WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT

MARCH 26, 2013

IN THE MATTER OF THE APPLICATION OF:

GARDEN SOLAR, LLC PUBLIC HEARING
BLOCK 18, LOT 1
624 BRUNSWICK PIKE (D3 USE VARIANCE)
.....

B E F O R E:

THE WEST AMWELL TOWNSHIP ZONING BOARD OF ADJUSTMENT

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THE CHAIRMAN: The next item will be applications, and the first application ready to go is Garden Solar.

MR. WILSON: Good evening, Walter Wilson, Annandale, New Jersey, on behalf of Garden Solar, LLC. The notices were sent, but I may have them here.

We do not have the affidavit of publication from the Democrat, which hasn't come in from them yet, although it did appear in the required edition, which I personally observed and should be coming in in the next day or so. But I will represent to you that that did appear, and the affidavit simply has not been sent.

I tried to reach them today, and they said it would take two or three days to re-acknowledge the affidavit and to send another one, but we will have it within the next day or so.

MR. PALILONIS: Let the record reflect that the notices are in order, and we will wait to receive the notice of publication.

THE CHAIRMAN: Did you want to continue?

1 MR. WILSON: Yes. Just for background,
2 I am not sure, it has been a long time, but we
3 may have one or two new members. The matter
4 concluded in August of 2011, and the resolution
5 was adopted sometime thereafter. Action was
6 commenced in the Superior Court, which was with
7 a Hunterdon County docket number. At that time
8 the Court sent it up to Warren County, and then
9 it bore Docket Number WRN-L-69-12.
10 That action, after filing, resulted in
11 a number of discussions. Defendants in this
12 action were both the Board, as well as the
13 Township, with respect to its ordinance, the
14 so-called solar ordinance.
15 There were modifications and amendments
16 to that ordinance, and the matter -- there was
17 an Order in December of 2012 entered by the
18 Superior Court, an Order for Remand, and that
19 was entered with the consent of the parties,
20 being the plaintiff, Garden Solar, LLC, and the
21 Board of Adjustment through its counsel, and
22 the Township through its counsel, to remand the
23 matter back to the Board for reconsideration
24 under the new ordinance.
25 Let me get the right number here. It

is Ordinance Number 2011-10, or was it 3 --

MR. DECKER: It is 12.

MR. WILSON: Ordinance 12-2011, or 2011-12, depending which way they go. The most significant change in that amendment insofar as this application is concerned related to the previous requirement, the original requirement that the property upon which any ground mounted solar array was to be located had to consist of at least 20 acres.

If you will recall, this property was approximately 17.9 acres, and so we did not satisfy all of the conditions of the conditional uses which were allowed.

The ordinance was modified to eliminate that requirement or to modify that requirement, and it now requires a lot size of, correct me if I am wrong, Tom, but five acres per megawatt of proposed power. This is a two megawatt, or not more than two megawatt site, and therefore the lot size is required to be a minimum of ten acres. Again, we still have 17.9 acres, plus or minus, which is greater than ten, and so it is now -- the applicant now meets all of the conditions of the conditional use so as to be a

1 permitted conditional use in the zone district.
2 That does not resolve all aspects of
3 the matter, and we are back here today because
4 of the Board's denial of the relief from
5 conditional use in 2011, the Board took no
6 further action. The remaining action that
7 exists is the granting of relief to preliminary
8 and final site plan, which was applied for. We
9 believe we meet all of the requirements for
10 site plan approval, and also, the two principal
11 uses upon a lot. This is a single lot. We do
12 not propose to subdivide the lot and create one
13 lot for Mason Supply and one lot for solar
14 array, we propose to maintain it as a single
15 lot with two distinctive uses upon it.
16 The property does have, if you will
17 recall, two distinct uses upon it at this time:
18 One is the Mason Supply, and the other is an
19 agricultural use. We will continue to have two
20 uses. There will be no diminishment in the
21 size of the portion that is dedicated to Mason
22 Supply. The only impact upon the Mason Supply
23 portion of the property, as was testified to,
24 will be that the ultimate access, not the
25 construction access, but ultimately the access

for driving into the solar array, will be through the driveway entrance of Mason Supply.

It was testified to that the trips involved usually are pick-up size or SUV sized vehicles, on the order of not more than one per week. But even if it was once per day, we suggest that is not a significant impact upon the existing use.

So those are the issues that we are here for tonight for the Board's reconsideration.

We did provide the documents, with the assistance and cooperation of your Board secretary, so that hopefully every member had a complete set of the site plan. I forget how many pages it is, but a complete set of the latest revised drawings as well as a complete set of all of the exhibits, including the color renderings, the last of which is the overall site plan that appears on the board right now. That is the most relevant one. But we did provide all of the exhibits and also the photographs, duplicate copies of the photographs that were also marked into evidence.

We also supplied, I guess we provided a combination of 12 copies, so each of you also has a complete set of transcripts of the earlier proceedings.

With that, we will proceed, however you wish us to proceed in that regard. I do have Mr. Chmielak here tonight, who is both our engineer and our planner, and I am going to ask Jim in a moment to give a brief recollection refreshed type comment on the last overall site plan, just insofar as its highlights. We are then available for any questions from the Board members, either from a review of the transcript, old questions you might have had, new questions that might have popped up, or old ones that may have been revived by a review of the transcript and the exhibits.

Because this is a remand, I hesitate to call this a Whispering Woods or settlement hearing, it is, in fact, a remand hearing, although not a new application. It is a reconsideration application, and we also are prepared to take questions from the public and any testimony that you may have.

With that as background, if we can

swear Mr. Chmielak again, unless he is considered still sworn, but we are happy to re-swear him tonight and give a brief description again of the current site plan.

MR. PALILONIS: Since he is standing up, we will re-swear him.

J A M E S C H M E L I A K, is sworn.

MR. PALILONIS: Before you proceed, let me just state, so it is understood, that we are all on the same page here, that there are two issues here, the first is the D variance, the use variance for two principal uses on the same lot, as was said, and the other is the site plan, required site plan approval.

Mr. Decker does quite a thorough job of covering all of the issues related thereto. The main thing you have to decide is whether you are going to allow two principal uses on this lot.

As far as the site plan is concerned, and to those who were here at the previous proceedings, I think it was very clear that they had met the standards of the ordinance.

1 That is not to say you don't have any input on
2 what type of improvements you would like to see
3 on the whole property, both the proposed use
4 and the existing use, but that should not be a
5 problem, beyond making sure that you feel that
6 all site plans -- if you want more
7 improvements, is what I am trying to say as
8 part of the site plan which changes the layout
9 or whatever, that would be the issue at site
10 plan.
11 So the main issue is the dual use, and
12 then the site plan should flow from that.
13 Any questions? You may proceed.
14 MR. WILSON: Thank you. That does
15 bring to mind, and I will place on the record
16 that we did receive, just so it is clear, Mr.
17 Decker's letter as well. I believe it is
18 dated --
19 MR. PALILONIS: I would suggest when
20 you get to it when you are testifying to the
21 issue, if you are talking about site plan
22 review, I suggest it might be fruitful to go
23 through Mr. Decker's letter. I think it is a
24 very thorough letter and covers all of the
25 obvious issues. I am not saying that someone

else may not have additional ones.

MR. WILSON: I concur, and that letter is dated March 22, 2013. I think the revision date is the same date.

MR. DECKER: It is revised the 25th, there should be an original one March 2nd.

MR. WILSON: We did receive the revised letter which had a minor correction in it, and we acknowledge the correction made by way of reference to the ordinance.

In that regard, one of the topics that Mr. Decker brought up in his letter had to do with the discussion that the Board had, and I did pull out the reference in the August 23rd transcript in the pages beginning about page 50 or so and proceeding for 10 or 15 pages that related to the fact that the anticipation of the Board and its planner and engineer regarding the existing conditions, the non-conforming existing conditions of Mason Supply were not going to be granted variances, but were going to be acknowledged by way of record, and that was the purpose of the additional conditions map that was to be presented. So there was a memorialization from a going

1 forward standpoint on the Mason Supply. Again,
2 that reference is in the August 23rd
3 transcript, the 50 to 60 page range, where that
4 discussion occurred, the various items were
5 identified by Mr. Decker at that time.
6 So with that, if I may --
7 MR. PALILONIS: Excuse me, let's mark
8 the Decker letter as G-1 for purposes of the
9 record.
10 (Exhibit G-1, consisting of a letter
11 from Mr. Decker, marked for identification.)
12 MR. WILSON: I would like to question
13 Mr. Chmielak.
14 MR. PALILONIS: Go ahead.
15
16 DIRECT EXAMINATION BY MR. WILSON:
17 Q Mr. Chmielak, could you perhaps
18 reference the exhibit board that is up? What is the
19 original exhibit number of that board, the one you
20 will refer to?
21 A This is GS-7 dated 8/23/11.
22 Q And that is a colorized version of the
23 overall site plan, which is the same version, even
24 though it bears a different date now, it is the same
25 version as in the latest set-up plans that were

1 submitted.
2 A Yes, that is correct.
3 Q Could you, just again, from a
4 recollection standpoint, refresh the Board and
5 public's recollection as to how the property lays out?
6 A Yes. As indicated on GS-7, the exhibit before
7 you, the subject property consists of approximately
8 17.9 acres in total. It includes the West Amwell
9 Mason Supply as shown on the exhibit here along the
10 southerly boundary. The main frontage of the property
11 is along the Brunswick Pike, also Route 518. There
12 are also two additional frontages, one on the west,
13 Rock Road, and Rock Road continues further to the
14 north around -- basically encompassing the site. The
15 proposed project includes, as stated in the previous
16 testimony in the transcript, the construction of a
17 ground mounted solar array, and that will be connected
18 to the electric distribution grid at the edge of the
19 property.
20 The plan as submitted at this point, and also
21 with the recent ordinance change, would comply with
22 the conditional use and engineering standards and the
23 requirements of your ordinance which does permit a
24 solar array use in this zone, which is the
25 NC zone.

1 Q Jim, regarding the solar array itself,
2 the testimony back in 2011 and the plans still show a
3 maximum height throughout that array of ten feet,
4 correct?
5 A That is correct.
6 Q And we are approaching two years from
7 the initial presentation of this plan to this Board,
8 and during that period of time, several other Garden
9 Solar sites have actually been constructed.
10 A Yes.
11 Q And through the course of construction,
12 although in all of those, it depicted the same maximum
13 height of ten feet.
14 A Yes.
15 Q And from a practical standpoint, an
16 installation and construction standpoint, what has
17 turned out to be the height of the arrays at their
18 highest point?
19 A On average, the arrays installed are
20 approximately eight feet in height. It can range from
21 seven feet to nine feet. It would be in that range,
22 and the plans do specify a maximum height as an
23 ultimate maximum of ten feet. But the point is, the
24 arrays would be slightly lower than that maximum.
25 THE CHAIRMAN: You don't need to stand

1 next to the presentation for us to pick you up
2 on the mike easier, we can get you from there
3 and you can move up as you need to. But if you
4 do, you will just have to talk into the mike.
5
6 BY MR. WILSON:
7 Q At that height, Jim, is it calculated
8 off of the existing rig that is on the property?
9 A Yes.
10 Q Again, it is not anticipated that there
11 will be any grading that occurs, and that is why there
12 is the undulating light because of the undulating
13 earth that may exist.
14 A That is right.
15 Q Although there is a tilled field, so it
16 should be relatively consistent.
17 A Yes.
18 Q It is more likely on the lower side of
19 the eight to nine foot range of maximum height?
20 A Yes.,
21 Q Again, the top of the arrays remain
22 constant, they don't fluctuate up and down by panels,
23 it is the bottom portion that may have a dip in the
24 land that would cause a slightly higher height. It
25 doesn't mean it is raised higher in the air, it just

1 means that there is a dip in the ground that is
2 covered by the framing system.
3 A That is correct.
4 Q Sorry to interrupt.
5 MR. BORDEN: May I ask a question? You
6 said the average height is ten feet, the
7 average.
8 MR. WILSON: The maximum is ten feet.
9 THE WITNESS: Also on the plan, GS-7,
10 as you can see, there are landscape buffers
11 that surround the project in accordance with
12 that, and also complying with your solar
13 ordinance along the southerly boundary, the
14 westerly boundary, and the northerly boundary.
15 Then the northeastern boundary of the project
16 and the details of that plant material, et
17 cetera, have been discussed and is included in
18 kind in the same way on the current
19 improvements plan. But these landscape buffers
20 do provide a visual screen as required by the
21 ordinance around the perimeter of the project.
22
23 BY MR. WILSON:
24 Q This is also the fencing that is
25 provided, it is not just a chain link, this is an

