

The Regular Meeting of the Planning Board of the Township of Upper Deerfield was held on Monday, July 12, 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

Members: Robert Comer, Edward Fleetwood, Jodi Hirata, Ernest Holt, Terry O'Neil, Bruce Peterson, alternate # 1 Russ Vanella, alternate # 2 John Timberman, 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: Vice Chairman: Ed Overdevest, Gene Stoms, alternate # 3 Gary Barbeck

On motion of Ed Fleetwood, seconded by Ernest Holt, minutes June 14 & 21 meeting, unanimously approved.

On motion of Ed Fleetwood, seconded by Ernest Holt the following Resolution was memorialized.

#### RESOLUTION # 5-2010

#### **Township of Upper Deerfield Planning Board**

**Applicant's Name:** Kim Sod Company

**Property:** Block 707, Lot 5

**Application:** Renewal of Mining Permit

**Completeness Hearing:** June 14, 2010

#### **Findings of Fact:**

1. Applicant, through Donald Rogers, Jr., general partner, submitted a letter dated June 14, 2010, requesting the waiver of a new site plan.

2. Board Secretary Vicki Vagnarelli reported that the mining license was approved in 1989 subject to submission of a new site plan every three years to document the topography, the extent of excavation and continued compliance with setback requirements.

3. Board Engineer Robert C. DuBois offered to make an inspection of the property to confirm Kim Sod Company’s representations that mining activities at the site have been greatly reduced and have been minimal in nature since the last site plan was submitted.

4. The Board agreed to have Mr. DuBois make a physical visit to the mining operation and to report back to the Board with Engineer DuBois’ recommendation whether or not a new site plan can be waived at this time

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of Upper Deerfield Township authorizes its Engineer, Robert C. DuBois, to make a site inspection at the mining operation of Kim Sod Company on Lot 5 of Block 707 and to report back to the Board as aforesaid. The Board conditions the adoption of this Resolution upon Applicant, Kim Sod Company, posting a sufficient monetary escrow to cover the costs of the time to be expended by Township professional staff on this matter.

Upper Deerfield Planning Board

\_\_\_\_\_  
BRUNO A. BASILE, Chairman

ATTEST: \_\_\_\_\_  
VICKI VAGNARELLI, Secretary

Memorialized: \_\_\_\_\_

**Roll Call**

Bruno Basile –Aye  
Robert Comer – Aye  
Jody Hirata – Aye  
Terry O’Neill – Aye  
Gene Stoms – Absent  
Russell Vanella, Alt #1 – No Vote  
Gary Barbeck, Alt #3 –Absent/Absent

Ed Overdevest – Absent  
Ed Fleetwood – Aye  
Ernest Holt – Aye  
Bruce Peterson –Aye  
  
John Timberman, Alt #2 – No Vote  
Pauline Smith, Alt # 4 - was absent/No Vote

On motion of Ed Fleetwood, seconded by Jody Hirata the following Resolution was memorialized.

RESOLUTION #\_6-2010

**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

**COMPLETENESS HEARING:** June 14, 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 also received and considered the Completeness Review Report of Planning Board Planner Randall Scheule, PP/AICP dated June 10, 2010.
4. The Board also heard from Board Engineer, Robert C. DuBois, P.E.
5. The Board has been advised by staff that this is a permitted accessory use to the primary farming and vegetable processing plant operations.
6. Based upon the recommendations of the Planning Board Planner and Engineer, respectively, the Planning Board is willing to grant a waiver of additional topographic information.
7. The Board will address landscaping after receiving input at the public hearing.

8. Based upon the recommendations of the Planning Board Planner and Engineer, respectively, the Board is willing to grant a waiver of the submission of an Environmental Impact Report subject to review of the application by the Upper Deerfield Township Environmental Commission.

9. The Planning Board finds, based upon the recommendations of its professional staff, that the data already submitted by Applicant, together with additional data to be submitted before the public hearing, including the 200 foot property owners list and a landscaping plan, is sufficiently complete for the purpose of the scheduling of the public hearing.

