WEST AMWELL TOWNSHIP
ZONING BOARD OF ADJUSTMENT

MAY 28, 2013
7:30 P.M.

IN THE MATTER OF THE APPLICATION OF:

GARDEN SOLAR, LLC PUBLIC HEARING
BLOCK 18, LOT 1
624 BRUNSWICK PIKE
.....

B E F O R E:

THE WEST AMWELL TOWNSHIP ZONING BOARD OF ADJUSTMENT

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THE CHAIRMAN: If anybody is here for Messick, if you were noticed, it will be carried until next month, and if they do come before us, you will be noticed. That is where we are at now, so that will be carried.

We will now continue the public hearing on Garden Solar, LLC., which is Block 18, Lot 1-624 Brunswick Pike.

I believe that Mrs. Bland spoke already and had her opportunity, and Mr. Arnone has spoken. Were you finished, or were you going to continue with your comments?

MR. ARNONE: I am here, and I am going to support the speakers.

THE CHAIRMAN: Anyone else from the public who wants an opportunity to come up and make your comments. This is in reference to the Garden Solar application. You can just come up and state your name and your address for the record.

MS. ANDREOLI: Jennifer Andreoli, 16 Hunter Road.

I think to start out, we should thank the Board for the opportunity to speak. I understand this is our only opportunity to

present our opinion on this application as it stands. I don't know if any of us, as David mentioned last month, are really experts in these public hearings or anything like that, but one of the things we talked about last month that I think maybe we should go back to a little bit is the position of our Board Attorney.

David questioned whether or not he was here to represent us, the residents as individuals. My understanding is that he is not, his position here is to help guide the Board members into what is legally correct in their decision, correct? Sometimes that legality can be subjective and it can be questioned, and that is why there is banter back and forth on some of these questions of rights and liabilities with some of these applications.

One of the items that I personally disagree with our Board Attorney on, which was brought up again last month, was the non-conforming manner of the current application as it stands. We had some issues with the current site as it is, and as Mr. Romano brought up

1 last month, some of those non-conformities
2 can't be repaired if the application is
3 approved. I think those are points that we
4 need to address specifically, and take a look
5 at what impact will not correcting those non-
6 conformities have. What impact will it have on
7 the residents right along the property line,
8 but also as a whole. Mr. Decker provided a
9 detailed report as to the problems with the
10 current site, and one of the first things he
11 brought up is signage. I believe Mr. Decker's
12 report refers to the signs, freestanding signs
13 on the property which is in the right of way of
14 Route 518. And in looking at the site, if you
15 count it -- there is actually approximately
16 about eight signs that are on the frontage of
17 the property. Again, they are all around the
18 two signs that Mr. Decker refers to. There is
19 also signage along the building. Now, Mr.
20 Decker used Ordinance 109-1287 in the NC
21 district which says you are permitted to have
22 one wall mounted sign inscribed on the face of
23 the building. There is quite a bit more than
24 that. Is that something we can correct if the
25 solar installation is put in? Yes, that can be

corrected. Should it be corrected? It probably should be, and there are a couple of reasons why it should be, and it goes further into some of the non-conformities on the property.

If you look at the eastern line of the property, we have an aerial shot, right here there is a good shot and you will see it is very difficult to tell the difference.

MR. WILSON: Can you identify that?

MS. ANDREOLI: It is a shot of Route 518, the eastern side.

MR. WILSON: We have to mark it for identification, and it is in the package that you presented last month.

MS. ANDREOLI: I don't remember what was in the package.

MR. WILSON: It is your responsibility to tell us what you are identifying.

MS. ANDREOLI: I don't think that --

MR. WILSON: We will follow the rules, and we have to follow the rules.

MS. ANDREOLI: But I am asking a question.

MR. WILSON: Please correctly identify

the photo that you are looking at so the record is clear as to what is being displayed.

MS. ANDREOLI: This is a photograph of the eastern side of the property.

MR. WILSON: If you have a hard copy of that photograph, you can pass that around or mark it for identification.

MS. ANDREOLI: Yes, it is in the package that was marked.

THE CHAIRMAN: Was that marked the last time?

MS. ANDREOLI: Yes, it was. I believe it was O-2 and there were 30 sheets.

THE CHAIRMAN: Do you have a copy of this so you can refer to it?

MS. ANDREOLI: No, I don't. I have a copy that I gave you --

THE CHAIRMAN: We will need a copy. We need some way to refer to this, as the attorney said. You have to make it clear on the record what you are referring to. Remember, when you bring a slide up, you have to describe it in words, because the Court Reporter can't take down a picture.

MS. ANDREOLI: What do you want to

1 know? What number it is? What page number?
2 MR. PALILONIS: I will repeat my
3 general comment about these issues which are
4 that you have to show how this relates to the
5 proposed development. The status of West
6 Amwell Mason Supply, as we have seen over and
7 over again, is kind of an unknown. How it came
8 to be, under what rules it was developed. If
9 it is unknown it goes unknown. I mean, maybe
10 there is somebody who has been around long
11 enough who knows, but I mean, apparently, it
12 started before there was zoning in the
13 township. That is not an excuse, but the point
14 is that no one knows how it got to be where it
15 is.
16 I am not aware that it ever received
17 any Planning Board or Zoning Board approvals.
18 There was an application --
19 THE CHAIRMAN: There was some
20 documentation.
21 MR. PALILONIS: There was some, but it
22 was not conclusive.
23 THE CHAIRMAN: This isn't a typical
24 pre-existing non-conforming issue.
25 MR. PALILONIS: We don't even know if

it is pre-existing, that is the assumption. It has been there a long time, I know it has been there for at least 35 years. You know, I mean I am not saying there is no relation, but the location of the sign, how does that relate to the operation of the proposed solar field?

MS. ANDREOLI: By the way, it is page 25 of the package submitted last month.

THE CHAIRMAN: You are identifying it as O-25?

MR. PALILONIS: I hope they stay in order, this shows the eastern side of the property, which I believe the lot next door to it is Lot 11; is that correct? You can see here there is a little bit of difficulty distinguishing between the two lots.

As you are pulling in and out of these lots, the signage blocks your view coming out onto 518, and I am guessing that that is the reason why Mr. Decker made a point of the fact that it was in the right of way of Route 518. Can we switch over to that?

MS. ANDREOLI: This is an aerial shot of the site, this is showing -- it is not the current application as it stands on the site.

1 If you look at the eastern side of the
2 property, you can actually see in the gravel
3 the traffic flow there runs along the eastern
4 side of the property here (indicating).
5 Now, there are a couple of issues with
6 this, I believe last month Mr. Wilson discussed
7 the possibility of coming at least three feet
8 in off of the eastern side of the property. Is
9 that correct, Mr. Wilson?
10 MR. WILSON: I don't recall frankly at
11 this moment, I think the first photo was not
12 even a driveway for this property.
13 MS. ANDREOLI: But it shows the close
14 proximity and the inability to distinguish
15 between the two properties since the West
16 Amwell Mason Supply is encroaching upon the
17 property next door.
18 MR. WILSON: It does not encroach on
19 the driveway that you show, that is not that
20 driveway. The sign is the sign for the
21 excavator that is on the next property, it has
22 nothing to do with that.
23 MS. ANDREOLI: We will get to that.
24 MR. WILSON: As long as you correctly
25 identify that it is not the subject property.

MS. ANDREOLI: Did we not discuss last month your pulling about three feet off of the eastern side of the property, and we talked about a fence being installed, correct?

MR. WILSON: Whatever we said last month we can carry on.

MS. ANDREOLI: If we come in about three feet off the eastern side of the property, you can see by Mr. Decker's report there are seven parking spots along the easterly property line. If they do come three feet off of the property line, we lose those seven parking spots, number one, and number two, we would lose the eastern access onto the property, on and off of the property, which is where the traffic flow is for the trucks coming in and out of there, in the mornings and the late afternoons. The trucks come around that eastern side and wrap around to pick up supplies and then pull out.

Now, regarding the parking spots, that is a loss of seven parking spots. Mr. Decker's report says the total number of off street parking spaces required per Ordinance 1309-164A is 23. Currently there are only ten, and all

ten do not meet the required size for parking spaces. There is also no designated handicapped spot currently, which I believe Mr. Wilson did say they will put in a designated handicapped spot.

In order to correct that non-conformance of coming off -- by the way, the seven spots are also to be 20 feet off of the property line, which they are not. In order to correct that, and as additional parking that is required, we are going to have to move this way, move towards the nine acres on the western side of the property. In order to correct the traffic flow for the trucks that come in and out, and to circle around those two large buildings, they will have to move towards the west, encroaching on the nine acre space that is proposed to be solar panels. If these solar panels are there, then the only option is to move into the outdoor storage space to increase the parking spots. But also it would be to correct traffic flow issues.

Now, Mr. Arnone last month also presented a videotape showing the traffic coming in and out of the current site.

1 MR. WILSON: I am going to object to
2 the testimony, and again, for the same reason
3 as last month, we are allowing as much as
4 possible from the pro se objectors. But she is
5 not a traffic engineer. The testimony is
6 completely inconsistent with what she has
7 described. It was described that there is no
8 circulation problem existing. The offer of the
9 three feet was to move it out of the right of
10 way, if the Board thought that was appropriate,
11 and we placed before the Board the potential
12 for a fence along each side of the property.
13 The Board, I believe, was not inclined to go in
14 that direction. It was not to move the
15 driveway or anything of that sort. We have no
16 problem with the easterly neighbor, the
17 circulation works okay. It is specified to be
18 working okay, and the parking is described as
19 adequate for this use. If there was a change
20 in the use, it would be a different
21 application. If there was a change in the
22 sign, we would acknowledge it. We can't control
23 the signage on the adjoining property.
24 There is no change in that regard as
25 required, and if there was, if the owner and

1 operator of West Amwell Mason Supply decided
2 there were problems and they needed to readjust
3 their site, they would be before this Board for
4 variance and site plan review. It is not
5 something that just automatically occurs. The
6 Board would then have to deal with that, and
7 find a way to accommodate it. It is not an
8 accommodation that is required as a result of
9 this application. So I think the testimony,
10 absent the qualifications as an expert, should
11 be limited to factual testimony and
12 descriptions of actual events, rather than
13 speculative or expert type opinion as to what
14 exists or doesn't exist.
15 THE CHAIRMAN: I do agree with that.
16 You have to be careful, you are here, you are
17 directing traffic flow on the property, and we
18 don't know and you don't know, so that is not
19 the issue. You have to stay focused on the
20 property and its interaction with the proposed
21 application.
22 MS. ANDREOLI: I will go back strictly
23 to Mr. Decker's report and the fact that seven
24 of the ten parking spots along the eastern side
25 of the property are within 20 feet of the

1 property line, which is out of compliance. In
2 order to correct that, that would be difficult
3 to do if the solar application is in place,
4 correct?
5 MR. WILSON: We acknowledge it is a
6 non-conforming condition. If modification was
7 requested, an application would need to be
8 made.
9 MS. ANDREOLI: And the reason why we
10 are discussing this is because if this
11 application is approved, these modifications
12 become more difficult, if not impossible, not
13 feasible to do down the road.
14 MR. WILSON: Ms. Andreoli, do you admit
15 or acknowledge that if the changes were
16 required, or the operator applied to make the
17 changes, they would have to make that, there
18 could be other modifications made to the site
19 with a complete redesign of the West Amwell
20 Mason Supply, which would allow it to become
21 completely conforming.
22 MS. ANDREOLI: You acknowledge without
23 moving into the solar arrays, that
24 modifications could be made to the site to
25 downsize it to allow it to become conforming?

1 If additional parking spaces were needed, or
2 traffic flow didn't work, or the sign didn't
3 work, and if the applicant, the owner of the
4 site came in before the Board and made an
5 application with a site plan, they would
6 redesign their existing site. They don't have
7 to maintain the same size.
8 MR. WILSON: Yes, I absolutely agree
9 with that.
10 MS. ANDREOLI: I think that is
11 something that also should be taken into
12 consideration by the Board, that if we do
13 cross-examine some of these issues, whether it
14 be parking spaces, signage, potential traffic
15 flow issues.
16 Outside storage, which according to Mr.
17 Decker's report, is not in conformance with the
18 NC zone at all. You know, there are ways of
19 correcting it. They would put a large building
20 up there to put the outdoor storage inside.
21 They could somehow encroach on the outdoor
22 storage supplies to put additional parking in.
23 MR. WILSON: And this site as currently
24 comprised is a lawfully existing prior non-
25 conforming use.

MS. ANDREOLI: Yes, I do agree, but you are coming in for a variance on the entire site, not just these nine acres.

MR. WILSON: The variance is to allow a second use on the entire parcel.

MS. ANDREOLI: Correct.

MR. WILSON: Without intruding, other than the small driveway entrance, to enter the site with some limited access. It has no impact on the West Amwell Mason Supply portion of the property at all.

MS. ANDREOLI: But it does.

MR. WILSON: What you described --

MS. ANDREOLI: Your application -- excuse me -- your application is for a variance on the entire site. You want to bring a second principal use in on an already non-conforming site.

MR. WILSON: Do you understand and acknowledge that there is already a second principal use that is unrelated to the Mason Supply? That is agriculture.

MS. ANDREOLI: Yes, it is an agricultural site, correct. You are coming in with a variance to bring in a different

application.

MR. WILSON: A different second use, yes.

MS. ANDREOLI: Yes, a different second use.

MR. WILSON: But there is no modification to the West Amwell Mason Supply. What we already described that we would be willing to do at this point if the Board felt it necessary or appropriate --

MS. ANDREOLI: The point being what this does with this application, your proposal is intensifying the non-conformities currently on the site.

MR. WILSON: How is it intensifying it?

MS. ANDREOLI: Increased traffic, which I am not allowed to talk about because I am not a traffic engineer, but increased traffic. You discussed that.

MR. WILSON: But do you recall how much it was? It was one trip per day, right?

MS. ANDREOLI: No, actually during construction you said last month that we can expect the possibility of 50 to 60 additional construction vehicles during construction.

MR. WILSON: During construction.

MS. ANDREOLI: And where will those people park?

MR. WILSON: That is during construction.

MS. ANDREOLI: But where will they park, where will they park during construction?

MR. WILSON: If the Board directs that they not park either on the site or the public right of way, which we already indicated would occur --

MS. ANDREOLI: Where exactly can they park?

MR. WILSON: They haven't suggested that they will park on site.

MS. ANDREOLI: But where will they go?

MR. WILSON: They can be transported to the site from an off site parking location.

MS. ANDREOLI: And bus them in?

MR. WILSON: There is carpooling and vanpooling. I think that was already testified to.

MR. PALILONIS: Maybe the Stenographer can tell me this, but perhaps Ms. Andreoli was not sworn in at the last meeting. You have

drifted from asking questions to making your presentation, and I apologize for not picking that up, but at this point I think we should swear you in.

Were you sworn?

MS. ANDREOLI: Not today.

MR. PALILONIS: I am talking about in any of the hearings.

