to the local utility.**
 15 CHAIRMAN BOXER: Can I ask a question, Mr.
 16 Lynch? Are you suggesting then that if the building
 17 goes vacant do you effectively sell to the grid at that
 18 point?
 19 THE WITNESS: No, we do not. So even if
 20 there's no one in that building there's still an
 21 electrical load in that building, although diminished
 22 from where it was. Under the net metering regulations
 23 any excess, if you will, beyond. So, if we're
 24 delivering more than is needed for that building at
 25 that time it would in this case go to JCP&L.

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1 CHAIRMAN BOXER: What do they do with it?
 2 THE WITNESS: They would say use it to
 3 service whatever requirements they may have in their
 4 power.
 5 CHAIRMAN BOXER: Wouldn't you argue that's
 6 selling to the grid or --
 7 THE WITNESS: No, because this project is
 8 net metered. So, although the load has been reduced at
 9 that location it's still -- it still falls under the
 10 net-metering legislation. That power does not go back
 11 to PJM, it goes to JCP&L.
 12 CHAIRMAN BOXER: I just want to understand,
 13 because it's an important point for me. It may not go
 14 to PJM, but it will be distributed to other users in
 15 the grid locally, are you saying that?
 16 THE WITNESS: That is correct. Now, we
 17 also got comfortable when we entered into the power
 18 purchase agreement, or power sales agreement, I should
 19 say, with Sanofi as to their time in that building.
 20 Again, this is their Northern American headquarters.
 21 And, again, Mr. Spinnato is in a far better position
 22 than I to discuss their commitments to that facility,
 23 both from a people point of view, along with
 24 contractually. In our negotiations with them we got
 25 comfortable that they would be our customer for the

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1 full length of our 20-year power service agreement --
 2 or power sales agreement, I'm sorry.
 3 CHAIRMAN BOXER: That's okay, thanks. I'm
 4 sorry, Ms. Donato. I apologize.
 5 MS. DONATO: That's quite all right.
 6 BY MS. DONATO:
 7 Q. So, how long is the lease that you have on
 8 the Kirby Farm?
 9 A. **The lease is co-terminus with how long we**
 10 **have an agreement with Sanofi. So, if the agreement**
 11 **with -- for us to sell electricity is for 20 years with**
 12 **two five-year renewal. If they are not renewed on the**
 13 **power sales then we would have only a 20-year agreement**
 14 **with the Kirbys.**
 15 Q. And how long do the panels have in
 16 production life?
 17 A. **The warranty on the panels are for**
 18 **20 years; the economic use for life is projected to be**
 19 **at least 30 years.**
 20 Q. They don't have a production guarantee of a
 21 specific term?
 22 A. **Well, they have warranties of 20 years.**
 23 Q. That they guarantee that it will produce
 24 the power that it initially did for a period of
 25 20 years?

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1 **A. You can get 20-year warranties, some of**
 2 **them will -- and you can pay for it, so I think I'm --**
 3 **warranty to me -- I want to make sure -- I'm viewing**
 4 **your question of guarantee to be equal to a warranty.**
 5 **So, if I buy a panel from "X" manufacturer they will**
 6 **give me a 20-year warranty with a certain degradation**
 7 **schedule on that that will go for 20 years.**
 8 Q. So, that warranty that you're referring to
 9 is that the panels will produce a certain amount of
 10 power for that 20-year period?
 11 A. **Yes, Ma'am.**
 12 Q. What happens after the 20-year period?
 13 Let's say that the panels only really produce the power
 14 for the 20 years, what happens then?
 15 A. **Well, it's like a car. After a hundred**
 16 **thousand miles you're on your own. So, I cannot after**
 17 **year 20 go back to the manufacturer of panels saying**
 18 **it's not producing what I expected it to and expect**
 19 **them to either replace the panels or give me, you know,**
 20 **financial settlement.**
 21 Q. Okay. That's not what I was asking. If at
 22 the end of 20 years the panels are not producing power
 23 anymore what do you do with the panels that are out on
 24 the farm, on the Kirby Farm?
 25 A. **So, you're saying there's zero production,**

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1 **all of a sudden we fall off a cliff?**
 2 Q. Well, they're not producing sufficiently
 3 for them to be able to remain there. So, let's say
 4 it's 30 years they stop producing, what do you do with
 5 the panels at that point?
 6 A. **Well, I've got an obligation to provide a**
 7 **certain amount of electricity to my customer, Sanofi.**
 8 **If I'm not able to produce that from these panels then**
 9 **I'm not able to live up to my PTA. If the power sales**
 10 **agreement -- PSA, I'm sorry, power sales agreement is**
 11 **terminated I have an obligation under my lease on the**
 12 **property to decommission the facility. I have to**
 13 **remove all the panels. I have to remove the conduit.**
 14 **I have to remove the inverters. I have to take up the**
 15 **concrete pad that the inverters were on. And I also**
 16 **have to pull all the poles out or pilings, as they were**
 17 **referred to previously, and return the property to the**
 18 **owner in the state that I received them in.**
 19 Q. And how does that deal with the compaction
 20 of soils as a result of the construction of the panels,
 21 the construction of the road, construction of all of
 22 the other accompanying structures and their removal?
 23 How do you restore the farmland so that it is not
 24 compacted soil?
 25 A. **Well, the only compacting would be where**

1 the pilings are along with these pads. It is our
2 intention that there will be a metal mix planted
3 amongst all the panels. So there will be vegetation
4 coverage and growth over the 20-plus years that we are
5 using this property. So we're talking about a very
6 limited, if you will, area of permanent -- not even
7 permanent, it's only that 20-year period of
8 disturbance.

9 I don't know if you've had the opportunity
10 to familiarize yourself with the soils out in that
11 area. It doesn't take a lot to get down to the
12 fractured shale rock. So, to till the area where our
13 pilings or where the pads are is not a significant
14 undertaking.

15 Q. So you're saying that where the soils on
16 the site are prime agricultural soils you'll be able to
17 till them and restore them to the previous soil till
18 that they had?

19 A. Most of the soils that you're referencing
20 are not going to be disturbed with this project.
21 Again, what we're doing is we're putting in these
22 posts, and then on those posts are what is, if you
23 will, the soil disturbance. The majority of the
24 acreage in which the panel arrays, that fenced property
25 will still be vegetation and will be planted as such

1 while we're going through the construction.

2 Q. Well, what kind of equipment are you going
3 to use that will create soil compaction?

4 MR. HALL: Would that be a better question
5 for our engineer?

6 THE WITNESS: Yes.

7 MR. HALL: We'll have an engineer who will
8 go into the details.

9 CHAIRMAN BOXER: Okay.

10 BY MS. DONATO:

11 Q. So then you don't know how the site will be
12 restored at this point? Do you want me to defer the
13 questioning?

14 A. Yes, please.

15 Q. Now, I'd like to ask you some questions
16 about the film that you showed. Do you know who made
17 that?

18 A. I don't. One of my associates does. So
19 we'll get that answer for you.

20 Q. So you don't know anything about the height
21 of the vegetation that is shown on that film, and when
22 any proposed plantings would reach that height?