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of Upper Deerfield Township deems the Application of SBS Energy Partners, L.L.C. conditionally complete and schedules the public hearing thereon for Monday, July 12, 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 – Aye

Terry O’Neill – Aye

Gene Stoms – Absent

Russell Vanella, Alt #1 – No Vote

Gary Barbeck, Alt #3 –absent/Absent

Ed Overdevest – Absent

Ed Fleetwood – Aye

Ernest Holt – Aye

Bruce Peterson –Aye

John Timberman, Alt #2 – No Vote

Pauline Smith, Alt # 4 - absent/No Vote

On motion of Ed Fleetwood, seconded by Ernest Holt the following Resolution was memorialized.

**RESOLUTION # 7- 2010**

**TOWNSHIP OF UPPER DEERFIELD PLANNING BOARD**

**APPLICANT'S NAME:** Perdue Farms, Inc.

**APPLICATION NO.:** 2-08-10

**PROPERTY:** Silver Lake Road  
Block: 1205, Lot 4

**APPLICATION:** For Site Plan Waivers

**PUBLIC HEARING:** June 14, 2010

**FINDINGS OF FACT:**

1. The Applicant was represented by Rocco J. Tedesco, Esq. who appeared and presented the application on Purdue's behalf.

2. Applicant seeks to replace two existing grain storage bins at its Silver Lake Road grain drying and distribution facility. One of the bins to be replaced is 20 feet in diameter, and 55 feet high. It is being replaced with a new bin that will be 21 feet in diameter, and 68 feet high. A second bin is presently 21 feet in diameter, and 55 feet high. It is being replaced with a new bin that will be 30 feet in diameter, and which will also be 68 feet high.

3. The Board received and considered the opinion of Board Solicitor, Theodore H. Ritter, whose research determined that no height variance was required for this development, and that Part II, of the General Industry Regulation Accessory Uses include bulk storage tanks with a height limitation of 150 feet.

4. The Board received and considered the report of Planner Randall Scheule, PP/AICP, dated June 10, 2010, who concurred with the Solicitor.

5. The Board received input from Planning Board Engineer, Robert C. DuBois, who determined that site disturbance would be minimal and that the increase in bin height, and in diameter was also of a minimal nature.

6. No one appeared in opposition to the application.

7. The Board finds that the proposed application will not require any variances.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Upper Deerfield that the Application of Perdue Farms, Inc. for site plan waiver for the proposed replacement of two grain storage bins is hereby granted. The Planning Board finds that the proposed site modifications are

minimal, that the condition of the property is satisfactory, that ordinance requirements are met, and that a formal site plan can be waived. The Board further notes that it has received, and has on file, a partial topography survey and site plan for Perdue Farms, Inc. prepared by Fralinger Engineering, dated March 30, 2010. The Board determines that this drawing is satisfactory for its purposes, and that the submission of the site plan is therefore waived.

TOWNSHIP OF UPPER DEERFIELD  
PLANNING BOARD

By: \_\_\_\_\_  
BRUNO A. BASILE, CHAIRMAN

ATTEST: \_\_\_\_\_  
VICKI VAGNARELLI, Secretary

Memorialized: \_\_\_\_\_

**Roll Call**

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

On motion of Ed Fleetwood, seconded by Ernest Holt the following Resolution was memorialized.

**RESOLUTION # 8- 2010**

**TOWNSHIP OF UPPER DEERFIELD PLANNING BOARD**

**APPLICANT’S NAME:** John P. McGlynn, D.M.D.

**APPLICATION NO.:** P-04-10

**PROPERTY:** 1117 Route 77

Block: 1206, Lot 1.02

**APPLICATION:** For Revised Final Major Site Plan Approval

**PUBLIC HEARING:** June 14, 2010

**FINDINGS OF FACT:**

1. The Applicant was represented by Howard Melnicove, Esq. who appeared and presented the application on his behalf.

2. Applicant seeks to construct a 766 square foot addition to Building No. 1 at this office complex on State Highway #77, north of Carll's Corner.