MS. ANDREOLI: I was sworn in once.

MR. PALILONIS: Let's swear you in again, just in case.

J E N N I F E R A N D R E O L I, is sworn.

MR. PALILONIS: You swear that the testimony you have given and will continue to give is the truth?

MS. ANDREOLI: Yes. My name is Jennifer Andreoli, and I reside at 16 Hunter Road.

MR. PALILONIS: Go ahead.

MS. ANDREOLI: Now I am looking at Mr. Decker's report. Mr. Wilson brings up a good point about the fact that yes, there can be extensive modifications to the current use on

1 the property, the current principal use on the
2 property, yes, that is possible. It is also
3 possible that it will be increasing impervious
4 surface.
5 MR. WILSON: The law doesn't deal with
6 possibilities, the law deals with probabili-
7 ties.
8 MS. ANDREOLI: The possibility Mr.
9 Wilson brought up is that it could potentially
10 shut down the current application, correct?
11 MR. WILSON: Anything is possible, but
12 any modifications that were made to the already
13 existing non-conforming use, an application to
14 the Board would be required.
15 MR. PALILONIS: That is correct.
16 MS. ANDREOLI: So let's say the Board
17 decides that they want to bring the current
18 site into conformity. That is possible,
19 correct?
20 MR. WILSON: I don't think the Board
21 has control of that issue, no.
22 MS. ANDREOLI: Because you feel legally
23 they don't have control of that issue?
24 MR. WILSON: Correct.
25 MR. PALILONIS: Under the current

1 circumstances.
2 MS. ANDREOLI: Yes.
3 MR. PALILONIS: No, we don't go out and
4 enforce the Ordinance, we only react to
5 applications related to the Ordinance.
6 MS. ANDREOLI: This Board -- if they
7 are coming in for a variance on the entire
8 site, not just the nine acres, you have to look
9 at the possibility that it is intensifying the
10 current non-conformities.
11 MR. PALILONIS: That is right.
12 MS. ANDREOLI: And we talked about the
13 potential intensifications.
14 MR. WILSON: It is not potential
15 intensification, it is what intensification
16 exists, if any, as a result of that.
17 MS. ANDREOLI: I do believe -- I
18 believe that when you questioned your engineer
19 in 2011 he stated in all honesty that it will
20 intensify the current non-conformities.
21 MR. WILSON: I don't think that was so
22 testified to.
23 MS. ANDREOLI: Let me pull it out for
24 you. I believe that was back in 2011 when Mr.
25 Mercantante, who was our planner at the time,

1 essentially questioned your engineer regarding
2 the potential intensification of the proposed
3 site, and I do recall it was in the minutes.
4 MR. WILSON: If you can refer me to a
5 transcript page and date, we will be happy to
6 look at that.
7 MS. ANDREOLI: I will get that for you
8 momentarily. Zoning Board meeting of July 26,
9 2011 --
10 THE CHAIRMAN: What are you referring
11 to, the minutes?
12 MS. ANDREOLI: Yes, with regards to
13 continued public hearings for Garden Solar,
14 LLC, Block 18, Lot 1, Planner Mercantante
15 referenced the Ordinance and various zoning
16 categories throughout the township, stating
17 that the conditional uses you have to determine
18 -- you must determine whether what is being
19 proposed is suitable for this particular site.
20 It is a permitted use in the zone subject to
21 certain conditions, but -- this isn't where he
22 did it, but it is a good point, because the
23 conditions are intended to ensure that the
24 particular site being used won't have any
25 detrimental impact on the zoning.

1 MR. WILSON: While you are at that
2 point, you acknowledge the applicant meets all
3 of the conditions of the use Ordinance as
4 currently comprised, right?
5 MS. ANDREOLI: After being sued and
6 forced to change the Ordinance, absolutely.
7 MR. WILSON: There was no court order
8 to change that, the Township voluntarily made
9 that change.
10 MS. ANDREOLI: You are absolutely
11 correct, our Township Committee, at least two
12 of them, agreed to change it based on fears
13 that if they lost --
14 MR. WILSON: Objection as to why they
15 did it.
16 MS. ANDREOLI: That is in the minutes
17 of the meeting.
18 MR. WILSON: That they were afraid of
19 something?
20 MS. ANDREOLI: Yes. So we go back to
21 the fact that Mr. Decker makes it very clear in
22 his report that there are continued problems
23 with the site as it stands and as Mr. Romano
24 brought that up last month.
25 THE CHAIRMAN: He just was identifying

1 shortcomings, not problems.
2 MR. DECKER: Not problems.
3 MS. ANDREOLI: Non-conformities on the
4 site.
5 THE CHAIRMAN: He was identifying them
6 to the Board.
7 MS. ANDREOLI: And as brought up by Mr.
8 Romano last month, in my opinion, I feel it is
9 the duty of the Board to take a look at the
10 non-conformities and how they will be
11 intensified by this application, since I can't
12 talk about anything more than just really
13 parking spots at this point, and outdoor
14 storage, which is extensive.
15 THE CHAIRMAN: This Board needs to hear
16 specific intensifications being caused by this
17 application, that is what we want to hear you
18 tell us, what your concerns are.
19 MS. ANDREOLI: My concern really is
20 traffic, but I am not allowed to talk about
21 that, even though we showed last month that
22 there is a traffic issue along 518.
23 THE CHAIRMAN: Are you aware --
24 MS. ANDREOLI: There are already
25 problems along 518 with traffic coming in and

1 out of the current application.
2 MR. WILSON: We are here for the
3 testimony about the traffic generated by the
4 facility. You have been here at every hearing?
5 MS. ANDREOLI: Just about.
6 MR. WILSON: And how many times per day
7 would traffic be generated from the site?
8 MS. ANDREOLI: During construction?
9 MR. WILSON: No, during operation.
10 MS. ANDREOLI: I don't recall.
11 MR. WILSON: Do you recall it was less
12 than that which would result from a single
13 family home?
14 MS. ANDREOLI: Um-hum, I do remember
15 that point.
16 MR. WILSON: It is on an average less
17 than one trip per day.
18 MS. ANDREOLI: Yes.
19 MR. WILSON: And perhaps one trip per
20 quarter.
21 MS. ANDREOLI: Right.
22 MR. WILSON: Or one trip semi-annually.
23 MS. ANDREOLI: Yes.
24 MR. WILSON: There could be whatever
25 number of workers there during construction --

1 MS. ANDREOLI: What time do they start?
2 MR. WILSON: In accordance with the
3 Ordinance in the Township, during construction
4 only, it is generally 8:00 in the morning, and
5 there was a construction staging plan approved.
6 Do you remember the testimony about
7 that?
8 MS. ANDREOLI: No, sir, not
9 specifically. Generally, construction starts
10 at, I believe we are allowed to start at 8:00
11 in the morning, which is about the time the
12 Mason Supply opens for business. That is when
13 traffic is very heavy in and out of the site.
14 There will be additional traffic during
15 construction.
16 MR. WILSON: Do you know that there
17 will be additional traffic?
18 MS. ANDREOLI: You just said it.
19 MR. WILSON: I did not, I asked you --
20 MS. ANDREOLI: I said --
21 THE COURT REPORTER: One at a time.
22 MR. WILSON: What is the factual basis
23 that you have for suggesting there will be
24 increased traffic at 8:00 in the morning during
25 construction?

1 MS. ANDREOLI: What time will they
2 start in the morning?
3 MR. WILSON: Whatever time the Board
4 tells them to start in the morning, or they are
5 allowed to start in the morning.
6 MS. ANDREOLI: But there will be
7 increased traffic during construction.
8 MR. WILSON: There will be construction
9 workers that arrive at the site during a
10 limited period of time for construction, as
11 with any use, even with a single family home
12 being constructed.
13 THE CHAIRMAN: If somebody had visitors
14 along the road, they would have traffic, also.
15 MS. ANDREOLI: That would be one or two
16 cars coming in and out of the site during
17 construction, we are talking about 50 to 60
18 cars.
19 MR. WILSON: On what basis do you say
20 50 to 60 vehicles a day?
21 MS. ANDREOLI: Actually, I don't have
22 a copy of the minutes for last month's meeting,
23 because they weren't released yet, but I think
24 the comparison you gave is to the Kingwood site
25 when that was constructed, but nonetheless

1 neither here nor there, the concern being that
2 in normal operating hours a business like this
3 has heavier traffic at 8:00 in the morning and
4 right before closing.
5 MR. WILSON: Whoa, I object to the
6 testimony as to when peak hour of traffic is.
7 Do you have a traffic engineering degree?
8 MS. ANDREOLI: No.
9 MR. WILSON: Can you provide factual
10 testimony then and not opinions?
11 MS. ANDREOLI: I am just telling you
12 what I observe, this is information that is
13 available to the general public, if you sit
14 down and watch traffic --
15 MR. WILSON: Did you sit down and count
16 the cars?
17 MS. ANDREOLI: I didn't count the cars.
18 MR. WILSON: I object to the testimony.
19 MS. ANDREOLI: Okay, so as I said, we
20 have some issues as residents with the current
21 property and the non-conformities, and the
22 potential that it will impact or become more of
23 an issue if this application is approved.
24 It all goes back to the intensification
25 of the non-conformity. The non-conformities as

1 they currently stand.
2 MR. WILSON: Do you understand the
3 difference between an administrative
4 intensification and actual intensification? Do
5 you know what an intensification of use is?
6 MS. ANDREOLI: Yes, you are
7 intensifying it.
8 MR. WILSON: What does that mean? How
9 do you intensify a use? I am asking you what
10 you perceive to be an intensification of use.
11 MS. ANDREOLI: What I perceive of an
12 intensification of use is that it will
13 increase.
14 MR. WILSON: And what do you see as a
15 result of this application, the intensification
16 of the West Amwell Mason Supply business?
17 MS. ANDREOLI: Where I see issue with
18 it, again, is I have a child that is six on
19 Route 518 and Hunter Road, and at 8:00 in the
20 morning I watch between 8:00 a.m. and 8:12
21 three buses come up and down 518. I have seen
22 quite a few near misses at West Amwell Supply
23 from trucks that back up onto 518 trying to get
24 in. If you come into conformance and correct
25 some of the issues on the property, West Amwell

1 Mason Supply, to stay sustainable, will need to
2 move into the nine acres that you are talking
3 about using. If we do not sustain West Amwell
4 Mason Supply, that will reduce commerce into
5 West Amwell Township. This proposed
6 application supplies absolutely zero commerce
7 into West Amwell Township.
8 MR. WILSON: Can I show you the
9 transcript from July 26th that you referred to
10 before, and ask you to read this portion?
11 These lines, lines 14 through 20 on page 37 of
12 that transcript to yourself, where the word
13 "intensification" appears.
14 THE CHAIRMAN: From what meeting?
15 MR. WILSON: July 26, 2011.
16 Having read that, is your recollection
17 refreshed as to what the engineer testified to
18 it being an administrative intensification,
19 actually?
20 MS. ANDREOLI: No, actually I remember
21 you keep referring to West Amwell Mason Supply
22 as a junkyard, when it is not.
23 One of the other issues we have with
24 this proposed site, and if the Board is to
25 approve this proposal, one of the issues we

1 talked about, we talked about actually a couple
2 of times the storm water management that we
3 feel -- in my opinion, I feel it will be almost
4 impossible to correct it if the solar panels
5 are installed.
6 MR. WILSON: Objection, qualifications?
7 MS. ANDREOLI: In 2011 Pam Bland, who
8 lives at 12, Lot 12 --
9 MR. WILSON: This is as to what someone
10 else may have said?
11 THE CHAIRMAN: He is right.
12 MS. ANDREOLI: There have been
13 residents who have made clear to this Board --
14 MR. WILSON: Objection.
15 MS. ANDREOLI: -- and made clear to
16 Garden Solar that there is a water issue.
17 Garden Solar's engineer stated that the water
18 problems will be mitigated by the grass growing
19 under the panels, correct?
20 MR. PALILONIS: He doesn't have to
21 respond to you.
22 MR. WILSON: I believe the testimony
23 was that it would meet the storm water
24 management requirements, and they would be no
25 greater than the conditions that exist now, and

it should show improvements. From all of the storm water management measures, it would improve, not just from the grass.

MS. ANDREOLI: All of the storm water management measures, not just the grass?

MR. WILSON: Yes.

MS. ANDREOLI: Okay. In talking about this, if I hit a gray area, just let me know. In talking about this in the past, and the storm water issues, in my opinion I don't feel we have properly addressed the potential of a water problem. When Dave Arnone last month brought to the attention of the Board in his presentation that a site in Kingwood, that would be considered by Garden Solar a successful site, that even with the grass growing, we are looking at standing water. We are still looking at what appears to be water problems.

We are on a site that we know has water problems and we are aware of it. I think as a Board, that needs to be addressed directly. The approval of this application would bring two non-conforming non-optimal uses to this one site.

1 MR. PALILONIS: Mr. Decker doesn't have
2 to really respond to that, but that is his job,
3 it is for both the Board and the Township to
4 make sure the water quality standards of the
5 State of New Jersey will be upheld by this
6 application, and he has reviewed documents to
7 substantiate that. I mean, if there was a
8 problem, he would point it out to the Board,
9 and the Board would address it and require the
10 applicant to do something about it. You may
11 believe, and you may be right about that, but
12 under the water standards and engineering
13 standards that apply, they have met their
14 burden on that.
15 MS. ANDREOLI: That is based on
16 information available based on solar farms in
17 residential areas, correct?
18 MR. PALILONIS: No. Development in the
19 field.
20 MR. DECKER: Basically, if you go back
21 to the Kingwood sites, just to clarify, the
22 Kingwood sites have a lot of drainage issues
23 and tire ruts that were shown in the
24 photographs and were outside of the fenced area
25 that the solar panels were in. That area is

1 basically farmed, and it is farmed as it was at
2 that time. So that topography hasn't changed.
3 The only issue they worked on is the area
4 within the fence and the landscape portion
5 around it, so I know their focus that shows
6 wetlands, that shows ruts going through it that
7 was the disturbance --
8 MS. ANDREOLI: That is in the area of
9 the photographs you have identified last month
10 of being outside of the realm of this, but
11 there were other photographs that were clearly
12 inside of the fence and in the realm of part of
13 the management control.
14 MR. DECKER: These sites are less than
15 two years old, they are currently under a
16 maintenance bond. As far as vegetation
17 establishment, trees and so forth, it is
18 involved with the Soil Conservation, and they
19 are very happy with the way things have worked
20 out with the cover. Kingwood is notorious for
21 having poorly drained soils, so this is not a
22 problem.
23 Just to clarify, the Kingwood sites
24 don't exactly drain properly, they didn't
25 before the site went in, and as far as storm

water management, any applicant, when they come to the Board, their obligation is to not create any storm water issues on the adjoining properties. Their obligation is not to remedy any existing storm water drainage problems.

Based on the review of the report -- Mr. Wilson, you did receive County Planning Board approval?

