

**WEST AMWELL TOWNSHIP**  
**ZONING BOARD OF ADJUSTMENT**  
**Regular Meeting**  
**October 26, 2010**

The West Amwell Township Zoning Board of Adjustment regular meeting was called to order at 7:37 PM by Chairman Cronce.

The following statement of compliance with the Open Public Meetings Law as listed on the meeting agenda was summarized by Chairman Cronce: This meeting is called pursuant to the provisions of the Open Public meetings Law. This meeting was included in a list of meetings transmitted to the Hunterdon County Democrat and Trenton Times on January 28, 2010. Notice has been posted accordingly and a copy of this notice is available to the public and is on file in the Zoning Board of Adjustment Office.

The meeting was recorded via digital recording system and copy of CD is on file in the Zoning Board of Adjustment Office.

Chairman Cronce led the Pledge of Allegiance to the American Flag.

**ATTENDANCE/ROLL CALL:**

Roll call on attendance: Robert Fulper-present, Brian Fitting-present, Joseph Romano-present, Ruth Hall-present, John Ashton (Alt. #1)-present, John Hoff (Alt. #2)-present, John Cronce-present.

Absent: David Sanzalone, John Dale

Professionals Present: Stewart Palilonis, Board Attorney; Tom Decker, Board Engineer

**PRESENTATION OF MINUTES:**

Regular Meeting Minutes – August 24, 2010 – Fulper questioned whether the Board went into closed session on a personnel issue. He was advised that the Board did not retire into executive session. Motion was made by Fulper with a second by Romano for approval of the minutes as presented. Roll call: Fulper-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton (Alt. #1)-aye, Hoff (Alt. #2)-aye, Cronce - aye. Motion carried

Chairman Cronce announced that there would be a time limit on the meeting; the meeting would end at 10:45.

**APPLICATION(S):**

**Public Hearing: Green Power of West Amwell - Block 3 Lot 12/14 – Route 179 -**

Use and Bulk Variance Application/Site Plan Application – Completeness

## Determination/Public Hearing (7:42)

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Anthony Valenti, attorney for the applicant, appeared on behalf of the applicant, Green Power of West Amwell, (property owner Lynn B. Ziegenfuss). Application, checklist, and plan titled "Use Variance & Preliminary and Final Major Site Plan, Green Power of West Amwell, LLC" comprised of seven sheets and prepared by Challoner & Associates LLC dated October 7, 2010, were received and distributed.

Notices of service and publication were reviewed by Attorney Palilonis and found to be in order.

The following witnesses present on behalf of the applicant were sworn in by Attorney Palilonis:

Robert Kline, Solar Expert - 625 Spring St., Reading, PA  
Andrew Westhoven, Engineer - 201 Main St., Toms River, NJ  
Andrew Thompson, Planner - PO Box 363, Brielle NJ  
Lynn Ziegenfuss, Property owner - 309 Treckler Rd., Albertus, PA

In response to questioning by Attorney Palilonis, Attorney Valenti advised that the application would not be bifurcated and testimony would be provided on the variance aspect of the application initially. Mr. Valenti provided an overview of the application as follows: Project proposed is a two mega-watt Solar Farm, on two contiguous lots; Block 3, Lot 12 & 14. The solar arrays are to be constructed on Lot 14, with the power lines through Lot 12. Applicant is seeking preliminary and final site plan approval. Solar arrays are not a permitted use in the RR 4 zone; it is to be determined whether the proposed application is a public utility; public utilities are an allowed use in all districts. The MLUL has been recently amended to provide that Solar Farms of this nature are an inherently beneficial use. The second use variance being requested is the dual use on single lot with existing farm house. The property consists of 106 acres, with the proposed project encompassing 14 of those acres; there will be no impact on the farmland remaining.

