

Florence, New Jersey 08518-2323  
June 2, 2014

The Regular meeting of the Florence Township Board of Adjustment was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairman Zekas called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Secretary Buddenbaum then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided to the official newspapers and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Brett Buddenbaum	William Bott
Larry Lutz	Lou Sovak
B. Michael Zekas	Keith Crowell
John Groze	Anant Patel
John Lauricella	

ABSENT: None

Also Present:

Solicitor David Frank  
Engineer Anthony LaRosa  
Planner Barbara Fegley

## RESOLUTIONS

**Resolution No. ZB-2014-09**  
**Continuing the Application of LB Solar, LLC for**  
**Amended Final Major Site Plan, Use Variance and Bulk Variance for**  
**Property Located at 1051-59 Florence Columbus Road**  
**Block 165.04, Lot 64**

It was the Motion of Lutz, seconded by Buddenbaum to approve Resolution No. ZB-2014-09.

Upon roll call, the Board voted as follows:

YEAS: Buddenbaum, Bott, Lutz, Sovak, Zekas  
NOES: None  
ABSTAIN: None  
ABSENT: None

## APPLICATIONS

Solicitor Frank said regarding Application ZB#2014-04 for Sean Sklodowski, there was a deficiency in the notice the applicant provided, so if anyone was there this evening regarding that application, it would be heard when proper notice was provided, it would not be this evening.

At this point members Lauricella, Patel and Groze recused themselves from the hearing for Application ZB#2014-02. Charles Petrone, Esq. of Raymond, Coleman, Heinhold & Norman, representing the applicant, said he knows Mr. Lauricella is recusing himself because of a prior relationship he had with Mr. Dimon and Mr. Patel is within 200' of the property and is required to recuse himself, he inquired as to the reason Mr. Groze recused himself. Mr. Groze stated he recused himself because he is a friend of the Dimon family.

- A. Application ZB#2014-02 for LB Solar, LLC. The Applicant has installed a fence around the solar array, erected a hut for five alpacas and utilizes the fenced in solar array for alpaca grazing on property located at 1051-59 Florence-Columbus Road, Florence Township, Block 165.04, Lot 64

Mr. Petrone introduced himself. He said the last time the applicant appeared before the board the hearing was continued to research the impact of having only six board members. Subsequent to that the application was amended to request and interpretation from the board as to whether or not any of the activity that is going on at the property rises to a level requiring a variance. He wanted to proceed this evening with testimony with respect to the request for an interpretation. Regardless of what the board said on the interpretation the applicant had other testimony that would be applicable for the revision to the previously approved site plan. Some of the testimony that would be heard regarding the interpretation was also relevant for that portion of the application.

Solicitor Frank asked if the applicant was also prepared to go forward with proofs for a use variance in the event that the board decides it is needed. Mr. Petrone said the applicant is prepared to proceed this evening for the entire application. He said all his witnesses were present.

Solicitor Frank suggested swearing in everyone at once. Stephen Thompson, Mark Dimon, Raymond Zebrowski and James Miller were sworn in as witnesses for the applicant. The board professionals were also sworn in at this time.

Mr. Petrone called Mr. Zebrowski to testify regarding the landscaping. Mr. Zebrowski said he is a Licensed Landscape Architect in the state of New Jersey. He is currently employed with Stout & Caldwell Engineers in Cinnaminson, NJ. He has over twenty years of experience in the profession and he has dual degrees in landscape architecture and horticulture. This was his first time in front of this board but has testified in front of many other planning and zoning boards throughout the state. He was qualified by the other boards as an expert in his field.

Mr. Petrone asked if Mr. Zebrowski was familiar with the property in question. Mr. Zebrowski said he was. Mr. Petrone asked him to describe the landscaping plan for the property. Mr. Zebrowski referred to a drawing that depicted the overall sight located on Florence-Columbus Road. He noted the location of the solar field, the parking lot and the buildings that are on the property. The drawing was a colorized rendering of the site plan that was submitted with the application. It was entered as Exhibit A-1. Mr. Petrone said it was indicated there was a solar array and buildings. He asked Mr. Zebrowski to indicate what buildings were located on the site. Mr. Zebrowski noted the main building housed the florist shop and a liquor store. He noted another building that he was not familiar with. The applicant indicated it was a garage and the two additional structures were residential.

Mr. Petrone asked Mr. Dimon about the landscaping plan he would be testifying to. He confirmed it would be based on Mr. Zebrowski's recommendations, the prior approval and local ordinances. Mr. Zebrowski concurred. Mr. Petrone confirmed that this landscaping plan differed from the approved landscaping plan. Mr. Zebrowski said the plan that was previously approved by the board showed Douglas fir planted in a single row around the landscape mulch area. There was also a single row of Douglas fir planted along the back side of the solar field and along the western side of the solar field. The Douglas fir were shown being planted five feet on center. They were specified at 8'-10'. Mr. Petrone asked if Mr. Zebrowski had concerns as a landscape architect after reviewing the ordinance and the prior plan. Mr. Zebrowski said he was concerned with the spacing of the Douglas fir as well as with the species used. He said the spacing is detrimental to the overall growth of Douglas fir. They would be competing with each other for sunlight as they got larger and as a result they would start dying very quickly once they begin growing into each other. He said and he was concerned the overall growth and habitat of Douglas firs would not do well in this particular location. A species that was more indigenous to this region that was faster growing would be more appropriate. He suggested planting Leyland cypress at ten feet on center. Mr. Petrone asked if Douglas firs were viable in New Jersey. Mr. Zebrowski said that in his experience they were not a choice landscape buffer for this particular part of the country. They are more appropriate for Oregon and Washington State. They like a colder region.

Mr. Petrone asked if Mr. Zebrowski was showing a landscape plan that showed Leyland cypress. He requested Mr. Zebrowski describe the planning and specifications that were part of the plan that was submitted and reviewed by the board professionals. Mr. Zebrowski said the plan showed the Leyland cypress planted in a single row, the way the Douglas fir were. They were shown ten feet on center. Mr. Petrone confirmed this was in the mulch area. He asked if there was a landscaping requirement in the 2011 approval to have a buffer in that area and if the new plan is following the previous plan. Mr. Zebrowski said the new plan is very consistent with the plan that was approved. On the western side of the solar field the plan shows the Leyland cypress at fifteen feet on center. This was a subsequent revision to the plan. Mr. Petrone confirmed this change was in response to the review letter of the Board's Planner. He asked if there were any other revisions to the plan. Mr. Zebrowski said it was recommended that the applicant

look at screening along Florence-Columbus Road. He presented Exhibit A-2, an enlargement of the previously presented site plan. It was also recommended that there be some landscaping along Florence-Columbus Road along the outside of the fence. It was also recommended that there be evergreen landscaping where the fence doglegs back into the property. The applicant has agreed to do some evergreen screening in front of the fence. The plants would be Skip laurels at about 4'-5' in height and five feet on center. This would provide adequate screening of the solar field. Mr. Petrone asked how tall the Skip laurels would grow. Mr. Zebrowski said they could get 10' to 15' in height if not pruned. Mr. Petrone asked if they would be trimmed to 6' at the height of the fence so as not to cast a shadow on the solar panels. He asked about the density of the Skip laurel vegetation. Mr. Zebrowski said the density once they take root and mature would provide a very effective screen along the road and this portion of the fence.

Mr. Petrone asked about the specs for the Leyland cypress. Mr. Zebrowski said the plants will be 8' to 10' in height, the same as the Douglas firs. The spacing was 10 feet on center. He provided a photo of Leyland cypress planted ten feet on center. It showed a single row that had been in place for eight years. Mr. Petrone asked the location of the trees. Mr. Zebrowski said it was the south side of Stout & Caldwell's parking lot. The photo shows about 14 Leyland cypress trees. The distance from the first tree to the last one is about 140'. Mr. Zebrowski confirmed he took the picture. The photo was entered as Exhibit A-3. The trees varied in height, from 25' to 30'. Chairman Zekas asked about the diameter at the base. Mr. Zebrowski said it is easily 10' to 12'.

Member Bott asked if that is what was being put up at the other end also. Mr. Zebrowski confirmed. Member Bott inquired about the buffering the trees will provide to the homes located near the back of the property. Mr. Zebrowski said the residences would be screened. Member Crowell asked about the plantings near the subdivision. He wanted to know if they were being planted on a berm. Mr. Zebrowski said the plantings will be planted on the existing ground. He said the Leyland cypress were fast growing. From his experience and from a technical standpoint Leyland cypress would easily grow 3' a year, if not more under best conditions. Douglas firs only grow 1' a year. Member Buddenbaum asked how tall they are planting them. Mr. Zebrowski said they were being planted the same height specified for the Douglas fir, which was 8' to 10'.

Chairman Zekas asked if Mr. Zebrowski's testimony was part of the interpretation of the ordinance. Mr. Petrone said it is for the interpretation of the ordinance and for the site plan portion. Regardless of what the board decided for the interpretation, the application would have to get to the next step. If the board determines that a D variance was required he had testimony prepared. He said he also required an amended site plan approval based on changes to the property different from what was previously approved. His next witness was going to utilize some of the landscaping testimony and landscaping plan in his testimony as to why in his opinion a D variance is not required. That was the reason Mr. Zebrowski testified to the landscaping.

Mr. Petrone asked Mr. Zebrowski if the previous site plan that was approved was prepared by a professional or something that developed over the approval process. Chairman Zekas said he was going to ask the same question because he believed it was Stout & Caldwell and he remembered Robert Stout appearing in 2011. Mr. Petrone said he knows there were discussions with the engineers and the applicant; he does not know it came to be Douglas firs in the approved plan. Member Bott said he reviewed the minutes and there was no discussion regarding the species. Mr. Petrone said it was his understanding it was a recommendation by the board planner at the time. He said somewhere along the line it became part of the plan and because there is a deviation to what was shown on the plan it must be presented to the board. He said the landscape architect presented testimony regarding the minuses of the Douglas fir compared to what was proposed.

Mr. Petrone asked Mr. Zebrowski how much space would be between the ground and the lowest branches on the Leyland cypress. Mr. Zebrowski said there was about 6 to 8 inches. He referred to the photo and noted the branches were down to the ground. Mr. Petrone asked how wide the lowest branch would be at planting. Mr. Zebrowski said they are being planted at 8' to 10', the width of the plantings was hard to say, he estimated at least 8'. Mr. Petrone asked if it was comparable to the trees in Exhibit A. Mr. Zebrowski confirmed they are close in size.