MR. WILSON: We don't have the approval yet.

MR. DECKER: But based on my review of the calculations they have provided, which again, the only thing we can look at from a storm water management standpoint is the area that the panels are going in. If there is runoff from the Mason Supply, that runoff exists today, and it will exist tomorrow. It is not their obligation to correct any of that, that is the way the storm water management plan is written.

MR. WILSON: We don't have that because we have not resubmitted to them after the initial comment.

THE CHAIRMAN: It will be contingent upon the approval.

MR. WILSON: Yes, of course.

MR. DECKER: And in addition to the Township doing this, the County will review it in accordance with their standards, and their standards assume, regardless of what the cover is out there now or five years from now, the past five years, they consider the cover as meadow, and again, that is within the proposed disturbed area, not looking at Mason Supply.

So they look at the existing conditions. The Soil Conservation will also take a look at it from their standpoint and approve the seed mix and so forth, so there are several stages that this goes through and the agencies review this for storm water management.

MR. WILSON: We also have a DEP permit.

MR. DECKER: There may be drainage issues out there now, but it is not uncommon, there are drainage issues on site. However, their obligation for the storm water management regulations, and the township Ordinance, based on DEP requirements, do not require them to fix anything, it just requires them not to increase runoff onto these properties.

I think that is what you were trying to say, Stewart?

MR. PALILONIS: Yes, thank you.

MS. ANDREOLI: The processes you are going into, I am not an engineer, the processes that go into evaluating this is based on prior data. How is that gathered?

MR. DECKER: Basically, storm water management, there are a few components, there is soil type, and the soil type is not changing. There is grade of the site, the slope, and correct me if I am wrong, but I don't believe they are planning any excavation of this, so the existing slope will remain the same.

We have standards that we go by for various storm events, and they are taken into consideration under existing and proposed, and that doesn't change. The vegetation, even if they were proposed, if this was meadow and they came back with grass, it is no change, and if they come in with an existing corn field and convert that to grass, that is an improvement, because grass helps to retain the water, not just of the root structure, but it helps to

1 slow down water as it moves and will infiltrate
2 it. So those are the components. If you look
3 at a site like this where soil doesn't change,
4 the soils don't change, you are looking at
5 ground cover, and the State already said that
6 they do not consider panels as being
7 impervious, they have to be considered pervious
8 based on what the ground cover is, and the
9 proposed ground cover in this case is grass,
10 and that is what we based the calculations on.
11 MS. ANDREOLI: Now, that is -- the
12 proposed installation is to not use any
13 concrete pads or anything like that, they will
14 just drill like a stake, or a rod?
15 MR. DECKER: They are driven piers or
16 helical screws.
17 MS. ANDREOLI: But we talked last month
18 about that -- there was some discussion here
19 about the distinct possibility of hitting rock
20 and not being able to get through that, and at
21 that point Garden Solar would have to go to a
22 plan B for installation. What would that plan
23 B be? Would that in any way increase the
24 impervious surface?
25 THE CHAIRMAN: They testified to all of

1 this stuff at the hearing, we are rehashing
2 this over and over, and we heard this
3 testimony. We know what the testimony is. We
4 don't have to review it again. We have to hear
5 your comments and anything you think is
6 pertinent to this application as far as
7 something the Board hasn't heard yet.
8 MS. ANDREOLI: What is occurring here,
9 Mr. Fulper, is again, as I said before, this is
10 all data that is new to us, we are not experts
11 in this. Frankly, I didn't even know you guys
12 did like these hearings, this is all very new,
13 and for us to, as regular citizens, try to
14 retain and gather all this information, that is
15 apparently very easy and fluent for any of
16 these individuals or professionals to deal
17 with, but it is tough, so yeah, sometimes we
18 are going to have to repeat and ask questions.
19 Because simply, I don't get it. I understand
20 the position that we are in because of the
21 State determining the classification, that it
22 is not impervious surface. But in my mind,
23 this is a metal roof on a house that has no
24 gutters, it is just going to slide right down
25 and cause a big ditch, and that is what I am

1 seeing in my mind. So I am learning from Mr.
2 Decker that some of these -- I am hearing about
3 impervious surface, and I remember from last
4 month, and I am talking about the possibility
5 of them having to put piers in, and I know a
6 pier will increase the flow --
7 THE CHAIRMAN: That is why we gave
8 everybody an opportunity to ask questions at
9 the hearing of the expert testimony while it
10 was fresh, to get the answers you wanted.
11 MS. ANDREOLI: And I appreciate that,
12 but we are hearing words buzz words, about this
13 stuff, and I have to Google it, I don't know
14 what it means. He is asking me to define words
15 that I don't know. We are winging it here, and
16 really as a citizen we are at a disadvantage.
17 These guys come in with the suits, and I am
18 coming in, and I don't know anything about
19 solar or engineering or storm water management,
20 I am winging it, that is why I have to Google
21 everything. I don't have the people behind me,
22 the professionals and the deep pockets behind
23 me to address this stuff. I don't know what to
24 target, and that is why you are seeing me
25 throwing so much stuff up against the wall and

hoping something will stick, because frankly, I am not happy. I am very uncomfortable with this.

I have spent time with Alfonsina, Tony, Dave, and all of our neighbors have spent repeated hours reading through this paperwork, and we don't understand a lot of it. This is complicated stuff, and I give you credit for sitting through this. I don't know how you do this on a month-to-month basis, this is not easy. I spent a lot of time reading through the Master Plan which I had done once before when I asked the Township not to change this Ordinance, and I thought they should stand on their own two feet and fight this lawsuit and stand behind their Master Plan. They chose not to.

If you read our Master Plan, it is a 2012 Master Plan and it is brand new, it repeats over and over and over again the fact that we want to maintain the rural character of this community, the fact we want to preserve farmland. There is a whole section on farmland preservation in our Master Plan, an entire section devoted to it. This is farmland. The

1 State made clear over and over and over again
2 that they do not want to see these applications
3 dotting the farmland. They don't want to take
4 up productive farmland, they want to see it on
5 Brownfields and they want to see it on
6 rooftops. Or they want to see it on already
7 impervious surfaces. This was brought up, and
8 --
9 THE CHAIRMAN: The problem is that we
10 have to work under the guidelines and laws
11 today, and I understand the direction the State
12 is going, and I understand that, but as this
13 Board sits and listens to this, we listen to
14 the facts and abide by the laws and all those
15 things. It is not what we like, or think will
16 happen. We are listening to this based on its
17 own merits and listening to this based on the
18 Municipal Land Use Law, and we have an expert
19 who represents the Township for us, for you and
20 me, to help give some reaction to this
21 complicated stuff. But he is our expert. You
22 have to understand, we are all working within
23 the guidelines of the law before us, and that
24 is all we can do.
25 MS. ANDREOLI: And what we have is our

1 Master Plan which is our foundation. We have
2 your Ordinances which are the laws that
3 directly impact that Master Plan, and it helps
4 us maintain our Master Plan.
5 You refer to the MLUL, the Municipal
6 Land Use Law, and it specifically states in the
7 MLUL that in accordance with the MLUL, no
8 variance or other relief may be granted under
9 the terms of this section, including a variance
10 or other relief involving an inherently
11 beneficial use without, A, showing such
12 variance or other relief can be granted without
13 substantial detriment, and it will not
14 substantially impair the intent and purpose of
15 the Zone Plan and Zoning Ordinance. Well, we
16 already determined the Ordinance was adjusted
17 for a lawsuit, it does not however support our
18 Master Plan which we talked about repeatedly.
19 THE CHAIRMAN: The key word is
20 "substantial". That is what this Board
21 struggles with all the time, deciding what is
22 and what isn't.
23 MS. ANDREOLI: Right, and this
24 application was denied in 2011, not just simply
25 based on the Ordinance, it was denied also

because of its close proximity to residents, and the impact it would have on those residents. The only thing that changed from 2011 was the Ordinance. That is it. That is not the only reason this application was denied in 2011, so nothing else was changed except for that.

That has to be taken into consideration, and you have to consider the Master Plan as far as I can see, and it has to be taken into consideration. We specifically state in our Master Plan the need, the objective to preserve the rural character of the community. This zone, this application is sandwiched right in between the Sourlands, and between rural residential. Our land is the most environmentally protected section of this township. Rural residential 6, is called the most rural part of the township, and we are supposed to be protecting it. It also states on pages 90 and 91 of the Master Plan, it talks about the preservation of the scenic resources, and goes on to talk about township residential streets and rural roads. But also, regional roads like Route 518. The residents and

1 visitors can view the township's agricultural
2 fields and homesteads, historic buildings,
3 landscaped woodlands, rolling hillsides, and
4 this goes back to what we talked about before.
5 This is about vistas.
6 Our Master Plan speaks to this
7 repeatedly, the fact we are trying to maintain
8 these vistas, these open spaces. Route 518 is
9 a major thoroughfare from Princeton,
10 Pennington, Hopewell, down through West Amwell
11 and into Lambertville. It is a scenic route
12 for our Master Plan, and putting up a fence or
13 a barrier is not a vista, it is a barrier, no
14 matter how you look at it. So it is
15 eliminating any farmland or open space, it is
16 blocking it, and that is per our own Master
17 Plan, and it needs to be taken into
18 consideration. And you refer to the problems
19 you run into as a township trying to address
20 these issues, and I personally feel the State
21 has tried very hard recently, a little -- maybe
22 a little behind the eight ball with this, but
23 they have tried to reiterate their stance on
24 this in the fact that they don't want to take
25 out productive farmland or take out vistas, and

I will refer to the Association of New Jersey Environmental Commissions. Would you like a copy?

MR. WILSON: I object to it being read. They are not here to be cross-examined, it is hearsay.

MS. ANDREOLI: It is information available to the general public.

MR. WILSON: But it is still a hearsay document.

MS. ANDREOLI: It is not hearsay, it is printed.

MR. WILSON: It is a hearsay document.

MS. ANDREOLI: It is available to the general public, it is not expert testimony, it is available to the general public.

MR. WILSON: And the author is not here to be cross-examined.

A VOICE: Can I say something?

MR. PALILONIS: No, she has the floor.

MS. ANDREOLI: You are telling me I can't provide you with information that I think is extremely important to your ability to make a decision on this application?

MR. PALILONIS: Only if the information

is in your knowledge.

MS. ANDREOLI: It is available to the general public.

MR. PALILONIS: It is not within your knowledge.

MS. ANDREOLI: I didn't write it, it is the New Jersey Division of Environmental Protection --

MR. CRONCE: Can't she read it?

MR. PALILONIS: No, it is prejudicial.

MS. ANDREOLI: What you are telling me is --

THE CHAIRMAN: It is frustrating.

MS. ANDREOLI: It is. I spoke to the State about this and asked them can I give them this, and they said during the meeting. I tried to send it to Ruth, but Ruth said that you are not allowed to. I asked the State and the State said, "No, you cannot give it to them until the meeting. At the time of the meeting you can present it to the Board."

A VOICE: Can't she just give that to --

MR. PALILONIS: This would make it almost pointless. At best, it is prejudicial.

1 It is not the type of thing that you can
2 present in a formal hearing. The people could,
3 if they happen to read it in their daily life,
4 but what can you say, it happens, people have
5 knowledge. These Board members don't come in
6 here with planning slates, they are active in
7 the community. In life in general they know
8 what the trends are, what the policies are, and
9 they will take that into account when they
10 vote.
11 You could try to influence that by
12 presenting factual information or professional
13 opinions, but anything outside of that, no, it
14 cannot be produced as evidence. Mainly for the
15 reason Mr. Wilson said, he has no ability to
16 argue against it, to question the basis for it.
17 These groups are very well known groups, not
18 any fly by night groups, but it is their
19 opinion, and he doesn't have the ability to
20 counter that by asking the basis of the
21 opinion, how it would apply. The biggest thing
22 is how would it apply in this case. That is
23 the issue, how would their policies apply in
24 this case.
25 MS. ANDREOLI: Let me explain this,

1 this is not a policy, okay, I deliberately went
2 through it and looked for a broad-based thing
3 that would apply to any solar farm application
4 in any township of New Jersey, and I have got
5 to tell you, I don't understand how a resident
6 is supposed to get information to a Board,
7 then. We tried to follow the rules by going
8 through your secretary and asking is this okay
9 to do that, and she did the right thing by
10 saying no.
11 THE CHAIRMAN: Yes, and in our system
12 today, if you had a concern as a resident, the
13 way the system is supposed to be handled is by
14 you hiring a professional and bringing that
15 professional in to give testimony about this
16 problem.
17 MS. ANDREOLI: I don't have enough
18 money.
19 THE CHAIRMAN: I understand that, but
20 it has to be that way, we can't have hearsay.
21 We can't have people throwing thousands of
22 different opinions out without properly
23 educating them. We wouldn't put somebody on
24 the Board unless they were a licensed engineer,
25 so that is the problem. That is where the

1 burden comes in, and we want to be careful, as
2 much as you want to put in this document, and
3 if the decision is in such a way that it gets
4 challenged in court, that could ruin the
5 hearing.
6 MS. ANDREOLI: It goes back to
7 lawsuits.
8 THE CHAIRMAN: No, it does not, it is
9 not just lawsuits, it is our system, and the
10 system has good things about it. It does work.
11 You can't have a free for all, or people coming
12 up and throwing, like you say, everything at
13 the wall and see what sticks. There has to be
14 some structure, and as much as it can frustrate
15 neighbors and local neighbors who want to
16 challenge an application, unless you bring in
17 professionals to testify on the record, which
18 is very hard to do, you do have an opportunity
19 as a neighbor --
20 MS. ANDREOLI: Do you know what an
21 estimated cost is to bring this case in with an
22 attorney and experts? The whole case, I was
23 given a cost of 10 to $15,000. That is a lot
24 of money. It is the problem with our system.
25 What it does is, it leaves us in a quandary.

1 THE CHAIRMAN: And I understand that,
2 but I am telling you this is the position that
3 we are in. I can't change it.
4 MS. ANDREOLI: I understand your
5 position and I appreciate it, but you have to
6 understand our position, our desperation to get
7 the information out there that we have been
8 able to gather. I will stick to as general
9 terms as I can, but one of the benefits that we
10 learned or one of the things we learned in our
11 research is to evaluate the potential risks of
12 an application like this. We talked a lot
13 about different risks, and storm water
14 management and non-conformities, "Oh, it could
15 hurt my real estate sale", but we can't talk
16 about that. There was a risk touched on last
17 month that we did not discuss any further, and
18 I would like this Board to really take into
19 consideration that in approving this, you would
20 be approving a potential financial liability to
21 this township and the taxpayers, and I am
22 talking about the potential of decommissioning
23 costs. Garden Solar has not provided us, and
24 we asked last month if they had some concept of
25 what it would cost even today to decommission a

1 two megawatt site at this location. They
2 weren't able to provide that information.
3 I have some vague numbers and you don't
4 want to hear them because I am not a CPA. But
5 the numbers are all over the board. I am sure
6 they will come up with a low ball number, and I
7 will give you whatever number I can come up
8 with based on information available to the
9 general public. But I think it is something
10 that you seriously need to take into
11 consideration. You don't know who you are
12 dealing with, you are setting up a business
13 deal with a company that will not be here.
14 They will not be held responsible, Garden Solar
15 will not be held liable, with the promises they
16 are making, they will not be held responsible.
17 You don't know the company you will be dealing
18 with, and if they are financially capable of
19 covering the cost of decommissioning. This is
20 a rapidly moving industry, solar is moving
21 very, very quickly. It could have very easily
22 changed overnight. We have seen major changes
23 in the industry. What if they need to make a
24 change? What if whoever takes over the site,
25 which is only a two megawatt site, what if

whatever it says, they say it is not worth it and walk off? Who will pay for decommis-sioning? Who says the company that takes over the site will maintain the property?