Attorney Palilonis questioned whether this will be a public utility. It was noted that public utility is not defined in the Township ordinances. Attorney Valenti provided the definition of a public utility and offered that the State of New Jersey establishes jurisdiction within the Board of Public Utilities Commission. Based on the definition and service to be provided (solar farm to be tied to the grid to provide power to the public at large), Attorney Valenti presented that they are within the definition of a public utility. However, a determination needs to be made by the BPU; they have not applied to the BPU to date. He related that

there is an application process that will be required for the public utility through their contractor to tie into the grid and they don't believe there will be any problem. Mr. Valenti further advised that they were seeking approval from the municipality first because of the timeframe associated with funding.

Applicant is seeking the following relief: variance relief, specifically, "d" use variance, dual use, "c" variance – fence; existing non conforming bulk variance (frontage).

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Palilonis questioned the access to lot 14. He was advised there is a right of way to provide access to the lot. There is a recorded deed thru block 3 lot 16 described as a right of way in the deed. Attorney Palilonis advised that the Township has a requirement that a building lot abut a street. Applicant is seeking relief for this existing, non-conforming condition whereas this lot is landlocked.

Discussion ensued amongst the Board members as to whether this project has been defined as a public utility. Attorney Palilonis opined that if it is plugged into the grid, it will be public and this is the representation made by the applicant's attorney.

He offered that any approval granted could be conditioned on a factual determination that it is a public utility as determined by the BPU. Attorney Valenti requested that consideration be given to granting a variance in the event that it is not deemed a public utility (requesting use variance as alternative in the event the project is not considered a public utility by the BPU). Mr. Valenti offered that the use issue is based on it being deemed an inherently beneficial use by the State of NJ. Attorney Palilonis noted the ordinance distinguishes implications that flow from it being a public utility and not being a public utility.

Engineer Tom Decker of Van Cleef Engineering was present on behalf of the Board.

Completeness and Technical Review #1 letter dated October 22, 2010, was received and distributed. Engineer Decker provided an overview of the review letter noting outstanding checklist items that have been provided since the issuance of the report.

The following checklist waiver requests were addressed:

Flood Hazard Calculations – Applicant's engineer offered that the area of normal flooding will not encroach or affect any proposal that is greater than 300 ft. from the stream. Engineer Decker offered that given the existing topography (steep), the flood hazard limits do not likely extend beyond the limits of the 300 ft. Riparian Buffer and recommended the granting of this waiver request. Motion was made by Romano with a second by Fitting to grant this waiver. Roll call:

Fulper-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton (Alt. #1) -aye, Hoff (Alt. #2) - aye, Cronce -aye. Motion carried.

LOI/Wetlands – An Aerial Photo surrounding the area and labeled as “Rendering” was entered into the record and marked as Exhibit G-1. NJ DEP I-Map was entered into the record and marked as Exhibit G-2. Applicant’s engineer testified to the potential areas for wetlands in the south east corner just off the subject property and to the west. There are wetlands that run through the property, but with the steep banks they offered that the wetlands are contained within the stream bed itself. It was further related that as far as the DEP assigning a buffer to these wetlands, in the most extreme cases, the largest buffer they can assign would be 150ft. and if it is 150ft. it would still be within 300 ft. of the Category 1 Riparian buffer that has already been applied to this stream. Engineer Decker offered that approval of the waiver request be considered.

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Motion was made by Hoff with a second by Fulper for the waiver of Checklist items M1 (elements from Ordinance 109-274), M2 (wetlands report), and N (NJDEP LOI). Roll call: Fulper-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton (Alt. #1) -aye, Hoff (Alt. #2) - aye, Cronce - aye. Motion carried.

Plan Information – Motion was made by Fulper with a second by Ashton to waive items #10-19 as recommended by Engineer Decker with the following exception: Item #15 – on-site wells location to be provided as condition of approval. Roll call:

Fulper-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton (Alt. #1)-aye, Hoff (Alt. #2)-aye, Cronce-aye. Motion carried.