3. Applicant obtained preliminary and final major site plan approval by Resolution No. 16-2009 following a public hearing on June 8, 2009.

4. Applicant originally intended to construct the 766 square foot addition to Building No. 1, simultaneous with the construction of new Building No. 4 in this office complex.

5. Lee Marcello, of Tri-Mark Building Contractors, testified that he is the contractor on the project and that the construction of the new Building #4 has been stalled by the downturn in the economy.

6. Both Mr. Marcello, and applicant John P. McGlynn, D.M.D., testified that applicant has a need for two additional examination rooms for his dental practice. Applicant therefore wishes to construct the 766 square foot addition to Building No. 1, as Phase One of improvements at the site while deferring construction of Building No. 4, and the other on-site improvements until the economy rebounds.

7. The Board finds that the proposed application to modify the previous approval will not require any variances or design waivers.

8. The Board received input from Board Planner, Randall Scheule whose report was dated June 8, 2010.

9. The Board received input from Board Engineer, Robert C. DuBois, whose report was dated June 9, 2010.

10. Applicant provided testimony regarding parking at the facility. Based upon that testimony, the Board determines that no additional parking will be required in conjunction with a 766 square foot addition to the existing 7800 square foot Professional Building No. 1.

11. Applicant placed on the record, his consent to the conditions set forth below.

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Township of Upper Deerfield that the Application of John P. McGlynn, D.M.D. full revision of previously granted preliminary and final site plan approval is hereby granted subject to the following conditions:

**CONDITIONS:**

1. In ground irrigation shall be provided for all new landscaped areas.

2. Details regarding construction of the site improvements, landscaping and lighting for Phases One and Two are included on the Site Plan for John McGlynn consisting of seven sheets prepared by Fralinger Engineering issued April 21, 2009 and last revised October 26, 2009.

TOWNSHIP OF UPPER DEERFIELD  
PLANNING BOARD

By: \_\_\_\_\_  
BRUNO A. BASILE, CHAIRMAN

ATTEST: \_\_\_\_\_  
VICKI VAGNARELLI, Secretary

Memorialized: \_\_\_\_\_

**Roll Call**

Bruno Basile –Aye  
Robert Comer – Aye  
Jody Hirata – Aye  
Terry O’Neill – Aye  
Gene Stoms – Absent  
Russell Vanella, Alt #1 – No Vote  
Gary Barbeck, Alt #3 –Absent/Absent

Ed Overdevest – Absent  
Ed Fleetwood – Aye  
Ernest Holt – Aye  
Bruce Peterson –Aye  
  
John Timberman, Alt #2 – No Vote  
Pauline Smith, Alt # 4 - absent/No Vote

On motion of Jody Hirata, seconded by Ernest Holt the following Resolution was memorialized.

**RESOLUTION # 9-2010**  
**UPPER DEERFIELD TOWNSHIP**  
**PLANNING BOARD**

**WHEREAS**, Applicant, William Lacy, has made application to the Upper Deerfield Township Planning Board for side yard setback and lot coverage variances for the residential property at 23 Hilton Avenue, also known as Lot 2 of Block 2009, and;

**WHEREAS**, a Public hearing was held on June 14, 2010, at the Municipal Building, 1325 State Highway 77, Seabrook, Cumberland County, New Jersey, and the Board having heard the testimony presented by the applicant and having heard the sentiment of all persons wishing to speak;

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Upper Deerfield that the Board does find as facts the following:

1. That all property owners within 200 feet of applicants' premises were properly served with a Notice of Hearing.
2. That compliance has been had with each of the various requirements of the Open Public Meetings Law, P.L. 1975 c. 231
3. The property affected by this application is situated at 23 Hilton Avenue, and comprises as Lot 2, of Block 2009 as shown on the Upper Deerfield Township Tax Map.
4. The property is zoned R-2 and is undersized for the zone. The Township's current sub-division standards for the R-2 Zone require a 1.5 acre lot, with 175 foot of lot width where, as here, there is private septic and well water.