Mr. Petrone asked if the revised landscaping plan was created using the planner's review letter. Mr. Zebrowski said the plan does incorporate some of the suggestions from the board planner. Mr. Petrone asked if there was anything in the review letter that was problematic as it related to plantings. Mr. Zebrowski said as far as the plantings themselves, the applicant didn't want anything that would grow too tall or be a detriment to the function of the solar panels. He was just specifying Skip laurels at 4' to 5' in height so they would not interfere with the function of the solar panels. They could grow to 6' and be trimmed from there.

Solicitor Frank asked if this was a deviation from the planner's letter. Planner Fegley noted there were more deviations than just that. She had recommended more variety of tree species, and she felt that in the open area there would be a problem with this type of tree blowing over from high wind. Mr. Zebrowski said that is true with any evergreen and it was shown in the plans that they would be staked for a period of at least two years for them to get established. She also suggested more than one row, because with one row it would be obvious if one was missing. Mr. Petrone said that as part of an approved site plan if a tree was to fall or become diseased it would be the obligation of the applicant to replace the tree. Planner Fegley said there was already an approved site plan and right now there was nothing there. Mr. Petrone said he understood that but he was requesting a deviation from that site plan. Member Bott asked if the applicant agreed to replace trees if needed. The applicant agreed.

Chairperson Zekas said that in summary, the applicant was proposing a single row of trees, a different species, and different spacing. Mr. Petrone said there was a single row previously so they are just putting back a single row. Member Crowell said there was a

species change. He asked Planner Fegley her opinion. She said she disagrees. Mr. Zebrowski said he is confident that the Leyland cypress would be a very effective screen once it was established on the site. Member Crowell said the Board Planner recommended the Leyland cypress might not be the choice tree. Mr. Zebrowski does not see the problem with the Leyland cypress, especially since they will be staked for a number of years. Chairman Zekas said the last application in 2011 was approved and there was an approved site plan. Between now and then there apparently hasn't been any discussion about the landscaping or buffering, nor has it been installed. Mr. Petrone said the landscaping has not been installed and it was his understanding that a bond was posted that included an amount for landscaping. Different things came into being as to why this application is here. There were discussions between Mr. Dimon and the Florence Township Zoning Officer regarding things that occurred at the site, which ultimately resulted in the issuance of zoning violations. He was here requesting this board approve some of the things that have changed at the site. Whether or not they have actually been installed, such as the fence around the solar array field, was something he was asking the board to consider as a revision to the previously approved plan.

Chairman Zekas said he appreciated the testimony and he believed Planner Fegley had more questions for the applicant. Member Crowell asked why the changes were being recommended, he believed there were discussions. He questioned the value. Mr. Zebrowski said the Leyland cypress would grow much faster. He said if you wanted an evergreen screen or a buffer, why put in something that grows very slow, versus something that is going to grow faster and provide the desired evergreen screen in 3 to 5 years versus 10 or 15 years. Chairman Zekas noted the application was already three years behind schedule. Member Crowell asked Planner Fegley if the Leyland cypress was fast growing. She confirmed it was. Member Crowell said he believed the applicant had agreed to replace any trees when necessary. He asked Planner Fegley if she was comfortable with that. Member Buddenbaum was concerned that if a tree was replaced it would be a different height and not be able to catch up. Planner Fegley said that was the reason she suggested some variety and to plant in a double row. She said a lost tree would not be as obvious if there was some variety. Mr. Petrone said the trees were being specified at 8' to 10', which is a substantial height to begin with. If one should die, the applicant had agreed to replace it. Member Buddenbaum was concerned that when the trees were established and one died, the replacement would stand out. Member Crowell noted that if there was only one species and one became diseased it would wipe out all the trees. Mr. Petrone said that is always the argument and the same argument could be made with the Douglas fir. Member Bott asked if all the trees would be the same size if there was variation. Mr. Petrone said all the trees would be 8' to 10'. He said if another evergreen was used with the Leyland cypress, they would both go in at 8' to 10'.

Solicitor Franked noted that this proposal cut in half the number of trees. The spacing was being doubled. Mr. Petrone confirmed this. Solicitor Frank said if there was a double row with each row as the applicant requested, with better plant growth, it would result in the planting of the identical number of trees that was already approved. Mr. Zebrowski said there wasn't really room for a double row. The width between and the property line was too small; he estimated it is about 10'. Mr. Petrone asked Mr.

Zebrowski if it is his testimony that the Leyland cypress would provide a better, faster instant screening as was designed in the landscaping plan along the fence. He confirmed this. Mr. Petrone said in addition to the evergreen trees, there were also additional evergreens along a portion of the fence. He asked if there was a reason why the screening was not proposed further down the side opposite the larger line of trees. Mr. Zebrowski referred to the plan. He said coming from Columbus, the indicated area was where there was the first visual impact. Mr. Petrone said there were other improvements on the lot that would actually serve as screening. Mr. Zebrowski said there was existing vegetation. He referred to the first exhibit to show the existing vegetation. He said it provided a nice effective screen coming from Columbus and the site cannot be seen until over the hill. Having an effective screen, the Skip laurels, in front of the fence would be very effective in creating the visual buffer. Chairman Zekas said it was estimated the distance between the property line and the fence is 10' which is about what is on the front side also. Mr. Petrone said the front is actually less.

Engineer LaRosa calculated the distance from the edge of the panel to the property anywhere from 15' to 20', it varied. That was the total distance to work with from panel to property line. Mr. Petrone said he was working from the fence. Solicitor Frank said for the record, this board never approved the fence. Mr. Petrone concurred.

Mr. Petrone excused Mr. Zebrowski and called Mr. Miller. Solicitor Frank said Mr. Miller had been before this board in the past and should be accepted as an expert witness. Mr. Petrone asked Mr. Miller if he had formed an opinion about the interpretation request that the applicant had presented. He said he did. Mr. Petrone asked if he was familiar with the property. Mr. Miller confirmed. Mr. Petrone asked if he represented the applicant in 2011 with respect to the application and approval that was discussed previously. Mr. Miller said he did. Mr. Miller said with that as a predicate, one of the things he wanted to address was the type of relief he believed this application merits. His opinion was based on his review of the ordinance, review of the planner's letter and some other regulations that could impact this project. The panels were installed as part of a use variance that was granted in 2011. Subsequent to that, the Township adopted a chapter in the zoning ordinance that regulated this use. He thought it was relevant to this application.

Also, the applicant, in the interim, had installed a fence and that triggered certain C variances. Depending on a number of factors, there were different ways this project and application could evolve. First of all, it was dealing with a use which was an accessory use, not a principal use. That was important because the criteria used to modify an accessory use, whether it is pre-existing, non-conforming or whether seeking additional relief for the accessory use were different criteria than if it was a principal use. If it was a principal use it falls under 40:55 70D which is a use variance. If it was an accessory use it falls under the C category. He said the reason he believed it was an accessory was right out of the Township regulations. He read into the record the definitions. The ordinance says there were two classifications of solar facilities. One is defined as a major ground mounted solar or photovoltaic energy facility or structure. That is defined as an energy generating facility that shall be deemed to be a principal use when any of the following

conditions are met. The first condition is, when the ground mounted facility exceeds a ratio of 1 to 5 of the land area of which the facility is constructed to the area used for another purpose, including farming. So that if this use occupied less than 20 percent of the property it doesn't not trigger that condition, which would make it a major facility. It did not approach the 20 percent. The second condition was when the ground mounted facility comprised an area of 10 or more acres. This does not occupy anything close to 10 acres. The third was when the ground mounted facility is the only use or structure on the lot. This facility is clearly one of a number of structures on the lot and was placed there to service and provide electricity for the structures which were already present. Finally, when all of the energy produced by the facility is not used at the site of the facility or on an adjoining contiguous property in common ownership, for the purposes of this article net metering for the purpose of smoothing out differences in day to day production and demand on the site of the facility or on an adjoining contiguous property in common ownership does not constitute off-site use of energy and facilities constructed with up to 110 percent of the projected demand of the site of the facility or an adjoining contiguous property in common ownership or combination thereof does not constitute off-site use. Again, this facility satisfies that standard, it doesn't fall under this condition. It doesn't satisfy any of these four conditions to qualify as a major. If that is the case then it falls into the definition of minor ground mounted solar or photovoltaic energy facility or structure. Basically that definition is an energy facility which does not meet one or more of the conditions to be defined as a major solar or photovoltaic energy facility or structure. He believes this qualifies as the minor ground mounted, not the major. He referred to 91-319 General Provisions Use Standards. There is a paragraph C. The paragraph states, solar energy generating systems are permitted as an accessory use on the same lot as the principal use whether roof mounted or ground mounted in all residential and business zoning districts, specifically R, RA, RB, RC, RD, RD-1, AGR, HC, NC, OP, GM, SM, PS and RRAA. This property is in the OP so it meets that standard. The purpose of these accessory systems is to generate energy to satisfy all or a portion of the energy requirements associated with the on-site dwellings or businesses, rather than for sale back into the electrical grid system. This again meets that standard. This provision shall be interpreted to prohibit the net metering of excess power generated from time to time from a solar energy system that is designed to meet up to 110 percent of the energy needs of the principal use on the same property. Major ground mounted facilities shall not be accessory uses. Based on that language in the ordinance this is clearly an accessory use and not a principal use and therefore would fall under the C criteria for any future review. There are some aspects of this use that have changed and made the applicant appear before the board.

Mr. Petrone said other activities taking place at the solar field are that there are five alpacas. These were part of the zoning violations cited by the Zoning Officer, as well as a hut for them that is in the fenced in area. These items were not provided for on the original 2011 approval.

Mr. Miller said the alpacas are there to feed on whatever grows within the compound. They basically are a means of controlling the growth of the turf beneath the panels. Chairman Zekas noted there have been many applications at this board for ground-

mounted solar arrays, all the applicants spoke to the special type of grass that they planned to use that required virtually no maintenance. Typically you would not need to maintain it. Mr. Miller agreed this was a true statement. He has not encountered this technique personally in other applications. It is potentially available to those with panels. He has not explored with the applicant the reasons why he has chosen this as a means of controlling the growth of the turf.

Member Bott asked if Mr. Miller changed his mind about needing a fence at the site. At the previous hearing Mr. Miller said there would not need to be a fence around the site, but now wants the fence. Mr. Miller said at the time of the application there wasn't any need for a fence but since then conditions have changed which generated the need for the fence. Member Bott said he does not see vegetation at the site and asked what the alpacas were eating.