Landscaping plan/Soil Removal/As-Built Plan – Applicant’s engineer testified that in accordance with the woodlands protection ordinance, they have relocated the access drive to go through the lower field. Notes will be provided on the plans to remove shrubs but no trees. In response to questioning, testimony was provided that the trees won’t impact the panels in future. Applicant’s professionals offered that the landscaping plan will be developed at the discretion of the Board and the surrounding residents impacted by the project. Applicant will meet on site with the Board and residents to determine what landscaping would be suitable. Applicant’s professionals testified that there would be no soil removal; the fields will be tilled and planted with low maintenance meadow mixture under the panels. Minor excavation will be done for the installation of electric. Engineer Decker was satisfied with the testimony offered regarding these issues.

Motion was made by Fulper with a second by Fitting to deem the application complete subject to resolution of the landscape buffer detail and submission of

as-built plans. Roll call: Fulper-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton (Alt. #1) -aye, Hoff (Alt. #2) - aye, Cronce - aye. Motion carried.

*(Chairman Cronce related that there would be a change in the agenda order of business resulting in a brief recess of this application – Meeting recessed 8:33 PM – 8:43 PM)*

**Public Hearing: East Coast Colorants, LLC d/b/a Breen Color Concentrates**

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**Block 8 Lot 23.03 - Kari Dr.** - Use and Bulk Variance Application/Site Plan Application - Completeness Determination/Public Hearing (8:43)

Eric Rupnarian P.E. of Goldenbaum Baill Associates, Lambertville NJ, appeared on behalf of the applicant. However, due to the fact there was no legal representation present on behalf of the applicant; Attorney Palilonis advised the application could not be heard at this time. The applicant and members of the public were advised that the completeness review and public hearing would be continued to the November 23, 2010 meeting of the Board at 7:30 PM. No additional notices will be given. (8:47 PM)

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**Public Hearing: Quick Chek Corporation - Block 23 Lot 1 - Route 31 & Harbourn Rd** - Variance Request- Sign - Completeness Determination/Public Hearing (8:52 )

Mary Elizabeth Warner, Esq. was present on behalf of the applicant. Notices and proof of service were reviewed by Attorney Palilonis and found to be in order. Applicant's attorney agreed to carry the completeness review/public hearing to the November 23, 2010, meeting of the Board at 7:30 PM due to time constraints of this evening's meeting. The application will be forwarded to the Board's Engineer for a completeness review prior to the 11/23/10 meeting. Members of the public were advised of the continuance of the meeting; no additional notice will be made. (8:59PM)

*(The regular order of agenda business resumed – Green Power Application.)*

**Public Hearing: Green Power of West Amwell - Block 3 Lot 12/14 – Route 179** -

Use and Bulk Variance Application/Site Plan Application – Completeness Determination/Public Hearing (9:00 PM)

**Witness #1** - Lynn Ziegenfuss - Property owner -gave brief history of property, owned property since 1986, property consists of 106 acres, currently farming the fields, property not changing much under proposed plan; original plan was much

larger; scaled back to fit within ordinance. Asking for variance for farm house for daughter to reside in.

**Witness #2** - Andrew Westhoven P.E. - Mr. Westhoven offered his credentials and testimony experience and was accepted as an expert witness. An overview of the project was related as follows: This is a landlocked property with an access easement right of way to Route 179 through block 3 lot 19. Proposal is to convert two existing soybean farm fields, approximately 14 acres, into a 2 mega watt solar farm. The panels will be faced in the southerly direction. Proposal includes an 8ft chain link fence around each property. Proposing two gravel access drives for the purpose of accessing the concrete pads. These pads will house the transformers. There will be access gates to the pads. The farmhouse will stay. Property is Located in RR4 Northern district.

Arrays will be stepped with the slopes, will be mounted on poles driven into the ground, there will be no other disturbance other than the running of the electric lines. Pad design was entered as Exhibit "G-3" to show detail.