5. The testimony and exhibits indicate that applicant's lot comprises 13,984.3 square feet.
6. The R-2 Zone permits 20% lot coverage.
7. The applicant presented photographs of the existing ranch style residence on the lot. The house faces north. The residence already has an attached one car garage. There is also a 60 foot by 10 foot shed in the southwest corner of the lot. The house is set back 5.5 feet from the westerly property line, and 8.5 feet from the easterly property line.
8. The lot is 185 feet in depth, but only 70 feet in width.
9. Applicants exhibit showed the location of the septic system, and setbacks from front, both sides, and rear yard lot lines.
10. Applicant's proposed garage addition would be constructed immediately to the rear (south) of the existing one-car garage. The new garage addition, measuring 20 feet by 12 feet, would be setback 6.5 feet from the westerly side yard line.
11. No one appeared in opposition to the application.
12. The Planning Board has carefully considered this matter and finds that good cause exists for the granting of the variance in light of the unusual size and shape of the lot, and the existing improvements thereon. The Board further finds that such relief can be granted without substantial detriment to the public good and that the granting of such variances will not substantially impair the intent or purpose of the zone plan of the Zoning Ordinance of the Township of Upper Deerfield.

**NOW, FURTHER, BE IT RESOLVED**, that this Board does hereby grant lot coverage and side yard setback variances to applicant, William Lacy, pursuant to N.J.S.A. 40-55D-70, and the provisions of the Upper Deerfield Township Zoning Ordinance, Chapter 98 of the Code of

Upper Deerfield provided that the following conditions are met:

1. That compliance be had with all other applicable requirements of the Upper Deerfield Township Zoning Ordinance and Building Code, and;
2. That the exterior finish of the garage addition match the exterior finish of the existing residence.

**BE IT FURTHER RESOLVED**, that a certified copy of this Resolution be furnished to applicants, and notice of this action be advertised as required by law.

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Planning Board of Upper Deerfield Township at a regular meeting held on June 14, 2010.

**TOWNSHIP OF UPPER DEERFIELD  
PLANNING BOARD**

By: \_\_\_\_\_  
BRUNO A. BASILE, CHAIRMAN

ATTEST: \_\_\_\_\_  
VICKI VAGNARELLI, Secretary

Memorialized: \_\_\_\_\_

**Roll Call**

Bruno Basile – Aye  
 Robert Comer – Aye  
 Jody Hirata – Aye  
 Terry O’Neill – Could not Vote  
 Gene Stoms – Absent  
 Russell Vanella, Alt #1 – Aye  
 Gary Barbeck, Alt #3 – Absent/Absent

Ed Overdevest – Absent  
 Ed Fleetwood – Could not Vote  
 Ernest Holt – Aye  
 Bruce Peterson – Could not Vote  
  
 John Timberman, Alt #2 – No Vote  
 Pauline Smith, Alt # 4 - was absent/No Vote

On motion of Robert Comer, seconded by Ernest Holt the following Resolution was memorialized.

**RESOLUTION NO. 10-2010**  
**UPPER DEERFIELD TOWNSHIP**  
**PLANNING BOARD**

**WHEREAS**, Applicant, Olaf Horton, Executor, through A. Steven Fabietti, Esquire, has made application to the Upper Deerfield Township Planning Board for a request for interpretation and certification of the duplex dwelling at 586 Irving Avenue as a pre-existing non-conforming use pursuant to N.J.S.A. 40-55D-68, and;

**WHEREAS**, a Public hearing was held by the Board on June 14, 2010, at the Municipal Building, 1325 State Highway 77, Seabrook, Cumberland County, New Jersey, and the Board having heard the testimony presented by the applicant and having heard the sentiment of all persons wishing to speak;

**NOW, THEREFORE, BE IT RESOLVED**, by the Planning Board of the Township of Upper Deerfield that the Board does find as facts the following:

1. That all property owners within 200 feet of applicants' premises were properly served with a Notice of Hearing.
2. That compliance has been had with each of the various requirements of the Open Public Meetings Law, P.L. 1975 c. 231
3. The property affected by this application is known as 586 Irving Avenue, and is designated as Lot 8, of Block 2705 on the Upper Deerfield Township Tax Map.
4. The property is zoned for single family residential use.
5. Applicant was represented by A. Steven Fabietti, Esquire of Gruccio, Pepper, DeSanto, and Ruth, P.A. who presented the evidence on applicant's behalf.

