

The Regular Meeting of the Planning Board of the Township of Upper Deerfield was held on Monday, August 9, 2010 at 7:00 P.M. in the Municipal Building, Seabrook, N.J.

Chairman Bruno Basile called the meeting to order and read the following notice:

This is a regularly scheduled meeting of the Planning Board of the Township of Upper Deerfield. In compliance with the "Open Public Meeting Act" a schedule of regular meetings containing the location and time and date of each meeting was approved at the Annual Organization Meeting of the Board, and within seven days following such Organization meeting, a copy of such schedule of regular meetings was posted in the Municipal Building at Seabrook, New Jersey, which Notice has remained so posted throughout the year, and copies of the schedule of regular meetings have been mailed to The News of Cumberland County and filed with the Township Clerk in compliance with said Act.

Present:

Chairman: Bruno Basile

Vice Chairman: Ed Overdevest

Members: Robert Comer, Edward Fleetwood, Terry O'Neil, Bruce Peterson, # 1 Russ Vanella, alternate # 4 Pauline Smith

Staff: Engineer Robert C. DuBois,P.E., Planner Randy Scheule, PP,AICP, Solicitor Theordore H. Ritter, Esq., Secretary Vicki Vagnarelli.

Absent: Jodi Hirata, Ernest Holt, Gene Stoms, alternate alternate # 2 John Timberman, alternate # 3 Gary Barbeck

On motion of Ed Fleetwood, seconded by Robert Comer, **Minutes** of July 12 regular meeting and July 19 special meeting, unanimously approved.

On motion of Ed Fleetwood, seconded by Terry O'Neill the following Resolution was memorialized.

RESOLUTION #12-2010

Township of Upper Deerfield Planning Board

Applicant's Name: Coombs Properties, L.L.C.

Property: 75 Grier's Lane; Lot 4, Block 103

Application: Minor Subdivision of Block 103, Lot 4 into two new lots

Public Hearing: July 12, 2010

Findings of Fact:

1. Applicant was represented by Adam Telsey, Esquire.
2. The Board accepts as factual the plans and documents submitted by and on behalf of applicant:
 - a. Upper Deerfield Township Development Application and Checklist.

- b. Correspondence from Land Engineering, LLC, March 23, 2010.
- c. Minor Subdivision Plan, Land Engineering, LLC, last revised May 5, 2010.

3. The Board deemed the application complete at its meeting of May 17, 2010.

4. The Planning Board received and considered the presentation of Mr. Telsey on behalf of Coombs Properties, L.L.C.

5. The Board also received and considered the report of Randall Scheule, PP/AICP dated July 6, 2010.

6. Based upon the recommendation of Planner Scheule, and the Board’s review of the application, waivers requested by applicant are granted for:

- a. Schedule “A” (6) - NJDEP LOI
- b. Schedule “C” (41) - Environmental Impact Report
- c. Schedule “C” (44) - Drainage calculations.
- d. Street trees, street lighting, curb, gutter and sidewalk.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of Upper Deerfield Township grants minor subdivision approval to Coombs Properties, L.L.C. subject to the following conditions:

- 1. Applicant must provide verification from the municipal tax assessor regarding the proposed lot numbers prior to the recording of this subdivision approval.
- 2. Applicant’s professionals will check on the acreage as noted for Lot 4 on the plan.
- 3. The perfected plan will note that Grier’s Lane is a local road, not a county road.
- 4. Applicant is required to obtain approvals and permits from any other agency having jurisdiction.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: _____

Roll Call

Bruno Basile –Aye

Robert Comer – Aye

Jody Hirata – Absent

Terry O’Neill – Aye

Gene Stoms – absent/Absent

Russell Vanella, Alt #1 – Aye

Gary Barbeck, Alt #3 –absent/Absent

Ed Overdevest –absent/no vote

Ed Fleetwood – Aye

Ernest Holt – Absent

Bruce Peterson –Aye

John Timberman, Alt #2 – no vote/Absent

Pauline Smith, Alt # 4 - no vote

On motion of Ed Fleetwood, seconded by Bruce Peterson the following Resolution was memorialized.