**Witness #3** - Robert Kline, Solar Expert- Mr. Kline offered his credentials and testimony experience and was accepted as an expert witness. An overview of the project was related as follows: A solar panel was displayed. This project will develop 8,000 -10, 000 man hours to install. The conversion of sunlight to solar power was explained - sunlight converts to dc power, solar panels need to be connected to get voltage up, each panel is

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only good for about 35 volts. Connect in series to get the voltage up and run to inverter, (the inverter will be placed on the pad), inverter takes dc to ac power and synchronizes to push power to grid.

Project will consist of 8,736 panels, 312 arrays, in groups of 28. Post is 10ft long, goes in ground 4 ½ feet. Life expectancy of system is 30 years; inverter may need service in between, some claim that the inverter may need to be changed out in 15-20 years. Panels have warranty for 25 years to be providing 80% of their initial output in 25 years. Useful life expectancy is 25-30 year period.

Panels don't require any maintenance; installation at approximately 40 degree angle. When it rains, any pollen or dust that might occur will be washed off; plenty of studies have been done to show that the rain is more than adequate to keep them clean. The ones that require cleaning are those lying completely flat. No concern about harsh cleaning materials.

In response to questioning regarding the required service to the inverters, it was related that maintenance is set up for twice per year. The system is remotely

monitored and in the event of a problem, electronic notification will be received and there will be a disconnect.

Mr. Kline related the benefits of this project to the environment: equivalent of planting six million + trees. Equivalent of CO<sub>2</sub> absorbed from the trees and returned as oxygen is the equivalent for the CO<sub>2</sub> that was displaced. The State of NJ has deemed this a beneficial use.

An overview of the submission plan for the connection was provided: plan is to sell power to the grid; way to do that is to get interconnect agreement through PGM Gas. This company covers a five state area and is responsible for the management and the exchange of power on and off the grid. New Jersey Central Power & Light has the lines in the area. In consultation with JCP&L, it has been learned that a 2 mega-watt system is practical. Larger systems haven't moved forward, however 2 mega-watt systems and under can move right through the process. Utility already has lines running back to the property; plan is to have the lines updated with utility to make connection; all connections will be underground and connect to what is existing. In response to questioning, it was related that the connection will be made back in the property and not on Route 179. The utility company will make determination on upgrade.

Inverter specification sheet was entered as Exhibit G-4. It was related that the height will be two feet on the low side and nine feet on the high side. Racking system photo was entered into the record as Exhibit G-5.

In response to questioning regarding noise, testimony was provided that solar panels don't generate any noise at all. The inverter generates noise during daylight when the sun

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is up; approximately 45 decibels at 75 feet. It was related that the position is well off of the property line at 400 ft. away from the property edge.

Testimony was provided that the panels don't reflect and this would be against the design. Panels are trying to absorb the sun to convert into electricity. The reflective studies from manufacturer being used (one of the premiere manufacturers of panels in the world) uses a specific glass designed to let the light in and not back out so it can be absorbed inside the panel; panel has an anti-reflecting coating on it. It has been compared to equivalent to reflectivity of the cornfield. In response to questioning, Mr. Kline testified that the entire frame is covered by the panel, with exception of the aluminum edge, which is not buffed or shined up. The project is designed to be spaced out allowing for optimal absorption of energy, by optimizing the angle. It is possible to lower the angle and put more density of panels on the land but project is allowing for a lot of

grassy areas; they are not going to be bunched up; there will be rows of grass between.

In regard to safety concerns, it was related that the inverters are locked up, sealed up, and sitting on pads. Panels have connections that someone could get to and open up similar to that of an extension cord; they are dead when pulled apart. Objective is not allowing anyone on site which is why proposing a fence is serving a dual purpose; there is more concern with vandalism than anyone getting hurt.

Attorney Valenti asked if Mr. Kline was aware of any efforts by the Federal Government or State of NJ to promote solar energy. Mr. Kline advised that there is currently a 30% federal grant being offered as long as systems are 5% in safe harbor by year end. After year end there is still a 30% investment tax credit available for businesses and residents.

