

BEDMINSTER TOWNSHIP

LAND USE BOARD

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IN THE MATTER OF:

TRANSCRIPT

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

OF

PROCEEDINGS

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

BOARD MEMBERS PRESENT:

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

ALSO PRESENT:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 CHAIRMAN BOXER: Right.

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

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1 so.

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

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

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

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1 the requests --

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

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

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

10 MR. HALL: Okay.

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

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

21 MR. COLLINS: That's fine.

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

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

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

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

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

19 MR. HALL: Sure.

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

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

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

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

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

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

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

Page 24

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

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

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1 MR. HALL: Well --

2 MR. COLLINS: That's just --

3 MR. HALL: I understand.

4 MR. COLLINS: -- simple legalese, but

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

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

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

8 negative impact is the unknown. We shouldn't

9 decide it on negative impact. We should decide

10 it on the law and is this a revised application

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

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

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

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

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

16 this is going to get thrown at us.

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

18 master plan goals and about where you build and

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

20 anything here preempts that. We're talking

21 about this ordinance. Your master plan is out

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

23 that we have to reconcile what we want to do

24 with the master plan.

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

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1 think there was one case involving this time of

2 application rule, where actually the ordinance

3 changed to the benefit of the applicant. And

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

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

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

7 what, the applicant is supposed to withdraw,

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

9 ordinance?

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

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

12 sense point of view, that it was intended

13 specifically to benefit applicants. And to say,

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

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

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

17 consent to that result.

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

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

20 I want to hear the arguments of the objectors

21 and then I want you to check that with your

22 clients before we --

23 MR. HALL: I will.

24 MR. COLLINS: Because I think that for

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

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

2 somewhat common sense that if you substantially

3 amend your application while it's pending, that

4 you would be subject to the new ordinance. I

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

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

7 mean you should dismiss applications that make

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

9 sense either.

10 So think about that one and maybe

11 after you hear their arguments, you can assess

12 your judgment on that and talk to your client.

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

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

15 whether to allow the witness to present his

16 presentation?

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

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

19 application. We still want to build a solar

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

21 mall now.

22 MR. COLLINS: And it's just one

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

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

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

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1 stormwater engineer. He testified as to the

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

3 prepared to explain what changed.

4 MR. COLLINS: And even if he presents

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

6 at least some future nights to go over the

7 details of the stormwater management and other

8 application details, is that correct?

9 MR. HALL: Yes. And there are other

10 witnesses. And back to the stormwater

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

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

13 timing and what I said before about when it

14 might be ready.

15 Based on what you said, it sounds like

16 when we file something, it probably makes sense

17 to have a sit-down between our engineer and

18 Mr. Ferriero and the objectors' engineer before

19 we come back here to try to winnow away any

20 issues further rather than off-line before we

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

22 even less likely anything can happen in August

23 on that.

24 CHAIRMAN BOXER: I think the bigger

25 question is going to be if stormwater

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 MR. HALL: She cited it tonight.