23 A. No. I mean, I would like to defer that
24 line of questioning to -- our consulting staff worked
25 with some of KDC employees who actually commissioned

1 the film being done. I was not involved in the details
2 of that.

3 CHAIRMAN BOXER: During the testimony --
4 I'm sorry, Ms. Donato -- are you going to be able to
5 provide the math that goes behind the film, the
6 algorithm that you used, the height algorithm, the math
7 and we'll be able to see the elevations?

8 THE WITNESS: We will, yes.

9 MR. HALL: The engineer will address that.

10 CHAIRMAN BOXER: Thank you, Mr. Hall.

11 BY MS. DONATO:

12 Q. Now, did you say that the rural farming
13 characteristic will be maintained?

14 A. That is our intent.

15 Q. Now, when you travel -- just a second. Do
16 you know whether or not Country Club Road is designated
17 as a scenic corridor, or scenic road in this township?

18 A. I believe it's designated as one of the
19 scenic entryways. Your terminology may be the
20 specifics. I don't have the actual words that my -- on
21 my tongue, but it is Country Club as being --

22 Q. What about Meadow?

23 A. I don't believe Meadow. I believe Country
24 Club Road is deemed to be one of the gateways into
25 Bedminster Township.

1 Q. And did you look at any of the township's
2 planning documents to see how Meadow Road was
3 characterized?

4 A. I did not.

5 Q. But you said you lived here and you really
6 cared about the town, so wouldn't you care about what
7 the town planned for and what the town thought was
8 significant scenically and historically?

9 A. And we have incorporated all of that into
10 our design.

11 Q. Well, let me ask you this: You've
12 incorporated that into your design by proposing a berm;
13 is that correct?

14 A. Yes.

15 Q. Now, when you drive down Country Club and
16 Meadow at this time what do you see looking at the
17 Kirby Farm?

18 A. Litter. A boarded up farmhouse. A barn
19 that was falling down and was given notice -- the
20 Kirbys given notice by the township to dismantle that
21 barn because it was a safety issue.

22 Q. Let's try to focus it more on what this
23 township has recognized as the beauty of the Kirby
24 Farm, not you're looking at the piece of litter, okay?

25 MR. HALL: I think this is more for a --

1 well, we'll have a planner testify.
 2 MS. DONATO: Well, if you want to put --
 3 CHAIRMAN BOXER: I think we can just go on
 4 a little bit, Mr. Hall, and give a little latitude.
 5 MR. HALL: I mean, he can talk about in
 6 general.
 7 CHAIRMAN BOXER: On the other hand, I think
 8 that her line of questioning is really being directed
 9 at Mr. Lynch's claim that he's a resident here, so
 10 we'll give her a little latitude and we'll see where it
 11 goes.
 12 MS. DONATO: Yes, in addition, it was the
 13 direct statement of this witness that rural farming
 14 characteristic will be maintained?
 15 **A. That's correct.**
 16 Q. So, if this farm was not allowed to be --
 17 allowed to come to this state at this point in time and
 18 it was an active farm as it had been for generations,
 19 okay, if you were driving down the road what would you
 20 see?
 21 **A. I honestly don't know what I would see if**
 22 **it had been farmed for years and years. And I would**
 23 **presume it would look like what we see if we drove out,**
 24 **for example, Lamington Road where it was maintained,**
 25 **where it was "worked as a farm," where the investment**

1 **of fertilizer and tilling, et cetera, were done on an**
 2 **annual or semi-annual basis.**
 3 Q. Would you see hedgerows?
 4 **A. Hedgerows?**
 5 Q. Yes.
 6 **A. You may.**
 7 Q. Woodland lines against the farming area?
 8 **A. Presumably.**
 9 Q. And you recognize that this township in all
 10 of its planning documents has characterized this farm
 11 and the roads surrounding it as having scenic vistas?
 12 **A. Yes, I am aware of that.**
 13 Q. And you consider a berm vegetated with
 14 moderate vegetation to be a scenic vista?
 15 **A. I do.**
 16 Q. So people instead of seeing the farms,
 17 instead of seeing the woodlands, instead of seeing the
 18 hedgerows you think it's just as good to see a berm?
 19 That substitutes for a scenic vista and agricultural
 20 vista?
 21 **A. We are not planning to remove any of the**
 22 **existing woodlands on Meadow Road. We will keep much**
 23 **of, if not all, of the vegetation that is currently**
 24 **there today along the road. Keep in mind there are**
 25 **200-foot setbacks on both Meadow and Country Club Road,**

1 **so any development, any berming cannot at all commence**
 2 **until we're 200 feet in. So everything you see right**
 3 **along the road that you've just referenced will remain.**
 4 Q. And do you understand the amount of grading
 5 that is necessary to construct a berm?
 6 **A. Yes, I have been informed of it.**
 7 Q. And the disturbance that takes place beyond
 8 the berm itself in order to construct the berm?
 9 **A. I've got a general sense of it, yes.**
 10 Q. So that 200-foot area, are you saying that
 11 that 200-foot area is going to have its vegetation
 12 intact after the berm is constructed?
 13 **A. It will be, as I said, what I did say was**
 14 **along the road line there will be no change. Between**
 15 **the road line and that 200-foot it is our expectation**
 16 **that we will maintain what's there or enhance what's**
 17 **there such that there could be greater -- along that**
 18 **road some greater farming activity. We cannot do any**
 19 **earth moving and berm building or commencing a berm**
 20 **building until we're 200 feet in from that property**
 21 **line.**
 22 Q. You can't do any disturbance within that
 23 200 feet?
 24 **A. I believe we can disturb, what I'm saying**
 25 **is I don't -- we are not going to commence any of the**

1 **disturbance.**
 2 Q. I'm not sure that I understood. What do
 3 you mean by "commenced disturbance"?
 4 (Mr. Tobia approaches Counsel table to
 5 speak with Mr. Hall.)
 6 CHAIRMAN BOXER: Sorry. What's going on
 7 here? I just want to understand. Is there an issue?
 8 I just want to understand what the problem is.
 9 MR. HALL: Our planner was concerned that
 10 these are planning questions, not for Mr. Lynch.
 11 MS. DONATO: And I understand that, but the
 12 witness should not have been introduced to make these
 13 glowing statements about how this is going to be
 14 preserved unless the witness can be cross-examined as
 15 to the credibility and the validity of what he stated.
 16 MR. HALL: Yes, but not the details.
 17 CHAIRMAN BOXER: Mr. Hall, to be honest, I
 18 mean, I think that Mr. Lynch opened up a very
 19 interesting can of worms as he started to talk about
 20 his care about the town, and he's a citizen, and he's
 21 very active, and he's aware of the plans, and he's
 22 familiar with Meadow Road and Country Club Road.
 23 I don't want this to become a Spanish
 24 Inquisition but I think the line of questioning that's
 25 being asked of Mr. Lynch is fair, unless Mr. Collins

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1 thinks otherwise.