1 actual fence?
2 A Along the front of the property, the southerly
3 boundary as well as the westerly boundary there, that
4 was adjacent to the roadway. It included a more
5 aesthetic architectural style black painted aluminum
6 fence, typical that you would see as a pool fence
7 around, say, an in-ground swimming pool, which would
8 be a beneficial feature over regular chain link around
9 the perimeter of the property to the north. Chain
10 link is proposed, and the applicant actually agreed to
11 make that a black vinyl coated chain link fence, just
12 to address or to improve the appearance of that fence.
13 Again, as Mr. Wilson indicated, the full extent
14 of the existing West Amwell Mason Supply facility is
15 not being expanded in any way, that use will continue
16 to operate, and it was a pre-existing non-conforming
17 use as discussed during the prior hearings and prior
18 to the zoning ordinance, that is, and that will
19 continue to operate in the existing condition.
20 The main thrust of the reason that the variance
21 relief is requested is that the E2 intensification
22 variance that relates to the two principal uses on the
23 subject property relate to in that intensification,
24 relates to the access driveway to the solar arrays,
25 which I will highlight on this Exhibit GS-7, just so

1 everybody can see ultimately when the site is
2 constructed that there would be an accessway from the
3 Brunswick Pike entry drive around the western boundary
4 of the West Amwell Mason Supply. Given the fact that
5 that access driveway, which would be utilized
6 approximately once per week, as compared to the number
7 of trips from a single family dwelling of ten trips
8 per day, this is a very, very low traffic use, just an
9 occasional visit to the site.
10 Since that accessway falls within the existing
11 boundary of West Amwell Mason Supply, that is really
12 the administrative trigger, or the variance relief
13 requested for, basically, the administrative
14 intensification, because that additional element will
15 fall within the boundary of that existing West Amwell
16 Mason Supply boundary.
17 So that is the main thrust of the variance
18 relief that is being requested, and also as Mr. Wilson
19 indicated, in the existing condition, the West Amwell
20 Mason Supply is one use, and the agricultural use on
21 the rest of the property is the second use.
22 For this application, we have the same West
23 Amwell Mason Supply use, along with the solar array
24 use. Again, that is a relatively passive, low impact
25 use with regard to traffic generation, nuisances,

1 noise, activity, water supply consumption, because
2 there is none. Wastewater discharges into the
3 subsurface, that should be required by another type of
4 commercial development, but not in this case with the
5 solar arrays, because there is no use of water.
6 So that is the variance relief requested.
7 In terms of our rationale and our reasons why
8 we feel it is appropriate to approve this variance
9 relief, certainly the ordinance here in West Amwell
10 Township, the governing body has made a decision by
11 enacting the ordinance that the solar use is in fact
12 appropriate and would be beneficial within this
13 particular zone, the MC zone, because it is an
14 approved use. Also, this particular use does enhance
15 and puts forward two purposes of zoning, the municipal
16 purpose plan N, and for renewable energy resources, as
17 well as I, which we will discuss a little more,
18 created design techniques to create a desirable visual
19 environment.
20 This project also has elements that will
21 further that municipal purpose of zoning of the
22 desirable visual environment.
23 In terms of the rationale for the D2
24 intensification or administrative expansion of a
25 non-conforming use, with the two principal uses on

1 the property, there is no change to the West Amwell
2 Mason Supply on the three and a half acre portion of
3 this property. Again, only the driveway access
4 through the western boundary of West Amwell Mason
5 Supply, is the only element that requires the variance
6 relief because of the intensification which also calls
7 for the boundaries, in terms of planning proofs, for
8 requesting this variance, we rely on the rationale of
9 the Burbridge v. Mine Hill case, which addressed
10 those. It was a case that addressed a junkyard in a
11 residential zone which was a pre-existing non-
12 conforming use, the same situation as we have here,
13 which stated that a non-conforming use already has an
14 impact on an area, and certainly, it is less likely to
15 impair the zone plan than a new non-permitted use
16 would; and secondly, that the particular application,
17 if it is includes certain elements that would assist
18 the existing, the pre-existing non-conforming use to
19 better harmonize with the environment, visually with
20 its environment, that that would be substantive proof
21 and rationale for granting that variance.
22 In the Burbridge v. Mine Hill case, there was
23 the application included in the relocating of some
24 unsightly areas of that existing use to other areas
25 away from the residential use so that those nuisances

1 would be less seen. There were also some elements of
2 fencing and landscaping components to the project,
3 which further had the intent of zoning or creating a
4 desirable visual environment, and basically served to
5 lessen the impact of that non-conforming use on the
6 surrounding area.
7 Here in this case, as I pointed out on Exhibit
8 GS-7, the extensive landscape buffer that will
9 encircle almost the entirety of the project along the
10 Brunswick Pike to the south, Rock Road to the west and
11 then also Rock Road to the north, that particular
12 element will serve to mitigate the viewscape from the
13 public right of ways and roadways of the existing West
14 Amwell Mason Supply in the existing condition of some
15 of the storage areas that can be seen from the
16 frontage road along the Brunswick Pike.
17 At the end of this project, that landscape
18 buffer will enhance and better help this particular
19 site as a whole to blend in with the surroundings and
20 mitigate those view lines.
21 Q And in fact, the Supreme Court in the
22 Burbridge case said that even in a non-inherently
23 beneficial commercial setting, that the promotion of
24 the general welfare through any increase in the
25 aesthetics is actually a special reason for the

1 granting of the relief.
2 A Yes, that is correct.
3 MR. PALILONIS: Could you say that
4 again, please?
5 MR. WILSON: Sure. The Supreme Court
6 in the Burbridge case, Burbridge v. Mine Hill
7 Board of Adjustment, 117 N.J. 376 specifically
8 said that in a non-inherently beneficial use
9 case, the general welfare is the zoning purpose
10 that most clearly amplified the special
11 reasons, and the typical commercial use derives
12 a beneficial aspect, not from the use itself,
13 but from the development of the site that
14 creates a better aesthetic view of the non-
15 conformity. That was followed also in Kohl v.
16 Fair Lawn, a Supreme Court case from 1967.
17 A To further follow up on the proofs for the
18 variance as it relates to the negative criteria, there
19 would be no substantial detriment to the public good
20 or to impair the intent of the zone plan. It is your
21 position there would be no substantial detriment to
22 the public good as a result of granting this
23 intensification. The D2 variance for two principal
24 uses on a certain property, given the fact that they
25 are adjacent to one another does not result in any

1 real functional intensification of the way the site is
2 going to operate.
3 We are not going to have any significant
4 traffic from the solar array maneuvering through West
5 Amwell Mason Supply creating any type of traffic
6 hazard or nuisance. We will not have any additional
7 driveways coming from West Amwell Mason Supply,
8 exiting on any of the adjacent roadways, such as Rock
9 Road, or traversing through the solar array.
10 The two uses on the property are entirely
11 independent, with the exception of utilizing that
12 western boundary as highlighted in yellow of that
13 existing gravel surface to access the solar array on a
14 period of approximately one time per week. So the
15 fact they are on one property, given the unique way
16 these two uses operate, we don't see any negative
17 impact to the operation of the site relative to those
18 uses.
19 Q With respect also to the Mason Supply,
20 one of the requirements Mr. Decker had identified in
21 his testimony and in his letter from May of 2011 was
22 that in addition to acknowledging the current
23 conditions that Mason Supply has, that there would be
24 an identification of at least one handicapped space on
25 the site?

1 A Yes, and that could easily be provided near the
2 entrance to the front Mason Supply building with the
3 appropriate signage and hard surface. So certainly,
4 as a condition of any approval that improvement can be
5 accommodated on the Mason Supply portion of the
6 property.
7 Q Is there any other aspect of the Mason
8 Supply use that would be negatively impacted or
9 altered or substantially altered in any way as a
10 result of the development, the modification of the
11 second use from agriculture to solar?
12 A No, there will not. On the whole, that is our
13 testimony as to the D2 variance that is being
14 requested.
15 Just to reiterate, the solar use we discussed
16 at the last meeting that now is conforming, and it is
17 permitted here within the zone, and you can certainly
18 take a little time and go through perhaps Mr. Decker's
19 letter relating to any of the engineering items or
20 concerns that he summarized in the March 22 letter.
21 THE CHAIRMAN: Fine. Before we move
22 into his letter, do any Board members at this
23 point have any questions of the expert
24 testimony?
25 MR. BORDEN: I am not sure if it is a

1 question to you or ourselves, but I am looking
2 at Ordinance 12, which you referenced earlier,
3 which was an ordinance amending Ordinance 3 of
4 2011, which allowed for a ten acre minimum as
5 conditional use standard five acres per
6 megawatt of production. You said this project
7 is in the NC zone. According to this, I see
8 that this applies to the LI zone. It says here
9 in the LI zone 20 acre minimum size does not
10 apply for minimum use standards.
11 MR. WILSON: But that is in the LI
12 zone, it is a 20 acre requirement.
13 MR. BORDEN: Correct.
14 MR. WILSON: But in the NC zone, it
15 reverts back to the five acres per megawatt.
16 MR. PALILONIS: That is kind of a red
17 herring. What happened was, I think there were
18 separate acts, it was an act of the Legislature
19 that said solar arrays were permitted in all
20 industrial zones where the lot was at least 20
21 acres, that is a State statute, so the Township
22 passed an ordinance saying it is automatic.
23 But then they had a separate conditional use
24 ordinance where such developments occurred
25 outside of the LI zone, which is a different

1 ball game.
2 MR. WILSON: The 20 acres applies to a
3 principally permitted use, and the five acres
4 per megawatt applies to a conditional use. So
5 there were additional conditions applied to a
6 conditional use.
7 I think it is Section 3 in the
8 ordinance, it is conditional use standards.
9 MR. CRONCE: Is this the time to
10 discuss what he brought up on the fencing,
11 which you said we would have? I went back to
12 the pictures here that shows the fence, and it
13 is like a pool fence, like a dark painted type
14 pool fence.
15 THE CHAIRMAN: You are referring back
16 to photos that were part of the packet. Do you
17 know what they are marked?
18 MR. CRONCE: I think it is GS-9.
19 THE CHAIRMAN: Just for the record.
20 MR. WILSON: It depends which set you
21 are looking at.
22 MR. CRONCE: The set that shows the
23 first page. It shows the open field, and then
24 it shows what it would look like after it is
25 put in.

1 THE CHAIRMAN: There are two sets of
2 those pictures.
3 MR. CRONCE: This is 518.
4 MR. PALILONIS: From 518 before GS-3
5 and the one after is GS-4.
6 MR. WILSON: That is GS-3, 4 and 7.
7 MR. PALILONIS: I am talking about --
8 did I say Rock Road and 518?
9 THE CHAIRMAN: Actually, there is a set
10 of three.
11 Did you say GS-3?
12 MR. PALILONIS: I have them marked as
13 GS-3, 4 for 518, and GS-7 is a series of three
14 from Rock Road.
15 THE CHAIRMAN: The ones that John is
16 referring to is GS-9, I think that represents
17 the three packages.
18 MR. WILSON: That is correct.
19 A VOICE: Can I come up and look at
20 that?
21 THE CHAIRMAN: Do you have a question
22 of the expert? If you want to see the picture,
23 sure, but there are two sets of three each over
24 here.
25 MR. CRONCE: My question is that you

said that is the type of fencing going around the property, but I see on the map here the fence, and I said this before, the fence that goes around the back side is a chain link fence. Is there any way that that can be changed to the same type of fence that you have around there for aesthetic purposes, since there is a residence on the corner there, and it can also be changed along the side of the West Amwell Mason Supply building to match the same as on 518 and Rock Road West, so that when you are approaching south on 518, you look across here and you are trying to soften it up a little bit.

MR. WILSON: Could you point out where you are speaking about?

MR. ASHTON: Along this roadway here (indicating).

THE CHAIRMAN: And then behind the residence on Rock Road West, that whole section. Could that be changed to pull the chain link fence out of there and put a nice landscaped fence in there?

MR. WILSON: If the Board felt it was necessary, we can do that.