Chairman Zekas said conditions have changed, and the change is that there are now animals there and there is a fence there. Mr. Miller said neither one of those conditions were there when the site plan was approved so the applicant had to return to the board to amend the site plan to deal with the changes.

Mr. Miller did not believe there was specific zoning relief necessary for the alpacas. The reason is there is an ordinance, Chapter 41 of the Municipal Code called Animals. That chapter says that livestock is permitted as long as you meet the criteria that the ordinance established for maintaining the livestock. He did some research into the regulations for livestock at the state level. He found that according to the Administrative Code alpacas are classified as livestock and also as small rudiments, which include sheep and goats. Mr. Petrone said the Administrative Code promulgated under the state statute provides for the care and maintenance obligations for a domestic animal. Within that particular section, small rudiments are domestic animals that includes sheep, goats and alpacas. Alpacas were specifically identified within the Administrative Code. Member Bott said the animals were eating the grass but what would happen in the winter months. Mr. Petrone said hay would be brought in for the animals to eat. Member Bott said if there is hay in there and a fire broke out, the alpacas are there fenced in and fireman can't enter until the panels are turned off. He said that the applicant is saying the alpacas are there to do a job but it will not be a year round job because they will be fed hay in the winter.

Engineer LaRosa asked if they were being supplemented with anything now. He has visited the site and noticed there is not much grass growing there. It is all very close to the ground and there is a lot of hay there. Is there a need to supplement the feeding by bringing in hay? There was erosion on the site. Mr. Petrone said there would be an alpaca expert testifying as well as Mr. Dimon on the topic of alpaca care once the board made its determination.

Mr. Miller said he believed the alpacas were permitted by the livestock chapter of the ordinance, provided the applicant meets the other standards of the ordinance, and he believes the applicant does. That is subject to the board's questions of the management of the alpacas but basically the board does not have direct jurisdiction over Chapter 41

because it is not an ordinance that is enabled by Municipal Land Use Law, it is a separate police power ordinance that is under the general police powers of the township. Solicitor Frank asked if Mr. Miller was saying a general police powers ordinance under the township is creating a permitted accessory use in the OP zone. Mr. Miller said the ordinance permits live stock as long as you meet the standards and the question of the use is a separate issue. It involves livestock and it is a similar situation to having a separate body of regulation that might regulate cows, but there are also zoning regulations that regulate farms. There is probably some interface between they are still separate regulatory schemes.

Solicitor Frank agreed that they are separate regulatory schemes, he said as a lawyer he does not agree that because there are standards for how livestock is kept in the general police powers ordinance, that must mean they are allowed everywhere without reference to the use standards of any particular zone. He feels the interpretation is very problematic because the township does or does not permit uses all over the place very specifically using the Municipal Land Use Law procedures. There is the adoption of ordinance, master plan reviews, and others. Police powers ordinances don't get sent to the land use boards; it is a different procedure and a different set of adoptions. It is two different things.

Mr. Miller said they are, but the ordinance does say that as long the minimum lot size requirements are met, livestock can be kept. That is different than a zoning regulation because it is dealing with an animal; it isn't a land use it is something other than a land use. He said an animal isn't something that is subject to a zoning regulation. A use is what is subject to a zoning regulation. Solicitor Frank asked if he was saying that the keeping of animals is not a use. Mr. Miller concurred.

Mr. Petrone quoted from 41-16 of the Municipal Code Book, "the keeping of livestock shall be permitted subject to the following standards which shall be applicable to small lots in areas rather than full scale farms." The ordinance itself differentiated between a small lot, not even saying a small farm, rather than full scale farms. There was a request sent to the governing body, since alpacas are not identified within the livestock ordinance, as to whether the governing body will see them as comparable to goats and sheep.

Solicitor Frank said there are two distinct bodies of law. One is the general police power of the municipality. The other is the zoning authority of the municipality. The zoning authority governs explicitly the uses of land and the structures lawfully placed upon them. The general police power is something separate. This ordinance is saying if you are in a zone where animals are allowed there are limits. Some of the standards are misplaced, but he does not believe the ordinance can be used to say there are uses permitted in the zone. The police power ordinance can't be grafted out and used as a land use ordinance. It was not referred to a planning board and there was no Master Plan discussion. In order for a standard for this to be applicable potentially, the applicant would need to argue it is not a full scale farm. He does not think it is; it is an area of

accessory commercial use. He feels Mr. Miller is right, the current ordinance creates this as a permitted accessory commercial use.

The panels were built pursuant to a use variance. The plan was never completed as approved by the board. He doesn't know if the applicant can say now that it is permitted we want to throw away the requirements of the plan and operate under variances to allow what they are doing currently.

Solicitor Frank said if the applicant wants to argue for the alpacas they need to have that use somehow permitted as a principal permitted use or an accessory permitted use on its own. The keeping of livestock is a use; it is something you do. In a residential context, there are some municipalities that allow a few chickens in a back yard or honeybees as a residential accessory use. It is accepted. They are ordinarily and customarily associated with and clearly subordinate and incidental to the residential use. If there are going to be alpacas, they need to a principal use that is permitted in the zone or they need to be an accessory to something there. The applicant could argue that there is something that makes alpacas work as a principal use. Agriculture is not permitted in the OP zone, so the applicant would be seeking a use variance as a principal use. He thinks it could be argued that these are accessory to the liquor store that is being powered by the solar panels and somehow these alpacas are ordinarily and customarily associated with solar panels. It is a fair argument and a decent one to present to the board. Whether the board agrees or not in terms of the proofs is up to them. He doesn't think chapter 41 can be used to invent an accessory out of a completely different body of regulation and authority for regulations. He can't recommend that to the board.

Mr. Petrone asked Mr. Miller if he was familiar with any animal grazing with a solar field. Mr. Miller said he was not.

Mr. Petrone asked about the Farmland Assessment Act. He understands it is not part of this but he is showing an analogous situation based on what Solicitor Frank identified. There is a provision in the Farmland Assessment Act and there are eight criteria for a solar farm to receive the benefits of a Farmland Assessment. One of the criteria is that to the fullest extent possible there would be crops in the area or animal grazing. Member Bott said this not farm, it is commercial. Mr. Petrone said he understands that but the state tax code provides a nexus for a grazing area associated with a solar farm. This is a solar array field. It is a Farmland Assessment but it is a state statute.

Chairman Zekas said for the purposes of zoning there would still need to be a request to obtain a use for alpaca grazing. Mr. Petrone said if he can establish that nexus and that the alpacas are accessory to the accessory solar field it may not require him to satisfy a 70D variance as opposed to a C variance. The state tax code says solar farms can satisfy the requirements for a Farmland Assessment if certain criteria are met. There were eight of them. Solicitor Frank said he believes that is restricted. His recollection is that the circumstance Mr. Petrone is referring to is one in which the solar field is located on an actual farm growing crops or livestock and the solar farm is being used to provide energy for that. He believes there is a specific prohibition of taking a commercial solar activity

and attempting to bootstrap it into farmland assessment. Mr. Petrone said the energy produced does not have to be used exclusively for the farm operation. There is a non-exclusivity clause within that provision. He didn't want to imply that all the criteria was satisfied, just that there was a state statute that causes a connection. Solicitor Frank said it would need to be proven that this would ordinarily and customarily be associated with and clearly incidental to. Mr. Petrone said the reason he believed it is not a zoning question is the way the ordinance is structured. The Township animal ordinance is broken into two sections. One regulates dogs and the balance regulates everything else. He thinks the ordinance is contemplating that people in certain sections of the township are going to have relatively large lots and for whatever reason, whether they are hobbyists or they like a certain type of animal as a pet, they are going to maintain certain types of domestic animals. The ordinance is pretty comprehensive. It talks about rabbits, chickens, horses and others. There are situations for example where you could have a single family detached dwelling, which is a permitted use, and you could have a barn, which is an accessory use, but the horse itself that lives in the barn is basically a pet and it is not subject to a zoning standard unless the zoning ordinance regulates horses specifically as part of their controls on accessory uses. Whether it is a good ordinance or not, Florence's ordinance basically says is as long as you meet the standards it is not specific to any zoning district or any land use regulation someone can maintain the different animals it references in the ordinance anywhere in the township. He believes the ordinance stands on its own and there is nothing that he could find in the zoning ordinance that said keeping animals as a pet or a hobby rises to level of something that is subject to land use controls. He said that was the basis of his opinion and it was something he came up with arbitrarily; it is a considered opinion based on his reading of the ordinance.

Member Bott said from the panels, the electric is going to the commercial establishments. Chairperson Zekas said Mr. Miller's testimony was conflicting. Member Bott said it is classified as a commercial use and is not classified as farmland. He said the ordinance does not specifically say alpacas. Mr. Petrone said it does not. Mr. Miller presented articles highlighting where alpacas have been utilized. One was a school in Pennsylvania that has a solar field. It was entered as exhibit A-4. Member Crowell said that is only one instance. He asked if there was any empirical data that could be presented. Mr. Miller said he had not conducted that type of research. Member Crowell asked if anyone contacted Rutgers' School of Agriculture or local or regional universities. Mr. Petrone said they did not.

Chairman Zekas said lawn care is not required in a ground mounted solar field. To suggest that alpacas may be used to keep the grass down does not mean it is a good argument for ground mounted solar where the grass really isn't supposed to grow. There has been testimony given that supplemental food has to be brought in all year. He asked if there was going to be more testimony regarding the fence.

Mr. Miller said there needed to be a determination as to whether or not the modifications to the solar facility are subject to the criteria of a C variance, which was the first part of his testimony. The second part was whether or not the applicant needs relief from the

zoning board and the opinion of the zoning board relative to the alpaca. Mr. Petrone said basically the activity on the site with respect to the alpaca and the alpaca hut rises to the level that a variance under 70C is required. Mr. Bott asked if the applicant was saying the alpaca was a farm animal. Mr. Miller said no, he is saying it is livestock because that is how the township's ordinance defines it. Mr. Bott said alpaca are not mentioned in the ordinance. Mr. Petrone said the Administrative Code included alpaca in the same category as goats and sheep and goats and sheep are in the township's livestock ordinance with respect to how many would comprise an animal unit. It could be that five sheep comprise an animal unit. The number of animals depends on the size of the property.