2 MR. COLLINS: No, I think the line of

3 questioning is appropriate cross-examination, and I

4 would -- the objection I would overrule, but I think

5 Mr. Hall is willing to let it continue.

6 CHAIRMAN BOXER: Thank you.

7 BY MS. DONATO:

8 Q. Thank you very much.

9 Now, with regard to your statement that

10 this -- your proposal would increase the agricultural

11 yield, the Chairman asked you, you know, what you base

12 that on. And am I correct in understanding that you're

13 referring to a yield from that property as it currently

14 exists?

15 A. Yes.

16 Q. Okay. And then what are you comparing it

17 to as the yield that you would hope to have if you were

18 to get this approval?

19 A. So, currently there's approximately

20 15 acres that are hayed. And our proposal would be

21 that the amount of acreage that is in active

22 agricultural, whether it is hay, growing of vegetables

23 or livestock, would cover more acreage.

24 Q. You have a quantifiable number?

25 A. I mean, not at my -- ready at the moment.

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1 Q. Have you had an opportunity to read the

2 report of the township planner, Frank Banisch?

3 A. Yes, I did take a look at it.

4 Q. And are you aware that he has stated that,

5 "The proposed panels are going on the areas of the site

6 that contain prime agricultural soils, soils of

7 statewide significance, and soils of local

8 significance"?

9 A. Yes, I do recall reading that.

10 Q. So, I think you said there's something like

11 38.4 acres will have panels on them; is that right?

12 A. Yes.

13 Q. So, how much of that 38.4 acres is going to

14 be farmed?

15 MR. HALL: If you know.

16 BY MS. DONATO:

17 Q. You have to answer it yourself, Mr. Lynch.

18 A. I think probably somewhere in the 25 to

19 30 acres of that 38.

20 Q. So, how are you going to farm the 20 --

21 what you just said, you said 25 acres within that 38.

22 How is that farmed?

23 A. I didn't say -- well, one of the things

24 that we are currently working with is, for example, to

25 have sheep grazing, which is something that has been

Page 104

1 utilized in other solar facilities. And so one of the

2 opportunities we would have is for the sheep to be able

3 to graze in and among the arrays.

4 Q. Can you tell me where that's being done?

5 A. It's being done in Pocono, Pennsylvania, at

6 the Pocono International Racetrack.

7 Q. And have you analyzed the placement of the

8 panels at that place and see the distance between

9 panels and how that might relate to what you're

10 proposing here?

11 A. I believe my colleagues have, yes.

12 Q. So, when you made your statement you're

13 really relying on something that somebody else told

14 you?

15 A. That is correct.

16 Q. Okay. Now, when you refer to, you know,

17 the agricultural values what do you characterize as an

18 agricultural value?

19 A. I'm not sure I understand the question.

20 Q. Well, you said that you would be

21 maintaining the rural farming characteristics. So

22 what's a rural farming characteristic?

23 A. Hay, growing of crop and/or livestock, or

24 grazing.

25 Q. Have you in the report of Mr. Banisch seen

Page 105

1 the reference to other local objectives that are

2 accomplished by virtue of the R-10 zoning?

3 A. I did read the report. I'm having a

4 challenge right now in my mind, you know, going to that

5 part of the report.

6 Q. So, are you aware that the planning

7 documents in this town also identify the importance of

8 farmland for habitats, for animal life, and threatened

9 and endangered species?

10 A. Yes, Ma'am.

11 Q. Do you know how habitats with threatened

12 endangered species might be preserved with 40,484

13 panels?

14 A. I personally do not, but we have received

15 the Letter of Interpretation from the New Jersey DEP,

16 and as part of the LOI process the DEP does have a

17 section that -- a group of professionals that do focus

18 on that, and they have come back and have given us, I

19 guess what you would call a green light, or have given

20 us the LOI based on our proposal.

21 Q. My question to you was not whether you had

22 an LOI, my question to you is if you place 40,484

23 panels on this property how does it remain suitable as

24 a habitat for threatened and endangered species or any

25 other animal life that currently may occupy that site

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1 and use it?

2 **A. So, let me try and maybe rephrase. I'm not**

3 **an expert in that. And I relied on the state's experts**

4 **to confirm that our proposal would not threaten any of**

5 **those species.**

6 Q. A Letter of Interpretation, sir, does not

7 make that determination, isn't that correct? It just

8 says what's there; isn't that correct?

9 MR. HALL: I disagree as a statement of

10 law, because there's a procedure to look at as part of

11 that process, that I know. We can --

12 MS. DONATO: You talk about the -- I'm

13 sorry.

14 MR. FERRIERO: Just to be clear, a Letter

15 of Interpretation is a confirmation of existing

16 conditions on the site and is not an evaluation of a

17 proposed project.

18 MR. HALL: For general permit I believe it

19 is.

20 MS. DONATO: Thank you, Mr. Ferriero.

21 MR. HALL: The experts will get to that.

22 BY MS. DONATO:

23 Q. Now, are you aware of the concern that is

24 expressed in the planning documents regarding

25 agricultural preservation that farmland in general

Page 107

1 becomes less viable when it is reduced in size?

2 **A. I'm not aware specifically of, you know,**

3 **that particular language, but what you just stated**

4 **makes sense to me, yes.**

5 Q. Now, in referring to the berm that you show

6 on that, you showed on that video, is that berm

7 continuous around the entire tract?

8 **A. It is not continuous. The current existing**

9 **driveway will remain as it is on the property today.**

10 **So the berm will change with both the grade of the**

11 **road, along with the grade of the property.**

12 Q. But it -- other than for the driveway it

13 will be continuous?

14 **A. Until you get up towards the northern part**

15 **of the property that is along Country Club where**

16 **there's a lot of -- there's existing vegetation that**

17 **will serve to shield the visual of any panels from**

18 **people passing on Country Club Road.**

19 Q. Okay. Now, I just want to ask you one

20 other question about alternatives that you might have

21 considered. Isn't it true that the solar industry is

22 rapidly incorporating new technologies?

23 **A. No. I mean, not necessarily. I mean, the**

24 **technology that has been used over the last five to**

25 **10 years has pretty -- has been pretty consistent.**

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1 **There are more watts that may come out of a panel over**

2 **the last number of years, but the basic construction,**

3 **be it from a panel to the racking system to the**

4 **inverters, et cetera, has remained somewhat constant.**

5 Q. Isn't it true that the cells are becoming

6 increasingly smaller, that new technology corrects

7 that?