1 THE CHAIRMAN: You can handle that
2 right now, I think.
3 MR. DECKER: If I can build off of that
4 a little bit, we have been focusing on the view
5 traveling west on 518. We haven't looked at if
6 you are traveling east on 518, and what we
7 testified before is that the additional
8 vegetation that is being planted for the solar
9 facilities will create a buffer to the existing
10 non-conforming use. However, if you are
11 traveling east on 518 and looking across the
12 Mason Supply and storage areas, you will have
13 the fence, but you will still be able to see
14 into the solar field.
15 THE CHAIRMAN: If you are traveling
16 west, it would be west.
17 MR. DECKER: And to the north, if you
18 are traveling in this direction (indicating).
19 THE CHAIRMAN: That is west.
20 MR. DECKER: If you travel west, you
21 can see that.
22 THE CHAIRMAN: You needed landscaping
23 to soften it up.
24 MR. DECKER: I want to know if he wants
25 to include additional landscaping in there, I

1 didn't get there yet. If you could give me a
2 minute.
3 THE CHAIRMAN: Are you done talking
4 about that, or do you want to discuss it
5 further?
6 MR. CRONCE: I think we should discuss
7 it while it is fresh in our minds.
8 THE WITNESS: Can I add that -- I don't
9 know if this is helpful or not, but along the
10 frontage you do have an existing berm area with
11 existing trees and vegetation.
12 MR. CRONCE: Not to cut you off, I
13 travel that road every day, and I can look --
14 my eye goes right through that, and I can see
15 that, and I still think we should try to soften
16 it up with at least the fence.
17 THE CHAIRMAN: As to the Board members,
18 do you have any comments about that suggestion?
19 MR. ROMANO: Not with regard to that.
20 THE CHAIRMAN: Anybody else?
21 MR. DALE: You want the fencing?
22 MR. BORDEN: Just put an artificial
23 fence and shrubbery all the way around.
24 MR. DALE: You don't need to do that.
25 That is a good spot for trees.

1 THE CHAIRMAN: The applicant is willing
2 to do that.
3 MR. WILSON: We will accept that as a
4 condition, yes.
5 THE CHAIRMAN: Do you want to sew that
6 up?
7 MR. CRONCE: In addition to that, as if
8 you are traveling west, the fence, I appreciate
9 you are doing the fence, but could there be
10 something to soften that up, even like a little
11 landscaping along that side? I think the
12 ordinance calls for a landscape buffer, and we
13 needed a fence anyway, so we added that as an
14 element to give it some more structure and some
15 more preference. I think it is a positive
16 element. We have the arborvitaes, a double row
17 staggered, and if we make those adjustments in
18 terms of the on center spacing behind that, in
19 front of the fence, we also include what it is
20 what you are asking about.
21 THE CHAIRMAN: No. I think around
22 where you already have that, in my opinion, I
23 think you did a great job, I think that is
24 good, but my question is, can some of that be
25 continued down between the Mason Supply?

1 MR. WILSON: The yellow line on the
2 exhibit?
3 MR. CRONCE: The shrubs in there.
4 THE WITNESS: The applicant will agree
5 to a single row of arborvitaes along that.
6 THE CHAIRMAN: I don't see a problem
7 with that.
8 MR. DALE: That would work.
9 MR. CRONCE: That kind of softens up
10 everything and keeps it together. That is all
11 I have for now.
12 THE CHAIRMAN: Over at this point in
13 time what we are adding is the landscape, that
14 is along the access driveway down to the corner
15 where the structures are.
16 MR. DECKER: Correct.
17 THE CHAIRMAN: We will do the one row
18 of tree buffers for that fence, and then we
19 will also add that architectural fence around
20 that residential unit.
21 THE WITNESS: Six feet in height we
22 will go.
23 MR. DECKER: The arborvitaes will be
24 inside or outside of the fence?
25 MR. FERGUSON: It can be on the outside

there.

MR. CRONCE: We do apologize --

MR. DECKER: I questioned whether they would be on the inside or outside of the fence --

THE WITNESS: We can put them on the outside.

MR. DALE: I feel they will look better on the inside in that particular row, and that way it won't affect the access road.

MR. WILSON: The inside of the fence being on the solar array side.

MR. DALE: That is a better way of saying that, yes.

THE CHAIRMAN: Anything else?

MR. CRONCE: For now I have nothing else.

THE CHAIRMAN: Anybody else on the Board have any questions?

MR. ROMANO: Is now the time to talk about the application in general?

THE CHAIRMAN: Sure.

MR. ROMANO: How was the impervious coverage determined that is being proposed?

THE WITNESS: I believe that it

1 basically includes the building coverage and
2 the stone coverage on the property.
3 MR. ROMANO: Doing some quick math, the
4 stone coverage is about ten times the amount
5 you have here.
6 THE CHAIRMAN: I thought in the
7 original testimony they represented the
8 concrete pads and the posts that went into the
9 ground were impervious coverage.
10 MR. WILSON: Correct, and the access
11 drive.
12 MR. PALILONIS: Are you talking about
13 the solar arrays?
14 MR. ROMANO: This application right
15 here, the existing, it would be the entire
16 application, which includes the Mason Supply
17 building, towards the solar side, that is what
18 they had.
19 There are a few questions that reach
20 the point -- you are saying it is just the
21 buildings?
22 THE WITNESS: The buildings and the
23 inverter enclosures.
24 MR. ROMANO: How did you determine the
25 gravel lot, the gravel driveway? The parking

1 lot is pervious, right?
2 THE WITNESS: Typically, pervious areas
3 can be gravel based, and at different agencies
4 they have different interpretations of what is
5 gravel and what constitutes an impervious
6 surface.
7 MR. ROMANO: That wasn't designed in
8 accordance with the standards for impervious
9 paving?
10 THE WITNESS: It is not impervious
11 paving, it is gravel. Basically, a gravel
12 parking area.
13 MR. PALILONIS: We didn't ask the
14 engineer what the ordinance would say about
15 that.
16 MR. DECKER: I believe the ordinance, I
17 don't think it would confirm it, but gravel
18 would be considered as an impervious coverage
19 for the purpose of coverage calculations and so
20 forth. There are differences with regard to
21 gravel; in some cases it is considered
22 pervious, and when doing storm water management
23 and also impervious, depending what agency will
24 review it and whether it is existing or
25 proposed. I would say that this gravel parking

1 area has been there long enough that it is
2 acting as an impervious surface, because it is
3 impacted, and it is basically an impervious
4 surface. But I will confirm with the ordinance
5 as far as the definition of gravel.
6 MR. ROMANO: So just looking at the
7 contour plan, it looks like the contours are
8 going essentially into Lot 12 from this area.
9 What we thought was only about 13 or 15,000
10 square feet of impervious, we are at 150,000
11 square feet, roughly, of impervious. You are
12 shaking your head no.
13 MR. WILSON: I'm sorry.
14 MR. ROMANO: Did you scale it off? Are
15 you using rough numbers in order of magnitude?
16 It is more than what you have there, and I am
17 not saying you have to do anything with it, but
18 as it relates to the solar field, that is where
19 I want to go next with this. Is this water
20 flow combined with whatever drainage water that
21 are hitting the solar panels may create on the
22 ground with a swale or what have you? You have
23 150,000 roughly, I can confirm my math, and
24 actually, the solar panels are perpendicular to
25 the contour, so it is creating swales going

1 almost directly at that property. I am curious
2 to know how we will mitigate this?
3 THE WITNESS: A couple of things. One
4 is a significant portion of that drainage from
5 the West Amwell Mason Supply to the north, if
6 you follow the contours, the path breaks into
7 two portions, the portion that flows in a
8 westerly direction and one that flows in a
9 northerly direction.
10 MR. ROMANO: I would say more than half
11 goes towards the west.
12 THE WITNESS: Approximately half, and
13 there is an existing storm water management
14 facility along the northerly boundary of the
15 West Amwell Mason Supply, that is constructed
16 at some point. There is a drainage ditch along
17 the north edge of the property.
18 MR. ROMANO: Is that near Rock Road?
19 THE WITNESS: No, near the edge of the
20 gravel on the north side of the Mason Supply
21 where the gravel begins.
22 MR. ROMANO: Where does it go once it
23 hits that?
24 THE WITNESS: That swale would fill up
25 with water, and they continue once it fills up

1 the existing contours and continues to flow to
2 the north towards that wetlands area right of
3 way.
4 MR. DECKER: Could you show us on the
5 exhibit?
6 THE CHAIRMAN: Please try to speak
7 louder.
8 THE WITNESS: Basically, there is a
9 storm water management facility here along the
10 north edge that picks up a decent amount of
11 water that drains to this location. Then once
12 that water, if in fact -- this facility would
13 fill up and flow towards Rock Road towards the
14 wetlands area, and then this other portion
15 would flow in accordance with the existing
16 condition, which is towards the northwest of
17 the property, the way that it does today. The
18 plan does include a maintenance plan for
19 maintenance of that vegetated surface. The
20 proposed meadow grasses that are specified as
21 part of the plan are a stabilizing style grass,
22 and it is stabilizing in nature over more
23 ordinary type grasses. Those are elements that
24 have been included in the grass mix to beef it
25 up so it does perform.

1 Secondly, as part of the maintenance
2 plan, there are provisions in that that there
3 would be periodic inspections of the field. In
4 order to identify that the meadow grass, which
5 is under Best Management Practices, a storm
6 water management measure is still functioning
7 as such, and if for some reason there was an
8 area of erosion after a large storm, that
9 maintenance plan, which would be part of this
10 approval because it is part of the plan
11 documents, the provisions that need to be
12 rectified by the property owner. It is for the
13 ongoing life of the facility.
14 MR. WILSON: There is also, as part of
15 the application and as reviewed by the Board
16 engineer, a storm water management assessment
17 report dated April 7, 2011. That did a
18 complete analysis of the existing flows and the
19 proposed design flows, all of which meet NJDEP
20 storm water management rules relative to storm
21 water quantity, quality and resources.
22 MR. ROMANO: Did it determine whether
23 it was pervious or impervious, the existing
24 lot?
25 MR. WILSON: There are three acres of

1 proposed panels that are not impervious, they
2 are exempt. The panels themselves are not
3 impervious.
4 MR. ROMANO: The storm water management
5 plan just applies to the solar field area, or
6 the whole property?
7 THE WITNESS: The drainage areas apply
8 to the solar array areas of the property,
9 because we are not changing the West Amwell
10 Mason Supply.
11 MR. ROMANO: I understand, but this
12 started from looking at the breaks, and maybe
13 we all need to be educated in terms of what is
14 pervious and what is impervious and where is
15 the water flowing. Does the storm water
16 management plan address the condition of that
17 gravel driveway today? Maybe not when it was
18 constructed, because maybe it was impervious
19 then, but today it is clearly -- I won't say
20 that, most likely.
21 THE WITNESS: I did a quick
22 calculation, and if you take 17 percent times
23 the lot area, this yield, that is over three
24 acres of pervious coverage. On the overall
25 site, the bulk requirement calculation should

1 adequately address appropriately the coverage.
2 Taking into account that the existing West
3 Amwell Supply gravel areas aren't considered
4 impervious, even though they are gravel.
5 MR. DECKER: The definition for both
6 the land use ordinance and the storm water
7 management ordinance in West Amwell, impervious
8 surface is a surface impacted or covered with a
9 layer of material, so it is highly resistant to
10 infiltration by water. In this case, it is an
11 established gravel driveway that has been used
12 and compacted. I don't anticipate it is
13 getting a whole heck of a lot of infiltration,
14 so for all intents and purposes, it does
15 function as impervious coverage. What they are
16 obligated to do for storm water management is
17 evaluate any increase or change in flow, based
18 on their development. So they are correct in
19 saying whatever is on the Mason Supply, whether
20 the gravel is considered pervious or
21 impervious, it exists, and they are not
22 changing it, but they are, you know, putting in
23 the solar panels, which by statute, whether you
24 agree with it or not, are not considered
25 impervious surfaces. So the only impervious

1 surfaces they will have out there are the pads,
2 maybe Jim can clarify the posts, are they
3 driven or are they concrete?
4 THE WITNESS: They will be driven.
5 MR. DECKER: There won't be concrete
6 there?
7 THE WITNESS: No.
8 MR. DECKER: However, the question of
9 coverage is interesting because if we look at
10 it in the context of the two principal uses, we
11 do have a considerable amount of impervious. I
12 don't know if you have done any numbers or
13 calculations, but if you take what is remaining
14 for Mason Supply, that acreage, do you have any
15 idea based on that acreage what the percent of
16 coverage of impervious surface is?
17 MR. WILSON: Of the entire parcel?
18 MR. DECKER: No, not the entire parcel,
19 the affected area, once you put in the solar
20 panels and fencing and everything. Basically,
21 you have two uses. You have the solar facility
22 occupying a certain acreage, and the Mason
23 Supply, which is also being about three and a
24 half acres.
25 THE WITNESS: Yes.