Solicitor Frank said he thinks the applicant is making the argument that the applicant got an approval for a use variance to allow an accessory use not permitted in the zone in 2011. Pursuant to that approval the applicant began to construct the project. There was site plan approval but it was not fulfilled; there were components that weren't ever constructed and there were things that were constructed like the fence and the alpacas that weren't on the plan. He believes the applicant is saying because the ordinance has changed since then, the way the board needs to look at this is as a bunch of variances to a permitted accessory use. Mr. Petrone concurred. Solicitor Frank said it is throwing away the leverage that the board had with regard to positive and negative criteria to some extent with regard to the use variance and replacing it with the positive and negative criteria that would be applicable to a permitted accessory use. Mr. Petrone again agreed.

Chairman Zekas asked if that would be akin, back to changes that happened since the original approval, if you parked a bunch of junk cars in amongst the solar panels, would the same discussion be happening suggesting the site is an approved junk yard. Mr. Petrone said no, it is a whole different situation. What happened was that in the original approval the ordinance was basically silent on solar panels, and because of that there needed to be a use variance. Subsequently, the township did some planning and studies and reviewed their ordinance and adopted an ordinance that created two classifications of solar panel array. One was a principal use and one was a minor solar panel array. The ordinance said a minor solar panel array was an accessory use. There is a solid logic in that because it is incidental and subordinate to the principal use. The ordinance guarantees that because it basically says you can't have an accessory solar facility unless it supplies electricity to something else that is on the site and it can't go beyond 110% threshold. The ordinance really partly reflects the evolution of the local regulations and policies that have evolved for this particular use. That is why the applicant is saying it is an accessory and should be reviewed to the extent that they need relief from some of the standards that apply to the accessory usage, it should be under C, not D.

Solicitor Frank said it was an interesting angle but one that he did not know would be brought this evening in the form it was brought. He has not had an opportunity to research the issue in the fullness that he would like to. There is a logic to it, the township did change the ordinances and it is very clear that notwithstanding that this may be, under the applicant's theory, a permitted accessory use that addresses an accessory solar array, accessory to the commercial uses on the site. And the standards that would be applicable

then have been reviewed in the planner's letter under the new ordinance and the applicant does not meet those standards. Even if the board were to say the relief isn't use variance relief but relief from the bulk standards that would be applicable here; it is not modifying a use variance the board would hear a new bunch of requests for bulk standards, variances would still be needed. What troubles him is that the applicant did do something with the use variance, they did build something. It is convenient to throw away that approval because now there's a new set of rules. He said he does not know the answer and he thinks the board would need to hear proofs about the variances for the fence and things like that anyway. The applicant still needs to meet the positive criteria and still needs to meet the negative criteria.

Mr. Petrone said the issue comes down to he has a six member board so a 4-2 vote on a use variance and he is dead. If there is a 4-2 vote on an interpretation or a C variance it is okay.

Planner Fegley said what about the alpacas. Her opinion is that they are not permitted in that district. She followed the logic with the solar panels being accessory but there is livestock there in a zone that doesn't permit them. Solicitor Frank said he agrees. With regard to the issue of whether the solar array itself, not involving the alpacas, is permitted or not permitted, can be looked at under the new ordinances. There are standards that are in there. That aspect of any relief with this applicant could be addressed under 70C as a bunch of bulk variances. He disagrees completely with the linking of the ordinance from general police powers regulatory section to the land use section. He does not think the applicant bootstrapped themselves a permitted accessory use by finding standards for the keeping of animals somewhere else. He thinks once the meeting gets to whether or not there are alpacas, they are back to an accessory use not permitted in the zone. That is a 70D variance on that issue. The Municipal Land Use Law makes it clear that an accessory structure that is not permitted in the zone would be a C variance. The keeping of livestock is not, it is a D and that is what he recommends. Chapter 41 may describe some standards for if you are allowed to keep them how you have to do it but it does not mean it is permitted everywhere. That is a zoning question, it has to be dealt with under a zoning ordinance, not a general police powers ordinance. He thinks it circled back to needing a use variance to keep the alpacas. There is some logic to the discussion of what standards and what relief is necessary with regard to the panel array itself, the buffering and the fence.

Mr. Miller does not believe the alpacas rise to the level of a principal use. Assuming they don't meet the standards in the livestock ordinance, he believes they are in the same category as the fence and the hut and the buffering. They are aspects of an accessory use and therefore would be appropriately viewed under C, not D. It is not a principal use; it is a component of an accessory use. Solicitor Frank said he does not believe the solar ordinance contemplated the keeping of livestock in association with grazing. There were justifications for ground cover in certain circumstances and buffering and plantings, but there were no grazing specifications. There were no discussions on how many animals per acre were supportable, there was no science done on what would need to be planted or confer with any experts for guidance in that regard. It is very hard to make the case

that this is so generally found in this circumstance that it is ordinarily and customarily associated with solar array. The board has not heard from the expert yet, but there is the observation of the board engineer that there is presently no real vegetation established there for them to graze.

Mr. Petrone said there has been a question as to whether or not the array field is a commercial activity or non-commercial activity. It has been assessed as farmland. Solicitor Frank said it was his understanding, after discussions with Township administration, that the only reason it has not lost its farmland assessment is because there is a no final Certificate of Occupancy because of the violations that were issued.

Assistant Administrator Thomas Sahol was sworn in to testify. Solicitor Frank asked if the representation he just gave was complete and accurate regarding the farmland assessment. Mr. Sahol stated it was. He said the Tax Assessor reported it directly to him when they met regarding this application and this project. Mr. Petrone had no questions.

Chairman Zekas said if he understands what Solicitor Frank is saying, if in considering the applicant's request for an interpretation, the only real effect is that the proofs required would be basically the same as those for a C. Solicitor Frank said that is in regard to the buffers and the fence. Not with regard to the alpacas. He does not agree that case has been made fully. He did not know that the applicant would be bringing this particular issue of what law applies and whether it's a use variance or not.

At this time there was a short recess for Solicitor Frank and Mr. Petrone to confer.

Solicitor Frank said during the break he had an opportunity to conference with counsel for the applicant. They discussed how to proceed and move forward this evening with hearing and deciding this. The hope is to fully hear it and have decisions on all issues presented by the applications plural or application this evening. The first issue is whether or not a use variance is or is not required for the keeping of alpacas. Next, there was a lot of conversation regarding the modifications to the previously approved site plan pursuant to the previous use variance approval for the panels themselves and if it is a continuation of that use variance or whether because there is a new ordinance those are C variance issues. He thinks, depending on the outcome of the alpaca decision, there could be a need for a use variance anyway. There needs to be a practical approach. The first issue to address is whether or not the keeping of alpacas in the OP zone where they are not a principal permitted use or if by virtue of Chapter 41 they are a permitted accessory use.

Solicitor Frank suggested opening the meeting to the public before any action was taken on the issue of if the alpacas need a variance.

It was the Motion of Bott, seconded by Crowell, to open the meeting to the public regarding the interpretation of the ordinance as to whether or not the keeping of alpacas is an accessory use in this zone pursuant to Chapter 41. Seeing no one wishing to be heard, it was the Motion of Crowell, seconded by Lutz to close the public hearing. All ayes.

Chairman Zekas said having not had the benefit of being able to read the specific ordinances, he does not consider the alpaca to be an accessory use that is currently permitted. The part about making the leap from the land use ordinance to the police powers ordinance was explained very well, but he does not agree. Member Crowell said based on the testimony clearly it is an accessory use. It is certainly not a principal use, it has got to be one or the other.

Solicitor Frank agreed, the first question is whether or not it is an accessory use. The next question is, if it is an accessory use, is it a permitted accessory use by virtue of the existence of Chapter 41. Member Crowell said he does not understand how the police powers ordinance would apply. Solicitor Frank said the board needed to decide if they agree that it applies. His legal advice is that it does not, but he doesn't make the decisions.

Chairman Zekas asked Mr. Petrone if he knew of any precedent that relates to a situation like this. Mr. Petrone said no, he had nothing to compare it to. Chairman Zekas said for as many years he has been on the board, he did not recall ever hearing a similar interpretation request.

Member Crowell said he is not comfortable making the interpretation; he does not know enough about the ordinance. Chairman Zekas said in essence the board was being asked by the applicant to approve their interpretation of the ordinance or to not approve the interpretation of the ordinance that the alpacas are a permitted accessory use.

Solicitor Frank said that is one way to get to an accessory use. Another way to get to an accessory would be to say that regardless of the existence of Chapter 41 alpacas are ordinarily and customarily associated with solar arrays. So the board should imply that even though they are not specifically stated as an accessory use, they are so commonly a part of it that they should be considered an accessory use. That is a different question than the one that needs to be addressed first, the ordinance interpretation of whether or not Chapter 41 takes that question away from the board. Solicitor Frank said it was his legal advice to the board that the police powers ordinance does not do that. The applicant made the argument, but he does not see how it fits together. He knows of no other circumstance in which a general police powers ordinance created a permitted principal or accessory use. That is done in the zoning ordinance. Mr. Petrone has not cited any precedence.

Member Crowell asked what would happen if the applicant came and just said he wanted to put alpacas on the property. Solicitor Frank said the applicant is saying that by virtue of Chapter 41 he is able to. The applicant's perspective is not the prevailing opinion of the Zoning Officer. The applicant is here because he has been cited for having the alpacas. Chairman Zekas said to answer Member Crowell's question, if the applicant wanted to have alpacas on their property they would have to seek a use variance. Mr. Petrone said it would be a two pronged approach. The first prong is under Chapter 41, the applicant has a certain number of acres and under the ordinance he was able to fence in a smaller portion within the larger tract. Chairman Zekas said those are discussions

that would have been held before it got to the board because the applicant would have had to apply for a permit for a fence and the Zoning Officer would have to make a determination. Mr. Petrone said the applicant would also have to go the governing body because of the absence of alpacas in Chapter 41. Mr. Petrone said his applicant did appear before the governing body regarding the alpacas. Solicitor Frank said the board was capable of interpreting the ordinance about whether or not alpacas are sufficiently like the other livestock discussed in the ordinance. Solicitor Frank said he thinks it's a very close question as to whether or not it can even be posed to the board as a question of law. It is not a zoning ordinance. He said he cannot decide that but he cannot more strenuously advise the board than he is not in agreement with regard to the Chapter 41 issue. He said it can be further explored if it is not clear to the board.