8 **A. No. The sizes of the solar panel itself**

9 **has remained the same, the amount of watts that are**

10 **produced out of that footprint has increased.**

11 Q. Aren't there some new proposals that

12 incorporate the solar cells into the roofing materials,

13 shingles?

14 **A. There is stuff in the lab that is**

15 **definitely doing that, yes.**

16 Q. Okay. So other than being told by somebody

17 else that Sanofi's landlord didn't want to allow the

18 site to be available for production of energy, solar

19 energy, did you look into any other potential options?

20 **A. Well, options as far as where we could**

21 **locate the facility, Ma'am?**

22 Q. Yes, if you wanted to provide electricity

23 to the Sanofi campus?

24 **A. We, again, looked at around the -- under**

25 **net metering there's specific requirements as to where**

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1 **the production of electricity can be relative to the**

2 **consumer of electricity. So we did look at those**

3 **sites, if you will, where that could have taken place**

4 **and arrived at the one that met a criteria, the best**

5 **being this proposed site.**

6 Q. Now, in order to meet the requirements of

7 the Board of Public Utilities Commissioners for a

8 facility of this type, a net-metered facility, isn't it

9 true that the site has to be contiguous to the property

10 that it is supplying the energy to?

11 **A. Needs to be contiguous as defined by the**

12 **legislation, yes.**

13 Q. And have you ever received a ruling from

14 the Board of Public Utilities Commissioners that this

15 site is, in fact, contiguous?

16 **A. We received a letter from the BPU that**

17 **followed a what they refer to as a settlement hearing**

18 **by which the BPU staff, the rate payer, advocate for**

19 **New Jersey, the -- I might get it wrong, it's not the**

20 **attorney general, but the state legal team, along with**

21 **our attorneys and Sanofi, along with JCP&L, which is**

22 **the interconnecting utility, did have a meeting,**

23 **multiple meetings, multiple discussions, and we did**

24 **receive confirmation that the BPU has said that we are**

25 **contiguous and, therefore, we are from the -- as the**

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1 **BPU interprets the legislation, contiguous and thereby**
 2 **this is a net-metered facility.**
 3 Q. Isn't it true -- isn't it true that the BPU
 4 declined to render that decision and did not make a
 5 determination as to whether it was contiguous?
 6 MR. HALL: He just answered your question.
 7 MS. DONATO: I don't think he did.
 8 MR. HALL: He did.
 9 THE WITNESS: I said they rendered an
 10 opinion. They said it was.
 11 MR. COLLINS: She asked you did DEP
 12 decline, maybe you misunderstood. Maybe we should
 13 repeat the question from the stenographer.
 14 BY MS. DONATO:
 15 Q. Yes. Didn't BPU decline to reach the
 16 conclusion that the Kirby property was contiguous to
 17 the Sanofi campus?
 18 **A. I did -- we did not interpret it that way.**
 19 Q. Okay. All right. I'd like to ask you
 20 about whether or not you read in Mr. Banisch's report
 21 about the fact that the farm in this area of the
 22 township is -- let me just get his report. I'll make
 23 it specific.
 24 CHAIRMAN BOXER: Can I, Mr. Hall, are you
 25 going to make the letter or the opinion from BPU

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1 available to this hearing? (Request.)
 2 MR. HALL: If you'd like.
 3 CHAIRMAN BOXER: I think we'd like to see
 4 what the letter actually says and the wording. I think
 5 that would be helpful. Thank you very much.
 6 BY MS. DONATO:
 7 Q. I'm referring to Mr. Banisch's report, page
 8 five. Mr. Banisch in the second paragraph on that page
 9 states --
 10 MR. HALL: If you wait one second I have a
 11 copy so he can read along. That would probably be more
 12 productive. Go ahead.
 13 BY MS. DONATO:
 14 Q. Page five, second paragraph, "Bedminster is
 15 composed of a tapestry of farm parcels, which extend
 16 from its northern to its southern boundaries and
 17 dominate all but the easterly highway-corridor portion
 18 of the township. Despite the intervention of Route 78,
 19 which forms a functional barrier to contiguity of
 20 parcels, the area to the south of Route 78 remains
 21 dominated by productive agricultural land in
 22 agricultural use." You read that, right? You saw
 23 that?
 24 **A. Yes, I do.**
 25 Q. So this is from the Township's Master Plan,

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1 Farmland Preservation Plan Goals and Objectives, and it
 2 says that this parcel was not contiguous, it's
 3 separated because of Route 78, does it not?
 4 **A. That's what this paragraph does say, yes.**
 5 MR. HALL: I believe he said it's
 6 contiguous as defined by the BPU not the master plan.
 7 MS. DONATO: I understand.
 8 THE WITNESS: I believe I said by the
 9 legislation.
 10 MS. DONATO: I understand.
 11 BY MS. DONATO:
 12 Q. Okay. Do these panels produce any glare?
 13 **A. The objective of the panel is to absorb the**
 14 **sunlight, as opposed to reflecting the sunlight. So**
 15 **there have been glare reports done, and I would say**
 16 **they do not create a glare.**
 17 Q. That's your opinion, right?
 18 **A. Yes, Ma'am.**
 19 Q. Okay. Let me ask you this about some of
 20 the other structures that are being proposed. Can you
 21 describe the main switchboard that's next to the
 22 jacking station?
 23 **A. No, I cannot.**
 24 Q. So you don't know how tall that main
 25 switchboard is?

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1 **A. I do not at the moment, no. I mean, at one**
 2 **point I did. I do not recall.**
 3 Q. So you wouldn't be surprised if the plans
 4 said that that main switchboard would be 10 to 12 feet
 5 tall?
 6 **A. If you're looking at the plans and that's**
 7 **what it says there, then no, I wouldn't be surprised.**
 8 Q. And you wouldn't be surprised if your plan
 9 showed that it was 23-feet long?
 10 **A. What's 23-feet long?**
 11 Q. The main switchboard?
 12 **A. Switchboard?**
 13 Q. I think it's called the main switching
 14 station or the main switchboard?
 15 MR. HALL: I think our engineer will answer
 16 these questions.
 17 CHAIRMAN BOXER: That's fine. I think the
 18 engineer can be much more specific about that.
 19 MS. DONATO: All right. Thank you very
 20 much. Appreciate it.
 21 CHAIRMAN BOXER: Thank you, Ma'am. We
 22 appreciate it. Thank you, Mr. Lynch.
 23 Let me ask Mr. Collins. I think we're
 24 going to probably open up to the public, but we
 25 probably have a little bit of time, Mr. Collins, would

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1 you agree?