1 MR. DECKER: If you were to take the
2 total impervious surface on the Mason Supply
3 over that three and a half acres, what would
4 the percent coverage be, and the ordinance
5 permits 60 percent. What I am getting at is
6 from the inception, if you are looking at what
7 is, you know, visually what the lot would look
8 like for Mason Supply, is the amount of
9 impervious that will remain there, does it
10 exceed the 60 percent, even though that may not
11 require coverage variance. But if you are
12 looking at it in the context of intensifying
13 the existing non-conforming use, does that have
14 any bearing. I bring it up because it is
15 something to consider, that the Board should
16 consider when they are looking at the use
17 variances.
18 MR. ASHTON: When we look at that, is
19 it more appropriate to look at the box there?
20 Basically, it is all gravel, or is it to look
21 at the box plus the wooded area? Isn't there
22 an additional part of the property?
23 MR. DECKER: Yes, the wooded area.
24 MR. ASHTON: What is the right way to
25 look at that? Is there a right way to look at

1 it?
2 MR. DECKER: Basically, there isn't.
3 You look at the coverage of the entire lot,
4 that is assuming you have one use, and so
5 forth. You can cut me off if you disagree, but
6 when you are looking at this from a use
7 variance standpoint, the two uses, what is the
8 appearance? They are not creating a
9 subdivision by fee, okay, but visually are they
10 creating essentially two lots?
11 THE WITNESS: Can I respond?
12 MR. PALILONIS: Let me say that I don't
13 necessarily -- I am not an engineer and I don't
14 necessarily see the implications of that
15 analysis, but it would seem to me that the
16 question is, are there problems now with just
17 with West Amwell Mason Supply, or will it get
18 worse with this use? If so, how do you
19 ameliorate that, and that is the issue.
20 MR. ASHTON: If I could ask a follow-up
21 question on one of the answers you provided,
22 and you may have testified to this the last
23 time, but it is a little finer detail than I
24 remember. The analysis that was done, you said
25 basically it meets the requirements. Were

there any results from that analysis that were any finer? That said, will it be worse because it still meets it, or better because it meets it?

THE WITNESS: No, my recollection is that there will be a reduction in the proposed condition, there will be a reduction in the storm water runoff, and that is because basically, based on the runoff analysis, you may have periods in an agricultural use where the soil is unstabilized, or water runs off it real quickly. In this particular use, it will be a managed meadow grass that will be maintained throughout the duration, throughout all of the seasons, as opposed to an open tilled type agricultural type condition.

MR. ASHTON: So the analysis basically, the combination of the fact that you have panels that are shedding water to one kind of an alley, let's say, versus the stabilization of the soil, the net result was less discharge. Maybe discharge is not the right word.

THE WITNESS: The overall total runoff exists because of the change, because of the storm water management calculations.

1 MR. ROMANO: And you are saying there
2 will be less runoff on this site than what
3 exists there now.
4 THE WITNESS: That is correct.
5 MR. ROMANO: And this is on the site.
6 THE WITNESS: Yes.
7 MR. DECKER: And that is how the
8 numbers worked out, because you have to
9 consider the solar panels basically aren't
10 there, okay. Basically, you have to consider
11 it as if you are taking it from a tilled field
12 to a meadow, and a meadow would have less
13 runoff.
14 MR. ROMANO: Predicated on it being
15 properly managed.
16 THE WITNESS: And just to give you some
17 more accurate numbers, we are reducing -- based
18 on the state standard calculations and
19 methodology, we are reducing the existing flow
20 from two years to 70 percent, of the existing
21 ten years to 80 percent of the existing. So
22 there is basically a 30 to 20 percent decrease
23 in the existing overall condition based on the
24 analysis.
25 MR. WILSON: And that is for the entire

1 property, that takes into account what is
2 coming from the Mason Supply building?
3 THE WITNESS: No, this is based on the
4 new work, the Mason Supply will act the way it
5 does today, it will act in the future, and this
6 is predicated upon the remaining portion of the
7 property with the solars.
8 MR. CRONCE: We sit here and we hear
9 numbers, and we hear calculations, and we hear
10 formulas that are supposed to work, but the
11 truth about the whole thing is, and I think it
12 will come up later on, is that we actually hear
13 from the neighbors who actually live around the
14 property, because I have been familiar, and no
15 offense to engineering, but where they make
16 calculations and they are totally off when the
17 rains come and you go, "Wow, that pipe wasn't
18 sized right." So I think it will come up a
19 little later. So that discussion with the
20 water still remains open during the public
21 hearing and things like that.
22 I think there are some issues here, and
23 if I remember from the last discussion going
24 back a couple of years, I thought there was
25 some discussion along the side, I thought there

1 was some talk that you were going to do some
2 improvements down there, I thought there was
3 some discussion about that, and we will work it
4 out later on. The angle of those solar panels
5 are something like that (indicating).
6 THE WITNESS: Approximately 25 degrees
7 up from the horizontal.
8 MR. CRONCE: Is there any way of
9 softening that, or is there a way that the sun
10 rays catch it and it can't be more flat, so
11 your eye kind of goes over it?
12 THE WITNESS: The reason is based on
13 power production, and basically within that
14 area at that angle, the system is designed
15 based upon the performance at that angle.
16 MR. CRONCE: But I still want to leave
17 that distinction open about the water issue.
18 MR. ROMANO: I have more questions, so
19 we can table it until later.
20 THE CHAIRMAN: Are you done now?
21 MR. ROMANO: Let's move on.
22 THE CHAIRMAN: Any other members of the
23 Board have questions of the engineer?
24 MR. PALILONIS: So it is understood, we
25 have to go with what our engineer tells us.

1 MR. CRONCE: I understand that, Mr.
2 Attorney, but from experience sometimes I don't
3 always believe in the engineers.
4 MR. DECKER: And I agree with you.
5 Unfortunately, there are manuals and things
6 that we have to follow. Just like there is not
7 a hundred year storm anymore.
8 THE CHAIRMAN: Any other members of the
9 Board have questions of the engineer? At this
10 time, I will open it up for questions of the
11 engineer's testimony at this point, so anybody
12 from the public who would like to ask questions
13 about the testimony that was presented here
14 this evening can have an opportunity to do that
15 now. At a later point you can make your
16 statements.
17 Anybody from the public have any
18 questions?
19 Yes, ma'am.
20 MS. BLAND: Pamela Bland. Actually, it
21 would be helpful, since we are talking about
22 names, since we have to introduce ourselves, I
23 don't know who any of you are here, and it
24 would be helpful to have you introduce
25 yourselves or have a name or something so that

1 we can appreciate -- I understand in roll call
2 your names are called, but I could hardly hear
3 that. I don't know who you are, and that is a
4 point of making the meeting move smoother for
5 those of us attending. Anyway, is there any
6 way? I live on the corner of Lot 12 right here
7 (indicating), and the back of my property
8 adjoins the proposed solar field. And I have a
9 number of questions, and these are some of the
10 questions I brought up before, and I bring them
11 up again and this is to address the ordinance
12 changes, that is something else that I can't
13 ask those questions of these gentlemen; is that
14 the idea?
15 THE CHAIRMAN: As far as what? The
16 ordinance change?
17 MS. BLAND: I can't ask those
18 questions.
19 THE CHAIRMAN: It is on the record. If
20 you have a question and you don't understand,
21 you can ask it.
22 MS. BLAND: One is related to an
23 ordinance question, because the ordinance was
24 changed to ten acres, and as this letter -- by
25 the way, there is a mistake, an inaccuracy in

1 the letter sent to us. It says approximately
2 9.8 acres was and continues to be utilized for
3 a clean generation solar facility, but it isn't
4 and it doesn't continue to be, so that wording
5 is not accurate.
6 THE CHAIRMAN: If you have a question,
7 you can direct it to the engineer.
8 MS. BLAND: I am getting to the
9 question. The question is, it says 9.8 acres,
10 and this might seem like it is close, but it is
11 not the same, it says ten acres.
12 MR. PALILONIS: Let me answer it. The
13 lot is 17.9 acres, so they have ten acres and
14 they are only using 9.8 acres. Hopefully, they
15 would only use a square foot, but that will not
16 happen. Do you follow me?
17 MS. BLAND: No, it says the 17.91 acres
18 is the whole property, and they are not using
19 the whole property for solar, they said they
20 are using 9.8 acres. That is not ten, and the
21 ordinance says ten.
22 MR. PALILONIS: But the lot is 17
23 acres.
24 THE CHAIRMAN: The ordinance references
25 the lot size, so the ordinance is referring to

1 the lot size.
2 MS. BLAND: Not the lot size for the
3 solar?
4 THE CHAIRMAN: No, it is not looking at
5 how many acres of solar panels he is looking
6 for, but the amount of the lot size. To make
7 the application they have to have at least ten
8 acres and they have 17.9.
9 MS. BLAND: The other question is
10 related to the storm water runoff, and now
11 currently when we have heavy storms, I have a
12 river flowing in my backyard right down through
13 the backyard from the corner here (indicating),
14 and this is the wetlands, it runs here, some
15 comes off the field and runs down this way and
16 through the backyard around my trees and
17 eventually out to the road in the ditch there.
18 So as you were saying, in spite of all these
19 numbers, that is the reality. I have a river
20 running through my backyard, and it seems to
21 me --
22 THE CHAIRMAN: Do you want to ask him
23 that?
24 MS. BLAND: All of the details about
25 impervious and pervious, the reality is it is a

1 hard substance and doesn't absorb water and it
2 hits the ground that you are talking about
3 using.
4 The grass doesn't grow year round, it
5 is only part of the year, so maybe it absorbs
6 some of the water in July, August or whatever,
7 but it doesn't absorb it in January or
8 November, and the rest of the year. So to me,
9 that is not taking care of the exaggerated
10 runoff water, and that is likely to happen with
11 the addition of these solar panels --
12 THE WITNESS: Is there a question
13 there?
14 MS. BLAND: It is not a question, it is
15 a comment. I am telling you the reality of
16 what the water situation is now. I don't see
17 it getting better, I see it getting worse.
18 THE CHAIRMAN: Yes, but you have to ask
19 a question. You can make your comments later,
20 but you need to ask him a question, will this
21 be worsened by this proposal. You can ask him
22 how he came to his calculations or something
23 that would help you understand how this may
24 impact you. He has the opportunity now to tell
25 you what he sees.

1 MS. BLAND: Based on my observations,
2 as I said them, how do you propose to make that
3 better?
4 THE WITNESS: Our analysis of the storm
5 water runoff is based on state standards, and
6 we are required to utilize that as to what the
7 natural conditions are. Our analysis and
8 calculations do comply with those requirements.
9 MR. WILSON: Let me interrupt, start
10 from the premise -- do you disagree that there
11 may be water coming off the property that runs
12 through her backyard as she describes it now?
13 THE WITNESS: No, I do not disagree
14 with that.
15 MR. WILSON: Will it be improved or
16 remain exactly the same or worsened as a result
17 of this development?
18 THE WITNESS: Our calculations indicate
19 that will be slightly improved.
20 MS. BLAND: I don't see how, based on
21 the comments he made about solar panels and
22 grass.
23 MR. WILSON: Can you comment on the
24 nature of the grass and how it grows throughout
25 the year? Do you want him to do that?

MS. BLAND: Grass doesn't grow year round, but go ahead, give it a try.

THE WITNESS: The surface vegetation will be maintained throughout the entire year on this property.

MS. BLAND: How do you make grass grow year round?

THE WITNESS: It will not necessarily grow, but the existing root structure and the recharge components will function whether the grass is growing or not growing.

MR. WILSON: It doesn't become bare ground.

THE WITNESS: That is correct.

MS. BLAND: But the thickness of the grass --

MR. WILSON: Is this like lawn grass under the panel maintained at two to four inches of height?

THE WITNESS: No, it is a higher meadow grass.