Member Crowell said it is not clear to him and he is not comfortable making that decision with the information before him. He does not think it is fair for the board to be asked that question. Solicitor Frank said he needs to write a memorandum to the board that explains this issue more fully. He said Mr. Petrone needs to cite to the board any support to the position his expert has taken; any supporting case law or statute. The applicant needs to produce something that supports the use of a general police powers ordinance for the purpose proposed this evening. The legal opinions will be presented in written form. Member Bott said that this board is here to say what is allowed in a certain zone; that is what is in their power. Chairman Zekas agreed. Member Crowell asked what would happen if the applicant came before the board and said they wanted to place the alpacas on this property. He asked how that would be presented to the board. Solicitor Frank said in the agricultural zone it would be permitted. In some other zones it may also be permitted, either as a permitted principal use or as a permitted accessory use. There may be some residential zones that might also permit some sort of residential accessory livestock keeping. This property is in an OP zone. The question for the board would be is this or isn't it a permitted principal or accessory use. If it is an accessory, proofs would need to be provided. That is the second question to be asked. The applicant took one particular way to get there using one particular piece of the ordinance. It is confusing because it is posing a legal issue for the board. It is something that should be clear on its face. Member Crowell said it is not clear. Mr. Petrone said he was sorry that it is not. Solicitor Frank did not know that this issue would be posed the way it was or he would have briefed the board. He said they are at impasse on that issue. He had hoped that would not be the case. Member Crowell asked if the applicant could approach it a different way.

Mr. Petrone said it is a different situation because there is fencing, alpacas and the alpaca hut and these were subject to violations issued by the Zoning Officer. There were letters that were written since 2011 that led to this interpretation by the board. He used Mr. Miller's testimony as well as the New Jersey Code of Taxation with respect to farmland assessment linking the grazing area with the solar array field. He also presented two instances where alpacas were being utilized in this manner. Solicitor Frank said Mr. Petrone is suggesting the board could decide that question from both perspectives presently based upon the proofs before them, either the legal route from Chapter 41 or that the case was proven regarding the issue of whether or not it is an accessory use on its

own, without Chapter 41. So it would be whether it is ordinarily and customarily associated with or purely incidental to the solar accessory use. Mr. Petrone said the solar accessory use is the important use that is the primary use on that property and the alpacas are incidental to that. The purpose is to generate energy. That field is to generate electricity for the liquor store and the nursery and one day that is what it's going to do. The alpacas are not the primary use. Chairman Zekas said he thinks Mr. Petrone is laying out two possible paths and everyone has heard the same testimony. Whether or not a board member is comfortable with Chapter 41, it is really incumbent of the applicant to make the board feel comfortable with that. He does not feel overly comfortable with it. He would prefer the board come to a decision this evening. He does not think there would be much added that was not heard this evening.

Member Bott asked why the applicant did not plant grass. That would have sufficed. Mr. Petrone did not have the answer. Chairman Zekas said the board was back to an interpretation of whether or not alpacas are a permitted accessory use.

It was the MOTION of Bott, seconded by Sovak to deny the applicant's request for interpretation in the affirmative that alpacas are a permitted accessory use.

Upon roll call the Board voted as follows:

AYES: Buddenbaum, Bott, Lutz, Sovak, Zekas

NOES: Crowell

ABSENT: None

Solicitor Frank said the motion passed. He said there was an answer to the interpretation question. The board needed to move on to the issues of site plan changes and a variance to allow an accessory use not permitted in the zone; the keeping of alpacas in the OP zone.

Mr. Petrone said he respectfully disagreed with the board's interpretation and he planned to proceed with the proofs for the alpacas. At this time he called Mr. Thompson to testify. He said his day job is with the United States Department of Agriculture. He has a 30 acre farm in Burlington County where he breeds alpacas. He bought his first alpacas in 1996. Mr. Petrone asked what education was necessary to become an alpaca breeder. Mr. Thompson said there is some minor education required. If you want to be good at it you do need to get educated. He has been going to seminars since 1996 and he has given seminars on alpaca farming. He has written articles for the national publication called Alpaca Owners of America. He is President of the state-wide affiliate, New Jersey Alpaca Community.

Mr. Petrone inquired about the size of New Jersey's alpaca community. Mr. Thompson said there are just over 100 alpaca farms in New Jersey today. Approximately 35 are members of the NJ Alpaca Community this year. Mr. Petrone asked the purpose of the organization. Mr. Thompson said it is a networking group whose stated mission is to further the education of alpaca breeders and farmers and to assist with their education. There are things like a 911 e-mail if someone is in trouble. They have had farmers that

had fallen ill and could not take care of their herds and needed help. The community will rally around and volunteer assistance. If people have questions, health-wise, things like that, there is a forum to go to.

Mr. Petrone asked about the number of alpacas Mr. Thompson has. He answered that at one point he had over 100 on the farm at one time. He used to breed 25 to 30 a year. He started off slower and grew up to that. Right now he breeds 5 to 8 a year. Over the last 18 years the total number he bred would be a guess.

Mr. Petrone asked about the ultimate disposition of the alpacas; if they were kept or sold. Mr. Thompson said most of them have been sold. Most recently they have been going to Russia. But they have been sold all over the country. Mr. Petrone asked if they were considered domestic animals. Mr. Thompson said they are considered domestic animals and have been domesticated for over 3,000 years. There are no wild alpacas. Any alpaca seen is a domestic animal and they are stipulated as livestock by the NJ Dept. of Agriculture.

Mr. Petrone asked if Mr. Thompson had seen the alpacas in question. Mr. Thompson said he did stop out and see them. Mr. Petrone asked if they were all male or all female. Mr. Thompson said he did not know, but he assumed they were all of the same sex since he did not see any activity to suggest they were mixed. Mr. Petrone asked why having all of the same sex was important. Mr. Thompson said they breed like rabbits. They have one offspring at a time and it is once a year. Gestation is 11 months. If there are two together one will get pregnant rather quickly. Sometimes males will become aggressive to each other if there is a female around.

Mr. Petrone said the five alpacas on the property are male. He asked what their height would be. Mr. Thompson said the head would come up to a little over 4 ft. It would be a little under three ft. to the shoulder. The necks are very long. Mr. Petrone asked the weight of an adult male alpaca. Mr. Thompson said it varies quite a bit. The average is between 150 and 180 lbs. He said they are docile animals and quite intelligent and sometimes can be quite playful. The males wrestle with each other and will show some aggression even if a female is not around. They chest butt and chase each other back and forth across the pasture, sort of like play fighting. Mr. Petrone asked if alpacas jump. Mr. Thompson said they don't generally jump; he has never seen one jump. If they are startled they may hop a bit but they are not jumping animals. Mr. Petrone asked if they could jump on the solar array. Mr. Thompson said they could, they are strong animals but not prone to jumping. He can't imagine they would, there is no reason for it.

Mr. Petrone asked what alpacas eat. Mr. Thompson said they have three stomachs, like a cow. They graze on grass and are strictly vegetarian and eat hay in the off season, dry grass, things of that sort. Mr. Petrone asked about the waste produced by an alpaca. Mr. Thompson said it is very well-digested. They have three stomachs, they chew their cud like a cow, bring it up and chew it again and it goes through the second stomach then goes through the third stomach and when it comes out it is very much like the waste from a deer. It comes out in little round pellets. There is very little left in the way of nutrients

or even odor. Mr. Petrone asked if they go in the same spot or would they meander. Mr. Thompson said they are particular in the sense that they have poop piles. They will have two or three in a pasture and they will all use the same spots. The waste disintegrates in about 8 weeks and there is nothing left but the mineral that could not be digested.

Mr. Petrone asked if there were any environmental concerns related to the keeping of alpacas. Mr. Thompson said there is very little destruction. They have very soft feet; they don't have hooves, they have what is equivalent to a human heel. It is soft. They have toes in the front, toe nails over those which are sometimes mistaken for split hooves. They do very little damage to the ground and they do no damage to the grass itself because they cut it off above the ground. They only have teeth on the bottom and a hard gum on the top so they tear the grass off. They don't pull it out or eat below a certain height. They keep it trimmed very short but they don't kill it or trample it, they don't tear up the ground like some other animals do. Given their weight even in wet conditions they usually do very little damage.

Mr. Petrone asked if the fence was high enough at 6 ft. Mr. Thompson said he had never seen one that could look over a 6 ft. high fence. Mr. Petrone asked if the area was sufficient for the five alpacas. Mr. Thompson said the space seemed sufficient.

Member Bott asked what the main product of this particular animal was. Mr. Thompson said alpacas are fiber animals, like a sheep produces wool that is made into socks. Alpaca is a luxury fiber, more like cashmere or mohair. It has been used for that purpose for over 3,000 years. It is used extensively in South America but it is also been used extensively in Europe in some of the higher end fashions.

Member Bott said Mr. Thompson had been out earlier in the year and the ground cover was good. He asked if Mr. Thompson had been there recently. Mr. Thompson said he had not, and he does not know what is there today. He did look at them today but did not stop. He noticed they had been shorn.

Member Bott asked if there was enough room for the five alpacas. Mr. Thompson said his impression was that the whole fenced in area was open to them. Member Bott said the run is around the solar panels. Mr. Thompson said he believed the animals could go between the panels. Other board members confirmed the animals have full run in the fenced area. Mr. Thompson said there was plenty of space for the alpacas.

Member Crowell said Mr. Thompson previously testified that they are bred for their hair. Mr. Thompson said the preferred term is fiber. Mr. Crowell asked what else they could be bred for. Mr. Thompson said they typically are a fiber animal. They do produce meat that people eat. In South America there are hundreds of thousands and not much is wasted. It is on the menu at different restaurants in Peru and Chili. He said some people just like them, like any other animal. They are show animals. He has been going to alpaca shows since 1996. There are local and national shows.

Member Crowell confirmed there are 100 farms and about 35 are members. He asked if any of them had solar array. Mr. Thompson said there are a number of farms that have solar panels, but he has not seen them. Member Crowell asked how often the members meet. Mr. Thompson said they meet four times a year. Member Crowell asked if there was any correspondence. Mr. Thompson said the board corresponds on a weekly basis setting up educational events, annual meetings and different things. Member Crowell asked if there were ever any discussions regarding using alpacas for grazing on solar farms. Mr. Thompson said there were not.

Member Bott asked if the animals are considered pets. Mr. Thompson said some people do consider them as pets and take them in their homes.

Member Crowell said it was stated the New Jersey Department of Agriculture recognizes them as livestock. Mr. Thompson said when he got into the business they were considered an exotic, like a camel or elephant, but that changed a number of years ago. Member Crowell asked about the federal USDA. Mr. Thompson said they also consider them livestock.