We are a passive township here, we don't have an officer who drives around to make sure people are in compliance. It is up to us, the residents, to do it. We have to make sure they are in compliance and we have to complain to the Township and then the Township will send our zoning officer -- if that is what he's called -- out to review the complaint. That can be a constant thing when you look at the Kingwood site, because we talked about the dead trees that went down during Super Storm Sandy, and as of yet, they still aren't fixed. They aren't gone, they are still there. Who will pay for all that? It will end up on us as taxpayers.

I have heard some really big figures on decommissioning costs, and I think it is something we need to look into and hold them accountable for, the applicant would be accountable to the Township and not the taxpayers.

1 We talked about the non-conformities
2 and the potential -- some of the spot changes,
3 how we could potentially be putting the current
4 applicant out of business, which would decrease
5 any commerce coming into this township. We
6 gain absolutely nothing from this application
7 as a community. Garden Solar already testified
8 that you are looking at a potential of power
9 for maybe 300 homes on a two megawatt system.
10 That is not power that will stay here, this is
11 a grid supply, it is sold out to the grid, it
12 goes out and it goes and it doesn't stay.
13 MR. WILSON: That is a hundred percent
14 inaccurate.
15 MR. PALILONIS: But she is giving her
16 closing argument here, and when she is done you
17 can address it.
18 MS. ANDREOLI: There is no revenue
19 generated by this, there is a lot of potential
20 risk that we have talked about. There is a lot
21 of potential financial risk for the entire
22 community and township. But the impact on the
23 residents is not beneficial at all. You can't
24 get any worse. We as a community sent you a
25 letter requesting, and I have a copy of it

1 here, we sent a letter to the Board requesting
2 the Board go to the Kingwood site and talk to
3 the people of Kingwood about what they went
4 through when the two applications were put in.
5 I honestly don't think you can make an educated
6 decision without all of the information, and
7 looking at all of the potential risks. I think
8 you will really need to take a look at how it
9 impacts those homes that are so close, so close
10 to this proposed site. It is at their back
11 door. It is at his front door, he is looking
12 right at it, it is right smack dab in his face,
13 and I didn't understand the impact until I went
14 to Dave Arnone's house and looked at it and
15 said, "Oh, my God, it is right there, it is
16 bigger than death", and to tell me this is
17 inherently beneficial for this community, no,
18 there is no way. There is no way.
19 As we talked about before, 518 is a
20 doorway to our community and what any realtor
21 will tell you is curb appeal, curb appeal, curb
22 appeal, and that is what increases the value of
23 your home. That is what increases the value of
24 your community. That is why people want to
25 live here, because of the vistas, the open

space, the farmland preservation. It is exactly what our Master Plan testifies to. This is our objective as a community, and I don't feel this application supports our Master Plan at all, nor does it support our residents.

THE CHAIRMAN: Is that all you have to say?

MS. ANDREOLI: I am finished, thank you.

(Applause.)

MR. WILSON: Just a few very quick questions.

MS. ANDREOLI: You have questions for me? Go ahead, I'm listening.

CROSS-EXAMINATION BY MR. WILSON:

MR. WILSON: You are aware that the property is zoned for commercial use, correct?

MS. ANDREOLI: Neighborhood commercial, yes.

MR. WILSON: That would allow 35 foot tall buildings.

MS. ANDREOLI: A story and a half or two and a half stories, which is the height of a standard residential home, yes.

1 MR. WILSON: You recognize that no
2 portion of the array in any way, shape or form
3 will be greater than ten feet in height?
4 MS. ANDREOLI: Yes.
5 MR. WILSON: Are you familiar with the
6 type of soils on this property?
7 MS. ANDREOLI: No, I am not familiar.
8 MR. WILSON: Are you aware there are no
9 prime agricultural soils on this property at
10 all?
11 MS. ANDREOLI: It is actually
12 considered --
13 MR. WILSON: There are no prime
14 agricultural soils as defined by the Department
15 of Agriculture.
16 MS. ANDREOLI: It is not recognized,
17 however, it is considered soils of interest per
18 the State, statewide importance.
19 MR. WILSON: Do you know what that
20 means?
21 MS. ANDREOLI: Yes, it is important
22 soil to the State.
23 MR. WILSON: Do you know what soils are
24 in that categorization?
25 MS. ANDREOLI: Soils.

1 MR. WILSON: Any soil, that means
2 simply by the adding of fertilizer it could
3 become fertile. Do you understand that is what
4 it requires?
5 MS. ANDREOLI: Yes.
6 MR. WILSON: In and of itself it is not
7 useful for agricultural soils, it is modified
8 somewhere, do you understand that?
9 MS. ANDREOLI: No, I don't.
10 MR. WILSON: Do you know the amount of
11 farmland in West Amwell Township?
12 MS. ANDREOLI: Exactly, no, not without
13 pulling it out.
14 MR. WILSON: Do you know the percentage
15 of impact this would have? You said it was a
16 substantial impact on agricultural lands in
17 West Amwell Township.
18 MS. ANDREOLI: It would have a
19 substantial impact on our neighborhood.
20 MR. WILSON: What amount?
21 MS. ANDREOLI: I don't know for the
22 overall township.
23 MR. WILSON: But you gave us your
24 opinion on a lot of issues, what would be the
25 amount that would become substantial?

1 MS. ANDREOLI: Nine acres, I don't
2 know.
3 MR. WILSON: What is the percentage
4 amount of the total in the township?
5 MS. ANDREOLI: I have absolutely no
6 idea.
7 MR. WILSON: You have no idea what the
8 percentage of this impact is?
9 MS. ANDREOLI: Of the nine acres?
10 MR. WILSON: Yes.
11 MS. ANDREOLI: No.
12 MR. WILSON: If I told you it was one-
13 tenth of one percent, would that surprise you?
14 MS. ANDREOLI: No.
15 MR. WILSON: The height, you indicated
16 that this could be 35 foot high buildings?
17 MS. ANDREOLI: The size of a
18 residential home.
19 MR. WILSON: It could be larger than a
20 residential home?
21 MS. ANDREOLI: Sure.
22 MR. WILSON: And that would require
23 parking lots?
24 MS. ANDREOLI: It could.
25 MR. WILSON: And a substantial amount

1 of traffic to those sites.
2 MS. ANDREOLI: It depends what the
3 application is, they would have to apply for a
4 variance.
5 MR. WILSON: Why would they need to
6 apply for a variance if they were conforming
7 with the Ordinance?
8 MS. ANDREOLI: Have you read the
9 Ordinance?
10 MR. WILSON: Yes.
11 MS. ANDREOLI: It is restrictive, you
12 can have a sandwich shop, but you can't have a
13 tatoo shop.
14 MR. WILSON: Which would you think
15 would do better, a sandwich shop or a tatoo
16 shop?
17 MS. ANDREOLI: I don't know.
18 MR. WILSON: You are aware that prior
19 to the adoption of any Ordinance, the
20 conditional use modification here, there was a
21 public hearing?
22 MS. ANDREOLI: For the Ordinance
23 change?
24 MR. WILSON: Yes.
25 MS. ANDREOLI: Yes, I was there.

1 MR. WILSON: And the Committee still
2 made the determination to modify the Ordinance?
3 MS. ANDREOLI: Based on fear of being
4 sued.
5 MR. WILSON: They made a modification
6 in the Ordinance, right?
7 MS. ANDREOLI: Based on their fear of
8 being sued.
9 MR. WILSON: Did they or did they not
10 modify the Ordinance?
11 MS. ANDREOLI: They absolutely did,
12 based on a fear of being sued.
13 MR. WILSON: You indicated you are
14 aware also that the Ordinance, as comprised
15 before, and as currently comprised, includes a
16 decommissioning plan.
17 MS. ANDREOLI: Yes.
18 MR. WILSON: And did you review the
19 decommissioning plan that was submitted with
20 this application?
21 MS. ANDREOLI: No, I didn't get a copy.
22 MR. WILSON: It is in the documents
23 that were filed with the application, but you
24 didn't review it?
25 MS. ANDREOLI: Not the decommissioning

one.

MR. WILSON: Are you aware that ultimately there is a responsibility, whether it is Garden Solar, but do you know how much it costs to build this site?

MS. ANDREOLI: Six million dollars.

MR. WILSON: Minimum.

MS. ANDREOLI: Yes.

MR. WILSON: So it will not be a fly by night company that will come past and spend six million dollars.

MS. ANDREOLI: It could be.

MR. WILSON: It could be a fly by night company?

MS. ANDREOLI: You can't determine that.

MR. WILSON: Do you know what the continuing costs are after the site is built?

MS. ANDREOLI: No, but I know that there has to be some cost, because you will have to apply fertilizer and herbicides and have to clean the chemicals from the panels.

MR. WILSON: Do you know that there is no cleaning of the panels required? Are you aware of that?

1 MS. ANDREOLI: You have to for
2 efficiency of the panels, you have to.
3 MR. WILSON: If the panels are cleaned,
4 but only with water --
5 MS. ANDREOLI: Straight on water?
6 MR. WILSON: Yes, straight on water.
7 MS. ANDREOLI: I don't know.
8 MR. WILSON: I have no further
9 questions.
10 THE CHAIRMAN: I appreciate it.
11 Anybody else from the audience or the
12 public who wants to come up?
13 MR. PALILONIS: Are you appearing to
14 make a statement?
15 MS. COMUNE: Yes. Do you want to swear
16 me in?
17 MR. PALILONIS: Yes.
18
19 A L F O N S I N A C O M U N E, 122 Rock Road West,
20 is sworn.
21
22 MS. COMUNE: I am directly impacted by
23 this application. So please, anything beyond
24 my information that is not allowable, please
25 let me know, because I did call the DCA because

1 when we tried to submit the report to the
2 Committee, I did call the Department of
3 Community Affairs, their Office of Government
4 Services, and I spoke to the Deputy
5 Commissioner or Deputy Director there, and he
6 was very kind and helpful, and he did say we
7 could not -- the Township could not, because
8 they might be legally liable if we presented
9 the information prior to the hearing, but he
10 said we were allowed to present the
11 information. I was specific as to what
12 information I want to present at this hearing.
13 So I do think, and I will confirm, because I
14 will write them back, but they were so helpful,
15 to make sure we were able to provide the
16 information, because it is public domain, it is
17 available, certifiable and certified. It is
18 available to anybody for consumption and
19 validation. It is a paper that was issued to
20 the municipalities to help them with these
21 decisions, so it is specifically developed for
22 municipal use.
23 You said that couldn't be offered, so
24 we will not offer it. I would appreciate it if
25 we had the opportunity to give it to you so you

could look at it, since it has been published for the use of municipalities, to be used for municipalities, specifically for this kind of purpose, so you can decide later.

MR. PALILONIS: May I respond to that. Sure, it might be very helpful to the Planning Board in setting the policy for the Master Plan and the general policies of this township. But this is a quasi-judicial hearing, and we don't form policy, we respond to the policies and the laws as they exist. So that is why we are not going to let it in. Unless it addresses specifically the issues raised in this application, even then the applicant has the opportunity to examine or cross-examine whoever is proposing those policies, which obviously they wouldn't.

MS. COMUNE: Let me provide some information, based on laws that are actually enacted by the Government that hopefully this township is aware of regarding solar energy and the Energy Master Plan in the State of New Jersey.

In 2011, the Energy Master Plan specifically stated that it does not support

1 the subsidized conversion of --
2 THE COURT REPORTER: You are going to
3 have to read slower.
4 MS. COMUNE: -- stating, although a
5 number of utility scale solar installations
6 have been proposed for and installed on what
7 was previously working farms, the Christie
8 Administration does not support the use of rate
9 payer subsidies to turn productive farmland
10 into grids. That is N.J. 2011 EMP, page 107.
11 Also, I am sure everybody is aware in 2012 the
12 State of New Jersey passed the Solar Act, and
13 part of the Solar Act, the purpose is twofold:
14 One is to control the continued growth of solar
15 farms and solar installations on productive
16 farmland, and they define productive farmland
17 as farmland that has been assessed as farmland
18 and used as farmland in the last ten years.
19 The law was specifically put in place because
20 there was such a large growth in solar energy
21 installations in the State of New Jersey. It
22 brought vulnerability into the solar arena. So
23 there was so much capacity and growth that it
24 actually brought what was supposed to be a very
25 productive industry for the State, and the

1 solarability of 2012 is available on the
2 website, and that is where I got it from, the
3 Board of Public Utilities, because I contacted
4 them asking what would be the resource and what
5 would happen with the application if they were
6 to pass it now.
7 Interestingly enough, I contacted the
8 Board of Public Utilities on May 20th and
9 received some information, basically, regarding
10 Garden Solar, and the Board said, "Please see
11 attached a copy of the Board Order issued on
12 May 10, 2013, memorializing Board actions taken
13 on April 29th to deny or defer applications by
14 grid supplier solar generation facilities
15 seeking Board approval to participate in the
16 SREC market pursuant to this. The extent of
17 the Board's jurisdiction in these matters lies
18 with the authority provided in the solar-
19 ability of 2012, granting eligibility to
20 participate in the State's SREC market. In the
21 renewable portfolio standard, among the 54
22 applications covered by the attached Order, you
23 will find two applications by Garden Solar
24 which were denied approval pursuant to
25 subsections of the solarability and also

1 provides solar generation facility proposed for
2 farmland up to ten megawatts individually, and
3 80 megawatts DC, and aggregate an opportunity
4 to obtain approval pursuant to Subsection Q,
5 the application period for the developer
6 seeking approval --" And then it talks about
7 the application. They said that you will find
8 more information on the solarability on the New
9 Jersey Clean Energy Program, so I did research
10 there and they were also very helpful to me.
11 First of all, this is what the Order
12 states, "Garden Solar, LLC, Lambertville, West
13 Amwell, Docket Number E01211130RPJMs with 2-076
14 on September 21, 2012, applicant Garden Solar,
15 LLC, submitted a notice of intent to apply for
16 designation connected to the distribution
17 system as the proposed project would be
18 eligible to generate SRECs. The applicant
19 proposed two megawatts DC and two megawatts AC
20 projections, which is located in West Amwell,
21 New Jersey."
22 THE COURT REPORTER: You are going to
23 have to read slower.
24 THE CHAIRMAN: Yes, we may have to take
25 a break.