MS. BLAND: It still doesn't grow year round.

Also, I would like to discuss the noise elevation, there will be an increase of noise

1 that we are not accustomed to in our area.
2 THE WITNESS: I think the testimony and
3 our reports from the acoustical expert that
4 were submitted demonstrate existing ambient
5 sound conditions on the property, so not so
6 much suburban, but actual measurements taken of
7 the ambient sound on the property, and an
8 analysis was done to project the functioning of
9 the generators after the system was turned on.
10 In order to calculate what the sound would be
11 at the edge of the array, it was confirmed that
12 the existing ambient sound levels that you hear
13 today would not be exceeded based upon
14 installation of the solar array. Obviously,
15 the arrays and inverters function during the
16 day, and they are off when the sun goes down.
17 There is no functionality of the system at all
18 at night, even independent of the tests that
19 were done as to what the actual numbers are
20 today. An analysis was done to show that that
21 would not be exceeded.
22 MS. BLAND: First, this is not a
23 suburban area, this is a quiet rural area. And
24 can you say what the decibel level was?
25 THE WITNESS: I believe it was 39.1.

1 MS. BLAND: From what I looked up, less
2 than 40 decibels is equated to a typical noise
3 of a typical suburban night, and we do not live
4 in a suburban community.
5 THE WITNESS: But it is during the day,
6 and it complies with not exceeding ambient
7 noise, which is what the general nuisance
8 standard is in the overall ordinance test, and
9 also it complies with the solar ordinance,
10 which says that the noise decibel limit should
11 be limited according to the decibels. So we
12 are complying with exactly what the ordinance
13 requires.
14 MR. WILSON: As soon as the sun goes
15 down, is there any noise whatsoever from the
16 entire array or the inverters?
17 THE WITNESS: No.
18 MR. WILSON: It is completely turned
19 off?
20 THE WITNESS: Yes.
21 MR. WILSON: It takes mere minutes
22 after the sun goes down, it doesn't run for
23 three more hours, as soon as the sun goes down
24 it is off?
25 THE WITNESS: Yes.

1 MR. WILSON: And there is zero noise?
2 THE WITNESS: Yes.
3 MS. BLAND: That doesn't address the
4 daytime.
5 MR. WILSON: The daytime?
6 THE WITNESS: It doesn't exceed the
7 ambient noise levels that were tested on this
8 property.
9 MS. BLAND: Those are the only
10 questions I have at this point.
11 THE CHAIRMAN: Anybody else from the
12 public? Just come on up.
13 MR. HOLLOHAN: Justin Hollohan. Are
14 you aware that arborvitaes are deer bait, and
15 now you are closing off the entire bedding area
16 and now lining the buffet around this area,
17 that is going to wreak havoc. Are you aware of
18 that?
19 THE WITNESS: I don't know the
20 definition of deer bait.
21 MR. HOLLOHAN: To have that around is
22 calling more deer to the area.
23 What is your hurricane heavy windstorm
24 plan for this? If trees were to fall onto the
25 arrays, what is your plan after that? We have

had very high windstorms and trees falling down all over this area. What is your plan?

THE WITNESS: First of all, there are multiple levels of safety within the system. When there is a disruption with any of the circuitry, there are redundant shutoffs on the system at the street and in the inverter location, and the arrays are designed to withstand a code requirement of a 90 mile an hour wind and wind gusts, and we have several sites that have been installed and have been through the recent hurricanes without any issues. So we comply with the wind standards as regulated by the township building department.

MR. HOLLOHAN: What is the threat of contaminants entering our well water?

MR. WILSON: From the solar array, or in general?

MR. HOLLOHAN: From the solar array, if it is broken by a tree that fell.

THE WITNESS: I see no hazard or contamination or any hazardous materials leaking from the arrays.

MR. HOLLOHAN: Can you address the loss

1 of property value based on the addition of the
2 solar farm? How will that affect the property
3 values around -- the homes around it? Will it
4 go up, or will it go down?
5 MR. WILSON: That is in your planning
6 area of expertise?
7 THE WITNESS: From a planning
8 perspective, the impact to value is analyzed
9 and determined based upon net effect of
10 nuisance factors. In this case, the testimony
11 we have provided and our experience with other
12 sites and operations is that from a nuisance
13 standpoint it is a low impact development. We
14 are mitigating any viewscape -- the view line
15 issues compared to land use. We have no other
16 nuisances such as smoke, odors, and if you are
17 next to an industrial facility, you have
18 tractor trailers coming in and going out, for
19 example, which might have an impact on value
20 because of the nuisance factors. But in this
21 case, it is a relatively passive use, in the
22 absence of those nuisance factors.
23 MR. HOLLOHAN: So you have no idea?
24 THE WITNESS: I just answered your
25 question.

1 MR. HOLLOHAN: That is a political
2 answer, I teach fourth grade, and I need some
3 real answers. Who will do this after you make
4 your profit and leave?
5 THE WITNESS: First of all, I don't
6 necessarily profit from this. The existing
7 developer ultimately may transfer the asset to
8 an owner which would own and operate the
9 facility, and the facility would be maintained
10 in accordance with an approved plan that this
11 Board would approve along with conditions. We
12 also have maintenance plans that I mentioned
13 before relative to the maintenance of the storm
14 water BMP. This would be periodic inspections,
15 and if for some reason there was any sort of
16 violation of the approved plan, then it would
17 be subject to any action of the zoning officer
18 as any other development.
19 MR. HOLLOHAN: How about snow removal,
20 where will it go? Where will it get piled up?
21 Does it require snow removal?
22 THE WITNESS: It doesn't require snow
23 removal.
24 MR. HOLLOHAN: The snow sits on the
25 ground?

1 THE WITNESS: That is correct.
2 MR. HOLLOHAN: Was a study done on the
3 water drainage behind the masonry? Is there
4 enough to support the masonry place, but has a
5 study been done that it also will pick up what
6 is being added?
7 THE WITNESS: Yes, the study includes
8 that.
9 MR. HOLLOHAN: And the study was done
10 by you guys?
11 THE WITNESS: Yes.
12 MR. WILSON: And reviewed by the
13 township engineer.
14 THE WITNESS: That is correct.
15 MR. HOLLOHAN: I am just curious, and
16 this is totally random, but what are some
17 crimes associated with solar farms? Is there
18 looting, vandalism? You are saying no traffic,
19 you are using existing land, but how about
20 crime? I am just wondering?
21 THE WITNESS: We have no experience
22 with crime in any of the sites that we have
23 developed and assisted in the installation of,
24 with the exception of during construction
25 activities, I think there was one instance

1 where a four wheeler disappeared from one of
2 the sites because it wasn't secured and fenced
3 in. Beyond that, which is really a
4 construction management issue, we don't have
5 any experience with crime of that sort.
6 MR. HOLLOHAN: That is all I have,
7 thank you for your time.
8 MS. ANDREOLI: Jennifer Andreoli, 16
9 Hunter Road.
10 Over here (indicating), how close, this
11 is Lot 12, how close are those solar panels to
12 her home?
13 THE WITNESS: Approximately 150 feet
14 from the structure to the solar array.
15 MS. ANDREOLI: And the house is a two
16 story house?
17 THE WITNESS: Right.
18 MS. BLAND: Yes.
19 MS. ANDREOLI: So reasonably, the
20 resident in Lot 12 will have a very good view
21 of the solar arrays.
22 THE WITNESS: I don't know if I would
23 characterize it as a very good view, I know
24 there are existing evergreens along the
25 southerly boundary of Route 12, and that will

1 be augmented with a double row of evergreen
2 trees along the property line as part of the
3 buffer.
4 THE WITNESS: I don't know if it will
5 be a hundred percent visible, so the answer to
6 that is no; however, it will be substantially
7 screened with the existing trees as well as
8 with the proposed trees, and the trees are
9 continuing to grow.
10 MS. ANDREOLI: Would the arborvitae
11 or deer candy, I believe Justin calls it,
12 disappear --
13 THE WITNESS: No. It is eastern white
14 pine and white spruce, I believe, the
15 arborvitae is along the frontage as part of
16 that.
17 MS. ANDREOLI: And the arborvitae are
18 the little ones that you are talking about, the
19 trees in the back?
20 THE WITNESS: Yes.
21 MS. ANDREOLI: In relation to the
22 runoff, I think part of the problem is that we
23 are not engineers, so we don't understand the
24 whole thing, but when you did your evaluation,
25 were you aware that there was already a water

1 problem?
2 THE WITNESS: I wasn't necessarily
3 aware there was a water problem, I know on
4 Lot 12 in the existing condition it is
5 relatively low lying, just based on the
6 existing topography, and I am sure it was that
7 way for many years.
8 MS. ANDREOLI: Would it make any
9 difference knowing there is already a runoff
10 problem on that property in the evaluation
11 process? Would that make a difference?
12 THE WITNESS: Typically, it wouldn't
13 necessarily make a difference, the proposed
14 project is based upon the particular area, and
15 our evaluation as engineers is to calculate
16 what the runoff is going to be and see if it is
17 existing going to a downstream area, and we did
18 that, and it was slightly less.
19 MS. ANDREOLI: And you said your
20 elevation includes the entire 17, so it
21 includes the current non-conforming use along
22 with solar?
23 THE WITNESS: The answer to that is
24 twofold, and it is that the calculations are
25 based on the solar area, but inherently because

1 of that, because of West Amwell Mason Supply
2 not changing, it is a constant as proposed. We
3 focused the analysis on the area where the
4 project is, the solar area. In and of itself,
5 the numbers that we mentioned were those
6 reductions that would still hold true if we
7 drew our boundary around it, because that is
8 not changing.
9 MS. ANDREOLI: So because it is not
10 changing, even if you expanded and included
11 that, you don't see where it would have
12 additional impact, the runoff?
13 THE WITNESS: That is correct, because
14 it does not change.
15 MS. ANDREOLI: You refer to, I think it
16 was Mr. Wilson, in the buffering this is to
17 help maintain the vista or enhance the vista?
18 THE WITNESS: It may have been my
19 testimony.
20 MS. ANDREOLI: You talk about the fact
21 that your hope is, or you claim is that this
22 application will in fact improve the current
23 vista because the current non-conforming use
24 for West Amwell Supply, I guess in your mind is
25 unattractive, and this will enhance that vista?

1 THE WITNESS: Well, it is a pre-
2 existing non-conforming use, relative to the
3 zone, so it has a non-conformity associated
4 with it. The storage areas on the property
5 which now can be seen from a significant
6 distance, especially from the Brunswick Pike.
7 MS. ANDREOLI: So you are talking in
8 here (indicating)?
9 THE WITNESS: In here you can see the
10 storage area.
11 MR. WILSON: Describe what you are
12 referring to.
13 MS. ANDREOLI: I am referring to
14 Exhibit GS-7. Looking at the site from the
15 frontage, from a southwesterly direction to a
16 northeasterly direction, that is apt to
17 function as a mitigating factor of the view of
18 the storm areas, in that commercial activity.
19 And that activity --
20 MR. WILSON: The question of whether it
21 will improve the vista, is an individual
22 opinion.
23 THE WITNESS: My testimony was not that
24 it would improve the vista, my testimony was
25 the landscape buffer would be an added element

1 as part of that project that would serve to
2 make that non-conformity more harmonious with
3 the environment, which is the statutory proof
4 based on case law for that particular type of
5 variance.
6 MS. ANDREOLI: So in actually what you
7 are doing is turning a vista into a block.
8 THE WITNESS: Well, we are actually
9 proposing a solar array, which is a permitted
10 use within the NC zone, and it is permitted by
11 ordinance, because we meet all of the
12 conditions. This particular case is unique
13 because we have a second use on the property,
14 and that landscape buffer will serve to improve
15 the condition from that standpoint. But
16 really, the function of the application here,
17 it is a permitted use.
18
19 BY MR. WILSON:
20 Q And you refer to the view of the
21 existing Mason Supply as a vista?
22 A No, it is not. It is a view of outdoor
23 storage.
24 Q But the outdoor lot where the solar
25 array is being replaced is a vista?