**Witness #4** - Andrew Thomas, P.P - Mr. Thomas offered his credentials and testimony experience and was accepted as an expert witness. Mr. Thomas offered that in his professional opinion, this project is a public utility. He again offered that public utility is not specified in the Township ordinances. In response to questioning by Attorney Palilonis, Mr. Thomas confirmed that he is not an attorney and is offering his opinion as a planner and how the definition of public utility and this project relates to land use.

Mr. Valenti stated that they are also seeking as an alternative position, a variance, based upon it being possibly a business, but certainly if it were not a public utility, they would agree it would not be permitted in the zone. The analysis for granting a variance was provided: use variance to permit the generation of solar energy on the site, to permit two uses on the site. Context of it being a solar array, its still going to be an inherently beneficial use from the analysis of a second use, the inherently beneficial use still comes into play.

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Mr. Valenti stated that he would like to make clear that this solar array will in no way power the home; it is strictly for tying into the grid and supplying energy to the public, it is literally a second use and it is a second principal use.

Attorney Palilonis stated that he is confident that this would be considered a public utility and should be looked at as such and questioned whether the applicant has complied with the conditional use requirements and question of having it on the lot with the residence.

It was related that the project will be on a single lot; the farm house and the solar panel arrays will be on the same lot and lot 12 will not be developed.

Planner Thomas provided the following testimony as to how the positive and negative criteria of granting the use variance in accordance with the MLUL and Township's Master Plan and Zoning Ordinances will be met:

Positive criteria. - Solar panels are deemed to be an inherently beneficial use, MLUL was amended to include solar energy facilities under the definition of inherently beneficial use, specifically under NJSA 40:55d-4. He related that what inherently beneficial means is that its universally considered to be of value to the overall community because it fundamentally serves the public good and general welfare. Typically inherently beneficial includes hospitals, schools, childcare facilities, group homes. This was expanded to include wind and solar energy facilities and structures. Solar farms is deemed to be inherently beneficial according to positive criteria under the law. Planner Thomas referred to the section on Sustainability from the recently amended Township's Master Plan. Mr. Thomas related that it is his professional opinion that the proposed solar facility including solar fields 1 and 2 and the ancillary versions of the transmission facilities constitute an inherently beneficial use.

Negative criteria – issues whether proposed use could be granted without substantial detriment to the public good, and whether relief could be granted without impairing the intended purpose of the zoning were addressed: Solar energy facilities are benign uses. There will be no tilling, no crop spraying, one or two vehicles per month will be on site for servicing, project will be remotely monitored. Traffic generation is low. There will be a 100 ft buffer around the site to mitigate vandalism and provide safety to the site.

Mr. Thomas referred to the 2008 revised NJ Energy Master Plan goals, referencing three of the five goals: 1) reduce to the peak electric demand by 2020 by 5700 mega watts; 2) 30% of State's electric from renewable source by 2020; 3) maximize State's energy conservation in energy efficiency to achieve reduction in energy consumption by at least 20% by 2020. He related that the NJ assembly passed bill AB3520 which revised the statutes as adopted in January of this year. Legislation calls for electric power suppliers to provide a portion of electric they purchase are generated from solar power from June 2010, continuing through 2027. Electric providers must provide certain number of people on average with solar energy by year 2011 and if the providers don't meet that increase, there is a penalty.

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Mr. Thomas related that the only possible detrimental effects would be to the view sheds. Two particular areas would be in the area of Ferris Wheel Drive; there are two homes to the south of the site; one view shed. These homes sit up on a bluff and look down into the field. The other view shed would be the farm to the west side of the site.

In response to questioning by Attorney Valenti, Mr. Thomas offered his opinion that this variance permitting solar arrays could be granted without detriment to the public good and without substantially impairing the intended purpose of the zoning plan. He further related that the dual use could be granted without detriment to the public good and without substantially impairing the intended purpose of the zoning plan.

