



Mr. Schatzman asked that the Deeds be signed prior to the adoption of the resolution. The conditions would be the pins to be placed and the HOA documents to be approved.

Mr. Schatzman discussed the professional's memoranda.

Ms. Elliott asked the applicant to provide a paper copy of the updated map that shows the landscaping.

Vice Chairman Matthews opened the meeting to the public. There was no public comment. A motion to close the public hearing was made by Mr. T. Wilson, which was seconded by Mayor Trzaska. This was carried on the following voice call vote: Ayes (6) Nays (0) Abstentions (0)

A motion to approve the application subject to the conditions was made by Mayor Trzaska, which was seconded by Mr. T. Wilson. This was carried on the following roll call vote:

Ayes: Conforti, DeRochi, Dyer, Matthews, Trzaska and T. Wilson

Nays: None

Chairman Some arrived.

**B. Case PB-07-12**

**Applicant: Bloomberg, L.P.**

Block 34001 Lots 38.01, 38.001 and 38.03

Waiver of Site Plan Review/Major Site Plan

Expiration Date – 7/23/2012

Affidavit of Notification and Publication Required

Michael Fedun, Esquire, Richard Loeffler and Tom Widawsky represented the applicant. Notice was found to be in order. Mr. Fedun said the applicant is seeking a waiver of site plan approval but the applicant did provide notice in case it is determined that site plan approval is necessary. The application is for an emergency generator for times when power goes out. The structure is not in critical areas, totals 1,247 square foot of coverage and there will be no noise or visual impact.

Richard Loeffler, 15 Robin Ridge Road, was sworn in. Mr. Loeffler gave his qualifications and was accepted as an expert. Mr. Loeffler referenced site plan sheets SP-1 and SP-2 and gave the Board an overview. The generator will supply power to Building 100 only. It is located to the rear of the building so it will not be visible from outside the site and is in the vicinity of the other electrical components that serve Building 100. Mr. Loeffler used drawing SP-2 to describe the existing infrastructure in the vicinity of the new generator. The generator will be surrounded by a 6' vinyl fence. It is 1500 KW and can cause Building 100 to operate fully. The generator will be pad mounted and will have its own fuel reservoir. It will come on only when power is lost. It will be tested once a week during the day for 20 minutes to ensure it is functioning and operating properly. Once a month it will come on and the demand in the building will be transferred to the generator to ensure the whole system functions. It has a diesel engine and will be housed within an enclosure which is designed to create a reduction in noise. There are sensors in the system so if power from the grid is lost the generator will turn on. The enclosure as shown on the plan will muffle the sound to 65 decibels which would satisfy a daytime level but does not meet the nighttime level of 50 decibels max so the applicant agreed to provide a different enclosure that will meet the 50 decibel level.

Warren Thomas Widawsky, 439 Catskill Road, was sworn in. Mr. Widawsky gave the Board his qualifications and was accepted as an expert architect. Mr. Widawsky described the architectural plans and testified that the exhaust pipe is sticking outside of the enclosure. There is a muffler inside the enclosure that muffles the exhaust.

Mr. DeRochi suggested that the muffler be adjusted so that is not pointing toward the closest neighbor.

Mr. Widawsky replied that the decibel levels are for the engine noise of the cranking of the motor, not the exhaust. The exhaust will be muffled to a much lower level. The sound attenuation in the enclosure itself is for both the radiator side of the generator as well as the intake side because the engine is making the actual noise.

Mr. Conforti asked what types of tests are performed to ensure it is at the decibel level that it is estimated. Mr. Widawsky said the manufacturer provides the information. The applicant will submit a letter from the manufacturer regarding the decibel level. After the installation and operation, the applicant or manufacturer will run a sound test at the property line to show the 50 decibel level is met and submit the results to the Township.

Mr. Widawsky noted that the applicant will have to apply to NJDEP for the required permits once the generator is put in place.

Chairman Some opened the meeting to the public. There being no public comment, a motion to close the public hearing was made by Mayor Trzaska, which was seconded by Mr. Conforti. This carried on the following voice call vote: Ayes (7) Nays (0) Abstentions (0)

Mr. Linnus explained that the application is for a waiver of site plan but has backed up the application with an application for site plan approval. Mr. Linnus opined that it does not qualify for a waiver of site plan but it qualifies for site plan approval. There would be conditions including the noise test. A revised site plan will be submitted to accommodate the new decibel level and new design.