1 A I would say it is a farm field.
2 Q Which is a vista, especially when there
3 is nice corn planted and deer running through it and
4 fauna, and again we are going from an open vista, a
5 landscape that would block the non-conforming use,
6 therefore you feel it is enhancing the property,
7 correct?
8 A I would say it is an open view of the farm
9 field in approximately a ten acre area, so it is not
10 in an area where we are looking miles and miles away.
11 MS. ANDREOLI: But for the residents
12 who live there, this is part of their vista.
13 THE CHAIRMAN: Just ask questions.
14 MS. ANDREOLI: You brought up case law,
15 there are also some cases, for instance, are
16 you aware of the Salt & Light v. Willingboro or
17 Atlantic Green v. Upper Pittsgrove?
18 THE WITNESS: The Upper Pittsgrove case
19 I am familiar with.
20 MS. ANDREOLI: Again, it goes back to
21 cases where it was a use --
22 THE WITNESS: I believe actually use
23 variances on those, where the solar use wasn't
24 approved as an approved use within the
25 township, but in this case your township, by

1 passing the ordinance, made a determination
2 that this use is appropriate in this zone in
3 this location.
4 MS. ANDREOLI: But it is conditional.
5 THE WITNESS: Yes.
6 MS. ANDREOLI: And you talked about the
7 fact there are currently two uses on the
8 property, and you are asking for two principal
9 uses on the property?
10 THE WITNESS: That is right.
11 MS. ANDREOLI: I understand how these
12 things work, but if for instance West Amwell
13 Mason Supply decided to move and sod the
14 property, would somebody be able to put in a
15 similar use, or because it is a non-conforming
16 use it would have to go in for a variance to
17 continue the use? Wouldn't that be the norm?
18 THE WITNESS: My understanding is that
19 as long as the use is not abandoned or
20 terminated, the use would run with the land,
21 and a new tenant could continue the use. If
22 they wanted to expand it or change it
23 substantially, they would have to apply.
24 MS. ANDREOLI: Change it substantially,
25 so in this case you are changing this nine

1 acres substantially, correct?
2 THE WITNESS: It is a farm field, and
3 it will be a solar array.
4 MS. ANDREOLI: Which substantially
5 changes the condition of the property, it
6 visually substantially changes the condition of
7 the property, correct?
8 THE WITNESS: The property will be
9 different.
10 MS. ANDREOLI: Substantially different,
11 because we are going from a vista to a wall,
12 correct?
13 MR. WILSON: I will object to her use
14 of the word "vista", if it is what you see,
15 that is fine, but if you are referring to the
16 Upper Pittsgrove decision, it is completely
17 irrelevant to this decision.
18 MS. ANDREOLI: You spoke about factors
19 when Justin Hollohan talked to you about
20 property values. And when he asked you to give
21 your opinion, you spoke about factors that
22 impact property values in your position, your
23 profession, and how you do this, okay. Some of
24 those things you spoke about, would they not
25 apply to the current non-conforming application

1 in West Amwell?
2 THE WITNESS: They may.
3 MS. ANDREOLI: So we could actually say
4 that that intensifies the negative impact,
5 correct?
6 THE WITNESS: No, I wouldn't say that.
7 MS. ANDREOLI: But you are adding more
8 vehicles, right?
9 THE WITNESS: We are not adding more
10 vehicles.
11 MS. ANDREOLI: At least there will be
12 somebody up and down there, and during
13 construction there will be a lot of vehicles.
14 THE WITNESS: Construction is
15 temporary, and a vehicle once a week is less
16 than one house generates.
17 MS. ANDREOLI: But it is still an
18 intensification of the current non-conforming
19 use.
20 THE WITNESS: The variance we asked for
21 tonight.
22 THE CHAIRMAN: At this point we need to
23 take a break for the Court Reporter so she can
24 change her paper.
25 (Whereupon, a short recess was taken.)

1 THE CHAIRMAN: I will call the meeting
2 back to order. Just a little housekeeping. We
3 are going to end the hearing at 10:15 at the
4 latest, we have some other business to attend
5 to. We will keep moving forward and see how
6 far we get. But at this point we are still
7 open to the public, if you want to come up and
8 ask questions of the engineer. Just identify
9 yourself for the record, please.
10 MR. ARNONE: David Arnone, 631
11 Brunswick Pike, directly across the street.
12 How high is the architectural fence? The one
13 along 518?
14 THE WITNESS: Five feet high.
15 MR. ARNONE: And the arborvitae planted
16 in the front of the fence?
17 THE WITNESS: It will be behind the
18 fence.
19 MR. ARNONE: How tall will the
20 arborvitae be?
21 THE WITNESS: In excess of 12, 14 feet.
22 MR. ARNONE: For how long will it take
23 to get there?
24 THE WITNESS: Approximately ten years.
25 MR. ARNONE: When it gets to that

1 height, it will block the solar panels.
2 THE WITNESS: It will serve as a visual
3 blockage of the arrays.
4 MR. ARNONE: It will block the sun from
5 getting in. Those panels face south, correct?
6 THE WITNESS: Yes.
7 MR. ARNONE: So when those arborvitae
8 trees get up to 14 feet, that will block the
9 shadow cast from the sun --
10 THE WITNESS: There will not be a
11 substantial shadow cast in that area.
12 MR. ARNONE: It will be kept from
13 growing any taller than that?
14 THE WITNESS: The arborvitae would
15 likely continue to grow until it reaches
16 approximately 18 feet or so.
17 MR. ARNONE: Were any deer path studies
18 done on the property?
19 THE WITNESS: No.
20 MR. ARNONE: Were any geese studies
21 done on the property, because there is a flock
22 of geese out there, and if they are not out in
23 that field, they will be somewhere else.
24 THE WITNESS: No.
25 MR. ARNONE: That is all I have.

1 THE CHAIRMAN: Anybody else from the
2 public?
3 MS. COMUNE: My name is Alfonsina
4 Comune, 122 Rock Road West. I am right behind
5 the field. I have a couple of questions if you
6 don't mind. I then understand what your role
7 in this is.
8 THE WITNESS: I am a civil site
9 engineer and planner.
10 MS. COMUNE: And so you are here to
11 plan for the installment and the process, and
12 then once it is built, you basically leave, you
13 do all of the studies and then you go.
14 THE WITNESS: I prepare the engineering
15 documents, that is correct.
16 MS. COMUNE: And then at that point,
17 the owner or proprietor or solar energy --
18 THE WITNESS: Yes.
19 MS. COMUNE: And you are here just for
20 the planning purposes, and you are responsible
21 for doing all of the studies?
22 THE WITNESS: That is correct.
23 MS. COMUNE: I have a question. Your
24 study on the drainage and the fact that you
25 said that the drainage is basically -- that the

1 study was based on the agricultural use, the
2 tilling of the land, and therefore, if you till
3 the land, the assumption is that if you till
4 the land, when it rains you get a stream of
5 water, and so you are not worsening the
6 situation, because the way the land is used
7 based on your study, it actually might even
8 improve it; is that correct?
9 THE WITNESS: It is standard practice
10 that the roughness, surface roughness factors
11 used in the calculations are based on the
12 agricultural use, which correlates to the type
13 of use that is currently there, and we compared
14 the post development use to that.
15 MS. COMUNE: And that study was done
16 when, in 2011?
17 THE WITNESS: Yes.
18 MS. COMUNE: Do you know when the last
19 time was that that land was actually tilled or
20 used for agricultural use?
21 THE WITNESS: No, I don't.
22 MS. COMUNE: Do you know if the area,
23 and again I live, and I will show you where I
24 live, I live here (indicating), and my land
25 slopes, my house slopes down, as Pam said who

1 lives here (indicating), and I get a lot of
2 runoff because my land slopes. This area here
3 (indicating) doesn't get tilled, it has never
4 been tilled, it has never been planted on. Is
5 my drainage going to be improved?
6 THE WITNESS: We are not touching that
7 area.
8 MS. COMUNE: You are touching it here,
9 right (indicating)?
10 THE WITNESS: Within the existing field
11 there will be basically a proposed field which
12 will not exacerbate the drainage conditions.
13 MS. COMUNE: Can you guarantee me that?
14 THE WITNESS: I can only base my
15 opinion on factual information to a degree of
16 engineering certainty, which is standard
17 practice of what my responsibility is as an
18 engineer in this state.
19 MS. COMUNE: But you said the study was
20 based on the fact that the drainage would
21 actually improve a little bit based on the
22 utilization. Didn't you say that? Did I
23 misunderstand you?
24 THE WITNESS: Based on the agricultural
25 use coefficient.

1 MS. COMUNE: But I am telling you that
2 this land has not been used in over two years,
3 so your study --
4 MR. WILSON: When you say "this area",
5 are you referring to the area colored in darker
6 green?
7 MS. COMUNE: No, the whole area, the
8 whole parcel has not been tilled in two years.
9 So how can it increase? It is standard
10 practice that there are various cycles of a
11 production and other types of tillage in an
12 agricultural use, cyclical.
13 It is generalities, information based
14 on studies versus reality. The reality is that
15 we have a problem with drainage, and the land
16 has not been tilled. So how can it, based on
17 your study, now you know the reality, how can
18 it improve, or can it improve?
19 THE WITNESS: I would say if there is
20 increasing agricultural continuing utilization
21 of the land, there would be an improvement. If
22 that is not the case, then the post-development
23 condition would not exceed the existing, and
24 there would be a worsening of that condition.
25 So the reality is that the homes to the south

1 of Rock Road are in lower lying areas.
2 MR. WILSON: To the north?
3 THE WITNESS: To the north, as well as
4 Lot 12. Those are existing conditions with off
5 site properties, and their conditions
6 specifically with the property, you may be able
7 to address that, you may not. You may be able
8 to take steps to address those conditions, but
9 this applicant, the responsibility is to
10 address the impacts from their project so as to
11 demonstrate not an exceedance in a downstream
12 position, and we feel we have done that in
13 accordance with the standards.
14 MS. COMUNE: I understand, but you are
15 here to put a case forth for your purpose, I
16 think.
17 THE CHAIRMAN: Are you done with the
18 map? If so, then talk from the chairs.
19 MS. COMUNE: Your purpose here, as the
20 Board that is representing the residents of
21 West Amwell, is to ensure that their goal does
22 not harm our residences. I would think that
23 that would be the Board's purpose, right?
24 THE CHAIRMAN: At this point you are
25 asking him questions, not us.

1 MS. COMUNE: I'm sorry, but the
2 question is that I understand that your study
3 justified what you wanted and needed it to
4 justify.
5 THE WITNESS: And that study was
6 reviewed by the Board's consultant as to
7 whether it was reasonable and standard on the
8 Township's behalf.
9 MS. COMUNE: But you recognize the fact
10 the houses behind your field are low lying
11 houses?
12 THE WITNESS: They are lower than the
13 roadway, that is true.
14 MS. COMUNE: Do you also recognize the
15 fact there is a drainage problem, an existing
16 drainage problem?
17 THE WITNESS: That testimony has been
18 provided to me tonight about the specific
19 drainage problems on these off site properties,
20 but certainly I have not experienced it,
21 because I don't live there.
22 MS. COMUNE: And part of the
23 application process is to provide information,
24 to give information that this will not make the
25 drainage problem worse.