RESOLUTION # 13-2010

Township of Upper Deerfield Planning Board

Applicant’s Name: Kim Sod Company

Property: Block 707, Lot 5

Application: Renewal of Mining Permit

Renewal Hearing: July 12, 2010

Findings of Fact:

1. Applicant, Kim Sod Company, through Donald Rogers, Jr., general partner, submitted a letter dated June 14, 2010, requesting the waiver of a new site plan.
2. The applicant’s mining license was approved in 1989 subject to applicant’s submission of a new site plan every three years.
3. At its June 14, 2010, meeting, the Board resolved to have Board Engineer Robert C. DuBois make an inspection of the property and report back to the Board.
4. The Board has received and reviewed the July 8, 2010 report of Robert C. DuBois, P.E. as well as Mr. DuBois’ testimony at the license renewal hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of Upper Deerfield Township hereby renews the land mining license of Kim Sod Company, for another three years, and waives the submission of a

new site plan based upon Engineer’s DuBois’ report that work performed since the last renewal is minimum, and the site is still in compliance with the approved site plan.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: _____

Roll Call

Bruno Basile –Aye	Ed Overdevest –absent/no vote
Robert Comer – Aye	Ed Fleetwood – Aye
Jody Hirata – Absent	Ernest Holt – Absent
Terry O’Neill – Aye	Bruce Peterson –Aye
Gene Stoms – absent/Absent	
Russell Vanella, Alt #1 – Aye	John Timberman, Alt #2 – no vote/Absent
Gary Barbeck, Alt #3 –absent/Absent	Pauline Smith, Alt # 4 - no vote

On motion of Ed Fleetwood, seconded by Robert Comer the following Resolution was memorialized.

RESOLUTION # 14-2010

TOWNSHIP OF UPPER DEERFIELD PLANNING BOARD

APPLICANT’S NAME: SBS Energy Partners, L.L.C.

APPLICATION NO.: P-06-10

PROPERTY: 85 Finley Road
Block: 905, Lot 9

APPLICATION: Preliminary and Final Major Site Plan for Solar Photovoltaic System

PUBLIC HEARING: July 12, 2010

FINDINGS OF FACT:

1. Applicant was represented by Emily Givens of Maley and Associates, P.C. who presented the application on its behalf.

2. The Board accepts as factual the plans and documents submitted on behalf of Applicant:
 - a. Upper Deerfield Development Application Form and Checklist;
 - b. Site Plan (7 sheets) by Fralinger Engineering bearing the revision date of May 12, 2010;
 - c. Four color photographs taken from Foster Road and Finley Road, respectively.
3. The Board deemed the application conditionally complete at its meeting of June 14, 2010.
4. The Board received and considered the testimony of William Shiminiske, of SBS Energy Partners, LLC, William Seabrook of Seabrook Brothers, and Sons, and Robert Mulford, PE of Fralinger Engineering.
5. The parcel in question is a 77.36 acre lot in the GI Zone. The principal use is a vegetable processing plant.
6. Applicant seeks site plan approval for an accessory use: a 35 acre solar photovoltaic system which will supply electrical energy to the vegetable processing plant.
7. The Board considered applicant's landscaping plan which was submitted subsequent to the completeness review, and was the subject of discussions between applicant's professionals and the Board's Planner.
8. The report of Engineer DuBois confirmed that the water runoff calculations show that runoff after construction will be slightly less than that which currently exists.
9. The Board also received and considered the report of its Planner Randall Scheule, PP/AICP dated July 7, 2010.
10. Applicant, through its witnesses and counsel, agreed to the recommendations contained in Planner Scheule's report, as referenced on page five of the Planner's report, each of which is incorporated here.
11. The Board finds that the development proposal was in full compliance with the Township's Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of Upper Deerfield Township grants preliminary and final major site plan approval to SBS Energy Partners, L.L.C. conditioned upon the following:

1. Location of existing structures and setbacks will be added to the plan.
2. The perfected plan will contain the notation that there are no wetlands on site.
3. The cover sheet of the site plan shall be revised as specified in the Planner’s report.
4. The plan should be revised to indicate the location and nature of all connections from the proposed inverters and transformers to off-site utilities.
5. The plans shall be revised to note the nature and extent of all upgrades to off-site utilities required in conjunction with this new accessory use.
6. Applicant shall obtain approvals and permits as may be required from any other agency having jurisdiction. It is noted that applicant’s attorney represented that Cumberland County Planning Board approval has been given for this new accessory use.
7. Applicant shall provide letters of service availability from all utilities.
8. Applicant shall post a bond in an amount to be specified by Board Engineer DuBois following Mr. DuBois’ review of the perfected plan.
9. The form of the performance guarantee shall be subject to review and approval by the Board Solicitor.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: _____

Roll Call

Bruno Basile –Aye
 Robert Comer – Aye
 Jody Hirata – Absent
 Terry O’Neill – Aye
 Gene Stoms – absent/Absent
 Russell Vanella, Alt #1 – Aye
 Gary Barbeck, Alt #3 –absent/Absent

Ed Overdevest –absent/no vote
 Ed Fleetwood – Aye
 Ernest Holt – Absent
 Bruce Peterson –Aye

 John Timberman, Alt #2 – no vote
 Pauline Smith, Alt # 4 - no vote

On motion of Ed Fleetwood, seconded by Robert Comer the following Resolution was memorialized.

RESOLUTION 15-2010
TOWNSHIP OF UPPER DEERFIELD
PLANNING BOARD

WHEREAS, the New Jersey Municipal Land Use Law in N.J.S. 40:55D-89, requires periodic reexamination of the Municipality's Master Plan; and

WHEREAS, the Master Plan reexamination study has been ongoing with the aid of Planning Board Planner, Randall Scheule, PP, AICP; and

WHEREAS, based upon Planning Board discussions, Mr. Scheule has prepared, and circulated a draft Master Plan Reexamination Report dated June 2010, supplemented by his July 19, 2010 addendum; and

WHEREAS, the Board has reviewed, digested and discussed the draft Master Plan Reexamination Report;

NOW, THEREFORE, be it on this 19th day of July, 2010, **RESOLVED** that a Public Hearing on the Master Plan Reexamination Report is hereby scheduled for August 9, 2010 at 7:00 P.M. at the Upper Deerfield Township Municipal Building.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: _____

Roll Call

Bruno Basile –Aye

Robert Comer – Aye

Jody Hirata – Absent

Terry O'Neill – Aye

Gene Stoms – absent/Absent

Russell Vanella, Alt #1 – Aye

Gary Barbeck, Alt #3 –absent/Absent

Ed Overdevest –absent/no vote

Ed Fleetwood – Aye

Ernest Holt – Absent

Bruce Peterson –Aye

John Timberman, Alt #2 – no vote/Absent

Pauline Smith, Alt # 4 - no vote

On motion of Ed Fleetwood, seconded by Robert Comer the following Resolution was memorialized.

RESOLUTION #16-2010

Township of Upper Deerfield Planning Board

Applicant's Name: Comet Land Development, L.L.C.

Property: Block 1101, Lots 13, 14, 18, and 21.02

Application: Major Site Plan with Bulk Variances

Site Plan Hearing: June 21 and July 12, 2010

Findings of Fact:

1. Applicant was represented by Alan P. Fox of the Capehart and Scatchard Law Firm.
3. Applicant was granted a Use Variance by this Board's Resolution #11-2010, following a Use Variance Public Hearing conducted on April 19, and May 17, 2010.
4. The Board accepts as factual the plans and documents submitted by and on behalf of applicant including:
 - a. Tree Management Plan dated February 8, 2010.
 - b. Major Site Plan dated February 8, 2010 and thereafter revised.
 - c. Environmental Impact Statement dated February 2010.
 - d. Stormwater Management Report dated February 11, 2010.
 - e. Environmental Impact Statement Addendum dated March 1, 2010.
 - f. Correspondence from Justin Michael Murphy, Esq. dated March 1, 2010.
 - g. Undated information respecting Ground Mount Photovoltaic Systems.
 - h. Correspondence from ABR Consultants dated February 25, 2010.
 - i. Aerial photograph of Parcel in question.
4. The Board also received and considered the following additional data:

- a. July 2, 2010 letter to Upper Deerfield Township Planning Board from Joseph J. Raday, P.E., C.M.E of A.B.R. Consultants, L.L.C.
 - b. June 17 and July 12, 2010 reports of Planning Board Planner Randall Scheule, PP/AICP.
 - c. April 5, 2010 Report of Board Engineer Robert C. DuBois, P.E.
5. All property owners within 200 feet of applicants' premises were properly served with a Notice of Hearing.
 6. Compliance has been had with each of the various requirements of the Open Public Meetings Law, P.L. 1975 c. 231
 7. The property affected by this application is situated northwest of the intersection of Silver Lake Road, and DuBois Road, in the R-1 Zone. It comprises Lot Nos. 13, 14, 18 and 21.02, of Block 1101 as shown on the Upper Deerfield Township Tax Map.
 8. Applicant has requested preliminary major site plan approval from this Board together with a waiver for fence height and bulk variances for various setbacks affecting this oddly shaped property.
 9. Applicant's counsel explained that Applicant was withdrawing, at this time, a request for final major site plan approval. Applicant wishes to secure preliminary site plan approval so as to begin partial clearing and installation of a silt fence and then follow-up with submission of a final site plan.
 10. At the public hearing of June 24, 2010, Applicant presented the expert testimony of Mr. Raday, Professional Planner Barbara Allen Wooley-Dillon, Arborist Scott Lussier, Solar Facilities Engineer Dan Schaffer and lay testimony from Bruce Martin.
 11. At the public hearing continuation on July 12, 2010, applicant presented additional testimony from Engineer Raday and from Mr. Martin.
 12. For the July 12, 2010 public hearing, applicant clarified locations for the proposed tree line and added locations of the proposed inverters to the site plan.
 13. Applicant also placed into evidence multiple exhibits relating to buffering, elevations, pictures of the property, road setback and marked up aerial Google maps.

14. Applicant, through counsel and applicant's witnesses, advanced the argument that the variances sought could be granted under N.J.S. 40:55D-70(c)(2) and that the benefits of the proposed solar project outweigh any detriment relating to the proposed property line setbacks. Applicant's attorney and witnesses also advocated the project by juxtaposing the impact of the solar energy project versus the 49-lot residential subdivision project previously approved for this same parcel.

15. Applicant proposed to customize the visual screening for each of the 11 adjacent residential property owners following the clearing of the site and installation of the solar panels. Applicant offered to plant trees on the neighbor's property if desired by the homeowner or otherwise on applicant's property to visually screen the solar panel array.

16. After the approval of the use variance, applicant reconfigured the design of the property to reduce the acreage of solar panel coverage by 2.27 acres resulting in proposed solar panel acreage of 78.3 acres.

17. Arborist Lussier testified for applicant regarding the 43 acres of trees which were slated for removal. Applicant and others noted that the proposed solar use is incompatible with tree preservation.

18. Applicant's Planner, Ms. Wooley-Dillon, gave testimony regarding the hardship caused by the odd shape of the parcel making the buffer requirement very difficult if not impossible to meet. Ms. Woolly-Dillon also testified regarding the desirability of the promotion of renewable energy and the benefits of the proposed solar facility contrasted with the arguable detrimental impact.

19. Applicant argued that it was permitted, by right, to remove all trees in order to farm the property. Applicant contrasted the removal of all trees for farming purposes to the removal of some trees for solar energy production as being a more beneficial alternative.