2 MR. COLLINS: Yes.

3 CHAIRMAN BOXER: So this is a --

4 MR. COLLINS: But I think you should

5 concentrate on questions only.

6 CHAIRMAN BOXER: We agree. So this is the

7 part where the public has the opportunity to

8 cross-examine the witnesses. And this is not -- this

9 is not about really making statements about the

10 application, it's being quite specific to Mr. Lynch.

11 And we would at this point invite anybody from the

12 public to come up if you have questions for this

13 particular witness. And if you do come up we need to

14 swear you in. You'll need to state your name, address,

15 and there's a formality to it. You'll have to speak

16 into the mic because it must go on the record.

17 So, yes, sir, please come up and introduce

18 yourself and you'll have to get sworn in.

19 MR. BOLASH: My name is Jeff Bolash. I

20 live at 150 Somerset Terrace, Bedminster.

21 MR. COLLINS: Please raise your right hand.

22 Do you swear or affirm to tell the truth, the whole

23 truth, and nothing but the truth so help you God?

24 MR. BOLASH: I do.

25 CHAIRMAN BOXER: Sir, how long have you

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1 lived in Bedminster?

2 MR. BOLASH: Actually, two years, but my

3 parents have lived here since 1959. My father built

4 the house at 150 Somerset Terrace in 1959. So I'm

5 very, probably more than anybody else, I'm more

6 familiar with the Stevenson Farm than anybody here.

7 And Mr. Lynch my question to you is: No

8 one here has mentioned Preston Terrace or Somerset

9 Terrace. Have you been there?

10 THE WITNESS: I've been to Somerset Terrace

11 actually for an unfortunate fire that happened probably

12 about four, five years ago.

13 MR. BOLASH: Oh, I remember that. So my

14 understanding is there's not going to be a berm that's

15 built on this part of the property?

16 THE WITNESS: Is that what the question is?

17 MR. BOLASH: Yes.

18 THE WITNESS: No. We are planning to both

19 from -- both from Preston and from Somerset to create

20 that barrier such that from your homes, from your

21 properties, homes and property you will not see the

22 facility. So there will be both vegetation and in

23 places necessary a berm built.

24 MR. BOLASH: So this berm cannot be built

25 any closer than 200 feet to our property, and as well

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1 as 200 feet from Meadow Road, Country Club Road. So if

2 the berms are going to come in 200 feet that doesn't

3 seem to be enough room in the center of that to put

4 this power plant.

5 MR. HALL: If you know. The engineer can

6 answer that in more detail.

7 CHAIRMAN BOXER: That's fine.

8 MR. BOLASH: All right. So my

9 understanding is the berms cannot be built closer than

10 200 feet to the property lines or the roads.

11 MR. HALL: I think he may have misspoken

12 about that, but we'll clear it up.

13 THE WITNESS: Jeff, it is our intention

14 that from your property and all your neighbors'

15 properties that you will not see this facility.

16 MR. BOLASH: Thank you very much.

17 CHAIRMAN BOXER: Thank you, sir. We

18 appreciate your question. Can I ask anybody else in

19 the audience if they have questions for this witness?

20 Yes, Ma'am. Come on up and introduce yourself and

21 we'll have to get you sworn in.

22 MS. SMITH: My name is Michele Smith. I

23 reside at 927 Washington Valley Road, Basking Ridge,

24 New Jersey, which is the first house past Bedminster.

25 CHAIRMAN BOXER: Thank you very much.

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1 MR. COLLINS: Do you you swear to tell the

2 time truth, the whole truth, and nothing but the truth

3 so help you God?

4 MS. SMITH: I do. I have a couple of

5 questions. One of the things that you had said, Mr.

6 Lynch, was that if Sanofi, I'm sorry I can't pronounce

7 it, leaves that the electricity would still go into

8 those buildings. But several times you were asked if

9 they, you know, who is going to benefit from the

10 electricity? And you had said that it was going back

11 in and then it would go to JCP&L and -- but my question

12 would be, if I move out of my house today and I don't

13 turn off my cable and it still went there I would end

14 up paying for it. So who would end up paying for this

15 electricity that would be going into this building if

16 the pharmaceutical company left before the lease was

17 over?

18 THE WITNESS: The responsible party because

19 it's still paid to the -- the meter is in the name of

20 the tenant. And the meter is actually installed by the

21 local utility. So like your cable, you make the

22 payment to the cable company, the meter, the electric

23 there still would be a requirement to pay for the meter

24 to the local utility. And what I was saying was that

25 there's going to be -- even if Sanofi vacates the

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1 building there's still an electric load, unless they
 2 turn everything off, meaning all of the emergency
 3 systems, the sprinkler systems, et cetera, there's
 4 still an electric load there, albeit less than it is as
 5 an occupied building. The excess electricity that is
 6 produced in that case goes to JCP&L, which is the local
 7 utility. JCP&L would then settle up with us as the
 8 energy producer for the electricity portion of that.

9 MS. SMITH: Okay. That's one of the
 10 questions. Even though I'm not sure I really
 11 understand the answer, please forgive me. I spent many
 12 years in the Marine Corps, so talking intelligently has
 13 never been really identified as a characteristic of
 14 mine.

15 MR. COLLINS: You're doing very well.

16 MS. SMITH: Again, if I move out of my
 17 house, or if I have a private business and I move out
 18 of where I'm paying big bucks to rent and I'm going to
 19 be paying for services I would think that those
 20 services would stop. They would have to stop, because
 21 otherwise it really isn't cost effective to anybody.
 22 But that wasn't really a question.

23 My second question would be, you had talked
 24 about there is no glare from the solar panels. But my
 25 question would be about the heat. They would be

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1 generating heat. So the beautiful birds and hawks and
 2 sparrows and everything that you see floating around
 3 Somerset Hills would be affected by the heat from these
 4 solar panels; correct?

5 THE WITNESS: I have never seen a report
 6 that suggests that.

7 MS. SMITH: Okay. One of the other
 8 questions that was asked by one of the attorneys is at
 9 the end of the life of the solar panels, which could be
 10 anywhere from 20 years to, let's be generous and say 50
 11 years, end of 50 years what happens to those solar
 12 panels? You explained that you would be taking them
 13 out, but where do you put them once you take them out?

14 THE WITNESS: Depending on the remaining
 15 economic use for life we may deploy them into another
 16 project. If there is better technology, if there's not
 17 a reason to keep those panels they would then go and be
 18 recycled.

19 MS. SMITH: Even though a lot of the solar
 20 panels that are being made have Silicon and other
 21 material in them that cannot be recycled?

22 THE WITNESS: Well, Silicon is sand, so it
 23 would just be reused.

24 MS. SMITH: All right. So Silicon, from
 25 what I understand --

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1 THE WITNESS: It's Silica.