A motion to approve a site plan subject to the conditions was made by Mr. Conforti, which was seconded by Mayor Trzaska. This was carried on the following roll call vote:

Ayes: Conforti, DeRochi, Dyer, Matthews, Trzaska, T. Wilson and Some

Nays: None

**C. Applicant: Somerset County Improvement Authority**

Block 25001 Lot 27.02

Capital Review of Solar Panels at Montgomery High School

MLUL 40:55D-31

Chairman Some stepped down. Mr. Linnus explained that the applicant appeared before the Board at the last meeting and made a D31 presentation. After the conclusion and vote, the Township learned that Chairman Some had a conflict so the applicant is before the Board to re-present the application or to rest with the prior record and have the Board take a vote without Chairman Some participating. There has been a clarification that the County is the moving agency and will be expending the funds so the hearing qualifies for a review of a capital project and the Board's role is to make recommendations or non-recommendations to both the County and the Department of Education.

Michael Beck, Esquire appeared on behalf of Power Partners Mas Tec, LLC. Changes made to the plans based on discussion at the last meeting will be presented. A submission to the Department of Education has been made. This is a proposal through the Somerset County Improvement Authority as well as the Township Board of Education to supplement the existing energy on the site that comes from the utility provider with solar energy. This is not a commercial application whereby power is being sold back to the grid.

Stephen Pearlman, Esquire, 600 Parsippany Road, Special Energy Council to the Somerset County Improvement Authority was sworn in. Mr. Pearlman described the solar program and how Montgomery Township Board of Education became involved. The County Improvement Authority owns the panels for the 15 year allowable power purchase agreement useful life but they lease the panels to the private developer for that 15 year period. At the end of the 15 years, if the developer makes all the lease payments at the end of the term then the developer owns the panels. The developer is obligated to remove the panels. If the law gets amended to allow the time period to go longer than 15 years the contract will be extended. The other option is for the developer to sell the panels back to the government for fair market value. In this instance, the developer is Sun Light General Capital along with the construction company Power Partners Mas Tec.

Michael Thomas, 1971 Route 34, was sworn in. Mr. Thomas is with the firm Innovative Engineering. He gave the Board his qualifications and was accepted as an expert. Mr. Thomas described the changes that have been made to the plans. A plan entitled "Partial Solar Array Layout – Array 1 Exhibit" was marked as Exhibit A-1. The plan has been revised to provide an enhanced landscape buffer. A small bit of the inverter pad location has been reconfigured so it will not interfere with the existing sidewalk and will provide room for additional landscaping. At the request of the Board, the fencing has been revised to 6' instead of 8'. The landscaping is now three rows of staggered trees to the north and to the west of the proposal. The trees will be installed at a 7'- 8' tall height. The existing buffer to the southeast will be supplemented. In between the fence and the array is an 18' access drive that will be maintained to allow for maintenance of the basin and solar panels. The proposed canopy alongside of the bus parking area has not been revised. The arrays will be about 7' 8" or so above the existing spillway elevation. The plantings will be at least 1' taller than the highest point of any of the arrays. The fence is approximately 1'-2' lower.

Vice Chairman Matthews asked how this would fit in with the new ordinance. Mr. Thomas said the proposal meets the ordinance except the section where solar is not permitted to be within the front yard.

Mr. Thomas discussed the environmental impact the project will have. This is a net metered project. The energy being produced is going directly toward the facility on site. The consumption offset of the array in the basin and the canopy to the west will produce a total offset of about 16% of the school's annual energy consumption. The two arrays will produce a total in one year of approximately 933,000 kilowatt hours. This

equates to 1.4 million pounds of carbon dioxide or 126 passenger vehicles. The system is equivalent to the offset of about 56 residences in terms of power consumption.

Mayor Trzaska commented that he did not see how the Board could recommend this project since it does not meet the ordinance that was recently adopted.

Vice Chairman Matthews noted that this is the Board's first decision under the new ordinance and the proposal violates the ordinance.

Mr. Beck stated that every application has to stand on its own merit and there is no precedent setting by virtue of a recommendation for or against this application.

Ron Igneri was sworn in. Mr. Igneri is with the firm Innovative Engineering and will be speaking as a licensed professional planner.

Mr. Beck noted that the Solar Proposal Evaluation Report and the PV System overview from Innovative Engineering have been submitted to the Board.