20. The applicant's witnesses gave testimony and applicant's attorney argued that 78.3 acres of solar panels was the minimal acreage required in order to make this solar panel energy production project economically viable.

21. Planning Board Planner Randall Scheule offered calculations and a diagram concluding that the net area available for solar development, while keeping compliance with the Township ordinance minimum

setbacks, would be 54.94 acres. Calculations and an exhibit based on an alternative buffer plan proposing 62.13 acres for the solar panels was also presented. Applicant, its witnesses and attorney responded that the project would not be economically viable if only 62.13 acres of the site can be devoted to solar panel energy production.

22. A number of members of the public appeared at the public hearings and testified including Lynn Maun, Blake Maloney, Frank Catalana, Dean Hawk, Rebecca McCubbin, Joseph Nicosia, John Maun, Nancy Ridgway, Sandy Morrissey and John McGlynn.

23. Several neighboring property owners testified in favor of the project and expressed the opinion that the solar energy project was preferable to the previously approved 49 lot residential subdivision.

24. Some objectors questioned the actual need for the proposed solar alternate energy project and advocated against the removal of so many trees. Some objectors raised the issue of adverse impact on area wildlife.

25. The Board finds and determines that the applicant's site plan cannot be approved and that the bulk variances requested for property line setbacks cannot be granted without causing substantial detriment to the public good, which detriment outweighs the benefits of the proposed solar energy production project.

26. The Board also finds that the applicant has not provided sufficient justification for the applicant's proposed deviation from the Township's tree preservation ordinance.

27. The Board further finds and determines that applicant failed to meet its burden of proof that the proposed benefits of the project clearly and convincingly outweigh the detriments to the neighborhood and the zone plan arising from the non-compliance with the property line setback ordinance requirements in this residential neighborhood.

28. Applicant failed to prove that this site, with its unusual and irregular configuration, was feasible for adaptation to solar energy production while still maintaining compliance with the 100-foot property line setbacks specified in the applicable township ordinance.

29. The Board further finds as fact that this site is not suitable for the proposed solar panel energy production use due to its odd shape. That shape directly relates to the inability of applicant to comply with property line setback requirements while, at the same time, still having a large enough cleared area for an economically viable solar energy panel array.

30. Additionally, the Board further finds and determines that the economic component of applicant's inability to maintain the required 100-foot minimum property line setbacks on the North, East and South sides of the lot constitutes a self-created hardship.

NOW, THEREFORE, BE IT RESOLVED by the Upper Deerfield Township Planning Board that the preliminary major site plan approval sought by Comet Land Development, L.L.C. together with bulk variances for setback and waivers for trees are hereby denied.

BE IT FURTHER RESOLVED that a Certified copy of this Resolution be furnished to applicant and Notice of this action be advertised as required by Law.

Upper Deerfield Planning Board

BRUNO A. BASILE, Chairman

ATTEST: _____
VICKI VAGNARELLI, Secretary

Memorialized: _____

Roll Call

Bruno Basile –Nay
Robert Comer – Aye
Jody Hirata –absent/no vote/Absent
Terry O’Neill – cannot vote
Gene Stoms – absent/Absent
Russell Vanella, Alt #1 – Aye
Gary Barbeck, Alt #3 –Absent/absent

Ed Overdevest –absent/no vote
Ed Fleetwood – cannot vote
Ernest Holt – Absent
Bruce Peterson – cannot vote
John Timberman, Alt #2 – Absent
Pauline Smith, Alt # 4 - Aye

APPLICANT/DEVELOPMENTS

On motion of Robert Comer, seconded by Russell Vanella, Bridgeton Farms represented by Jeff Thakker was approved for Completeness only, public hearing set for September 13. Announcement was made so the applicant does not need to renote or advertise.