2 MS. SMITH: Silica has carcinogenics in it
 3 and it causes different things like autoimmune
 4 deficiencies: Lupus, chronic obstructive pulmonary
 5 disease.

6 MR. HALL: Is that a question?

7 MS. SMITH: No, it's not a question. I'm
 8 sorry. All right. Excuse me, sir. I have been
 9 treating you and everybody else here by speaking in a
 10 rational voice, which is what I teach my patients. So
 11 I would prefer not to be talked to in an emotional
 12 voice, because it really doesn't make me feel
 13 comfortable speaking up here.

14 So my question would be, have you heard
 15 that Agent Orange was used in Vietnam?

16 THE WITNESS: Yes. I've heard that.

17 MS. SMITH: Have you heard that when it was
 18 first used as a defoliant they thought it was deemed
 19 harmless?

20 THE WITNESS: I honestly have not spent a
 21 lot of time -- no, I haven't.

22 MS. SMITH: Okay. So you would not know
 23 then that Agent Orange actually affects people in
 24 different ways, including different cancers?

25 MR. HALL: I'm sorry, but she's testifying,

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1 and he's saying that he didn't know about it.

2 MS. SMITH: But you said to make everything
 3 as a question, so I'm asking him as a question.

4 MR. HALL: But it has to be a relevant
 5 question.

6 MS. SMITH: Excuse me, sir. The question I
 7 first asked was, did you know that Agent Orange was
 8 deemed harmless? He answered no.

9 MR. HALL: Then you can't ask him more
 10 questions because he says he doesn't know.

11 MS. SMITH: Excuse me, sir. I did not
 12 interrupt you, even when you belittled the people who
 13 reside in Bridgewater. I would expect the same
 14 respect.

15 MR. HALL: I didn't belittle anyone. I
 16 apologize if I said anything --

17 CHAIRMAN BOXER: Ma'am, I think the I best
 18 thing to do is --

19 MR. HALL: I'll shut up.

20 CHAIRMAN BOXER: Mr. Hall, bear with me.
 21 Ma'am, it's no problem. I realize that you're not a
 22 trained attorney, so some of these questions are maybe
 23 not on point. We're going to try to give you as much
 24 latitude as we can.

25 I think it's going to be very difficult for

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1 Mr. Lynch to testify to any medical issues, anything
2 that happened in Vietnam. I just don't think we're
3 going to go anywhere with that, and I understand where
4 you might be going, but I'm not sure he's the right one
5 to ask it. There will be other witnesses that may come
6 up that may be in a better position, but I would
7 recommend maybe you think about pointing the questions
8 towards some of the testimony that you heard tonight.
9 MS. SMITH: Definitely, Mr. Boxer. Yes,
10 Mr. Boxer. Mr. Martin isn't here.
11 CHAIRMAN BOXER: Yes. I'm incognito.
12 MS. SMITH: I'm sorry. So my other
13 question would be the fact that you had talked about
14 the pharmaceutical company not wanting the solar panels
15 on their property. And then you indicated that there
16 was no follow-up. Can I just ask how you heard that
17 Sanofi didn't want this?
18 THE WITNESS: I don't believe I ever said
19 that they didn't want it. What I said was that they
20 were not given permission by the property owners, both
21 the building and the -- the property there is owned by
22 multiple owners. So the parking lots, for example, are
23 owned by Entity "X," where the buildings in which they
24 may reside are owned by different owners. And so what
25 they were told when they inquire -- as I was told was

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1 when Sanofi inquired as to putting solar on either the
2 buildings or the parking lots that the landlords, the
3 respective landlords did not give them permission to do
4 that.
5 So, I can't attest to -- to whether or not
6 their desire, what their desire may have been.
7 MR. SMITH: Okay. So I guess the question
8 should have been, and you're right, you did not say
9 Sanofi said no. When you were told that the multiple
10 of owners were not in agreement with putting up solar
11 panels there was no follow-up by your company for this
12 multi -- I'm sure multi-million dollar project?
13 THE WITNESS: No. We, you know, Sanofi and
14 the individuals that we have been dealing with are very
15 high within the organization. They've been in their
16 positions within the organizations for many years. We
17 had no reason to question the information that they
18 gave us. And so upon receipt of that information we
19 then started looking for alternative sites and
20 ultimately arrived on the Kirby site that met all of
21 the needs that we have, the criteria that we had to
22 produce power.
23 MR. COLLINS: Mr. Lynch, you do have to
24 answer the question. The question was, did you follow
25 up after, with Sanofi or the owners after you learned

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1 that the owners didn't allow Sanofi to use the land and
2 the buildings?
3 THE WITNESS: We did not follow up with the
4 landlords directly to confirm that.
5 MR. COLLINS: And just to get this cleared.
6 The owners of the land you said are Entity "X." The
7 owners of the building are some other entities. Can
8 you state the names of the owners, or if you don't have
9 it here tonight can you get the Board a copy of the
10 names of those owners?
11 THE WITNESS: We can get the information.
12 MR. HALL: I understand it's a condominium
13 type of -- we'll provide that.
14 MR. COLLINS: Okay. So basically the
15 owners -- the request that I have for the Board and
16 this record is the names of the owners of the land
17 where the parking lots are located on. Also the names
18 of the owners of the land that the buildings are on
19 that are different than the buildings. And then the
20 owners of the buildings that the rooftops and their
21 ownership of rooftops could be known. Thank you.
22 MS. SMITH: Thank you very much.
23 CHAIRMAN BOXER: Thank you. Is there
24 anybody else from the public that would like to come
25 up? Hi, how are you doing? Come on up and introduce

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1 yourself.
2 MS. TERRAGLIA: Good evening. My name is
3 Daniel Terraglia. I reside at 77 Preston Terrace,
4 Bedminster.
5 CHAIRMAN BOXER: Mr. Hall, just for
6 planning purposes, I think we'll probably go until
7 about 10:15, if that works, and probably not take
8 another witness.
9 MR. HALL: No, there's no point. I agree.
10 CHAIRMAN BOXER: We'll try to let a couple
11 more citizens speak and see how the times works. Go
12 ahead, Ma'am, I'm sorry.
13 MS. TERRAGLIA: Good evening. Mr. Lynch,
14 you stated that you had done a study on another site.
15 My question is: The study on the other site that you
16 had done is it comparable in the size of the site that
17 you are suggesting for this Kirby property?
18 THE WITNESS: The only analysis we had --
19 the analysis I was making reference to was when we
20 first started -- when we responded to the RRP the RRP
21 was to put it on the company's own sites. And we
22 presented that, and it was following that that they
23 followed up with the property, folks that control the
24 property.
25 SECRETARY LINDSEY: Tom, I'm sorry, they're