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

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

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

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

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

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

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

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

25 MR. HALL: Yeah.

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

5 MR. HALL: At that time, yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<p style="text-align: right;">Page 70</p> <p>1 arrays. In the previous application we were 2 talking about digging into the ground. In this 3 case, we'd be putting it on the surface. 4 I'll say, generally, the inverter pads 5 stay the same as far as the configurations of 6 those. We're still doing all of those same 7 components. The only other change that we have 8 on here is based on technology changes, I think 9 we had a 12-foot-high switchgear. Now you can 10 get something that's 8.6 foot high. So that's 11 lower. That was the highest structure that we 12 talked about on the property. We can get 13 something lower, in that 8.6-foot range. 14 The racking system itself is all 15 galvanized. The channel inside of it which 16 holds the wires will be stainless steel. 17 Generally operates like the other systems that 18 we talked about at the last meeting, but this 19 racking system allows a lot of the wires to be 20 in a channel as opposed to going down into the 21 ground. And, again, when we have the electrical 22 person here talking about the panels, they can 23 get into a lot of those specific details. 24 As far as the overall site numbers, 25 the total limits of the project would be 41</p>	<p style="text-align: right;">Page 72</p> <p>1 17 percent. I forget the exact number, 17 2 point -- and I'll get that in a second -- 3 percent and it's now down to 15.9 percent. But 4 by virtue of using this panel installation, or 5 actually the ballast installation, our 6 impervious coverage will slightly go up because 7 each one of those little concrete ballasts will 8 count towards impervious coverage that we'll 9 have to address from a stormwater management 10 standpoint. 11 Ballast width, there will be a 12 reduction in the road length that will reduce 13 some of that impervious coverage for stormwater 14 calculations, but it will still be a net 15 increase in that coverage because those ballasts 16 will be taking up more surface area to the 17 ground than a 4-inch post or a 3-inch post that 18 we'll be drilling. And we'll have to address 19 that in the stormwater management. 20 The landscaping essentially is the 21 same as far as materials underneath there that 22 we talked about with the grasses. Again, we 23 just increased some of the landscaping that we 24 talked about at the last meeting. 25 Lastly is on construction timing, the</p>
<p style="text-align: right;">Page 71</p> <p>1 acres now, 41.17, where the previous application 2 was 53 acres. The grading disturbance that's 3 being proposed right now, 4.9 acres as opposed 4 to 15.5. And some of that-- and without getting 5 into the stormwater detail-- will change when we 6 finalize the stormwater management features. I 7 know that. I mean, there's no debate about 8 that. That will change up or down, it's going 9 to go up somewhat, but that has not been 10 finalized, as has been discussed earlier in this 11 meeting. 12 Balance cut and fill. The tree 13 clearing is the same. There's no difference or 14 delta in the tree clearing. The number of tree 15 units that we're talking about was per the first 16 application. No change to that. We are 17 planting more by virtue of the discussion that 18 we had at the last meeting, the last series of 19 meetings. And we talked about additional 20 plantings. We just show them on the plans, what 21 we committed to at the last discussion. 22 As far as some of the numbers, by 23 virtue of this plan, the actual element that 24 will go up is -- lot coverage will go down based 25 on your definition. And the original plan was</p>	<p style="text-align: right;">Page 73</p> <p>1 Board asked for a detail. We've presented a 2 plan from the consultant that's worked-- the 3 construction consultant that's worked with KDC 4 in the past, Whiting-Turner, and we've presented 5 that in the application package. And it lays 6 out all those times and it's fairly consistent 7 to what we've talked about at the last meeting, 8 or series of meetings, about the construction 9 timing and the detail phasing. 10 That's a review of it. I mean, again, 11 we can get into more details of it, but I wanted 12 to give you the overview of -- that's the bulk 13 of the changes that we're talking about here. 14 We're putting the pads on the ground as opposed 15 to going through the ground. Rearranged the 16 type of panel, the racking system, the 17 separation between the two. Rearranged the road 18 network that was proposed on the property. Same 19 inverters, generally same location, little 20 shifts around there, but essentially it's the 21 panels in the same area except for this front 22 field and using this field that's just to the 23 north and the center property that we didn't use 24 previous to that. 25 CHAIRMAN BOXER: Mr. Hall, is the</p>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 Q. Yes.

2 A. No. No.

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

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

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

6 design it when we finish some elements that are

7 on the project. When we start designing that,

8 we will keep in those general areas that we show

9 disturbance with the previous plan. If we have

10 to move a couple of panels around because of

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

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

13 that into the field, for stormwater management.

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

15 concept. This is a concept plan.

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

17 say that the perimeter areas around these basins

18 that are here now may change for the detailed

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

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

21 proposed right now, where the inverters are

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

23 on our stormwater management plan; that the

24 changes will be around the areas where we have

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

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

2 you discovered through your soil testing that

3 areas where you're proposing panels are areas

4 where the soil types have a higher permeability?

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

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

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

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

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

10 areas that have permeability, I can tell you

11 right now within three weeks I can submit the

12 plans to this Board for the stormwater

13 management.

14 Q. But you are testing --

15 A. I don't have that.

16 Q. Okay. But you are conducting soil

17 testing on all areas of this site including

18 where you have these proposed panels.

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

20 Q. So that this Board can actually if

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

22 can actually do it in an intelligent manner and

23 place the panels in the proper location.

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

25 edification with the stormwater and the

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

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

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

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

5 horizons of the soil out here for infiltration.

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

7 finding something affirmative, it's finding

8 something negative. That we haven't found

9 anything that has that permeability for

10 infiltration.

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

12 was stating, we have to look around the property

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

14 we find that, we have to put infiltration in

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

16 going to find that and we have to go through

17 that correct testing procedures.

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

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

20 ordinance with the ten-acre zoning, would you

21 have the need for as much recharge?

22 A. You would have less recharge, but the

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

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

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

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1 resubmitting an application of stormwater back

2 to this Board.