1 MS. COMUNE: Let me read the decision
2 and I will talk about the rest of it. "The
3 applicant submitted an application -- the
4 applicant submitted an application by the
5 cutoff date of December 25, 2012. The
6 projected cost of the project as stated is
7 $36 million. As of the date of the submittal,
8 225 has been expended, equivalent to 3.73
9 percent of the total. The project application
10 indicates construction was to commence on
11 January 4, 2013, and the anticipated completion
12 date is September 30, 2013."
13 I want you to note the dates, I think
14 they are kind of important. One is by -- I
15 also brought this to the attention of the BPU
16 -- Garden Solar was not on the agenda for the
17 Zoning Board in January, and we were notified
18 of that, anybody within 200 feet of the
19 affected parcel received notice, but we did not
20 receive it. I didn't get that until February,
21 so the application that states it was to start
22 in January 2013 was not a viable assumption.
23 So according to the information
24 provided with the application, this is what
25 they based their decision to deny the

1 application on. "According to the information,
2 no action has been taken regarding project
3 development site plan or design. A CSA and ISA
4 have not been executed, and interconnection
5 facility costs have not been funded. It was
6 rejected, the equipment was not purchased and
7 an application has not been submitted to the
8 Safe Harbor -- it goes on, that the project
9 construction financing has not been secured.
10 The application indicated the requisite
11 federal, state, regional and local approvals
12 have not been secured.
13 "The applicant also indicated the
14 project has not been installed, construction
15 has not commenced, no material is on site. The
16 system has not been authorized to interconnect.
17 Further, SREC has not been secured. Since the
18 project is still in the early stages of
19 completion, all state, federal, regional and
20 local approvals have not been approved by the
21 application date. The prospect of timely
22 completion remains suspect. Under the criteria
23 described above, staff recommends the
24 application be denied approval under Subsection
25 S, and then passed."

1 THE CHAIRMAN: We are going to take a
2 recess at this time.
3 (Whereupon, a short recess was taken.)
4 THE CHAIRMAN: All right, we will call
5 the meeting back to order and hear what you
6 have got on the record, and listen to comments
7 from the public, and you may continue.
8 MS. COMUNE: Give me a moment, please.
9 Since this is directly related to the
10 application, and it actually goes to support
11 where they stand with their application, it is
12 important that the Township understand where
13 the State approvals are. Can I submit a copy
14 of the decision?
15 MR. WILSON: We will stipulate we made
16 application for inclusion, and that we were not
17 selected for inclusion in Subsection S. We did
18 not submit for approval of Subsection Q, there
19 were specific requirements for each. There
20 were three applications granted by the BPU for
21 Subsection S, all of which -- or two of which
22 were fully constructed at the time of their
23 application and approval, that it is not -- we
24 will stipulate that we do not have a
25 determination by BPU at this date for the 2014,

1 '15 or '16 energy years, which end 2014; or it
2 ends in a couple of days, and that we are not
3 determined to be SREC eligible, which is not an
4 economic force behind this development.
5 THE CHAIRMAN: It is not?
6 MR. WILSON: It is not.
7 THE CHAIRMAN: So that would not hinder
8 the project.
9 MR. WILSON: That is not a determining
10 factor for the success or failure of a project
11 at this time.
12 MR. PALILONIS: We will allow it since
13 the applicant is not objecting, but understand
14 it is for your own purposes, that it has no
15 relevance in this proceeding.
16 MR. WILSON: I concur with that, I
17 tried to help things along by so stipulating.
18 MS. COMUNE: I still think that you are
19 held by the solar law of 2012.
20 MR. WILSON: That is applicable to all
21 places.
22 MS. COMUNE: Is it applicable to your
23 application?
24 MR. WILSON: Before this Board, no.
25 MS. COMUNE: Why not?

1 MR. WILSON: It has nothing to do with
2 local approvals.
3 MS. COMUNE: Do you have all of your
4 State approvals?
5 MR. WILSON: We have all of the State
6 approvals that we are required to have. Part
7 of the 2012 requirement was for certain
8 applications. If you want to be deemed
9 connected to the distribution grid, you have to
10 go through a BPU approval process. We have not
11 chosen to make that application, and we may or
12 may not do so in the future. We don't have to.
13 MS. COMUNE: Let me ask a little more
14 about the Solar Act of 2012, which was really
15 put in place for several different reasons, and
16 I was not aware they did not require the SRECs
17 for the viability of this project. But it does
18 not mitigate the fact that this construction is
19 at the early stages. They have not gotten all
20 of their approvals. At this point, some of the
21 important things the State looked at is how
22 viable this project is, and if you actually
23 pass this Ordinance, how viable is it, and will
24 they really put it up.
25 MR. WILSON: I will object at this

1 point, this is not part of the BPU process at
2 all, there were sites fully constructed and
3 running, waiting for approval to connect. They
4 were fully constructed, and they were not
5 approved under Subsection S.
6 MR. PALILONIS: It is not relevant to
7 our proceedings here, because the law assumes
8 they are not coming in here just to sit around
9 for a few hours every month and hear irrelevant
10 testimony. We have assumed they intend to
11 proceed. If we don't assume that they will
12 proceed, then their application would be moot
13 and we would say don't waste our time.
14 Beyond that, any other agency approval,
15 we have to act subject to them getting that.
16 If they never get it, it never happens.
17 MR. WILSON: We are not beholden under
18 any law or regulation to a BPU approval, we
19 have PJM approval, which is what is required.
20 THE CHAIRMAN: And you have connection?
21 MR. WILSON: We have not signed an
22 agreement, it has been presented to us, and we
23 have a system impact study. The reason an
24 application was made, an S application was made
25 as it is referred to in the Act, is because we

had a system impact study prior to June of 2011, which was one of the required criteria. This existed, because it is one out of the three sites in the entire state that were approved under Subsection S, out of 56 applications, three were approved. One of them was Garden Solar.

MS. COMUNE: Let me just continue with some of the information I found out from BPU as well as the Department of Community Affairs. I also contacted Assemblyman Ciattarelli's office to find out what is happening, since he sits on the Energy Commission in helping the municipalities make the appropriate decisions regarding solar energy, because this is not a problem unique to West Amwell, and everybody knows if you read the papers you have seen lots of articles in the last couple of weeks. All of a sudden, this became a really hot topic for all municipalities, but even more so for the State of New Jersey.

There are articles out there, I don't know if I can bring articles in, but we have copies of articles in "The Beacon", one of them is "Solar Energy and You, Not Perfect

1 Together", talking about the solar arrays. But
2 let me read directly from BPU --
3 MR. WILSON: I need a statement as to
4 relevance.
5 MS. COMUNE: I think it is relevant,
6 the fact that this is not unique, you are
7 coming in front of the municipality asking for
8 a variance. Some of the reasons why solar
9 energy is being -- or some of these
10 installations are being requested is solely for
11 speculation, and I think the Board needs to
12 understand by passing these variances that a
13 variance is a deviation from the norm, from the
14 normal code. What they are facing, they need
15 to be educated as to what other townships are
16 also facing. Am I incorrect?
17 MR. WILSON: Permitted in the
18 Ordinance? What BPU says, I stated unless
19 there can be a showing by proffer that the BPU
20 regulations will somehow govern this site or in
21 any way govern this site, based on the
22 municipal approvals, it is completely
23 irrelevant.
24 MS. COMUNE: But the Solar Energy Act
25 of 2012 marries to the Master Plan of the State

1 of New Jersey, which also marries to or perhaps
2 to the Master Plan for the municipality.
3 MR. WILSON: It has nothing to do with
4 the Energy Master Plan, the portion that was
5 read or anything else, that has to do with the
6 construction of solar facilities only for the
7 determination of SREC eligibility, whether it
8 is deemed connected. The revision led from the
9 Energy Master Plan that speaks of subsidizing,
10 the only state subsidy that exists is the SREC.
11 SREC, as I indicated, has no bearing whatsoever
12 on this application. This site can be
13 constructed if approved by the Board without a
14 determination of SREC eligibility, and there is
15 nothing in the Solar Act and nothing in the
16 regulations and nothing in the Energy Master
17 Plan that so provides.
18 MS. COMUNE: Let me finish my
19 statement, and then allow me an opportunity to
20 talk.
21 MR. WILSON: We just had a proffer of
22 where we are going with this.
23 THE CHAIRMAN: Make sure it is relevant
24 to this specific application.
25 MS. COMUNE: The New Jersey Municipal

1 Land Use Law, MLUL, now defines solar electric
2 generation facilities as inherently beneficial;
3 however, the law has not removed the necessity
4 to prove that as a solar facility it will not
5 frustrate the planning of the town or become
6 detrimental to the wellbeing and safety of the
7 community. In other words, inherently
8 beneficial.
9 MR. WILSON: I am objecting, I am
10 entitled to object and state the reason for my
11 objection. We are dealing with completely
12 irrelevant per se information. We are reading
13 from a document that couldn't be admitted
14 before, it is a hearsay document. The person
15 that authored that is not here, there are
16 advocacy type of organizations which make
17 policy making decisions, and since it is not in
18 connection with a specific application before a
19 Board --
20 MR. PALILONIS: Who is the author?
21 MS. COMUNE: The Association of New
22 Jersey Environmental Commissions.
23 MR. PALILONIS: What she read so far is
24 exactly why we are here, so that is fine.
25 MS. COMUNE: It is relevant.

MR. PALILONIS: It is redundant. We will see where you are going with this as soon as you get to some opinion or policy.

MS. COMUNE: It is not, I think you are right that beneficial use does not mean an argument for beneficial use, it doesn't mean you have to approve it because somebody makes an argument.

MR. PALILONIS: The Board understands --

MR. WILSON: This is a conditional use application, it is not a use variance.

MR. PALILONIS: Just so we are on the same page, the way I interpret what she just said is that it must comply with the negative criteria.

MR. WILSON: Exactly, which applies to any variance.

MS. COMUNE: But the importance of the Solar Act, it doesn't relate, and I think yes, it does, it absolutely relates to the municipality --

MR. PALILONIS: It doesn't.

MS. COMUNE: How does it not relate?

MR. PALILONIS: We have a Master Plan

1 that talks about encouraging renewable energy
2 sources, and an Ordinance that has been fully
3 adopted. No other policies. If the Township
4 is wrong, then somebody else has to tell the
5 Township it is wrong. You can't. The Zoning
6 Board cannot tell the Township it is wrong,
7 unless it is wrong as a matter of law. So the
8 Township should do the right thing, or somebody
9 would be suing.
10 THE CHAIRMAN: What he is saying is
11 whatever is in place now is what we work with
12 as a Board. So the Ordinance is in place, that
13 is what we are working under.
14 MS. COMUNE: There are a couple of
15 things not in place for this application, they
16 don't have all their -- I think you said
17 earlier you're still waiting for some
18 approvals.
19 MR. PALILONIS: That is not relevant.
20 THE CHAIRMAN: It is not uncommon to
21 have approvals with contingencies.
22 MR. PALILONIS: They can get them after
23 the approval, but before a permit is issued.
24 THE CHAIRMAN: It is contingent, they
25 have to get them all, they can't move forward

1 without them.
2 MS. COMUNE: Again, let me talk a
3 little bit about one of the reasons I feel, my
4 opinion, and based on what I have been reading
5 from this application, and I am not quite sure
6 if they are not getting SREC, and there is no
7 financial benefit from the State, because the
8 Governor was pretty clear that he didn't want
9 ratepayers' benefits going to replace or put
10 solar panels on farmland.
11 MR. WILSON: It is not the Governor's
12 statement.
13 MS. COMUNE: The Governor's statement,
14 the history, the Administration was very clear
15 in giving direction, and I have the May
16 advisory issued by the League of Municipalities
17 to the Municipalities that basically says the
18 particular interest to municipalities and local
19 government, the plan is designated to focus the
20 large solar panels towards large municipal
21 landfills and Brownfield sites. On page 2 it
22 reads, "Local governments should be allowed to
23 collect property taxes from the property owners
24 based on enhancement of value." A footnote
25 points out that it prohibits local governments

1 from increasing a tax assessment following the
2 installation of solar systems, and limits local
3 zoning jurisdictions, respectively.
4 Both laws were passed over the
5 opposition of the League, stated a draftsman
6 for the Municipality. It says, "Earlier today
7 Governor Christie, joined by Lee Solomon,
8 Chairman of the Board of Public Utilities, and
9 Bob Martin, Commissioner, revealed a new energy
10 plan to fulfill the State Energy needs for ten
11 years." We did that --
12 MR. WILSON: This is a policy
13 statement.
14 MR. PALILONIS: What you are reading is
15 not relevant, so please keep it within the
16 basis.
17 MS. COMUNE: I did talk before about
18 the Solar Act, not enforcing it, and the
19 Administration not supporting the use of
20 farmland for solar arrays. It does not support
21 subsidizing the version of productive farmland
22 to solar energy, it states --
23 THE COURT REPORTER: You are going to
24 have to slow down. You are reading much too
25 fast.

1 MS. COMUNE: The Administration does
2 not support the use of ratepayer subsidies for
3 solar arrays. The purpose of the legislation
4 for West Amwell was it sought to limit the
5 development, and the policy clearly reflects in
6 a press release by Governor Christie, and that
7 was on July 23, 2012, the Office of the
8 Governor's news release, consistent with Policy
9 Subsection S, applies for solar development,
10 and that no longer applies since you are not
11 applying to BPU anymore, because the Governor's
12 policy proposes to limit the development of
13 farmland and the development of solar farms on
14 farmland.
15 Let's talk a little bit, I know Dave
16 brought up the West Amwell Township map, and
17 you did say it shows the farmland soil of
18 statewide importance in that section over there
19 right at the back. It may not be primary land
20 soil, but it is still farmland soil of
21 statewide importance.
22 The other thing I want to bring up, I
23 don't have the map here, but we had talked at
24 the last hearing about the geology of this site
25 and within your Master Plan that geology of

that site, again, that became part of it, it is Jurassic in nature, and I think you mentioned the geology of the soil is pretty much the same as the Frenchtown site.

MR. DECKER: I was guessing.

MS. COMUNE: That is important to note, because if it doesn't perc and it doesn't perc because there is rock back there, although --

MR. WILSON: I have an objection to this, unless there is specific testimony to what the geology is.

MS. COMUNE: I agree, and I agree there should be a study that is produced.

MR. WILSON: But the study was produced, and it is part of the record.

MS. COMUNE: Then what is the geology?

MR. WILSON: It is your testimony, our report is there, it is acceptable geology for the site as proposed.

MS. COMUNE: The geology, I don't have that information.