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1 making reference that you didn't swear her in. She
 2 wasn't sworn in.
 3 MR. COLLINS: We like to swear people
 4 making questions, except attorneys because we respect
 5 that a statement might be made that might be an
 6 unexpected statement and we like the record to be --
 7 MS. DONATO: I understand. Thank you.
 8 MR. COLLINS: Correct. Sorry, Ma'am. Do
 9 you swear or affirm to tell the truth, the whole truth,
 10 and nothing but the truth so help you God?
 11 MS. TERRAGLIA: I do.
 12 MR. COLLINS: And I don't think you made a
 13 statement, but if you made any statements that you --
 14 are the statements you've made are true to the best of
 15 your knowledge?
 16 MS. TERRAGLIA: Yes.
 17 MR. COLLINS: Are there any changes that
 18 you want to make to any statements you might --
 19 MS. TERRAGLIA: No changes.
 20 THE WITNESS: So the analysis we did was on
 21 the 55 Corporate Drive, we'll call it Campus. And then
 22 we -- the next analysis was on the Kirby property.
 23 MS. TERRAGLIA: Okay. But my question is,
 24 you're talking about doing a study on another site, and
 25 from the way that I understood was that you're talking

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1 about you did a study where you placed other solar
 2 panels on another site. My question is then, have you
 3 done a sound study where you will find out how this
 4 affects houses and residents in the nearby area, what
 5 sound levels going to be produced by these 40,000-plus
 6 solar panels?
 7 THE WITNESS: I'm sorry, I should have let
 8 you finish your question before I answered the first
 9 time. The panels themselves are noiseless. The noise
 10 comes from the inverter. And we have actually on the
 11 Branchburg project we had to do a sound -- we had to
 12 bring in a sound noise expert that I think is --
 13 MR. HALL: Acoustical.
 14 THE WITNESS: Excuse me, acoustical expert
 15 is the professional name, who did an analysis based on
 16 the noise that's generated at the -- from the piece of
 17 equipment, and then going out "X" number of feet from
 18 the equipment.
 19 MS. TERRAGLIA: Okay. But in my question
 20 being the same site, is it along the same size? And
 21 also is it in an agricultural area, or are we talking
 22 about Branchburg maybe on Routes 202/206, Routes 22
 23 where there is other outside noises because you're on a
 24 much more suburban area than you are, say, on Country
 25 Club Road? So is there -- do you have some information

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1 that you can provide to us that is relevant to the
 2 noise that would be produced in an area such as by the
 3 Kirby Farm on Country Club Road?
 4 THE WITNESS: The answer is, yes.
 5 MS. TERRAGLIA: Okay. Is there any chance
 6 that you can provide that or direct us?
 7 THE WITNESS: We will have that as part of
 8 the testimony that I believe it's our engineers can go
 9 through.
 10 MS. TERRAGLIA: Thank you. Also, is there
 11 studies done that we can find that we all that live
 12 over in Somerset Terrace and Preston Terrace and
 13 Victory Road we use well water. How do we know that
 14 the runoff will not affect our well water?
 15 MR. HALL: I think our engineer can
 16 respond.
 17 THE WITNESS: I believe it's part of the
 18 stormwater management plan. I said, I believe, so I'm
 19 not a hundred percent sure.
 20 CHAIRMAN BOXER: I think probably that one
 21 we'll deal with through the engineers. I also think
 22 the sound issue just for planning purposes will become
 23 the point of focus. So we should be thinking about
 24 acoustical studies, because I think that each of these
 25 sites are different elevation, proximity to where

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1 houses are, elevations to berms in natural vegetation I
 2 think affects sound, so we should be thinking about
 3 that as the hearing goes on.
 4 MS. TERRAGLIA: And one last question.
 5 This refers to something, Mr. Lynch, that you stated
 6 earlier. If and when you have to remove any of the
 7 pilings you say that it won't take much to till the
 8 earth to return it back to the state that you found it
 9 now. But the question is: How deep do these pilings
 10 go? And you say that you won't have to till very much
 11 to return that earth to the condition that it is now.
 12 How much effort would it take to fix that fractured
 13 earth of putting these pilings in?
 14 CHAIRMAN BOXER: I'm sorry, Ma'am. Mr.
 15 Hall, my thought for you is that I think some of these
 16 questions could be very technical and I don't really
 17 see Mr. Lynch as the expert in terms of pilings and
 18 depth and soil compaction.
 19 MS. TERRAGLIA: With all due respect, it's
 20 just that it was a comment on something that he had
 21 stated.
 22 CHAIRMAN BOXER: I think that some of these
 23 questions that we're going to have are probably going
 24 to have to be directed over to the professionals to
 25 deal with this. So, I mean, I think you can continue

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1 to probe, but I think we're going to probably run Mr.
 2 Lynch through his technical limitations and I'm not
 3 sure that that's fair to anybody.
 4 MS. TERRAGLIA: All right. Very good.
 5 MR. HALL: We will have an engineer that
 6 will testify and we'll answer all your questions.
 7 CHAIRMAN BOXER: And you will be able to
 8 come back.
 9 MS. TERRAGLIA: I'm just commenting on a
 10 statement that he made.
 11 CHAIRMAN BOXER: And save those questions,
 12 because there will be people up here that will answer
 13 it for all of us.
 14 MS. TERRAGLIA: Thank you.
 15 CHAIRMAN BOXER: Sir, we're just going to
 16 take one more. So you're welcome to come up and --
 17 we're only going to take one. We're only going to be
 18 five or 10 minutes.
 19 MR. CATUCCI: My name is Ken Catucci. I
 20 live on 20 Preston Terrace.
 21 MR. COLLINS: Sir, please raise your right
 22 hand.
 23 MR. CATUCCI: I've been there for 20-plus
 24 years. I won't cut you off if you don't cut me off.
 25 MR. COLLINS: I just need to get you sworn.

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1 So, do you swear or affirm to tell the truth, the whole
 2 truth, and nothing but the truth so help you God?
 3 MR. CATUCCI: Yes, I do. First question, I
 4 just want to make sure I heard the earlier response.
 5 The owners of 55 Corporate Drive, the building I worked
 6 at for about five-plus years, do we know the reason
 7 that they did not want the solar at their facility?
 8 THE WITNESS: I don't know.
 9 MR. CATUCCI: Just a little comment from a
 10 space perspective for those who haven't been there and
 11 you can't see it from the road. It's a huge facility:
 12 Four buildings, a lot of roof. It's a huge parking lot
 13 facility as well. Similar to Disney where you're
 14 waiting for the bus to take you to the building, so
 15 that's how big it is. So thank you for that answer.
 16 My next question is, how many installs has
 17 KDC done where the recipient of the power or the power
 18 comes from a different town to where the recipient
 19 receives the power?
 20 THE WITNESS: I don't believe any.
 21 MR. CATUCCI: Okay. My last question: In
 22 your view what are the direct benefits of this solar
 23 plant to the township of Bedminster, as well as its
 24 residents? And just for clarity, that is direct
 25 benefits.