With respect to that, Mr. Valenti offered that he believes that the enhanced criteria does not apply and assuming it would, questioned how would you reconcile the zoning ordinances of not permitting more than a single use; it's an inherently beneficial use. He offered that inherently beneficial uses such as solar use is a benign use; it doesn't create any traffic and other factors attested to that go along with inherently beneficial use in addition to the permitted use, the farm house.

In response to questioning by Attorney Palilonis, Mr. Thomas reiterated the positive criteria being met relative to the dual use request: solar facility is an inherently beneficial use under the MLUL, the use of solar energy as a public need is consistent with the solar initiative of the NJMP, the proposal is consistent with advancing goals of the Township Master Plan for sustainability. Mr. Thomas offered it is his opinion that the use variance can be granted without substantial detriment to the zoning plan. In regard to the adjacent uses, there is a farm next door to the west and two properties just to the south of the solar panels and neither of these uses would be affected by the proposed two uses on the same property. It is Mr. Thomas' opinion that the proposed solar farm satisfies the negative criteria requirement for a use variance.

It was related that the application meets the positive criteria of promoting public health, and safety and promoting the utilization of renewable energy research resources (which would be solar energy). He further related that even without the State going ahead and identifying this as an inherently beneficial use, the application would already meet two of the criteria of the zoning laws in general.

Chairman Cronce opened the floor to the public for comments/questions of the applicant's planner:

Janice Jarrett, daughter of Mildred Lambert, neighboring property owner – Ms. Jarrett related that Mildred Lambert owns the farm that gives the right of way to the farm in the back. She expressed concern with the fact that no one came to them until they got a letter advising of the public hearing. They have spoken to Ms. Ziegenfuss who has agreed to move the right of way, which is for two farms behind them. She related that for 85 years, her parents and grandparents have provided that one family in each home could access the right of way which runs along their home and barn yard. She related that while Ms. Ziegenfuss has agreed to move the drive to the southern end of the property, she has concern with the location of the poles and whether they will be moved. Ms. Jarrett was advised that her concerns should be related during the public comment period following the site plan testimony.

Joan VanDerVeen- 346 Rock Road East – In response to questioning, it was reaffirmed that the plantings would be done at the discretion of the Board as previously agreed to. Representatives of the Board and the adjoining property owners would be invited to visit the site as well as a representative from the Board's engineering firm. Ms. VanDerVeen noted that the solar panels are not considered impervious; they are considered pervious, and therefore, questioned whether there would be a change to the flow of the water and whether the plantings to be done around and underneath will help to resolve some of the flow of the water. Ms. VanDerVeen was advised that these questions would need to be addressed by the applicant's engineer.

Ron Tucker - 22 Ferris Wheel Dr. – Mr. Tucker expressed concern with the view shed specifically relative to the trees that are potentially going to be planted. He related that the view from his deck is directly into the field and questioned more information on the plantings of the proposed trees.

John Hurley - 24 Ferris Wheel Dr. – Mr. Hurley also expressed concern with the plantings and whether they would be high enough to block the view.

Planner Thomas addressed the concerns of the neighboring residents relative to the plantings: there is a 100 ft. setback from the property line to where the solar fields will be; there will be a fence. Because of the slope of the property, the intent would be to put the trees up close to the adjacent properties to block the panels whereas if the trees are closer to the solar panels there wouldn't be sufficient buffering. Recommendation would be to provide and enhance the buffering up closer to the property line. Attorney Valenti also offered that the applicant is also willing to plant shrubbery or trees on the adjacent properties as well to provide even additional buffering.

Mr. Tucker advised that he was present at the first meeting where it was initially proposed to put the panels in the back of the property and there was no discussion about placing them in the front. He expressed concern that the new location which is comprised of 14 acres is more visible which is of major concern and questioned when this new location was agreed to.

Joseph Laflame – Corporate Council for Green Power - 234 North 6<sup>th</sup> St. Reading PA. – Mr. Laflame advised that when the applicant was initially talking to the Planning Commission, they were going to have to remove some trees and in order to avoid having to remove trees, they looked into expanding the project into the front part.