Mr. Petrone asked about the care of the animals and where they usually sleep. Mr. Thompson said typically they sleep outside unless there is very deep snow. Member Bott asked if the alpacas would use the hut on the property in question. Mr. Thompson said they would if it rains enough or snows a lot. They know when to seek shelter, but they are pretty hearty animals.

Chairman Zekas asked what Mr. Thompson's purpose was in having 100 alpacas. Mr. Thompson said he currently has 38 and he has them for the fiber. Chairman Zekas said it is a business. Mr. Thompson concurred.

Engineer LaRosa asked how much an alpaca eats in a day. Mr. Thompson said it is hard to measure how much grass they eat. He puts 5 to 6 bales of hay per alpaca in the winter and that gets them through until mid-April. Engineer LaRosa asked about the amount of space each animal needs to be able to graze. Mr. Thompson said according to the books he read when he started, there can be 8 alpacas on an acre and it would never be overgrazed. He said it seems to hold true but it varies depending on the vegetation.

Chairman Zekas asked if Mr. Thompson's alpaca grazing area was fenced in. Mr. Thompson confirmed that it is. They would wander off if there was no fence. They won't try to get through a fence but if the gate was left open they would leave the pen.

Solicitor Frank said earlier Mr. Thompson testified that the area of the solar array is adequate for the 5 alpacas. He asked if it was for their comfort or for their grazing. Mr. Thompson said it is big enough space wise for their comfort. He did not inspect the vegetation. He was there before the March meeting. There was green grass there at that time but it was early in the season. Solicitor Frank asked Mr. Thompson if he knew of any other solar arrays using alpacas for ground cover control. Mr. Thompson said he is

not aware of any. Solicitor Frank asked what specifically was planted under the solar array. Mr. Thompson did not know.

Mr. Petrone called Mr. Dimon to testify. He stated he is the owner of LB Solar, LLC and the trustee of the property in question. Mr. Petrone asked what LB Solar's interest was in the property. Mr. Dimon said LB Solar rented the acre and installed the solar array. Mr. Petrone asked how long the family has owned the property. Mr. Dimon said the original piece was purchased in 1976 and then another 10 acres was purchased in 1982. There are 17 acres total. Mr. Petrone asked what the current uses of the property were. Mr. Dimon said there is a liquor store, a flower shop, a landscape business and there are two residential houses and a non-functional solar system. Mr. Petrone asked if any of the property was being farmed. Mr. Dimon said 15.2 acres is being farmed. Mr. Petrone asked how long the property has been farmed. Mr. Dimon said the property has been farmed for as long as he can remember. It was a dairy farm until 1968 and then it was a livestock farm since his father bought it and it has been a crop farm since then. Mr. Petrone asked if the property or a portion of it qualified for assessment as a farm for real estate tax purposes and how long has it been assessed as such. Mr. Dimon said it has been since the farmland program has been in effect. Mr. Petrone asked if LB Solar was the applicant before the board when it sought use variance approval for the solar array field. Mr. Dimon said it was. Mr. Petrone said the board made an interpretation of the ordinance that a variance is required for the alpacas. In addition to that there were some other changes that were made to the property since the 2011 approval. He asked Mr. Dimon what the changes were. Mr. Dimon said the original application submitted was basically the same as what is here but it was changed from the time that it was approved to the time that the final plan was signed. He is going back from Douglas fir to Leyland cypress. He said he is adding additional buffering to the front of the property. Mr. Petrone asked if the fence was part of the original application. Mr. Dimon said it was not. Mr. Petrone asked the purpose of the fence. Mr. Dimon said it was two-fold. He said he thinks differently than most people and he likes to make 1 and 1 equal 3. Researching alpacas, they do a better job mowing than he can. He needed the fence for security around the solar panels and the alpacas eliminate the time he would spend cutting the grass. Using the tax code, he took advantage of it by bringing in alpacas and securing them with a fence. Mr. Petrone asked if the fence was also to keep people out. Mr. Dimon said it was. There was a potential for theft and there was a potential of electrocution. Mr. Petrone confirmed the fence was 6 ft. high and black iron.

Mr. Petrone asked if Mr. Dimon had any concerns with the proposed revised landscaping plan. Mr. Dimon said he had no concerns with the plan. Mr. Petrone asked if the existing and proposed landscaping would be sufficient to screen the alpacas so they are not highly visible from the road. Mr. Dimon feels it would be sufficient.

Mr. Petrone said there were questions earlier from board members regarding the care and routine maintenance of the alpacas. Mr. Dimon said he makes sure they have plenty of water. He provides grain food and in the winter they had alfalfa. Mr. Petrone asked if they are examined by a veterinarian. Mr. Dimon said they are. He came to the site and visited and they were all healthy. Mr. Petrone asked how long the alpacas have been on

the site. Mr. Dimon said they have been there since September. Mr. Petrone asked when the vet visited the site. Mr. Dimon said it was in March and it was just an examination, there were no medical issues with the alpacas. They received their deworming shots when they were sheared. Mr. Petrone asked how often they are sheared. Mr. Dimon said it is once a year, but they will get another worming later. Mr. Petrone asked if any agencies had come to the property to examine the alpacas. Mr. Dimon said the SPCA was there. Someone reported cruelty to animals but there was nothing. It was in October. Mr. Dimon said he called the county Department of Agriculture and they visited also. There was no issue.

Mr. Petrone asked, prior to putting the alpacas in the fenced in area, what was Mr. Dimon's reason for doing it. Mr. Dimon said he did a lot of research. He read up on alpacas and they are very easy on the ground and don't kill the vegetation. They are docile and are the ideal animal to put under a solar farm. He read online that the University of Pennsylvania did research and said alpacas were the most ideal animal for this. There is an estate in one of the Carolinas that has a megawatt system and is using sheep to maintain the grass under the panels. In Europe it is common to use sheep under solar. Mr. Petrone asked about where the alpacas tend to be in the enclosure. Mr. Dimon said they like to roam in the shade. They go everywhere they want to go, he doesn't have to weed whack a single thing in the enclosure. They go under and around. It is ideal. Mr. Petrone asked why this method of lawn maintenance instead of a mower. Mr. Dimon said he was concerned about hitting a stone and damaging a panel and it saves him a lot of time. He also can make a profit with the fiber. He wanted to go green. It is all alternative energy and he is not using any gas or putting any pollutants in the ground or doing anything harmful and he is following the tax code by using as much as possible for grazing.

Mr. Petrone asked how he decided to have five alpacas. Mr. Dimon said he was talking to people from the farm fair and he did research online to determine how many he needed. He said he could have put more but he didn't want to have more than he could handle.

Mr. Petrone said there was a question raised earlier about why he didn't plant a different type of grass. Mr. Dimon said he submitted the plan to the county. He plans to plant different grass that will be nutritious for the alpacas.

Mr. Petrone asked why he was asking the board to allow him to alter the original landscaping plan. Mr. Dimon said his first concern is that the Douglas firs were five ft. center. He researched it and he thought they would all die. He does not want to spend money to have something die and then have to replant and have them die again. It was a failed plan from the beginning. He said he doesn't want to waste his money. Mr. Petrone asked if he agreed at that time that it was a failed plan. Mr. Dimon said that is not what was submitted. It was 15 ft. on center and they were not specified as Douglas fir. It was after the plan was approved by the board; it was six months later when it came back from the planner and specified 5 ft. on center.

Member Bott asked Mr. Dimon to indicate what part of the property was currently being farmed. Mr. Dimon indicated the area on the site plan. Member Bott asked if he had any plans to enlarge the solar array. Mr. Dimon said he is not.

Member Crowell asked why Mr. Dimon didn't approach the administration or return to the board as opposed to just placing them on the property. Mr. Dimon said the workers did go to the Construction & Code Office prior to installation. Regarding the alpacas, it is like if you have a driver's license, do you have to ask your parent's permission to go out and drive if you are allowed. He said he read the tax code and it says a resident is allowed to use the area for grazing as much as possible under solar.

Chairman Zekas said Mr. Dimon's primary reason for the alpacas was to keep the grass trimmed. He asked why Mr. Dimon didn't select a grass that didn't require any kind of cutting or maintenance. He noted that is typically what is proposed for most small and large ground mounted solar installations. Mr. Dimon said that was not what required of him in the plan. He said he thinks differently. Just because it is solar it doesn't mean you can't do other things with it. This is farm and it is farmland assessed. He said it stays in the farmland assessment program.

Solicitor Frank said the Township Administrator explained to the board that the piece will not be under farmland assessment. Mr. Dimon made application to take that out of agriculture and make it into a commercial accessory. Solicitor Frank said he wanted to make sure the board understands that the land is going to be taken out of agricultural assessment by the assessor, according to testimony provided by the Township Administrator who had consulted with the assessor recently. It is not currently in agricultural use, it is in commercial accessory use. That is how it will be treated by the assessor.

Mr. Dimon said he has the application for Farmland Assessment that was signed, given to the tax assessor, approved and handed over to the county. Mr. Dimon said it is still Farmland Assessed and the assessor was not present to testify so the issue was not applicable.

Chairman Zekas said Mr. Dimon mentioned he became concerned about theft or electrocution and that was the reason for the fence. He asked Mr. Dimon when he became concerned about that because the board specifically asked about a fence during the original application in 2011. Mr. Dimon did not know at that time. Chairman Zekas said in regard to the testimony on the Leyland cypress, did Mr. Dimon think that they would mitigate the risk of theft and electrocution, which was the reason the fence was installed. Mr. Dimon said they could get in from any other place. Mr. Petrone said the Leyland cypress would not represent a complete enclosure of the solar field. Chairman Zekas asked the placement of the front of the fence relative to the right of way, what is the current setback there. Mr. Dimon said the current right of way is 10 ft. Chairman Zekas said the panel furthest out meets the setback requirement of the 2011 ordinance and the fence is 10ft beyond that. Chairman Zekas said he is concerned with the

decreased setback and buffering in the front. it will be close to the edge of the road. Planner Fegley advised it is in the right of way and will need county approval.

Mr. Petrone said in 2011 fencing in the area was not part of the plan. Subsequent to that approval there was a change of plans. Mr. Dimon became concerned about the safety and security of the solar field. That was the driving force in installing the fence.

Mr. Petrone said he understands the alpacas will require a D variance. The applicant is also there to satisfy the obligations for the C variances for other changes associated with the solar array field on the site.

He called Mr. Miller to testify. Mr. Miller said he would like to do the variances separately and start with the D variance. He thinks ultimately the board should vote separately on them because there is not a strict relationship between C relief and D relief.