MR. WILSON: It has been on record for several years before the Township, the geology is unchanged, the report is unchanged. It is the geotechnical study that was performed site

1 specific.
2 MS. COMUNE: In what year?
3 MR. WILSON: Probably 2011.
4 MS. COMUNE: Recognizing, and we said
5 at a previous hearing there is water issues
6 now. If the geology is what it is now, your
7 application says you will not make it any
8 worse, you can't correct it, that is what your
9 testimony was. You can't correct the existing,
10 but at least the assumption is it won't be
11 worse.
12 MR. DECKER: That is correct, that is
13 their obligation to not make it worse.
14 MS. COMUNE: But how could it not be
15 worse? How can you cover and create -- you
16 created this in the Frenchtown application in
17 the solar fields, you created streams of water
18 runoff.
19 MR. DECKER: I didn't say that.
20 MS. COMUNE: That was said at one of
21 the hearings.
22 MR. DECKER: The experience we have had
23 at Kingwood, and I spoke with the Hunterdon
24 Soil Conservation District on a number of
25 facilities that were put in, there was a

1 learning curve when it was first put in, the
2 Hunterdon Soil Conservation District was happy
3 with the way the facilities were constructed to
4 minimize erosion off site, minimizing erosion
5 by establishing vegetation. And as far as the
6 water management for any site, again, they are
7 not obligated to correct a drainage problem,
8 just not to exacerbate anything.
9 MS. COMUNE: You are saying the panels
10 themselves will not exacerbate that?
11 MR. DECKER: According to State
12 regulations, they say you have to take the
13 panels out of the equation.
14 THE CHAIRMAN: This has all been
15 testified to previously. The Board has heard
16 this testimony over and over and over again,
17 and we are rehashing it back and forth.
18 MS. COMUNE: But I have to tell you
19 that I just heard it a few months ago, so State
20 laws don't apply.
21 THE CHAIRMAN: The Solar Act passed in
22 2012 for the State of New Jersey does not
23 apply?
24 MS. COMUNE: I heard that the BPU
25 approval doesn't apply.

1 THE CHAIRMAN: They aren't relevant.
2 MS. COMUNE: Not relevant?
3 THE CHAIRMAN: If they are not
4 applicable.
5 You can't rehash testimony over and
6 over again, the geology, the reports I have at
7 home, this has been discussed.
8 MS. COMUNE: They are making an
9 assumption that by putting these structures on
10 this land, this will not change anything, it
11 will be exactly the same. If it increases, it
12 has the risk -- the Township --
13 THE CHAIRMAN: Go ahead and continue, I
14 want to stay focused on how you feel your
15 comments and your thoughts apply. Remember,
16 the real issue is they are applying here for
17 these two uses, all of the other issues have
18 been dealt with and been worked through with
19 our engineer or professionals, and their
20 professionals, and the State requirements and
21 the laws, and they have all been complied with.
22 MR. DECKER: To clarify on the panels,
23 what I referred to is the State decided and
24 that is regulations that were included within
25 the Municipal Land Use Law, which is what this

1 Board does go by, and the amendment to the
2 MLUL, in addition to the inherently beneficial
3 use which also states you cannot consider these
4 panels as an impervious surface.
5 MS. COMUNE: I know that.
6 MR. DECKER: These are the regulations
7 that the Board has to follow for the Land Use
8 Law.
9 MS. COMUNE: I do know that, I read the
10 law. We are educating ourselves on this
11 process, so you have to guide me as a citizen,
12 as a resident, as a resident directly impacted
13 by this. I do not want this solar array on
14 that property, I think it will negatively
15 impact me. I will tell you, I have storm
16 waters now in that area, and I think this will
17 exacerbate that issue and create issues. I
18 know that the Township needs to consider this
19 not for one applicant, because the only person
20 benefitting from this is the applicant, and I
21 think there is a law that says you cannot or
22 should not pass Ordinances that benefit only
23 one developer or one person. This is a
24 township, and you are passing an Ordinance.
25 The only person who will benefit, unless

1 somehow you are benefitting me, it is only
2 benefitting one person. There are not ten
3 applications here that this Ordinance will
4 benefit.
5 THE CHAIRMAN: But we are not passing
6 an Ordinance. This is an application.
7 MS. COMUNE: With this one passing, you
8 are only benefitting one applicant. But what
9 you are putting at risk for the Township is,
10 first of all, these guys will not be here, I
11 know Jennifer said this earlier, but I need to
12 make this clearer, they will not be here for
13 the lifetime of the project. I think the
14 lifetime of the solars is about 25 years, and
15 that is the information. It is basically
16 saying they are here one nanosecond, as soon as
17 they get their variance, that is their job,
18 that is what they do. They are brokers of
19 applications, so they can sell it to the next
20 person who will stay with it. You did this in
21 Frenchtown 1, and you have been on top of the
22 Frenchtown, I think it is ConEd who owns it, to
23 make sure they fulfill their obligation;
24 however, that is taking your time. You have
25 had to call them, you have had to say to them

1 to ensure that maintenance -- which costs the
2 Township a lot --
3 MR. WILSON: No, it does not.
4 MR. DECKER: ConEd has an escrow with
5 the Town, and during the time period for the
6 maintenance where we go out and inspect things
7 and so forth, when they come in to have their
8 maintenance bond released, they need our
9 authorization to do that. When an applicant
10 comes before the Board, there is a view of the
11 escrow that is posted, and if it has to be
12 replenished, it is. Once they are off the
13 maintenance bond, then the responsibility will
14 go to the local enforcement officer, which
15 should be the zoning officer.
16 MS. COMUNE: That is a cost that will
17 not come to you until two years later?
18 MR. DECKER: Two years.
19 MS. COMUNE: I don't know what it is
20 here, but this is 25 years where you have
21 somebody come, and after two years then you
22 will have to pay for enforcing it. That is a
23 cost to the Township.
24 Any storm water runoff will be a cost
25 to the Township. During construction, although

1 we cannot -- we cannot verify that there will
2 be increased traffic. From your experience in
3 Frenchtown there was, correct?
4 MR. DECKER: Yes.
5 MS. COMUNE: That is a cost to the
6 Township. There is going to be lights and
7 fences --
8 MR. WILSON: No lights.
9 MR. DECKER: There are no lights
10 proposed on the application.
11 MS. COMUNE: During construction I
12 heard there were lights.
13 MR. WILSON: In Kingwood there were,
14 but there are no lights --
15 MS. COMUNE: At the last meeting you
16 said lights, but okay, if there are no lights,
17 we will not talk about lights. Let's talk
18 about vandalism.
19 There have been articles in the paper
20 about vandalism, and this is a known fact,
21 there is vandalism of these sites at the cost
22 of the Municipality, correct?
23 MR. WILSON: At the cost of the owner
24 of the facility who goes in and prosecutes
25 those who are caught by video.

1 MS. COMUNE: Which requires law
2 enforcement to go out at the cost of the
3 Municipality during construction. You will
4 have 50 to 60 construction people, and I think
5 we said that, correct me if I am wrong, coming
6 to the site.
7 MR. WILSON: We never said that, it is
8 a misstatement of the testimony.
9 MR. DECKER: The 50 to 60 vehicles came
10 up when we discussed the Kingwood Township
11 site, and that is what was experienced there on
12 Route 12. I believe the request was made of
13 this applicant, which is something that we have
14 done in Kingwood on sites after the ConEd site,
15 was for a staging area on site and strict
16 regulations as far as on street parking with
17 vehicles and so forth. I believe we discussed
18 this at a previous meeting, the applicant
19 agreed to provide a staging area.
20 MS. COMUNE: On site.
21 MR. DECKER: On site, and within the
22 confines of the solar facility in the Mason
23 Supply site, that is a different issue.
24 MR. WILSON: That is correct.
25 MS. COMUNE: We talked about this a

1 little while ago again, Jennifer brought this
2 up because the site is pretty condensed. You
3 are using a hundred percent of the property
4 pretty much in the back, so we will move it
5 when you are at the last stages.
6 MR. DECKER: That is something that
7 they have to develop in the staging, that would
8 have to be approved by our office.
9 MS. COMUNE: Who would enforce it?
10 MR. DECKER: Our office would enforce
11 all construction activities with regard to site
12 approvals. That being the expense, the
13 landscaping, and as far as the actual
14 installation of the panels, the electrical and
15 so forth, that falls under the building code.
16 So it reflects in much the same way that if you
17 looked at a commercial development and someone
18 was putting up an office building, we don't
19 inspect the office building.
20 MS. COMUNE: Who incurs the cost?
21 MR. DECKER: The applicant.
22 MS. COMUNE: Who incurs the cost of the
23 example inside, who incurs the other costs?
24 MR. DECKER: These are fees paid per
25 the building code requirements.

MS. COMUNE: If something doesn't go right, or it is not being done correctly, who incurs the cost?

MR. DECKER: They will. If something isn't done correctly, code enforcement will not issue a CO, which means they will not be able to turn the system up with the switch.

MS. COMUNE: There is no cost to the Municipality?

MR. DECKER: As far as the building permits, I can't speak to that, our office does not get involved in that, as far as the site improvements. It is at no cost to the Municipality because they have an inspection escrow.

MS. COMUNE: Basically what I want to ask is, you are incurring -- you are at risk of incurring costs, and you have to be open minded and come into this with your eyes wide open. You are not getting an increased farmland assessment, no increase in taxables, that is what the Government says, you cannot raise the taxes.

MR. WILSON: That is not correct.

MS. COMUNE: Go ahead.

1 MR. WILSON: This will not be farmland
2 assessed, and it will be regularly taxed, and
3 every site is regularly taxed. If you read the
4 whole Master Plan, it refers to get metered
5 sites and the Statutes in New Jersey indicate a
6 site is to be valued without the added
7 improvement of a solar facility, if it is not
8 metered.
9 MS. COMUNE: Is that true?
10 MR. PALILONIS: Yes.
11 MS. COMUNE: I asked the question and
12 we were told the Mason Supply yard would
13 maintain its agricultural assessment.
14 MR. PALILONIS: I don't know who told
15 you that, but it is not true. It is not
16 agriculture anymore.
17 MS. COMUNE: But again, what the State
18 said on the solar arrays is that you can't
19 increase it, and that is as the leading
20 municipality, you should look into that, that
21 is not what it says. If that is not true, I
22 would like to know that for a fact. I don't
23 think you are getting anything out of this
24 except a big headache. You are not getting
25 anything. I am getting a big headache and I

1 don't think the Municipality has all of the
2 information. I think this is information that
3 you need to have before you can make an
4 educated decision. The fact they put forth an
5 application, I think Dave is writing me a note,
6 but the fact they have this study and they paid
7 for this study does not mitigate the fact that
8 you might have vulnerability in this. You need
9 to understand that.
10 MR. PALILONIS: On that basis, we would
11 have no industrial development whatsoever in
12 the Township of West Amwell, and even
13 commercial would be questionable. But you
14 know, that is my legal opinion. It is a
15 conclusion from what you are asserting.
16 MS. COMUNE: I know when I asked about
17 whether the argument -- when I stand up here as
18 a citizen and I don't have legal
19 representation, I have to tell you that I did
20 ask DCA about whether I needed legal
21 representation, and they said no, under the
22 legal process, a public process, anybody should
23 be able to defend themselves and not incur
24 legal costs, because that is part of it. I did
25 talk to them about whether the attorney could

1 architect the conversation in a certain way,
2 and they said sure, and please correct me if I
3 am wrong, I am not trying to be condescending,
4 I am trying to understand. You are to give
5 legal counsel to the members, and they are
6 supposed to, based on that, protect themselves
7 and guide themselves into making the correct
8 decision. But you are not a voting member.
9 MR. PALILONIS: That is correct.
10 MS. COMUNE: So I appreciate that you
11 are guiding me in having this conversation, but
12 I don't know if that was a legal decision.
13 MR. PALILONIS: I am trying to find the
14 relevance in your argument, that is all.
15 MS. COMUNE: The issue here is for the
16 Township that you may be incurring costs, you
17 probably will be incurring costs. There is a
18 risk to the Township. The only benefit to the
19 Township, even if you get the taxes, are
20 minimal, but what you might be incurring are a
21 lot. One of the things, and again I want to
22 talk about the dismantling costs, because in
23 all of the papers I have been reading about
24 solar energy, that is a big topic for everybody
25 is dismantling costs and how much possibly you

could be at risk in 25 years to get rid of this thing.

MR. WILSON: It is a hundred percent recyclable. In fact, we will be lucky if people don't steal the posts.

A VOICE: How much does the labor cost?

MR. WILSON: Some estimates say the labor costs to remove are offset entirely by the recycling value.

MS. COMUNE: Not if you Google that.

MR. WILSON: There is a lot of information --

MS. COMUNE: I read a ton of articles about the dismantling costs, and the dismantling costs can be a couple of million dollars, right? If it will not be that, if the costs are offset, I want proof of that. I don't think that is true, that is hearsay.

MR. WILSON: You can present whatever proofs you wish, but not speculative guesses.

MS. COMUNE: You can provide the information?

MR. WILSON: We have met the decommissioning requirements of the Ordinance.

MS. COMUNE: I have to tell you, one of

1 the things I read the most of in the last
2 couple of weeks is the applicants will come in
3 and do the minimal amount possible, it is up to
4 the Township to protect yourself. Don't accept
5 minimal, the fact I just said I read the rule
6 as minimally as possible should not be
7 satisfactory to you. What you need to do is
8 protect this Township, and that means he needs
9 to go beyond the minimal.
10 MR. WILSON: Is there any other
11 building in the Township that is required to
12 provide a removal bond or cost, that was
13 constructed?
14 MS. COMUNE: You are the first solar
15 one.
16 MR. WILSON: Any other buildings in the
17 Township that are required to provide that?
18 MR. PALILONIS: The Board knows better,
19 there is no argument. This argument is not at
20 issue. The issue is not relevant.
21 MS. COMUNE: I think it is relevant for
22 you and for the Township.
23 MR. PALILONIS: You are entitled to
24 your opinion.
25 MS. COMUNE: I think I am. I am pretty

much done, I want to close by saying there has been a lot being advertised on the issues with solar energy in the last couple of weeks, the fact they are inundated in the Division of BPU, there is speculation going on with the applications. I don't think there is a split use of this land. This is farmland, this is active, workable farmland. This is prime use. Solar farms is not the prime use, and you should consider it. There are many better places to put this other than sticking it in a small parcel of land on 518 which, as Jen said earlier, is a road that is traveled on and over constantly by visitors in West Amwell, and this is the impression people will get of West Amwell. There is a use that people are using landfills for this, rooftops for this, Brownfields for this and farmland is not the way to go. You should not consider using farmland for solar use. In this town if you want to put it somewhere else, they can consider where to put it.

THE CHAIRMAN: Anybody else from the public have any comments?

MR. HOLOHAN: Justin Holohan. I teach

fourth grade.

J U S T I N H O L O H A N, is sworn.

MR. HOLOHAN: The real question is how is that advantageous for our township? There is no advantage for the public. That is the testimony, and I won't go into it.

MR. WILSON: That is not the testimony.