Mr. Tucker expressed additional concern with the impact of this project on the resale value of his property. Attorney Valenti related that while this property is currently a soy bean farm, it is unknown how long it would remain as a farm and this project will help to preserve the current use as opposed to the possibility of it being developed. Mr. Tucker expressed his opinion that he would prefer to see a housing development in lieu of this project. The Board questioned whether the planner could address the off-site impact of the solar panels on the neighboring properties to include the impact on the property values. Planner Thomas was unable to address this question. In response to questioning, Mr. Tucker was advised that there is a similar solar project in Hamilton Township, Mercer County, NJ.

In response to questioning by Mr. Hurley, Planner Thomas advised that the applicant is willing to plant large evergreen species that would grow up to 50-60 ft. high which would not impede the solar panels but would serve as a buffer. Species Leyland Cypress, which is a heavy evergreen, rapid growing, in one season anywhere from 2-3 ft., nice heavy tree stays heavy from top to bottom was offered as an option. Mr. Valenti offered that the applicant would be willing to make a provision that if any of the trees die, they would be replaced. Chairman Cronce invited Mr. Tucker and Mr. Hurley to accompany the Board's subcommittee and landscape architect on the site visit.

Vincent Ranieri, neighboring resident, questioned whether it would be possible to try to move the smaller array to another part of the larger array and take down a few trees and plant trees in the soy field to compensate for the few trees that are being removed. The question was directed to the applicant's engineer. Applicant's engineer advised that there are restrictive ordinances in the Township that don't allow for the cutting of the trees. Ranieri again questioned the feasibility if the trees were replaced.

Attorney Palilonis related that the original plan was presented to the Planning Board when at such time the tree removal ordinance was discussed resulting in the applicant re-designing the project as presented.

Mr. Ranieri questioned the resource referred to by Attorney Valenti relative to New Jersey being second to California in solar initiatives and requested the definition of a public utility be repeated. Attorney Valenti reiterated the measures being taken by the State of New Jersey in adopting legislative mandates promoting solar power as an inherently beneficial use.

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In response to questioning by the Board, Mr. Kline advised that PGM is a third party company hired by the State to manage the power transactions on and off the grid in a five state area.

Joan VanDerVeen questioned the need for the barbed-wire fence for security. Ms. VanDerVeen expressed concern for the need of it pointing out the potential hazard to the deer. Mr. Kline advised that the fence height and barbed wire is open for consideration.

Ms. VanDerVeen questioned the soils and whether they have been checked relative to the footings that may be required. Planner Thomas responded that the soil decides the depth and not the design of the footings. In response to Ms. VanDerVeen's concern about the presence of rock, Planner Thomas advised that footings would need to be shifted if there was an issue with the presence of the rock.

Applicant's engineer addressed Ms. VanDerVeen's concern with dust on the panels and run off water between the panels. It was related that there hasn't been demonstrated anywhere to be a problem with water off of the panels with all the grasses that will be planted. With this plan, there is a proposed detail that puts a mat under the drip line of each panel to assist in the growth of vegetation so when water does run off it hits the grass and will disperse and will flow across as it does today in the farm but will be better because of the grass; won't be the bare soils as it is today with the soybean fields. Planner Thomas advised that approval has not been requested from PGM as of this date and the process for approval should be quicker based on the size of the project.

Mr. Ranieri questioned why a panel may have to be replaced. It was related that the panels are not fragile; they hold up to hail, wind, snow; they do not leak – there is nothing inside; no liquids. In regard to the disposal of the panels, it was related that it's a renewable group; they bring them back to their office and recycle them. There are no hazardous materials inside of them. In response to questioning as to who will replace the panels in 25 years, testimony was provided that the property owner would be responsible and would want to replace same in order to continue the revenue stream.

Hearing no other questions, the floor was closed to the public (10:34 PM).