Mr. Wilson asked how deep the detention basin is. Mr. Thomas said it is about 4'-5' deep and there is a spillway that is below the perimeter berm. The spillway elevation is about 110'. The bottom of the panel is 1' above that or 111'. The highest point on the panel is about 118'. The roadway runs anywhere between 114' down to about 112'. The highest point is only about 5'-6' above the street elevation of the fence.

Mr. Igneri showed the Board 12 photographs which were marked as Exhibit A-2. The photos are the existing conditions and a photo shopped picture showing what it will look like with the arrays, fencing and landscaping installed from different vantage points. They are now using a 1" mesh black vinyl fence so the slats are not needed. The existing trees will be relocated elsewhere on site. Mr. DeRochi noted that the photo simulations show the panels above the fence.

Mr. Wilson asked questions about the 18' access drive and the height of the proposed plantings as they grow.

Mr. Igneri discussed the planning issues associated with the proposal. The ordinance prohibits arrays in the front yards. The intent of the ordinance is to protect the visual impact. Locating the arrays in the existing basin is the best location. The Board of Education does not want to take up existing playing fields. The proposed buffering will offset the impact. He opined that relief could be granted without substantial detriment to the public good and it will not substantially impair the intent and purpose of the zone plan and the zone ordinance. The deviation is being requested given the site conditions that exist. There are no residences in the area.

Robert W. Austin, 52 Bolton Road, was sworn in. Mr. Austin is the Director of Facilities for Montgomery Schools. Mr. Austin said as requested at the last meeting they went back to see if the panels could be installed in a different location but there is nowhere else on the site. There will never be this type of funding available again and the Board of Education will lose 1.2 million dollars over 15 years if this project is not constructed.

Mr. Beck explained that the Board would send their recommendation to the State Department of Education. The Department of Education will review the recommendation and make a determination as to whether or not they will allow the project. Ultimately the Department of Education has control over school facilities and accessory facilities.

Mr. Conforti said his concern is what solar applications come after this. If the Board waives the very first thing that comes before it, there is a concern about what comes next. Vice Chairman Matthews agreed.

Mr. Wilson said the purpose of Planning Board and Zoning Boards is to deal with each situation. If it were simply a matter of taking ordinances and applying them the Board's would not be needed. The Board should look at every situation, judge it on its merits and determine whether the cumulative good outweighs the cumulative detriment. From a perspective of precedent, this isn't a residence and is not a residential neighborhood. The idea of converting the detention basin and adding a second beneficial use to it is not a bad thing. The tree buffer protects the viewshed from Route 601.

Mayor Trzaska appreciated the changes the Board of Education made to the plan. It will help with the public reaction to the project. This proposal does not adhere to the new ordinance and he does not recommend it.

Vice Chairman Matthews said he has sat on the Board for many years and he knows what the ramifications are. It is difficult when the Township spends 7 or 8 months developing an ordinance that everyone agreed on and to violate it now is not a good idea. The Board makes decisions for planning reasons not for monetary reasons.

Mr. DeRochi asked how likely it would be that the Department of Education would take the Board's recommendation and scratch the project. Mr. Beck said he did not know, but in the County solar projects he has been involved in the Planning Boards have always recommended the project.

Mr. Linnus confirmed that legally every case that comes before the Board establishes their own facts and circumstances. The Board has the policy.

A motion to recommend the carport portion of the application was made by Mayor Trzaska, which was seconded by Ms. Dyer. This was carried on the following roll call vote:

Ayes: Conforti, DeRochi, Dyer, Matthews, Trzaska and T. Wilson

Nays: None

A motion to not recommend the detention basin portion of the application was made by Mayor Trzaska, which was seconded by Vice Chairman Matthews. This was carried on the following roll call vote:

Ayes: Matthews and Trzaska

Nays: Conforti, DeRochi, Dyer and T. Wilson

A motion to recommend the detention basin portion of the application was made by Ms. Dyer, which was seconded by Mr. T. Wilson. This was carried on the following roll call vote:

Ayes: Conforti, DeRochi, Dyer and T. Wilson

Nays: Matthews and Trzaska

The Board authorized Ms. Savron to send a letter to the Department of Education regarding the recommendation. A copy of the letter should be sent to the Somerset County Improvement Authority.

#### **IV. MINUTES**

##### **May 7, 2012 – Regular Meeting**

The minutes should be amended to show that Mr. T. Wilson was not at the meeting.

A motion to approve the minutes as corrected was made by Mr. Conforti, which was seconded by Ms. Dyer. This was carried on the following roll call vote:

Ayes: Matthews, Conforti, Dyer and DeRochi

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:45 p.m.