MR. HOLOHAN: There is no property tax relief for the Township, there is an undeterminable change to tax property values. We don't know, it could go up, or it could go down, that is true. There will be a change in traffic patterns, how big or small, it doesn't matter, there is a change, because we will be removing a view. If there are fences there, that is a removal of a view and could be dangerous. For safety you can get off the road. If you turn, we most likely could use that. We have an undetermined change in drainage to a 70 year old woman's house. We don't know. We have a change in the traffic and the habitat. It is undetermined. We don't know, but I have lived in the woods a long

time, and it will just change. They have an undetermined effect on hurricanes, blizzards and whatever else God hands out, hazardous cleanup, undetermined. I will take that as a yes.

MR. WILSON: Don't take anything as a yes, we are not answering questions.

MR. PALILONIS: Mr. Wilson, let him proceed.

MR. HOLOHAN: You did testify about sound, but light reflection and long term effects, we don't know, that is the science of it. We do have a second-hand client installing something and leaving, which makes me very uncomfortable, okay, guys? We are doing away with the people's right to live in a rural community. Some people lived here a very long time, longer than some of you, and we have an undetermined way of how to get through layers of rock. You will dig two inches and go, "Oh, God, shit." And we have an undetermined dismantling fee, a process, and as of yet my biggest fear, I will get to this, I am reading off here, my biggest fear is now we are opening the door and this means ten acres, and we will

open up a can of worms. We are stealing from our children, from our future. What does this leave them that way? Here are the pluses to having them here, we get a tax, they get to be taxed. I couldn't come up with anything else after that, so with the lack of positives, it leads me to something else here.

I was assured by the Township Committee that the Ordinance changes were amended by vote, and I am not accusing you of this or anything, but the other thing is cowardice, I know it is not cowardice on your part, you guys are left with the mess from the upper level. I know that. You are left with the adjustment here, so I understand that it is not your fault, okay. It is left by the Township Committee.

My other biggest fear is if this passes, we basically undermine our community's morals and our very sovereign authority. How can we stand up to anything after this? We have a Master Plan that says we are this, but here we are saying no, we will do this. It seems weird to me. Basically, it will send a message that we are pushovers, and we will

1 shiver in our boots and do whatever it takes to
2 get out of it. I was told by the Township
3 Committee that they are appointed, and our
4 attorney is appointed. Is that you, or the
5 township attorney?
6 MR. PALILONIS: No.
7 MR. HOLOHAN: We are told by our
8 attorney that our 20 acres were non-defendable
9 and thus they changed under external pressure
10 of Garden Solar.
11 So let me tell you why I think our
12 numbers are defendable. This is my opinion.
13 In 1846 we became an established and sovereign
14 community, blessed enough to run ourselves in a
15 democratic way, and that is done by the
16 Township Committees who are volunteers from the
17 community, and taxpayers and elected officials,
18 and they represent the opinions of our public.
19 So it is weird that our attorney would say
20 these numbers are non-determinable [sic] when
21 our very own people set those numbers in place
22 for a reason. They are putting in numbers to
23 our God given right to have a Constitution here
24 and put things in place. And a very small
25 population of this community has been here in

1 favor of this, two or three, maybe five people
2 have been here saying we don't care. A bunch
3 of families are here saying no, we don't like
4 it, okay. I am assuming 90 percent that aren't
5 here don't care, so how can you say no to your
6 public opinion? You work for us. Our taxes
7 pay for you.
8 Basically, here is my final conclusion,
9 it sends the message that we can be told what
10 to do, and we are frightened, and are afraid
11 and told we would sue, and this undermines your
12 authority. This is a violation of the Master
13 Plan that we put into place long before Garden
14 Solar was a blip on the radar here. It is now.
15 It is your turn to do something, where lesser
16 men have failed, and it is time for you to do
17 the wrong thing for the right reason, okay. We
18 are defending our homes, we are defending our
19 future. If you let this go, you are going to
20 open up so much, so I say tell these guys no,
21 grow some balls and take the lawsuit head on
22 and maybe take some bumps along the way. I
23 don't know, but allow the people to defend our
24 numbers and let everyone know why 20 acres was
25 there before we were coerced and taken

advantage of, and we stand up for ourselves, and we do have morals and we are not afraid. That is up to you gentlemen. Thank you.

MR. PALILONIS: I would like to respond to that with the risk of being criticized, but do you understand solar facilities are allowed everywhere in West Amwell?

MR. HOLOHAN: Yes, through cowardice and fear of being sued, I get that.

MR. PALILONIS: You are entitled to your opinion, it isn't political in the true sense of the word to make those kind of statements in an open public meeting, but you are certainly allowed to do it.

MR. HOLOHAN: I teach fourth grade history and I do the basics, I don't care about the little things.

MR. PALILONIS: You don't, and it is not my job to defend the Township Committee, but to the extent they represent the Township, you are attacking the whole Township, given the fact that similar facilities are allowed everywhere in the Township, you know, and I am not advocating anything.

MR. HOLOHAN: It is obviously not

1 wanted here. You can force us -- I would think
2 you would want to listen to the people that you
3 represent, that is basic public democracy, and
4 you should pick up a history book and learn it.
5 THE CHAIRMAN: Are there any other
6 members who wish to make a statement?
7 MS. EISEMAN: Jane Eiseman, 631
8 Brunswick Pike. I have one thing to add, in
9 the original denial of 2011 before you changed
10 the Ordinance, one of the two reasons you gave
11 for denying this application is still relevant,
12 and it says, "Applicant has failed to establish
13 that the use variances may be granted without
14 substantial detriment to the public good,
15 although the negative of the visual impact of
16 the arrays will be substantially mitigated by
17 the proposed buffering. The arrays will be too
18 close to existing residential areas." And that
19 hasn't changed, I can still reach out my front
20 door and see this. I can feel it and hear it.
21 I know Garden Solar are not bad people, they
22 want to make money like everybody else. It is
23 not their job to look after this community, it
24 is your job to look after the community.
25 I am from New York and I don't know

about this kind of thing, but this is what you guys are here to do for us. Thank you.

THE CHAIRMAN: Anyone else? Nobody else from the public who wants to make any comments at this time?

R O B I N H O R S N A L L, 136 Rock Road, is sworn.

MS. HORSNALL: I have been coming to these meetings for quite a few years, and 25 years down the pike it will not affect me. However, I see a lot of stuff happening on a small property. You are trying to pack in too much into a small piece of property. The second principal use on the property should not be there, it shouldn't be there. I have lived there for quite a while. West Amwell does provide a service to people, and the church provides a service. This facility will not provide anything for us. Zero. It is here and using our property, and these people will not be here after they finish their job. In the long run, who will we end up with? Who will we be dealing with?

I have had my own experiences in the

1 Township with zoning, and it has been tough, it
2 was a tough road. Was I satisfied with the
3 results? Not really, but one person like me
4 trying to straighten out something doesn't
5 work. I am worried about what will happen in
6 the future. What will you people be left with?
7 I see a burden. You can promise us everything,
8 you can say this is written up, that is written
9 up, everything is written up for us. This is
10 put aside, that is put aside, promises are
11 promises. When the end of the day comes, I
12 think the Township will have a burden, that is
13 the wrong feeling. This will not affect me 25
14 years down the pike, it won't affect me, but it
15 will affect our township, and I have lived too
16 many years hearing people say, "Well, I wish I
17 lived in West Amwell. I could do whatever I
18 want."
19 We have zoning, we have things in place
20 and we have to stand up for ourselves. I stood
21 up for myself, it was a tough battle. Did I
22 get everything? No, not really. Do I have a
23 next door mess that should have been
24 straightened up? Yes, but so be it. This will
25 have to be something that is checked on to take

1 care of it, it will change hands, it will
2 change in the solar company. If they decide to
3 go belly up and are done, who will be
4 responsible for it? Will you sue them? No,
5 they won't have anything. Who will be there to
6 do that, or will it be you or your children?
7 Those are my concerns.
8 I don't have a crystal ball, you don't
9 have a crystal ball, but lots of promises can
10 be made and everyone has experienced a promise
11 made and a promise broken. Things can look
12 bright and all in place, but at the end of the
13 day, at the end of the journey, what will you
14 have in your hands? I think a burden, and you
15 can put that burden on every resident of your
16 township, and that hurts. Thank you.
17
18 J I M H O L O H A N, is sworn.
19
20 MR. HOLOHAN: Jim Holohan, H-O-L-O-
21 H-A-N, 120 Rock Road West, on the other side of
22 Mrs. Pam Bland. I have been in construction
23 for 40 years, commercial, and I went to Mercer
24 Community College and did everything to get my
25 DCA license for building official, and I took

some buildings out of the ground as a construction manager. I have worked with architects, PEs, civil engineers, and whatever there is. Are there any preliminary drawings for the foundations that support the solar panels, whether they are pilings, or whatever? Were they available to the public? Something has to support this.

MR. WILSON: There is a typical detail and geotech report.

MR. DECKER: Yes, it is on file.

MR. HOLOHAN: How do you go about looking at those? We are always in the dark.

MR. WILSON: It has been on file since 2011.

MR. HOLOHAN: You can come in any time?

THE CHAIRMAN: Any time from 8:30 to 3:30, the files are in the office. They are set aside, sealed drawings.

MR. HOLOHAN: Thank you.

THE CHAIRMAN: Anybody else?

Seeing none, we will now close the public hearing for the public, and at this point, Mr. Wilson, you can summarize, if you like.

MR. WILSON: Very, very, very briefly.

While we appreciate the concerns legitimately of the members of the public, I would suggest to you that there is nothing here of substance that points specifically to a reason for denial. There was testimony, the farmland that is in question in this regard is less than 11 hundredths of one percent and certainly less than one-tenth of one percent. I'm sorry, less than one-tenth of one percent of the farmland that is affected. It is a commercially zoned district, not an agricul-turally zoned district.

I will hit a few points. We don't meet the minimum requirements of the Ordinance, but all of the conditional requirements are exceeded. The height issue, the Ordinance allows 15 feet, our height will be less than ten feet on all of the arrays. It is a third less than that which is allowed in the Ordinance. We do meet the requirements, and it is not a vista issue; anybody that has a view of the mountains will still have a view of the mountains that exist. You are talking about complete structures again that are ten feet

1 tall or less. Unfortunately, for people whose
2 homes were built before the wetlands needed to
3 be identified and delineated and construction
4 prohibited, who have constant water problems,
5 we cannot exacerbate them to any extent, and we
6 meet the requirements of improving the water
7 quality, and as testified to, to make a slight
8 calculatable reduction.
9 We are not going to solve problems, but
10 they will certainly not be made worse. We did
11 indicate the issue before the Board which has
12 been raised by almost everyone in some of the
13 statements this evening, which are purely
14 speculative and inappropriate, because they are
15 controlled by the regulatory agencies. We have
16 submitted this to the Soil Conservation
17 District, and also the County, we have not
18 resubmitted it yet, until we have the final
19 plans, which is a typical standard process. We
20 have the State of New Jersey DEP permit in
21 hand, which reviews the storm water management
22 calculations, and from an energy standpoint, we
23 have the PJM approval. PMJ, again, you will
24 recall, is the New Jersey, Pennsylvania --
25 Pennsylvania, New Jersey and Maryland grid

1 facility, and allows us into the grid.
2 You also know what the grid is from the
3 standpoint of the electricity that is
4 generated, it is used in West Amwell Township
5 and used within the single circuit the property
6 is operating. You may recall the testimony,
7 that it is sold to the highest bidder at the
8 wholesale rate in the municipality, and to
9 every producer. You may have seen articles of
10 the capacity requirements.
11 But what is in it for us. Besides the
12 theoretical improvements, the capacity auction
13 that is conducted is the auction whereby the
14 utilities buy this power mostly from outside of
15 the State. The Energy Master Plan has
16 provisions basically encouraging the increase
17 of New Jersey production, and that is where
18 solar and wind comes into play, in large part.
19 You heard references in some of the
20 conversations referring to those from Ms.
21 Comune, I believe, about large scale and small
22 scale. This is considered a small scale
23 system. It would be wonderful if we became
24 SREC eligible in the future, but it is not
25 required to operate. It does meet the PJM

1 requirements, and it puts its power to the
2 distribution grid. The language read from Ms.
3 Comune said, "connection to the distribution
4 grid", and distribution grid is not a
5 transmission grid and it is not carried outside
6 of the local circuit. So the purest use within
7 the subdivision, the capacity auction, the
8 results of that capacity auction that were just
9 conducted in May are that the rates, due to the
10 increase in peak hours creating power, was that
11 JCP&L, for example, had their costs reduced by
12 a third with their capacity costs. PSE&G, on
13 the other hand, which is in a different area,
14 tried to do it themselves with the pole mounted
15 facilities, and actually had an increase in
16 their power. Every electric company serving
17 New Jersey, except for PSE&G, had a substantial
18 reduction in their charges. That will be
19 dollars in the pockets of ratepayers.
20 It is likely not just any dollars in
21 electric bills, it won't be evident for a
22 period of time, the description was it begins
23 to take place sometime between one and three
24 years from now, you will see a shutdown of the
25 fossil fuel, not oil, the coal fired plants.

1 The GPL site, you probably read about
2 it in the papers, is being shut down ahead of
3 schedule, and that is a significant site by way
4 of peak hour production.
5 MR. PALILONIS: Mr. Wilson, please keep
6 your comments to the merits for this
7 application.
8 MR. WILSON: The merits are inherent in
9 the application. There are substantial
10 financial benefits to ratepayers from the
11 standpoint of what you are looking at, from the
12 standpoint of the Master Plan. We do support
13 the Master Plan, it is item 8. It is 78 goals,
14 and objective number 18 speaks of encouraging
15 and promoting renewable energy resources
16 including solar in the municipality as its
17 objective. There is no change that is proposed
18 in this application to the Mason Supply.
19 There was specific testimony that
20 although technically as was spoken to by your
21 previous planner, an intensification in the
22 variance when required in that regard, it is
23 really an administrative intensification,
24 because the second use is being modified from
25 agriculture to the solar production.

The question of what impact does that administrative intensification have on the operation of that prior non-conformity is that it is a non-conformity, there is no question. The issues of non-conformance were identified, and I think it is important that you identify them, and acknowledge them. They are acknowledged on the record in the event there are modifications in the future, requiring applications such as if the sign is blown down, it requires modification.

We did offer you both the addition of a fence to the rear portion of the easterly boundary, and I think the Board's general consensus is that it would only preserve the view from the Stellitano Excavating next door, and it may not be worth the effort, but we are prepared to do that, and we agreed to pull back the product display that is offered for retail and retail sales from the right of way. It will allow some improvement on the site.

We did agree that we would provide for a paved ADA parking space, and we will provide some additional landscaping as well. We agreed to modify the fencing to an architectural style

fence in areas other than originally proposed, so there is an aesthetic improvement that results. We didn't view it as that, as they are not intensifying it. I guess from the somewhat speculative nature, you can say we are now limiting the ability of Mason Supply to increase their facilities at the non-conforming site, and to do so, they will have to perform more compliance or perform in a more compliant manner. So we think we have satisfied the requirements of the Statute on both the positive and negative criteria.