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

4 this Board and why did we spend night after

5 night going over some of these issues when the

6 data really doesn't support recharge?

7 A. Until we met with your consultant and

8 went through a certain aspect of that with the

9 town engineer on this size of a site to show

10 that we need to do something with that, we

11 didn't feel we needed to do that.

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

13 recharge? Isn't that one of the mandatory

14 components of the stormwater management plan?

15 A. Not if you have soils of a certain

16 type that we couldn't find the recharge.

17 Q. But your reports and what you

18 submitted to this Board and what you testified

19 to had to do with the fact that there were

20 statements that there was sufficient

21 permeability in the soil.

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

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

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

25 Again--

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

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

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

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

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

19 **A. I do not.**

20 Q. Thank you.

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

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

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

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

6 (Recess)

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

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

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

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

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

23 MR. HICKEY: I believe so, yes.

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

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

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

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

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

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

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

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

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1 use the other systems.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 they're about a thousand pounds each set.
 2 MR. YINGLING: In previous meetings we
 3 discussed the amount of cedar trees that are
 4 being removed.
 5 Did you establish what the count was
 6 on that?
 7 THE WITNESS: The physical number?
 8 MR. YINGLING: Yes.
 9 THE WITNESS: No, I just have physical
 10 area, acres. I didn't go out and count
 11 individuals trees for that.
 12 MR. YINGLING: And how many acres
 13 would that be?
 14 THE WITNESS: Well, I don't have it
 15 broken out that way. We have a total
 16 disturbance of 51 acres for the whole site over
 17 there, but I don't have it broken out to regions
 18 of each individual areas of trees that would be
 19 removed from there. Some areas are truly--
 20 MR. YINGLING: Are you stating that 51
 21 acres of trees are being removed or--
 22 THE WITNESS: No, that's total area.
 23 So that would include areas like this field.
 24 There's some type of product in there. I mean,
 25 I don't think it's hay. Some sorghum or

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1 something that's in there now. So that wouldn't
 2 have cedars to be removed. This area is
 3 primarily cedars with some open areas.
 4 MR. YINGLING: That was the primary
 5 area?
 6 THE WITNESS: Yeah. And this area is
 7 about 25 acres. Okay? And, again, there's a
 8 couple of hardwoods. We have those in the
 9 count. There's a couple of open areas in this
 10 area, but I'd say it's primarily a cedar wooded
 11 area.
 12 MR. YINGLING: Okay. The 5-foot
 13 aisles that are now being proposed, how do you
 14 plan on maintaining them or servicing the panels
 15 with such a narrow area?
 16 THE WITNESS: They just have smaller
 17 equipment that would go up and down there to
 18 maintain those areas. For maintenance, for
 19 taking down a panel that had to be taken out.
 20 MR. YINGLING: Okay. Just to clarify,
 21 Mr. Hall made a statement earlier that you're
 22 not seeking approval based on the plan being
 23 presented. If that's the case, why is that plan
 24 being presented?
 25 THE WITNESS: I don't know what

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1 context that was in.
 2 MR. HALL: That's a legal question. I
 3 meant that particular piece of paper is not
 4 something we're asking the Board to approve. I
 5 didn't mean the layout. We're asking the layout
 6 to be approved. The layout is on the other--
 7 MR. COLLINS: It's a technical
 8 objection. It was a technical objection. It
 9 has to do with these particular --
 10 MR. HALL: Pieces of paper.
 11 MR. COLLINS: -- exhibits, yes.
 12 MR. YINGLING: So the layout is
 13 being --
 14 MR. COLLINS: They are not the -- they
 15 are not the site plan drawings that are in a set
 16 of drawings like this. They are graphic
 17 exhibits for tonight's presentation.
 18 MR. YINGLING: But essentially this is
 19 what's being proposed even though it's not in
 20 the blueprint format.
 21 MR. COLLINS: That's correct. But
 22 there's no aerial photo, for example, in these
 23 plans. They're technical exhibits.
 24 THE WITNESS: The reverse of that,
 25 though, the detailed plans, are submitted. This