1 THE WITNESS: That is right.
2 MS. COMUNE: As part of that study,
3 wouldn't it also be relevant to find out
4 whether there is a drainage problem?
5 THE WITNESS: Not necessarily. The
6 calculations are based on the specific project
7 area and pre-development and post-development
8 issues.
9 MS. COMUNE: I have a question. I have
10 a question for you, sir, and I don't know your
11 name --
12 MR. WILSON: My name is Walter Wilson.
13 MS. COMUNE: It has to do with the
14 improvement of the aesthetics. We talked about
15 improving the aesthetics of the property and
16 making it, I think you brought up a case --
17 MR. WILSON: I mentioned two cases. I
18 can't answer questions, I am not testifying.
19 If it is a legal question, hopefully I can
20 answer it for you.
21 MS. COMUNE: No, I was curious, do you
22 think the property at the masonry yard is
23 comparable to a junkyard?
24 MR. WILSON: Personally?
25 MS. COMUNE: I am not asking you, I am

1 asking him.
2 THE WITNESS: It is not the same use,
3 but the way it functions in terms of potential
4 impacts and the mitigating factors has some
5 similarity with the landscape buffer as
6 proposed. It is pre-existing and non-
7 conforming, and it does not necessarily conform
8 to the zoning ordinance.
9 MS. COMUNE: So you feel the
10 improvements are going to increase the --
11 THE WITNESS: It would affect the net
12 effect of that non-conformance.
13 MS. COMUNE: You talked about the shed
14 house, how high is the shed on the West Amwell
15 masonry yard?
16 THE WITNESS: I am not positive of
17 their exact height.
18 MS. COMUNE: Take a guess.
19 THE WITNESS: They may be a story and a
20 half high.
21 MS. COMUNE: Do you know how high they
22 are? They are about a story and a half high.
23 So do you think that putting a fence around the
24 area and putting black fencing and adding trees
25 is going to mitigate? How about with the non-

1 conforming use, do you think it will make it
2 better?
3 THE WITNESS: Yes, providing those
4 elements of the landscape buffer which is
5 closer to your property, and making it more
6 functional, that will be an added element.
7 MS. COMUNE: Have you looked at the
8 property?
9 THE WITNESS: Yes, I have.
10 MS. COMUNE: You have, and in all
11 honesty, you think that will make it better?
12 THE WITNESS: Yes, I do.
13 MS. COMUNE: You think from my looking
14 out the door and seeing all of the trees and
15 the open land and the fields, that looking into
16 a black fence in all honesty will make it
17 better?
18 THE WITNESS: It will decrease the view
19 of the storage area that you can see. It will
20 increase the use.
21 MS. COMUNE: I cannot see the storage
22 area from my house, but I will be able to see
23 your black fence. In all honesty, I can't
24 trust the response because it is not true, it
25 is not going to be the best view. It will not

1 make it more aesthetically looking.
2 MR. PALILONIS: Limit your testimony.
3 You are supposed to be asking questions.
4 MS. COMUNE: I think the water issue is
5 an important issue for me, and I think --
6 THE CHAIRMAN: You will have time to
7 make your comments on how you feel, just finish
8 asking your questions of him at this point.
9 MS. COMUNE: I think I am done.
10 MR. ARNONE: David Arnone again. The
11 facility that will be built there, would both
12 Sandy and Irene, has any study been done on
13 whether they have weakened at all on the solar
14 facilities that have been built?
15 THE WITNESS: Not to my knowledge.
16 MR. PFEIFFER: Sean Pfeiffer, 74
17 Rocktown/Lambertville Road. I have a couple of
18 technical questions. I notice the green for
19 the wooded areas there are different shades.
20 Is that a printing issue, or is that supposed
21 to be an indication of the different areas?
22 THE WITNESS: No, it is just a wooded
23 area.
24 MR. PFEIFFER: If you are coming west
25 on 518 or you are one of the residences to the

1 east or southeast of the property, I notice you
2 don't have the vegetation coming all the way
3 down on the side. Can you explain the
4 reasoning for that with the buffer?
5 THE WITNESS: Are you speaking over
6 here (indicating)?
7 MR. PFEIFFER: No, I am speaking about
8 on the map. If you are driving down the road
9 from east to west, then --
10 MR. WILSON: From the east side of the
11 panels to the west side on the county road?
12 MR. PFEIFFER: Of if you are in this
13 area over here (indicating), would these panels
14 be visible, in your opinion, in this direction,
15 given the landscaping buffer, or from this
16 location of the area from the south of the
17 property?
18 THE WITNESS: I don't believe there
19 would be much visibility to the rear solar area
20 from the front. From the front of the property
21 you do have screening from the buildings that
22 are functional, and there are existing trees
23 along the frontage that may not reach the level
24 that some of the Board members were looking
25 for, and that is why I will add one row here to

1 reinforce that.
2 MR. PFEIFFER: And just a couple of
3 other technical questions. Under the recharge
4 column, it says, B&B. Do you know what that
5 means?
6 THE WITNESS: It just means it is a
7 tree --
8 MR. PFEIFFER: Is there any kind of
9 maintenance plan if the tree dies?
10 THE WITNESS: Yes, in our materials we
11 do have a maintenance plan for annual
12 inspections of the plant material, the trees as
13 well as the stabilizing grasses and the
14 placement of those trees.
15 MR. WILSON: For the entire life of the
16 arrays, rather than a standard two year
17 maintenance?
18 THE WITNESS: Yes, for the entire life.
19 MR. WILSON: Is there a maintenance
20 bond or something posted for the cost? Who is
21 responsible for that cost?
22 THE WITNESS: There is no bond for the
23 full life of the system, the owner and operator
24 of the system would be required by virtue of
25 enforcement by the Township of replacing the

1 plant material; otherwise, it would be a
2 violation of their agreement.
3 MR. PFEIFFER: Is there any
4 decommissioning plan that you have filed as
5 part of the application if the arrays need to
6 be decommissioned?
7 THE WITNESS: Yes.
8 MR. PFEIFFER: Can I ask a question of
9 the board engineer related to this testimony?
10 THE CHAIRMAN: Go ahead.
11 MR. PFEIFFER: I know you were
12 obviously involved with developing standards
13 when you were the Planning Board engineer.
14 Have you looked at the plantings that are
15 proposed here by the applicant, and do you
16 think they are appropriate for this site, or
17 did you have any suggestions as far as
18 plantings?
19 THE WITNESS: Plantings, they have done
20 obviously the arborvitae, there is a question
21 about the deer, but the other plantings they
22 have are deer tolerant, the ordinance has a
23 requirement where they have to provide 75
24 percent coverage of the arrays, I believe,
25 after a five year growth, that is, and they

have presented exhibits at the previous hearings. The first set of exhibits did not show the 75 percent. I believe there were supplemental exhibits when they were added. I think they tightened up the trees and added additional rows to achieve that 75 percent.

MR. PFEIFFER: In your opinion, they are complying with the ordinance?

MR. DECKER: I believe so, yes.

THE CHAIRMAN: Anyone else from the public who has any questions?

MS. BLAND: I have one more question, Pamela Bland. Following up on the storm water and the comment you made a couple of minutes ago that this would be monitored, you feel that you have adequately addressed that it would be monitored. I am not sure by whom it would be monitored.

THE WITNESS: I think I was speaking of the landscape plan and the proposed reinforcing meadow grasses underneath the panels throughout the site would be monitored for any evidence of erosion, and if it was observed, that that would be replaced and fixed in accordance with that.

1 MS. BLAND: So there is nobody that
2 would be observing or evaluating if the water
3 runoff is greater or the same as it is now?
4 THE WITNESS: No, that is standard in
5 any development project. The drainage
6 calculations are in accordance with the
7 standards as reviewed by the Board engineer,
8 and ultimately the Township has their township
9 engineer review different ancillary items
10 throughout the Township, but this is standard
11 practice.
12 MS. BLAND: So if the water runoff does
13 get worse than it is already is, after having
14 heavy rains, I am not sure who will address
15 that or how it will be addressed and what would
16 be the solution for reducing that after the
17 facility is already built. How could that be
18 addressed if the field is already built? At
19 that point, can you make a berm, can you make a
20 ditch to redirect the water after it is already
21 constructed?
22 THE WITNESS: It depends on the details
23 of the situation. I would defer --
24 MS. BLAND: It seems to me that if the
25 field is already constructed, going back and

1 then making a berm or making a ditch to divert
2 the water away from the runoff on our
3 properties would be a more costly and involved
4 resolve to the situation than doing such a
5 thing in the beginning.
6 THE WITNESS: It may be, and again, our
7 position is that we have done the analysis and
8 complied with the requirements necessary for
9 the property.
10 MS. BLAND: On paper you have met the
11 requirements, but the reality is the water is
12 currently running off, so I have a problem with
13 that. If this is approved and built, then we
14 can't resolve the problem if it gets worse.
15 MR. WILSON: If it is the result of
16 erosion or loss of coverage or anything shown
17 on the plan, there would be a remedy.
18 MS. BLAND: It would be more involved.
19 My point is that wouldn't it make sense to try
20 to address the problem before such a facility
21 is built, rather than take action afterwards,
22 which is more involved and more costly? That
23 is probably a question and a comment, I guess.
24 MS. ANDREOLI: I will make this brief:
25 You mentioned this has not been tilled, the

1 land you will put these solar arrays on. If it
2 hasn't been tilled, what concerns me is that
3 you are saying the lot that is run off will
4 hopefully be held by the grasses. These
5 grasses are not like normal lawn grasses, it is
6 a different lawn, or a different grass, right?
7 THE WITNESS: Yes.
8 MS. ANDREOLI: So do we know that grass
9 can grow on that land, on that soil?
10 THE WITNESS: Yes.
11 MS. ANDREOLI: And how do we know that?
12 THE WITNESS: It is similar to our
13 other projects and similar soil conditions, and
14 we have specified the same type of proposed
15 grasses.
16 MS. ANDREOLI: I know just from a
17 residential use, if I have got an area that has
18 not been, what is that called when you poke
19 holes in the ground --
20 MR. DECKER: Aerated?
21 MS. ANDREOLI: If it hasn't been
22 aerated properly, it will not get the grass to
23 grow. I live down the street, and we live on a
24 rock, it is an absolute rock, and trying to get
25 grass to grow is very difficult. Do we know

1 that that grass will withstand it, and if it
2 does not, what is plan B?
3 THE WITNESS: It is the applicant's
4 responsibility to ensure there is a stabilized
5 grass surface and based upon our design plans,
6 the seed specifications and soil conditions on
7 the site, it is our position that that will
8 stabilize the surface soil.
9 MS. ANDREOLI: But as part of your
10 evaluation, did somebody go to the lot and
11 check the soil and the conditions of the soil?
12 THE WITNESS: Yes, the general
13 conditions.
14 MS. ANDREOLI: Of the actual lot
15 itself, and they know it has not been tilled?
16 THE WITNESS: We believe the soil
17 stabilization, which is on the plan, will allow
18 this.
19 MR. WILSON: Jim, there is an
20 obligation on the part of the developer to meet
21 the planned specifications, and that is to have
22 the grass grow there, right?
23 THE WITNESS: Yes.
24 MR. WILSON: For the first two years
25 there is a bond to be posted, a maintenance

1 bond -- first a maintenance guarantee that it
2 is provided for in the event the developer does
3 not?
4 THE WITNESS: Yes.
5 MR. WILSON: And thereafter, a two year
6 maintenance bond to make sure it continues to
7 grow and sustains itself for at least two years
8 after the development is completed?
9 THE WITNESS: That is right.
10 MR. WILSON: And thereafter, the same
11 obligation continues, but it is not bonded, it
12 is not backed by a monetary bond, it is just
13 based upon -- it would be based on, or backed
14 by the requirements of site plan approval with
15 the threat of a site plan approval that has a
16 penalty attached?
17 THE WITNESS: Yes.
18 MR. WILSON: And it is a monetary
19 penalty, indicating that there is a possibility
20 the municipality, if it so chose, could force
21 the developer to take whatever action is
22 necessary to have that turf grow the way it is
23 supposed to grow?
24 THE WITNESS: Yes.
25 THE CHAIRMAN: We are going to close

the public hearing and move on for some testimony of the engineer, and then maybe we will have some more things you will have questions on later. We will move on. We will close the questions for the public, and we will move on and review Tom Decker's letter and go through that point by point with the applicant and see if we can get through that part of it.

If you can start, jump to where we need to be.

MR. DECKER: Basically, what I am looking at is a letter dated March 22, 2013 revised March 25, 2013. The revision was the ordinance wasn't cited properly in my original letter. I referenced Ordinance 3-2012, which evidently was not adopted, but 12-2012 was. So I revised that to make sure the record was straight.

The first three and a half pages are pretty much informational purposes for the Board. It is a recap of things that happened during the last hearings and so forth. At the bottom of page 4 is really where we start on comments, and these are comments that are carried forward from my previous review letter

1 back in May of 2011, and then also it
2 incorporates the planner's test review at the
3 end. So on page 4 with regards to zoning,
4 item 1, it reads that a variance is no longer
5 required for the minimum lot size of 20 acres
6 due to Ordinance 12-2012.
7 Item 2, with regard to the second
8 principal use on the lot, and we heard
9 testimony with regard to that this evening, I
10 believe it is a non-conforming use, and we
11 agreed to that. I believe we are in agreement
12 on that.
13 MR. WILSON: We agreed there are a
14 number of non-conformities to the use, whether
15 it in and of itself is a non-conforming use, we
16 think it is included in the definition aspect,
17 not to Schedule 3, but definition aspect of the
18 ordinance. But regardless of that, there are
19 still some non-conformities that exist with
20 regard to outdoor storage.
21 MR. DECKER: Comment number 4 is
22 regarding DEP approval. I understand from the
23 applicant that they have obtained their
24 permitting, and I am not sure if that has been
25 provided to the Town yet or not.