We again, from the conditional use standpoint, as much as everybody doesn't want to acknowledge it, and while I wish we had the power to wave a wand and cause a municipality to change its Ordinances, the fact remains that the Ordinance was modified, and this project now complies more than a hundred percent. That means we don't just meet the minimum requirements, we exceed them. The Township Committee has determined this, as your attorney has counseled, in the township, that is an appropriate location if the conditions are met for a solar facility. So we think we have

1 satisfied all of the requirements.
2 We appear before you for your
3 consideration and hopeful approval, and with
4 respect to the applicability of other laws, we
5 will comply with every law that is applicable
6 and stipulated. We understand there are still
7 outside agencies by way of the County whose
8 approval we require, and if we choose to apply
9 for SREC, we would need to submit to the BPU.
10 But we are not required to, and it is not
11 required to construct the facility.
12 The reference to the Subsection S and
13 Subsection Q application which are for the
14 energy users expire about a year from now, so
15 it is not likely that this will be through the
16 outside agency approvals and ready for
17 construction by way of electrical design and
18 construction permits within the 2014 term.
19 Perhaps the 2015 energy year, which starts next
20 June 1st or perhaps later than that, but
21 certainly within your period of protection from
22 the granting of approval. So we do ask that
23 you grant the variance relief, and also grant
24 approval as requested as complying with your
25 Solar Ordinance. Thank you.

THE CHAIRMAN: Members of the Board, any discussion?

MR. BORDEN: Mr. Wilson made a statement that the size of this property represents about one-tenth of one percent of the farmland or open space in question.

MR. WILSON: Farmland within the Township.

MR. BORDEN: I would like to say that that assumes that all farmland or open space is the same, and if you consider it to be the same, I think it is not all the same. Location is important. I am sure there are farmlands in this community, and basically, they are not visible from the homes, but this one is. It is very visible. I wanted to make that point, all farmland is not the same, although it is a small parcel.

THE CHAIRMAN: Anybody else have any discussion on the application? Are we ready for a motion?

MR. ROMANO: My concern is that it doesn't seem as though the applicant has addressed the impact from the Mason Supply building. All of the existing non-

conformities, how they would be addressed in the future with this solar application site? I said it two months ago and I said it last month, and I am saying it again this month. How hard would it be to develop a plan to show we can bring the parking, the circulation, the storage, all of this into compliance? We will be voting on something we are not prepared to vote on. I can't believe that I am saying it after the fourth meeting, that we just don't know enough from the perspective anyway, they are linked together, the two uses, and before it was a farmland, if you had to go in a field and redo parking and circulation, yeah, I have heard something where they can reduce the size of a business. But truthfully, it is based on what we have got there right now, and how that property would function if it were brought into conformance, and what impacts it would have on the area that you are proposing to put a solar panel on. I am hearing all this stuff, but I am not, you know -- it is such an easy thing that -- you have a lot of engineers in this room and how hard would it be to put a plan together that would show us, the Board, that

hey, even with this solar application here, all of these non-conformities that exist on this property could be addressed.

Once you get the solar out there, it is impossible to address anything, in my estimation. I am not saying you do it with a need to evaluate, we are evaluating things in the air, we would like to see it on the plans.

MR. ASHTON: I understand what you are saying, and I understand your concern, but just a thought in the other direction about what you are saying, it is one of those things, the contingency of what if. It takes a lot of branches and it is not quite that simple to say, for example, 23 spots, and that business operated how many years with how many problems without any parking spots.

So would this contingency -- it is okay, here is what we will do with ten spots, that doesn't bring us into conformity, and I am not saying it is not something that should be a concern, but I am questioning how simple a thing it is.

MR. ROMANO: It is not our job to solve it verbally, we have to see what impacts there

are. Maybe we can say with confidence hey, we can move forward, but right now I can't sit here, and at least in my perspective I can't sit here and vote one way or the other without knowing more information.

THE CHAIRMAN: Everybody has their own thoughts.

MR. DALE: I have a question before we go further, they are a non-conforming business at this point, Mason Supply. The Township will never change that, because they are grandfathered in, before the property laws. Is there at some point in time where we say hey, the grandfather clause doesn't affect you anymore?

MR. PALILONIS: That is the thing, it is Mason Supply, what do you say, how did they get to this point? It is probably twice as big as it was when I first became aware of it, which was at least 35 years ago. What can you say about that beyond that it will not be changed if this application is denied, nothing will change. I am not saying that is why you should deny it, I am saying it will not make a difference. The real issue, and I guess I will

1 give you my summation here, is whether or not
2 either use will adversely impact the other use.
3 The applicant, per se, the owner of
4 West Amwell Mason Supply, which I guess will
5 continue, has agreed to certain conditions and
6 some conformities, but right now the Township
7 today has no mechanism to bring this into total
8 compliance in any case, you know, and beyond
9 that, cleaning it up, you do the best you can.
10 MR. ROMANO: If we have to do anything
11 along those lines, we have to see that there is
12 absolutely no way they can get there. In order
13 to address the storage, that is what it would
14 look like, what would the circulation look
15 like, and you can easily solve these things. I
16 have seen this on plans like this for other
17 things.
18 MR. PALILONIS: You are assuming there
19 is a problem. I am not saying there isn't, but
20 there is nothing in the record today that I
21 know of that says there is a problem, other
22 than the stuff being in the right of way, which
23 they are moving, anyway.
24 MR. ROMANO: I appreciate that, but
25 once you get the solar in there, the ability to

1 expand and address things that are currently
2 non-conforming, it is that much more difficult.
3 MR. PALILONIS: But that will not
4 change.
5 MR. ROMANO: If there were no solar,
6 there is nothing to prevent them from extending
7 the parking lot out and applying for something
8 to extend the parking lot 10 or 15 feet out
9 into the field, because it is a field right
10 now.
11 MR. PALILONIS: But they are locking
12 themselves in, and you can argue that the West
13 Amwell Mason Supply building can do that, but
14 that is their choice, and you may say that is
15 foolish and you don't like to encourage
16 foolishness, but that is their choice.
17 MR. ROMANO: It makes it that much more
18 difficult, if this came up, it would be a
19 hardship for them to do anything.
20 MR. PALILONIS: Maybe they should pack
21 up and leave at that point?
22 MR. ROMANO: I am not saying that.
23 MR. PALILONIS: I am not being
24 facetious, if they got too big for their
25 britches, what do they do? They are screwed.

They would have to move, and maybe they are shortsighted, the owner or operator or whatever. I mean, the question you have to ask yourselves is, how does that impact on the proposed solar field, or how does the solar field impact on the ability to expand to conform. But there is no reason, you know, what is the reason why they should conform?

MR. ROMANO: This is our planner talking as well, this isn't just me, one member of the Board saying that. I am trying to carry on an argument, but just as a Board, we like to make decisions based upon the most available information that we can look at, and right now we are making a decision on something you don't have. In order to address the current non-conformity, the planner --

MR. PALILONIS: He is not our planner anymore, and he wasn't here for any of these hearings.

MR. ROMANO: I guess, but there are memos and discussions even by our engineer that substantiate what he mentioned.

MR. PALILONIS: The non-conformity is in the record.

1 THE CHAIRMAN: Everybody made efforts
2 to go on the record, but unless you want to
3 pursue that, you can wrap up by saying this is
4 a general use, and if it weren't for the fact
5 there will be two principal uses on the same
6 lot, this would be before the Planning Board.
7 Under the Municipal Land Use Law, the
8 problem is the Municipal Land Use Law says
9 solar facilities are inherently beneficial, and
10 that takes you halfway home with the applicant
11 in trying to get the approval, whether or not
12 they are accessory or principal structures.
13 They have to overcome the burden of the
14 Ordinance, which says the use is permitted. So
15 it comes down to the negative criteria, whether
16 it is detrimental to the intent and purpose of
17 the Zoning Plan. That doesn't apply the
18 municipal plan that was cited and the Zoning
19 Board permits, so it comes down to whether or
20 not it is substantially detrimental to the
21 public good. That is what you have to decide,
22 and they have complied with the standards that
23 deal with landscaping. So you have to decide
24 what it comes down to, you have to determine
25 whether it would impact adversely on West

1 Amwell Township. I mean, if it is limited to
2 that, that is all of the testimony we have had
3 as far as expert testimony. A lot of people
4 don't like it, don't want it, and they are
5 certainly entitled to their personal opinion.
6 Their personal opinion is valid, but it is not
7 legally sufficient to overcome the testimony of
8 the applicant for complying with the Ordinance.
9 What it comes down to is the interplay
10 between the Mason Supply and the solar panels.
11 Any questions or comments?
12 MR. ASHTON: Just one, the outdoor
13 storage is being moved --
14 MR. PALILONIS: That has been there for
15 decades.
16 MR. ASHTON: You couldn't operate the
17 business in its current form and bring it into
18 conformity as a typical operation of the West
19 Amwell Mason Supply business to bring it fully
20 into conformity?
21 MR. PALILONIS: It is not academic,
22 because it is not a permitted use in any case.
23 MR. ASHTON: Because I think Jerry
24 raised a good point, I was trying to weigh the
25 elements of that point, how realistic would it

be to bring it into conformity anyway.

MR. PALILONIS: You have to decide, I am not saying they are or they aren't, but do the non-conformities -- are they inappropriate to have the solar panels there? That is the bottom line on the application.

MR. KOVELOSKI: The non-conformity of West Amwell Mason Supply, were they cited on record or anything before this application was applied for?

MR. PALILONIS: There is nothing in the record that would indicate they have ever been cited for violations, if that answers your question. Beyond that, why would an owner care? People generally do what they want to do, and if nobody stops them, that is what they do, right?

MR. WILSON: That is why the Board required us, and we did submit an existing conditions plan to memorialize what is there, so it doesn't change.

MR. PALILONIS: Beyond that, you can make further comments. I wanted to check with Mr. Decker, there was no question of the understanding of the site plan implications.

1 We can talk about that, but the engineer, there
2 is an understanding between our engineer and
3 the applicant as to what the site plan will
4 look like finally and what the other
5 accommodations look like.
6 MR. DECKER: The plans as submitted
7 address all of the landscaping, plus what has
8 been testified to with regard to additional
9 landscaping. I have my notes in case those
10 plans are revised to accommodate that should
11 the approval be granted, and the applicant has
12 agreed to provide a staging plan for
13 construction to help with construction traffic
14 and so forth. That would be something that
15 would have to be submitted and approved by our
16 office before any construction takes place.
17 THE CHAIRMAN: Anything else?
18 MR. DECKER: No.
19 MR. CRONCE: You will control the
20 staging plan of everything for construction?
21 MR. DECKER: They will prepare the
22 staging plan, it would have to be done to our
23 satisfaction.
24 MR. CRONCE: How come it is not done
25 now? We approve plans, we approve applications

before we actually see your done product, your finished product. We never see the final approved plans that are done. Why are we approving something that I never saw. Maybe there is a question on it.

MR. DECKER: That is your prerogative.

MR. PALILONIS: Because you trust him.

MR. WILSON: You can require that, and we will be happy to get it back to you.

MR. CRONCE: There are some things I wonder about. I don't have the approved plans.

MR. DECKER: It is certainly the Board's discretion --

MR. CRONCE: And I also have an issue with that.

MR. WILSON: We submit what we consider are compliance plans and we only generally submit -- I have had some municipalities call for five or six and some say two. We will be happy to bring enough copies of the compliance set so you can see it, it goes out to everybody.

MR. CRONCE: I understand that, but we always approve the applications before that is done. I just want to say a few things. I

1 would like to make a motion, I honestly feel
2 that we have taken in a lot, a lot last month,
3 and we have taken in a lot today, on all of
4 this, and I think making a decision here is a
5 hard thing to do. I would like to make a
6 motion that we hold off on making a decision
7 tonight, let us all go home and think about
8 what we are deciding on tonight, because we are
9 not deciding on the solar field we did a year
10 ago out in the middle of nowhere, we are
11 deciding on a solar field dealing with a lot of
12 residential properties. It wouldn't hurt us to
13 hold off one or two months, maybe we will come
14 back and ask another question, and I always go
15 home and I think this and think why didn't I
16 ask that question. So we do have time on the
17 calendar, and we can hold off on making that
18 decision tonight and go to the next meeting.
19 MR. PALILONIS: Whether that is true or
20 not --
21 MS. HALL: It is 104 days. That takes
22 us to our June 25th meeting. We are good until
23 June.
24 MR. CRONCE: I make a motion that we
25 hold off any decision on this tonight until the

1 next month's meeting, due to the fact that we
2 should all go home and look at our notes and
3 review what we have done and think about it.
4 MR. ROMANO: Second.
5 THE CHAIRMAN: There is a second? I
6 don't know, I think we have heard testimony
7 over and over. We have spent a lot of time on
8 this application, and I always feel the
9 applicant, as much as the people who come out
10 to these meetings, are waiting for an answer,
11 and I always like to try to give it to them.
12 My feeling is, I don't know what will change
13 between now and next month, but --
14 MR. CRONCE: I will go home and think
15 about a lot of things I wrote down in my past
16 meetings, and I will go home and think about
17 what the residents said tonight, and think
18 about what the applicant said tonight, and I
19 need an extra 30 days or whatever we have,
20 another month's meeting to make a decision.
21 There is a motion on the floor and it is
22 seconded.
23 THE CHAIRMAN: Any more discussion on
24 the motion? We will call the question.
25 MS. HALL: Mr. Cronce?

1 MR. CRONCE: Yes.
2 MS. HALL: Mr. Romano?
3 MR. ROMANO: Aye.
4 MS. HALL: I will go with aye.
5 Mr. Dale?
6 MR. DALE: Aye.
7 MS. HALL: Mr. Ashton?
8 MR. ASHTON: Aye.
9 MS. HALL: Mr. Borden?
10 MR. BORDEN: Aye.
11 MS. HALL: Mr. Fulper?
12 THE CHAIRMAN: No. The ayes have it.
13 We are being asked to carry the hearing until
14 next month. Do you want to ask the applicant
15 to provide more information?
16 MR. PALILONIS: He can't, it is over.
17 MR. WILSON: Has the Board closed the
18 hearing? The Board has been in discussion, are
19 we done?
20 MR. PALILONIS: The statement was made
21 a while ago, the public hearing is closed.
22 MR. CRONCE: It is closed, but not the
23 Board's decision. We can ask the applicant
24 some questions --
25 MR. PALILONIS: No, you cannot do that.

THE CHAIRMAN: That was my point.

MR. CRONCE: I will live with that. I will go home and research my own decision, then. We will leave it at that.

THE CHAIRMAN: The motion carries, and we will hold our decision off until the next meeting.

MR. CRONCE: We can still discuss this among the Board members. We are talking about the Board can make a decision at its next meeting.

MR. PALILONIS: Yes.

(Whereupon, the hearing 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 May 28, 2013.

JACQUELINE KLAPP, CCR 30X100034700