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1 is just a representation of taking layers of
 2 those plans and putting it on this exhibit.
 3 MR. YINGLING: Okay. One just last
 4 comment or statement, if I may. Builders
 5 typically when they present a project like this
 6 tend to oversize the project and eventually
 7 scale back based on public comment, Board
 8 review. Bridgewater Commons, as an example, was
 9 originally 1.2 million square feet. It was
 10 built out at between, like, 8 and 900,000 square
 11 feet with options to have future expansions.
 12 The front field that's on here now,
 13 Mr. Hall indicated that that was going to remain
 14 as open field area. Are there any plans to
 15 expand into that area in the future?
 16 THE WITNESS: No. No, not in any of
 17 our designs. We basically took the same amount
 18 of energy and rearranged it in this location.
 19 MR. YINGLING: Okay.
 20 THE WITNESS: We have no plans in this
 21 application for fields or arrays in that area.
 22 MR. YINGLING: Okay. The application
 23 currently, to my understanding, was issued
 24 incomplete to the Board as it does not have the
 25 stormwater runoff application or information

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

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

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

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

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1 requests one speaker)

2 THE WITNESS: The field towards

3 Somerset flows in a southwest direction-- or

4 southeast direction, I'm sorry, and then

5 westerly it flows in a southwest direction.

6 MR. CIRONA: Right. So we're

7 basically agreeing that it flows in a southerly

8 direction. Southeast, southwest.

9 THE WITNESS: Yeah.

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

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

12 along the north end?

13 THE WITNESS: Correct.

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

15 reverse effect as to preventing water from

16 flowing naturally? Where does that water go?

17 It's diverted with the berm.

18 THE WITNESS: That's a fair question.

19 And at Somerset Terrace, in that area where the

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

21 property. So along the berm the water that will

22 be around the berm on the residential side, that

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

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

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

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1 be a swale along the western side of that berm

2 that will flow down towards this stream

3 corridor.

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

5 have to make sure the berm is stabilized and

6 will be--

7 MR. CIRONA: Well, I understand what

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

9 water flowing naturally in heavy storms or

10 whatnot, that berms acts then as a block,

11 doesn't it?

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

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

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

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

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

17 comes from north of that berm.

18 THE WITNESS: And we're going to have

19 to match that.

20 MR. CIRONA: That's it.

21 CHAIRMAN BOXER: Thank you very much,

22 sir.

23 Anybody else?

24 MR. GRAVEN: Bob Graven, Country Club

25 and Meadow.

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1 MR. COLLINS: Mr. Graven, were you

2 previously sworn in this matter.

3 MR. GRAVEN: Yes.

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

5 Go ahead.

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

7 previously sworn, remained under oath and

8 testified as follows:

9 MR. GRAVEN: Thank you for a smaller

10 footprint. Thank you very much.

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

12 is a continuation of your "Lamington Road"

13 appearance and--

14 CHAIRMAN BOXER: Mr. Graven, could you

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

16 trouble hearing you. Thank you very much.

17 MR. GRAVEN: The previous

18 presentations had a "Lamington Road" appearance

19 that you're trying to maintain.

20 Would the appearance of a Lamington

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

22 THE WITNESS: Well, certainly this

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

24 would have more of that Lamington feel than the

25 old layout. I was trying to invoke something

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1 new into the landscape to try to make that

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

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

4 be what it is today.

5 MR. GRAVEN: There are a few trees

6 along the southern edge there of Meadow Road--

7 yeah, the southern edge of the property.

8 THE WITNESS: Right where my pointer

9 is?

10 MR. GRAVEN: Correct. And there's

11 trees to the right between Country Club Road and

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

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

14 coming to the south from the northeast corner,

15 from there, on the west side of Country Club

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

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

18 now a little open spot.

19 Could trees be completed along this

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

21 shielding of the entire site with vegetation?

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

23 as we all know in Bedminster is you let fields

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

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

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1 aerial photos from 10 or 20 years ago, these
 2 areas are thinned out less than they are now.
 3 So if you let those areas go and don't hay them,
 4 they'll naturally get cedar growth that will
 5 occur.

6 MR. GRAVEN: Well, the only place
 7 we're haying right now is down in this part of
 8 the corner and here where the house and-- this
 9 is the part where it's being hayed.

10 THE WITNESS: Yeah, they're also doing
 11 something in this field--

12 MR. GRAVEN: That's in--

13 THE WITNESS: -- but I don't think
 14 it's hay. I think it's sorghum or something
 15 else. I'm not sure what it is. It's something
 16 else.

17 MR. GRAVEN: The vegetation you
 18 propose is called "meadow mix." Meadow mix is a
 19 mixture of wheats -- small wheats, medium
 20 wheats, high wheats -- which are also called
 21 flowers or wildflowers by those who like wild
 22 weeds. To maintain the farming and to maintain
 23 our hay, we fight weeds all day, every day.
 24 It's an expense. It's an enormous expense of
 25 time and effort and energy.