With the use variance, he said he needed to show that special reasons justify the relief and also the relief would advance the purposes of the Municipal Land Use Law. He believes there are two purposes that would be advance purposes. The first is to encourage municipal action to guide the appropriate use or development of all lands in the state in a manner that will promote the public health, safety, morals and general welfare and to promote the utilization of renewable energy resources. The relief being sought is a carry-over from the relief sought before and it is important to note this use is an inherently beneficial use and what is being is sought is a modification of that inherently beneficial use. By statute solar panels are inherently beneficial. They are specifically cited in the definition of an inherently beneficial use, and the Township found this to be an inherently beneficial use when the applicant was before the board earlier. It also satisfies the proof for a minor modification of a pre-existing, non-conforming use. There are a lot of cases that deal with that. They say that minor changes in inherently beneficial uses are justified, especially when they are needed to allow a use to adapt to changing circumstances or changing technology and where they don't involve a significant change in the character or intensity of the use. That is the standard for looking at the expansion of a pre-existing, non-conforming use. He believes the alpacas, as a modification of the pre-existing use, satisfy that standard. The idea is that somehow or another you do have to maintain the turf, even if the turf is relatively low and level. There is still some maintenance that is necessary. The alpacas provide an environmentally friendly way of doing that maintenance. This is an issue that comes up when there are solar applications. There is always debate about what is the appropriate type of vegetation. He has been involved in other applications where there was some discussion about potentially using grazing animals as a means. From the testimony that was presented, this is probably the ideal choice in terms of the animal.

He does not believe the alpacas will change the character or intensity of the use. There are not going to be any additional panels, nothing changes except that there are five animals in an enclosure. It does not affect the amount of electricity that is produced. There is an incremental environmental benefit from having alpacas versus some kind of automated means of controlling the turf. It still supplies electricity to the same

businesses that it did previously. The physical changes that were necessitated by the alpacas were relatively minor. The landscaping that is being added will help the site meet the standard the Township has imposed to provide the screening. It also provides a good screening for the alpacas as well. For all those reasons he believes that the alpacas are both a minor extension of the pre-existing non-conforming use and also that they meet the special reasons criteria on the positive criteria as an inherently beneficial use.

In terms of the negative criteria, for an inherently beneficial use there is a balancing test. It is a four step process. The applicant must identify the benefit. In this case it is the renewable energy. The potential detriment from the alpacas is not existent. They are basically contained within the compound and they don't have any external impact on the surrounding community. The compound was placed where it is to mitigate as much as possible any impact on the adjoining residential area. The justification for the setback variance required initially was to keep the panels as far away from the adjoining residential community as possible. When the benefits and detriments are weighed the benefits outweigh the negative.

He said he had to prove that there is no impairment to the intent or purpose of the zone plan. This is already an existing use and he does not believe the alpacas have the capacity to truly affect the character of the area. There is no real impact on the intent or purpose of the zone plan from the alpacas. He thinks the community is animal friendly and recognizes that livestock can be appropriate in a lot of different places. That is what Chapter 41 is about. It creates criteria for the humane care of livestock. These animals will meet those criteria. It is a very minor element to this. It is akin to someone who has a pet more than anything else.

Mr. Petrone asked how the presence of the alpacas was mitigated by the landscaping plan that was proposed this evening. Mr. Miller said the landscaping plan blocks views from the public right of way. It would prevent people from seeing it as an attractive curiosity from the roadway. The Skip laurels are a good choice for the frontage because they don't take up very much space. It is ideal for the tight setback. They also will not make shadows that will impinge on the operation of the solar panels. The balancing of the landscaping has been required as screening. That has been the case since the beginning.

Mr. Petrone asked if even though there is not a complete screening by the plantings proposed in that the Leyland cypress is planted at 10 and 15 ft. on center and that the applicant is proposing not putting Skip laurels around the remaining perimeter of the fence, does that change Mr. Miller's opinion with respect to the screening that proposed. Mr. Miller said the screening is appropriate. There are no views of the eastern property line of the compound because that is screened by the building and the landscaping in the front of the building. For the management of the alpacas, it is very important to have views into the compound so that the alpacas can be observed without having to enter the area. It is nice for patrons of the two businesses to be able to go see the alpacas. They are interesting animals. The fence allows people to take a look at them. There is no reason to screen it and there is some benefit to not screening. It is an appropriate design for the screening.

Member Crowell asked if these items should be voted on separately. Solicitor Frank suggested letting the applicant do the entire presentation and then proceed from there.

Mr. Thompson said the sound an alpaca makes is a hum. If they get stressed they will hum and it is not very loud. The only audible sound they might make is called an alarm call. If an animal threatens them and comes into their vicinity they make a sound that is like a bird. They have an alarm call that goes out rather loudly that alerts the other members of the herd. He said it is very seldom, and does not last long.

Mr. Miller said for the C variance under the positive criteria the applicant needs to show it is a better zoning alternative and would advance the purposes of the Municipal Land Use Law and the benefit would outweigh the detriment. He said he did not want to repeat all of the testimony already given regarding the benefits versus the detriments of the enclosure, but that is basically the justification for the variance on the fence. It is coupled with the fact that the location of the panels is already established so that creates the parameters for the fence. It is supported by the logic that the board used that the prior approval in 2011, the setback was adjusted to keep the panels from the nearby residential uses. These are the reasons it remains a better zoning alternative. There is not much else that can be done with the fence; it has to be around the perimeter of the facility. The relief from the setback requirement for the fence is justified. In terms of the landscaping, he believes the applicant can meet the intent of the ordinance. There might be a need to vary a little bit in terms of the double row because there is not enough room in areas to accommodate that but there was ample testimony that the screening itself can be provided. There might need to be a modification to the mix of trees but overall that can be achieved. It meets the positive criteria for the C variance; the benefits outweigh the detriments. In terms of the Master Plan he believes it fits with the intent of the zone plan, especially given that the use is already established. This is basically in many respects an enhancement to the use. There is some security from the fence and if the board chooses to permit the alpacas the fence is essential to contain the animals. The fence is appropriate for that purpose because the animals are not going to be able to get over the fence. It is sufficient to contain them.

Chairman Zekas asked for a Motion to open the meeting to the public. It was the Motion of Lutz, seconded by Crowell to open the meeting. All ayes.

Anant Patel, 222 Leffler Circle approached to speak. Solicitor Frank noted that just for the record, Mr. Patel is a member of this board, but was also on the 200ft. notification list. He did step down from the dais but because he is on the list he can speak about his own concerns about his own property.

Mr. Patel said his concern is the trees in the rear falling down if there is wind. He asked if there was some way to get a double row in the back area. He said there are shipping containers on the ground that seem permanent and if there were more trees it would shield the view of them. Mr. Dimon said that is not related to the solar. Mr. Patel said he

is not opposed to the alpacas but he had complaints about the peacocks that come onto his property from the applicant's property.

Mr. Petrone said there was testimony on the Leyland cypress and the benefits of those trees with respect to being faster growing and thicker than the Douglas fir. He asked if Mr. Patel had any objection to the Leyland cypress. Mr. Patel said he did not know the differences between them, his concern is that the trees will blow down. Mr. Petrone said they would be replaced if needed.

Solicitor Frank noted that the board had not heard from the planner yet regarding the application, and there may be suggestions from the report. He acknowledged there is a current ordinance on the subject and that the use is a permitted accessory use under the current ordinance. There are also some burdens. One is that the 20ft. wide planted buffer is required all the way around the facility.

Planner Fegley thinks there are three rows of trees required. Solicitor Frank said under the current ordinance standards considerably more is required. There are physical constraints in in some places, but not all.

It was the Motion of Crowell, seconded by Lutz to close the public hearing. All ayes.

Chairman Zekas said it was a good time for Planner Fegley to review her report. He knew there were quite a few issues. But before that, he asked if the applicant would testify as to what else is on the property as far as animals. Mr. Petrone said he would like to address what Mr. Patel said in regard to the noise from the peacocks. He asked Mr. Dimon if besides the peacocks were there any other animals. Mr. Dimon said there are dogs and a couple wolves. The peacocks are wild. He said they are his brother's animals. He explained the wolves are through a rescue. They are neutered. They were taken from people who raise them for their pelts for coats and the like. Chairman Zekas asked about the peacocks. Mr. Dimon said they are wild.

Mr. Zekas asked how many approved uses there are for this property. Mr. Dimon said there is the liquor store, the nursery, the bar-b-que, green house, approval for solar. Chairman Zekas asked if there are other people that use the lot, such as a tree cutting business. Mr. Dimon said there is. Chairman Zekas asked what the trailers were associated with. Mr. Dimon said they are part of the landscape business. He said the only thing there that is his is the solar array. It is not his entity; he is just a trustee.

Planner Fegley said under general comments she noted the contribution to the sidewalk fund and the encroachment into the right of way. She said she was concerned about the landscaping. She would like the applicant to agree to the original landscape plan that was approved.

Chairman Zekas asked what would happen where the available area was reduced to about 10 ft. Mr. Dimon said there is a 20ft. right of way of the county and beyond it is owned by somebody else. Chairman Zekas said the applicant will be staking into someone

else's property. Planner Fegley said there should be double rows of trees at the residential area. Mr. Petrone said the applicant is willing to have the landscaper sit down with the planner and finalize the landscape plan.

Chairman Zekas noted one of the reasons the applicant was there was for the approval of the installed fencing. He wondered if the applicant thought of the setback and the close proximity to both the current and proposed right of way and the fact that there will need to be a buffer that will be tighter than the 10ft. on the side. He asked if the fence could be moved back. He asked if the top sets of panels could be moved to accommodate moving the fence back.

Planner Fegley asked if the alpacas will eat the vegetation growing on the outside of the fence. Mr. Thompson said he has a number of shrubs around his enclosure, and they do chew on a number of things. He does not have experience with Skip laurel.

Engineer LaRosa said there is a good bit of erosion at the site. He said it cuts through the site and needs to be addressed. If there was grading done outside the fence it could help some things but some of the erosion taking place could be the water shedding off the panels and then running and off the parking lot as well. There is a rut that runs through the site. He believes it would help if stone was put down. Outside on the back end of the fence there are some ruts that developed that need to be addressed. Grading would help with the erosion and make it more amiable to planting.

Chairman Zekas noted that Planner Fegley said there needs to be a current survey of at least the area of construction. Engineer LaRosa agreed and said there needs to be an as built survey provided to ensure that the solar field is where it is supposed to be.