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1 THE WITNESS: Well, I think from a direct
 2 benefit the 30-plus acres that is currently under
 3 farmland assessment comes out of farmland assessment
 4 and gets taxed appropriately. So I would say there's a
 5 economic contribution that comes to the township which
 6 all of the residents should benefit from.
 7 Part of the transaction with Sanofi is
 8 there's economic benefits to Sanofi for that. And as I
 9 noted earlier there's approximately 3,000 employees
 10 that on a relatively daily basis during the workweek
 11 arrive there. And as you had worked at that site, you
 12 know, the closest place to pick up a gallon of milk is
 13 either the Whole Foods -- the soon-to-be Whole Foods or
 14 Kings. I think the closest place for someone to fill
 15 their car up happens to also be in Pluckemin.
 16 So, I think what we are trying -- part of
 17 our proposal on doing these net-metered projects is to
 18 reduce the cost of electricity for our power purchaser.
 19 That hopefully makes it a little more challenging as
 20 they think about picking up and moving somewhere else
 21 and they take those jobs, and that economic engine that
 22 we in Bedminster benefit from vis-a-vis their dollars
 23 spent in the Pluckemin area and elsewhere.
 24 So, I would say from a direct contribution
 25 to the residents, one is, if the project is ultimately

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1 approved and the land portion thereof becomes --
 2 generates more tax dollars; secondly -- without, you
 3 know, clearly, and I'm not going to argue that people
 4 have different points of view, but we're not creating
 5 any more people on the school system. We're not
 6 creating any more infrastructure draw. And so -- and
 7 then the economic benefits of having such a large
 8 corporate tenant just over the border from Bedminster.
 9 MR. CATUCCI: Just to follow up. I just
 10 want to make sure I understood, because I guess I
 11 understood Bedminster getting the taxes. I'm not sure,
 12 and I look at the audience, I'm not sure that I heard
 13 the direct for the residents. Can you just repeat that
 14 response?
 15 THE WITNESS: Well, if you've got more
 16 property tax dollars coming in, and we all live within
 17 a two percent cap, you've got one more contributor to
 18 the property tax.
 19 MR. CATUCCI: But that's -- it's probably
 20 indirect, right? Similar to how you said earlier that,
 21 you know, the benefit of the electricity -- okay. I
 22 appreciate the answer. I'm not sure I agree or totally
 23 understand it, but thank you for your response.
 24 CHAIRMAN BOXER: Thank you very much. Mr.
 25 Hall, I think what we'll do at this point is it's after

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1 10 and I would suggest, we're probably not quite done
 2 with Mr. Lynch and there may be some other people that
 3 want to question him and I --
 4 MR. HALL: That's fine.
 5 CHAIRMAN BOXER: Mr. Collins, I think at
 6 this point what do you suggest, that we probably
 7 carry --
 8 MR. COLLINS: Yes, we should carry to a
 9 date certain. A date that had been mentioned in the
 10 past was the second Thursday of November, which is
 11 November 14th.
 12 CHAIRMAN BOXER: Right.
 13 MR. COLLINS: And it's up to the Board and
 14 the Chair and maybe the attorneys who might want to
 15 think about it, but I believe we could use the school
 16 and the larger meeting room of the school that night if
 17 we wanted to.
 18 CHAIRMAN BOXER: Mr. Hall, I'm going to
 19 leave this one actually for you to think about. If we
 20 have it here and we end up having more than 150 people,
 21 my thought is that we'll be conservative and we can set
 22 the school up on the 14th. That way we take all the
 23 risk out of the hearing.
 24 MR. HALL: I agree, and Trina, did you
 25 confirm that it's available?

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1 SECRETARY LINDSEY: The school did respond
 2 and they did say that they believed it was available
 3 that night. I do want to point out, though, that the
 4 school does not have a recording system. So the
 5 meeting will not be recorded. We obviously have the
 6 stenographer, but they do not have a recording system
 7 in that meeting room.
 8 CHAIRMAN BOXER: Let me ask Mr. Collins
 9 about this. Is that an issue?
 10 MR. COLLINS: No, that can be the verbatim
 11 recording.
 12 MR. HALL: We'll provide the transcript.
 13 MR. COLLINS: We already have the
 14 understanding that we're going to receive the
 15 transcript. So that is fine.
 16 MR. HALL: We'll provide tonight's
 17 transcript.
 18 CHAIRMAN BOXER: We appreciate that. And
 19 if it's okay with you then we'll go ahead and plan on
 20 the meeting on the 14th.
 21 MR. HALL: I agree, that makes sense.
 22 MR. COLLINS: So for the public's
 23 information this case which started tonight and was
 24 noticed for tonight is carried to a date certain of
 25 November 14th, 2013, at the school name is the --

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1 what's the name of the school?
 2 SECRETARY LINDSEY: It's the Bedminster
 3 Township School.
 4 MR. COLLINS: Not here at the municipal
 5 building, right up the street at 7 p.m. There will be
 6 no further notice.
 7 MR. HALL: And we agree to an extension of
 8 time to the end of November. There's no question
 9 there.
 10 CHAIRMAN BOXER: Thank you very much. We
 11 appreciate it.
 12 Mr. Lynch, we'll continue on -- we have a
 13 few more citizens that would like to talk, so we just
 14 plan on you coming back on the 14th. For everybody
 15 that's out here we'll see you on the 14th. Thank you
 16 very much. Do we have a motion to adjourn?
 17 BOARD MEMBER GUTTSCHALL: Motion.
 18 BOARD MEMBER RODELIUS: So moved.
 19 CHAIRMAN BOXER: Thank you very much.
 20 (The hearing on this application adjourns
 21 at 10:10 p.m.)
 22
 23
 24
 25

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1 C E R T I F I C A T E
 2
 3 I, IRIS LA ROSA, a Notary Public and Certified
 4 Shorthand Reporter of the State of New Jersey, do
 5 hereby certify that the foregoing is a true and
 6 accurate transcript of the testimony as taken
 7 stenographically by and before me at the time, place,
 8 and on the date hereinbefore set forth.
 9 I DO FURTHER CERTIFY that I am neither a
 10 relative nor employee nor attorney nor counsel of any
 11 of the parties to this action, and that I am neither a
 12 relative nor employee of such attorney or counsel, and
 13 that I am not financially interested in the action.
 14
 15
 16 IRIS LA ROSA, CSR, RPR
 17 Certificate No. 30XI00162800
 18 Dated: 10-17-13
 19
 20
 21
 22
 23
 24
 25

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