Roll Call

Bruno Basile –Aye	Ed Overdevest – Aye
Robert Comer – Aye	Ed Fleetwood – cannot vote
Jody Hirata – Absent	Ernest Holt – Absent
Terry O’Neill – cannot vote	Bruce Peterson – cannot vote
Gene Stoms –Absent	
Russell Vanella, Alt #1 – Aye	John Timberman, Alt #2 – Absent
Gary Barbeck, Alt #3 –Absent	Pauline Smith, Alt # 4 - Aye

PUBLIC HEARING : Draft Master Plan Review

Planner, Randall Scheule reviewed Master Plan with the Board and Public and on motion of Ed Fleetwood, seconded by Robert Comer the public portion was opened.

Blake Maloney chair of Environmental Commission thanked the Board for continuing to address Environmental Commission issues. On motion of Ed Fleetwood, seconded by Robert Comer the public portion was closed

On motion of Ed Fleetwood, seconded by Robert Comer the Board adopted the Draft Master Plan Report

Roll Call

Bruno Basile –Aye	Ed Overdevest – Abstain
Robert Comer – Aye	Ed Fleetwood – Aye
Jody Hirata – Absent	Ernest Holt – Absent
Terry O’Neill – Aye	Bruce Peterson – Aye
Gene Stoms –Absent	
Russell Vanella, Alt #1 – Aye	John Timberman, Alt #2 – Absent
Gary Barbeck, Alt #3 –Absent	Pauline Smith, Alt # 4 - Aye

PROFESSIONALS/COMMITTEE/COMMISSION

Planner, Randall Scheule reviewed with the Board the following Ordinances the Township Committee requested Board to Review:

Ordinance amending Section 98-40.3 of the Code of the Township of Upper Deerfield

Ordinance amending the “Upper Deerfield Redevelopment Area Redesign Guidelines”

Ordinance amending “Exhibit F” of the Township of Upper Deerfield Redevelopment Plan

On motion of Ed Fleetwood, seconded by Robert Comer the Board approved all 3 ordinances

Roll Call

Bruno Basile –Aye	Ed Overdevest – Aye
Robert Comer – Aye	Ed Fleetwood – Aye
Jody Hirata – Absent	Ernest Holt – Absent
Terry O’Neill – Aye	Bruce Peterson – Abstain
Gene Stoms –Absent	
Russell Vanella, Alt #1 – Aye	John Timberman, Alt #2 – Absent
Gary Barbeck, Alt #3 –Absent	Pauline Smith, Alt # 4 - Aye

At approximately 8:30pm Attorney Ritter requested the Board go into closed session so on motion of Ed Fleetwood, seconded by Russell Vanella the Board went into executive closed session to discuss a letter received from an applicant the Board denied for approval at an earlier hearing.

UPPER DEERFIELD TOWNSHIP

PLANNING BOARD
RESOLUTION

AUTHORIZING A CLOSED MEETING

WHEREAS, the Planning Board of the Township of Upper Deerfield, in the County of Cumberland, has before it certain matters involving Planning Board matters: and

WHEREAS, the matters involving the Planning Board are of a sensitive nature: and

WHEREAS, N.J.S.A. 10:4-2 et seq. Permits the exclusion of the public from a meeting of the Board to discuss the aforementioned matters;

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board as follows:

1. That the Planning Board met in closed session on the 9th day of August, 2010.
2. That whenever the aforementioned matters are resolved, by the way of decision of the Planning Board, compromise, final judgment, or appeal, as may be applicable to the issue in question, the Planning Board will disclose the matters and contents of the aforementioned closed session at the next business meeting following the disposition of the aforementioned matters.

UPPER DEERFIELD TOWNSHIP
PLANNING BOARD

Bruno A. Basile, CHAIRMAN

Attest: _____
Vicki Vagnarelli, Secretary

Approximately 9:10pm on motion of Ed Fleetwood, seconded by Bruce Peterson the executive session was closed and the Board returned to regular scheduled meeting.

Administrator Roy Spoltore informed the Board of the Water Treatment Plant opening Friday, August 13 at 1:30pm.

Being no further business on motion of Ed Fleetwood, seconded by Bruce Peterson the meeting adjourned at 9:20pm

Respectfully Submitted,

Vicki Vagnarelli
Planning Board Secretary