Member Crowell asked about sidewalks. Planner Fegley said she thought there was going to be a contribution; that was a condition of the original approval. Solicitor Frank said there was a waiver granted for the original approval because of on-site conditions. Mr. Petrone said the applicant would now like to install the sidewalks.

Engineer LaRosa said regarding his letter of April 2, 2014 there were some waivers that were requested and were addressed one way or the other. There were some statements with regard to the alpacas and the environmental impact they would have. Changes to the buffer were dealt with. He said it boiled down to the following issues: the as built survey is very important showing the relation to the county right of way so there is an understanding of how much room is actually there for plantings. Also, there is going to be an issue with the placement of the sidewalk and there needs to be county approval. There is soil erosion through the site and he is concerned on the back end there are some ruts that developed that need to be addressed. A stone berm would be a simple inexpensive fix. The fence is in the county right of way and he recommended adjusting it out of the right of way. The county will require that anyway. There was an issue with landscaping in the site triangle as someone pulls out of the site. He believes some adjustments were made recently, and confirmed that there is stone out there. Mr. LaRosa said he checked the site and it did not look like there was much grass and the alpacas

were eating the hay. He suggested using a different kind of ground cover to provide food for the alpacas. He thinks better ground cover could help with the ground erosion problem also.

Solicitor Frank said there is a clear review for the board with a departure from current standards if analyzing it under the current ordinance as a permitted accessory use. As the board looks at the use, and the panels are in place, but the board needs to remember the current ordinance requirements in regard to buffers and setbacks and the like. They were detailed in Planner Fegley's letter. Planner Fegley referred to page three of her letter and noted that the requirement stated the panels needed to be shielded from view on all sides by a 20ft. wide buffer. She noted the setbacks and right of ways and she thinks a triple row of trees is required. She also requested more variety in the vegetation. She said the applicant is not being asked to do anything more than what the current ordinance requires.

Mr. Petrone said the requirements cannot be met as a result of the site being as far away from the residential area as possible. He said the applicant's professionals were willing to sit down with the board professionals and come to a mutual conclusion regarding the landscaping. Mr. Petrone said in regard to moving the fence and placing the sidewalks, it is subject to what the county wants. It is possible the county would let it stay.

Chairman Zekas said the board also has some say in moving the fence. The fence is the main reason for not meeting ordinance requirements. There is always some level of compromise that can be reached, but it could be that the board would want the fence moved.

Solicitor Frank confirmed it was Planner Fegley's recommendation that if the board permits the fence, it should be moved to accommodate additional plantings and sidewalk. Assuming everything was placed where it should be the fence is the only thing to be moved.

Solicitor Frank said the board has before it the question of whether or not it is willing to grant a use variance to allow the alpaca use that is accessory to the solar use that is accessory to the liquor store use.

Another question is the bulk variances that are necessary to permit the fence and the deviation from the landscape buffers that were approved. He would like the applicant to work with the planner to get closer to what is required in the current ordinance.

With regard to the voting on whether or not the alpacas are permitted; that's a use variance. That would need five affirmative votes. With regard to the issue of the C variances, those would require four affirmative votes. Any expressions of reason regarding a vote would be very helpful.

Solicitor Frank said he didn't want to jump the gun and offer a lot of conditions in the event of an approval, but he wanted to mention a few things that he made note of. With

regard to the C variances, not even addressing the issue of a use variance, if the board were to approve the requested C variances a condition proposed by the planner is that the fence be moved back out of the county right of way to provide additional room for landscaping. The soil erosion and grading is to be addressed by the applicant's engineer subject to administrative approval by the board engineer. An as-built survey showing what is there presently needs to be provided. On that would be the location of the new sidewalk and the proposed new landscaping, but starting with real data from the field. The applicant expressed the intent to build a sidewalk rather than provide funds to the sidewalk trust fund. The applicant has agreed to work with the Board Planner to revise the landscaping. The usual conditions of approval are also applicable. The ground cover also needs to be maintained as cover and established. When the original application was submitted it was to be grass, not grazed to the nub soil. That needs to be part of what happens. Regardless of what happens with the use variance question, these would need to be included. Engineer LaRosa would like a plan that shows where everything is located to make sure it is all correct.

Solicitor Frank said regarding the use variance, the board needed to decide the issue of the alpacas. In deciding that, if the board were to grant the variance it should be very particular about where they could be, how many would be allowed, what the underlying standards would be. It was offered by the applicant that the purpose was to maintain the ground cover but the ground cover was not presently satisfying its other purposes, which is very problematic. If the board is inclined to grant a variance to allow the alpacas it really needs to have as its foremost the maintenance of that cover and not the sustaining of alpacas. Under certain conditions it may be the case that the applicant is overgrazing even with the stated number. In the spring and fall there is plenty of grass growth but in the middle of the summer there is close to nothing. That's why it was important if the board grants that it needs to be the case that the alpacas are there to serve the solar and they are not there for themselves. That is the significance of that, but the board may also find this is OP district and farming and livestock aren't allowed in the OP district and the proofs were not adequate. He believes there is not an inherently beneficial use for the alpacas on their own; it is a convenience, a way for it to work better for Mr. Dimon. The energy itself is inherently beneficial. He would guide the board to think about it more stringently although still balancing the benefits and the detriments.

Member Bott asked if the number of the alpacas could be limited to a certain number. Solicitor Frank confirmed it could be a condition. Mr. Bott said each application that comes to the board is judged on its own merit. He said there is a bare spot in the grass covering. It needs to be maintained. Mr. Bott said it was difficult for him to weight what was right and what was wrong for this application. He said if the numbers of pets being used for ground cover control was limited and the ground cover was kept up to scale, he would approve..

Member Buddenbaum asked what the smallest number of alpacas together that would still be healthy and happy. Mr. Thompson replied it would be three.

Mr. Zekas advised the Board to consider the testimony because that is what the decision is based on. The purpose, as was testified to, for the reason for the alpaca, was for keeping the grass down. At the same time the applicant testified that it is not common place and most ground mounted solar relies on specially selected grasses that stay low and green without bare spots. There is not the potential for stormwater run-off and erosion with the special grasses.

Mr. Bott thought the special grass should be required. It was approved in the first application to have the special grass. There was discussion regarding the number of alpacas and how many should be allowed.

Solicitor Frank noted the Board could decide to not create the dilemma of the number of alpacas. He said Chairman Zekas pointed out the applicant's expert testified that the grass mix that is normally used is not adequate to support the alpacas. The applicant has had to add to the grazing to support the number of animals there. He said it seemed backwards if the animals were to be used as lawnmowers.

Member Crowell asked if the number were to be reduced would the Chairman feel more comfortable. Mr. Dimon said it was only the first year and the board is making a decision to make him plant grass and remove the alpacas and then grass comes back. They want trees to grow that haven't been put in yet and then want them to be replaced when they fall down. He didn't understand the philosophy of that. Member Crowell asked if the applicant was comfortable with five alpacas. Mr. Dimon confirmed that. Member Crowell said he was surprised the applicant wanted to maintain five because there is no grass. The idea of grass cover is to prevent soil erosion.

Chairman Zekas said there are better alternatives to control the turf than using alpacas. He said he is old fashioned and tries to minimize granting variances as much as possible, especially if there is an alternative.

Chairman Zekas made a Motion to deny the applicant's request for a use variance for the alpacas.

Member Crowell said for due consideration and for the record, he thought it should be the opposite. He thought the D variance should be considered and Board members should provide their opinions as to why they voted as they did.

Chairman Zekas' Motion was seconded by Member Bott.

Mr. Bott said he voted no because he believed a limitation to the number of alpacas and making sure there is adequate ground cover would be acceptable. He said Solicitor Frank expressed to him that each application stands on its own merits. He does not believe the animals are farm animals, if the fiber is used it is a business.

Member Crowell said he voted no because he thinks despite what you call them the alpacas eat grass and reduce the level of grass that is there. There were some issues with

how many would be approved. Rather than someone cutting or mowing, this reduces greenhouse emissions and he thinks that is a good thing. He also does not think it changes the character or intensity of the property. The alpacas are contained. There was testimony from someone living adjacent to the subject property and he is not uncomfortable and there are no noise issues. He didn't see any major impact, he was just concerned about the potential for breeding and there should be a condition that all are the same gender. Also they should not be allowed outside of the fenced in area for control reasons. Another condition should be that adequate grass coverage be maintained. The alpaca are there and should have gotten there a different way but because they are there some reasonable accommodations should be made for both sides- the community as well as the applicant.

Member Buddenbaum voted no also. He said his reasons were the same as Member Crowell's. He liked the green technology. He would be more comfortable if the number were reduced to three because he has only seen dirt at the site. He was also concerned that passing motorists like to look at the alpacas. There have been cars pulled over and that could be a safety risk. He believes the buffer will solve most of that.

Member Lutz said he voted no for all the reasons other board members had noted. The whole accessory use to the alpacas appealed to him. He liked the green aspect of it.

Member Sovak voted no because of the reasons mentioned. It is a way to maintain. Might not be the best way but it the way the owner has chosen.

Upon roll call the Board voted as follows:

YEAS: Zekas  
NOES: Bott, Crowell, Buddenbaum, Lutz, Sovak  
ABSENT: None  
RECUSED: Groze, Patel, Lauricella

Solicitor Frank explained the motion was to deny. There needed to now be a motion to approve the applicant's request for a use variance for the alpaca limiting the number to five of all the gender.

It was the Motion of Buddenbaum, seconded by Lutz to approve the applicant's request for a use variance.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Bott, Crowell, Lutz, Sovak  
NOES: Zekas  
ABSENT: None  
RECUSED: Groze, Patel, Lauricella

Solicitor Frank said the board now needed to make a motion for the bulk variances. He said he noted the conditions earlier in the evening.

53.

It was the Motion of Bott, seconded by Crowell to approve the C variance with conditions including as-built survey, buffer modification, soil erosion and grading, sidewalk construction plans, stormwater management, revised landscaping and others.

Chairman Zekas said it would require a lot of interface between the professionals and the applicant's professionals to work through the current ordinance requirements.

Upon roll call the Board voted as follows:

YEAS: Buddenbaum, Bott, Crowell, Lutz, Sovak, Zekas

NOES: None

ABSENT: None

RECUSED: Groze, Patel, Lauricella

CORRESPONDENCE

OTHER BUSINESS

Motion of Lutz, seconded by Bott to adjourn the meeting at 12:36 p.m. Motion unanimously approved by all members present.

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Brett Buddenbaum, Secretary

/ak