Attorney Valenti summarized the testimony presented regarding the relief sought for the use variance. As presented by the applicant's professionals, this is an inherently beneficial use. Positive criteria have been met on both, inherently beneficial use on the evidence presented to not only show NJ designation by legislative mandate that its an inherently beneficial use but in and of itself even

with out that this is something that is beneficial to the public at large. The negative criterion has been met, in that the positive aspects far out way any negative aspects. There have been no negative aspects identified other than some on site issues that are going to be adequately dealt with through the planting of trees.

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Chairman Cronic opened questioning to the Board members:

Question was raised that solar panel field # 2 looks like it is  $\frac{1}{4}$  of the size of the rest, and what the importance of solar panel field #2, where  $\frac{3}{4}$  of the panels are in solar field #1. Valenti responded that this project could have been up to a 14 mega-watt project but was scaled down to 2 mega-watt, the return is not worth the investment of what you have to go through to put one of these in; that is the significance of the 2<sup>nd</sup> field. Applicant is willing to eliminate the barbed wire. They are not prepared to present studies on property values. However, the property values aren't really relevant because it's already a conditional use and that's not one of the conditions of a conditional use.

Discussion by Board members ensued regarding the solar panel life expectancy, specifically, if it's not in use, what will happen to the panels. Question was raised as to whether there should be a condition to have the panels removed if the corporation is no longer viable.

Mr. Valenti responded by questioning whether we have ever imposed this kind of condition on any application before and that the Board would be imposing a condition on what the legislature has told you is a inherently beneficial use. It was related that conditions have been imposed on cell tower applications.

Ms. VanDerVeen offered her opinion that this is something new and as a township we need to be sure that we do things the right way; we are going to get more applications, it needs to be thought through. Chairman Cronic compared a defunct solar farm to an abandoned billboard, stating that this is an opportunity to have language imposed regulating the possible abandoned use. Attorney Valenti agreed to have the condition imposed on any approval granted.

Paul Jarrett expressed concern with this project and the Township taking over their land. Attorney Palilonis responded that the Township is not taking over the land in any case and issues raised regarding the access to the property will be addressed during the site plan testimony.

Given the late hour, it was agreed to continue the hearing on this application to a special meeting to be held on November 4, 2010 at 7:30 PM. Motion was made by Fulper with a second by Romano for the continuance of the public hearing to 11/4/10. Roll call: Fulper-aye, Fitting-aye, Romano-aye, Hall-aye, Ashton (Alt.

#1) -aye, Hoff (Alt. #2) - aye, Cronic - aye. Motion carried (11:06 PM).  
Members of the public were advised of the continuance of the hearing.

**CORRESPONDENCE:**

The following communications were received from Zoning Official Baldino:

- Balaam violation for unpermitted storage cargo container – Block 22, Lot 9

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- Scurti violation for stockade fence for height – Block 17, Lot 25.01 received incomplete application

- Balaam letter of compliance for plantings as required in resolution dated 1/24/06 - Block 22, Lot 9

- Hope notice of violation for stockade fence height – Block 28, Lot 34

- Notice from NJPO for training;

- Sept/Oct issue of Planner was distributed

**PRESENTATION OF BILLS FOR PAYMENT:**

The following bills were received:

Stewart Palilonis - August meeting – Total: \$200.00

Voice Vote – all in favor of approval of the bills contingent upon certification of funds.

**DISCUSSION:**

A) Environmental Commission Chair Cathy Urbanski - Ordinance #12, 2010 - Stream

Corridor Ordinance – Public hearing scheduled for Nov 3, 2010. It was agreed that the Board would not offer comment on the proposed ordinance and members of the Board may comment as individuals if they desire to do so but not on behalf of the Board.

B) Application Review Correspondence - Environmental Commission –

**CARRIED TO**

**NEXT MEETING**

**OPEN TO PUBLIC:**

The floor was opened to the public. Hearing no comments/questions, the floor was closed.

**ADJOURNMENT:**

Motion was made by Fulper with a second by Ashton to adjourn at 11:19 PM. All voted in favor of adjournment.

Respectfully submitted,

Ruth J. Hall

Secretary