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1 Could you not plant meadow mix and
 2 plant something else even if it's just hay or
 3 something that doesn't have a fire ladder result
 4 and the growth of the higher weeds and/or
 5 wildflowers?

6 THE WITNESS: Underneath the panels
 7 are being proposed a mix that has been
 8 successful on other properties under panels that
 9 don't grow too high, that need heavy maintenance
 10 but still allow good ground cover. That's the
 11 balance that you're looking for here and that's
 12 what we're proposing. If there's a different
 13 mix that you know of that works better in there,
 14 show it to us. We'll look at it.

15 MR. GRAVEN: Bluegrass.

16 THE WITNESS: Bluegrass is a little
 17 different.

18 MR. GRAVEN: Bluegrass grows maybe 6
 19 inches; rye grows maybe 6 feet. On the adjacent
 20 property, I have two patches: One with
 21 bluegrass and I get 6 inches of growth; and
 22 right next to it I have ryegrass and I get 6
 23 feet of growth. And next to that on winchite
 24 (ph), which now have, fortunately, decayed and
 25 produced very good soil, I can get 6, 7, 8, 10

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1 feet of weeds -- oh, sorry, meadow mix.
 2 It's not a good solution. It's a fire
 3 hazard. I've spent an enormous amount of time
 4 and effort and energy to keep that-- prevent
 5 those weeds from growing and overtaking and
 6 blowing into my fields.

7 THE WITNESS: So, again, if we can
 8 talk off-line about a mix that you think is
 9 good, we'll show it to our people to see if
 10 that's something that we can use there.

11 MR. GRAVEN: So to confirm, it is
 12 possible to have trees and more shielding rather
 13 than the meadow-- rather than the Lamington Road
 14 look of an open field to help with the shielding
 15 from a two-story house that doesn't exist.
 16 You've done the analysis of housing that does
 17 exist. What about for housing that does not
 18 exist on adjacent properties at a height of 35
 19 feet, which is the height of the-- actual height
 20 of the zoning for now for residential even
 21 though this isn't residential?

22 THE WITNESS: It can be-- again, if
 23 the Board asks us to look at those types of
 24 things, we can look at that. And it's a balance
 25 of how they want that viewscape along the two

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1 road systems as opposed to an open meadow versus
 2 having areas that are going to grow up and be
 3 cedars.

4 MR. GRAVEN: Thank you.

5 CHAIRMAN BOXER: Thank you,
 6 Mr. Graven.

7 Okay. We haven't had a chance to
 8 solicit my colleagues. Thanks, Mr. Kennedy.

9 Mr. Strakhov, I'd like to just get
 10 your thoughts and any questions that you might
 11 have. And then I'd like to just go down the row
 12 here.

13 BOARD MEMBER STRAKHOV: Yeah, I don't
 14 have any questions for Mr. Kennedy, or do you
 15 mean any comments?

16 CHAIRMAN BOXER: Any comments of
 17 Mr. Kennedy or otherwise.

18 BOARD MEMBER STRAKHOV: Oh, okay.
 19 Well, otherwise my only other thought is that
 20 somehow I have this feeling that without the
 21 stormwater management, this is not a complete
 22 application. That's just my view. And I would
 23 really like to see a complete application before
 24 we proceed further.

25 CHAIRMAN BOXER: Mr. Rodelius?

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

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

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

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

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

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

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

25 So my thought is maybe you're looking

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 to adjourn)
 2 (Whereupon, the hearing is adjourned
 3 to October 2, 2014, at 7:00 p.m.)
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1 C E R T I F I C A T E
 2
 3 I, BRIDGET LOMBARDOZZI, Notary Public
 4 and Certified Shorthand Reporter of the State of
 5 New Jersey, do hereby certify that the foregoing
 6 is a true and accurate transcript of the
 7 testimony as taken stenographically by and
 8 before me at the time, place and the date
 9 hereinbefore set forth.
 10 I DO FURTHER CERTIFY that I am neither
 11 a relative nor employee nor attorney nor counsel
 12 of any of the parties to this action, and that I
 13 am neither a relative nor employee of such
 14 attorney or counsel, and that I am not
 15 financially interested in the action.
 16
 17 -----
 18 BRIDGET LOMBARDOZZI,
 19 Certified Shorthand Reporter
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