1 MR. WILSON: It was sent directly to
2 the Township Clerk.
3 MR. DECKER: Item number 5, there is no
4 action required on that, that is just a
5 comment.
6 Item number 6, with regard to the photo
7 exhibits, the photo simulated exhibits which
8 were presented at the hearings in 2011, there
9 was an error noted at the time that some of the
10 tree heights were mislabeled as four to six
11 feet, and it was indicating they should be six
12 to eight feet in height.
13 Item number 7 regarding signage for
14 responsible parties, they had agreed to supply
15 that at the time, and that is signage basically
16 will be continuing.
17 added to the plan and at the last
18 hearings they had agreed to comply with those
19 comments.
20 MR. WILSON: And we still do. If I
21 don't comment, we still agree.
22 MR. DECKER: Item number 9 was with
23 regard to the shade tolerant grasses, and
24 testimony was provided in 2011, and you heard
25 more discussion about that tonight.

Item number 10, there is a note stating that cadmium and telluride solar panels shall not be permitted, and they agreed with that condition.

MR. PALILONIS: That was deleted from the ordinance.

MR. WILSON: That was deleted from the ordinance, but we don't propose any cadmium/telluride panels.

MR. DECKER: Item number 11, that was regarding the electronic equipment to prevent interference with radio or television, and there was testimony offered that that meets the Board's satisfaction.

Item number 12, there was testimony regarding the glare on neighboring properties and residences in accordance with Standard 9.1.

Number 13, the as-built plan will be provided prior to activation.

Item number 14, a note would be added to the plans stating that the use of lead acid batteries is not permitted, except as stand-by power supplies for on site control systems.

The second section regarding the site plan review, Item 1 was regarding the township

ordinance with regard to the fence height. It had a maximum of four feet in the front yard; however, a five foot fence is proposed, and it was determined during the hearing that the solar ordinance permitting fences to be eight foot height superseded and trumped the township ordinance on fences. They are proposing a six foot high fence.

Item number 2, that indicates --

THE CHAIRMAN: Go back to 1. Five was for the architectural and 6 foot was for the chain link, and number 2 requires -- the township ordinance with regard to fences requires a maximum fence height of six feet, and the solar ordinance allows eight feet. And again, it was determined the eight foot would be used.

The plans should be revised to include site triangle at the intersection of Route 518 and Rock Road. I believe they comply with that.

Items 4 through 10 --

MR. PALILONIS: By the way, number 3, that would require Hunterdon County Planning Board approval for the site triangle?

MR. DECKER: Correct, and I believe I looked through the file, and I believe that there was an approval from the County Planning Board.

MR. PALILONIS: Yes.

MR. DECKER: Item number 4 regards the installation of signage. Four through 10 deals with improvements on the existing masonry facility. Four has to do with the signage, they are allowed to have one wall mounted sign and two six foot high freestanding signs, and item 5 is outdoor storage of materials. A and B also touched on the outdoor storage of materials.

Number 6 indicates off street parking spaces per ordinances, 23 spaces existing conditions. That shows ten spaces are provided per township ordinance. The parking spaces are to be ten foot wide by 18 feet in depth. There are spaces that do not comply with that, and in accordance with the Americans with Disabilities Act, at least one of the parking spaces must be handicap accessible, and the applicant agrees to comply with that.

Item number 9 requires parking to be a

minimum of 20 feet from the property line and half the building setback requirement from any street right of way. Seven of the existing parking spaces are within 20 feet of the Mason Supply building, and there is on site parking for vehicular circulation. Those items I went through, 4 through 10, there was a discussion in 2011, I believe, between the planner and I, the township planner said the Board does not have to grant waivers on any of that, but they can acknowledge that it exists for the record.

Moving forward, so that for example, if the sign, the sign out in front was to get hit by a car or taken out, in order to put the signs back up, they would have to come in for a variance.

MR. WILSON: Mr. Decker, at page 55 of the transcript of August 23, 2011, Mr. Decker was asked by the Chairman, "Tom, could you identify what you found, and we will come back to it?" And he read the same items that he just read and concluded with a comment. If it is okay, I will read it very quickly, page 56 and 57, it is by Mr. Mercantante, he said, "One more thing, just by acknowledging, if you were

to acknowledge that the non-conformities existed, you are not granting them variances, you are just acknowledging that they are there. If the signs were to be wiped out by a car, they can't put them back up without a variance. If you grant them a variance, they can put them back up without asking for permission."

MR. PALILONIS: Just to clarify, it hasn't been conclusively determined, but I think the general understanding is, and to the extent you feel you need to get your feet on the ground with this, just say so, but I believe this is a pre-existing non-conforming use. Does everybody understand what the implications of that are? The good news and the bad news for the applicant is that these are not violations, there may be some violations, but the bad news is they are before us for site plan review, and to the extent you want to make them an issue, you can.

MR. CRONCE: This is on what we are here for?

MR. PALILONIS: Again, the good news and bad news for the applicant is that it is one lot.

1 MR. WILSON: The only thing Mr. Decker
2 later commented on, which is on page 59 of that
3 same transcript, was that the handicapped
4 parking spot does get paved with a hard
5 surface, and we would agree with that.
6 It wasn't concluded.
7 MR. DECKER: It wasn't concluded, and
8 if I go through the memo, his last comment
9 touches on this again.
10 MR. PALILONIS: If you think it is
11 cogent.
12 MR. DECKER: I am on page 8 at the
13 bottom, and this is the letter by Anthony
14 Mercantante, he copied his text, and item 1 was
15 to do with the 20 acre requirement, which is no
16 longer a variance, 2 was to do with the two
17 principal uses; 3 requested testimony with
18 regard to the variances, which was provided; 4
19 with regard to additional landscaping
20 buffering, which had been added to the plans;
21 5, Tony made comments about the storm water
22 management, and again, the storm water
23 management had been reviewed, and I will also
24 add in addition to the West Amwell Township
25 Board to review storm water management, the

1 County Planning Board and county engineer's
2 office will also be reviewing storm water
3 management, as well the Hunterdon County Soil
4 Conservation District, and all those approvals
5 will be conditions of this approval. So the
6 storm water management will be reviewed early.
7 Item 6 addresses the treatment of the
8 ground below the panels that is provided, and
9 number 7, regarding fence height, again, which
10 was discussed before.
11 And item 8 again, Tony reiterates about
12 the non-conformities of the existing masonry
13 building or Mason Supply business, and the
14 impact, and he sums it up at the end by saying
15 it should be addressed in a session with the
16 applicants and should be brought into greater
17 conformity. That was his comment at the time,
18 and again, I don't think that was the
19 resolution of the Board with regard to that.
20 THE CHAIRMAN: The real issue I would
21 refer to the Board right now is how do you want
22 to deal with the non-conformity, the non-
23 conformity that exists on the pre-existing use.
24 We can identify them here on the record, which
25 basically locks them in to what we have, and we

can make any changes from that or any deviations from that in the future. They won't be able to without a variance, or we can try to bring them into conformity which may be difficult, because, again, it is a pre-existing use. So that is an issue that the Board must deal with.

MR. ROMANO: What makes it difficult is that it is difficult to mitigate their fencing right up to the gravel, so it makes it very difficult to mitigate against some of these things with what they have out there. Yes, it is pre-existing, but if the solar fields weren't there, it would be easier to mitigate than what you see right now.

THE CHAIRMAN: Depending on what you want to mitigate and whether or not you do need more ground outside of the existing.

MR. ROMANO: Is now the time to bring these things up, or what have you?

MR. PALILONIS: It is now or never, but I mean the real issue is, is there a problem? There are some obvious problems that are minor, but is there a problem just because they don't comply with the current ordinance, the parking,

for example? I mean, the ordinance requires 23 spaces, and they don't have anywhere near that. Is that a problem?

MR. ROMANO: Do the neighbors have a problem?

MR. PALILONIS: The outside storage, that is inherent to their business, is that a problem?

MR. ROMANO: You have got storage right up to the right of way line, there are things -- that probably requires some effort, but I think it is manageable. I am not saying it is impossible, but just to acknowledge it without seeing if any of these things -- the only thing is the most cost effective thing from their perspective. There are other things that might, you may want to consider --

THE CHAIRMAN: We will have a pretty long discussion on this, and it is about 10:15 now and there is no way that we will finish this up, and neighbors will have questions of what we discuss here at this point. They will want to make comments at the end. The attorney needs to wrap up, so in lieu of the time, this may be a good point to stop, and the Board

needs to ponder what we are talking about right now. Think about it between this meeting, and Mr. Wilson, would you like to be moved to the next meeting?

MR. WILSON: Your next available opportunity, we would appreciate it.

THE CHAIRMAN: Ruth, would they be first on the agenda?

MS. HALL: Yes.

MR. VANDERHORST: May I ask a question? My name is T.J. Vanderhorst, and I am new to the township. I have seen a lot of ten acre lots in the township that were approved. How are you going to stop the next guy who asks for the second ten acres and then the next guy ten acres and so on and so on?

THE CHAIRMAN: Every hearing that this Board listens to is heard on its own merits. No matter what our decision is on this hearing, it has no bearing on the next applicant that walks before us. That is the simple answer. We need to shut the meeting down, and you will have plenty of opportunity.

MR. VANDERHORST: First, it was 20 acres, now it is ten. Does it mean that the

owners of the property have enough influence to go from 20 acres to lower it down to ten?

MR. PALILONIS: If you want to make any conditions on West Amwell Mason Supply, you should have it in the report probably by our professionals with prior notice, and give them an opportunity to respond, or agree to disagree, or make a proposal or whatever.

MR. CRONCE: You are saying we could instruct him to go out there and find --

THE CHAIRMAN: Tom, do you feel comfortable looking at the site and seeing what kind of mitigation would be reasonable on the site, or is that outside of your expertise?

MR. DECKER: The items 4 through 10 in my letter basically identifies those non-conformities, storage too close to property line and so forth, and then the Board would really have to determine whether or not to move it. We don't have a problem with the signs, but I would like to see the storage move or whatever. I bring those discrepancies to light, and then the Board can act on them with what your feeling is.

THE CHAIRMAN: And the applicant, you

could obviously internally review what is before the Board and maybe some things you might want to suggest. I don't know if that is applicable or not.

MR. WILSON: We will take a look at it, but unfortunately -- we have had discussions with the property owners, but we can't compel them do anything directly, so we will have discussions with him.

MR. PALILONIS: You can't compel him, but if he doesn't agree, you may lose.

MR. WILSON: It may be the imposition of these items as a condition, if they are unable to come forward with something that is satisfactory.

MR. PALILONIS: But it is agreed that those four to ten items are the universe of what we are dealing with.

MR. CRONCE: I don't know if you want to lock yourself down to that.

MR. PALILONIS: How will you do it, then?

MR. CRONCE: You send him out, I don't know.

MR. PALILONIS: All he can do is

compare the ordinance to what is there.

MR. DECKER: I have done that already with the plans that they have provided.

THE CHAIRMAN: I know they are out of conformity on a number of issues, and things are functioning and working, and as far as I know at this point, I don't know if West Amwell should be there. But that is not -- it is a functioning business, and it is operating, so that has some merit and some bearing on this. As you said, it is a very tough situation to deal with.

MR. DECKER: The only other question I have for the applicant is more construction related, and that is during construction will all of the construction staging be within the limit of the solar field, or are there areas of the masonry business that will be used for staging, parking of vehicles or anything else?

MR. WILSON: I think we can fairly say we will not use the Mason Supply Company for staging purposes.

MR. DECKER: All vehicles and so forth will be within --

MR. WILSON: Either within it or off

site in a legal manner.

MR. DECKER: And not on public roadways or anything like that?

MR. WILSON: Correct.

THE CHAIRMAN: Okay. We will adjourn this hearing and continue on April 23rd. For all of the public, this hearing will be continued to our next regular meeting on April 23rd, that is the fourth Tuesday in April.

(Whereupon, the meeting was adjourned.)

C E R T I F I C A T E

I, JACQUELINE KLAPP, a Certified Court Reporter and Notary Public of the State of New Jersey, holding License No. 30X100034700 do hereby certify that the foregoing is a true and accurate transcript as taken to the best of my ability of a meeting held on March 26, 2013.

JACQUELINE KLAPP, CCR 30X100034700