6. Applicant introduced documentary evidence which included the following:

- a. Estimate for changes to house dated November 25, 1929.
- b. Receipt for purchase of doors and screens dated June 27, 1930.
- c. Invoice for work performed dated January 30, 1930.
- d. Upper Deerfield Township Tax Assessor records from various years, prior to 1995, describing the building as a side-by-side duplex, two-family residence.
- e. A copy of Ordinance No. 435, adopted on May 4, 1995, eliminating duplexes, and semi detached houses as a permitted use in this Zone.

7. The Board received evidence that on June 13, 1995, a representative of the Township's Tax Assessor's office inspected the property and recorded that the structure was found to be a single-family dwelling. The inspection sheet was signed by Ida Hignett.

8. Applicant, Olaf Horton, testified that Ida Hignett was his grandmother, and that she was older than ninety years of age in 1995. She has since passed away.

9. Applicant further testified that in June, 1995, one-half of the duplex dwelling was occupied by his grandmother, Ida Hignett, and the other half of the duplex dwelling was occupied by applicant, Olaf Horton's son. Applicant testified that the recording by the Township Tax Assessor's representative that the structure was a single-family dwelling on June 13, 1995, was erroneous. The applicant testified that the property has not been occupied since 2008. Mr. Horton, testified that the dwelling structure is presently for sale.

10. The Board received evidence that the duplex structure has never been registered (despite the existence of a Township Ordinance requiring the registration of all rental units and the

payment of an annual registration fee) as a rental unit.

11. The Board received testimony from next door neighbor, Nancy Ridgeway, who testified that the property has continuously been used as a duplex since she moved into the home next door in 1979.

12. Neighbors, William Bruck, and Brenda Bruck, live across the street from the subject property. Both William Bruck, and Brenda Bruck, testified in opposition to the request by applicant to deem the structure as a pre-existing non-conforming use. Mr. and Mrs. Bruck both testified that, since 2001, the property has never been occupied as a duplex.

13. The Board received evidence that, due to an error on the part of the Electric Company, electric service to the dwelling was incorrectly terminated which led to extensive damage to the structure when water pipes froze in the winter. The evidence before the Board was unclear as to whether or not permits were issued and inspections performed when the water damage repairs were performed.

14. Next door neighbor, Nancy Ridgeway testified that the water damage repairs were undertaken at the expense of the electric utility company.

15. The Board received and considered the Planner's Report of Randall Scheule, PP/AICP, dated June 10, 2010.

16. The Board received and considered the report of Edward P. Fleetwood, Jr., Upper Deerfield Zoning Official, dated June 4, 2010.

17. The Planning Board has carefully considered the evidence and finds that the preponderance thereof supports applicant's assertions that the structure was converted to a duplex in 1929-1930, and has remained a side-by-side duplex structure continuously since that date.

**BE IT FURTHER RESOLVED**, that this Board does hereby find and determine, pursuant N.J.S.A. 40-55D-68 that the structure is a pre-existing, non-conforming duplex and the Board so certifies subject to the following conditions:

1. That no occupancy of the structure is to be permitted until the structure is properly registered as one or more rental units pursuant to the applicable Township Ordinance.

2. That no occupancy of the property shall be permitted until an inspection is conducted by the Upper Deerfield Township Construction Official, and compliance is had with any conditions imposed by that office respecting the condition of the property, including, without limitation, any renovations which may have been performed in or about year, 2008.

**BE IT FURTHER RESOLVED**, that a certified copy of this Resolution be furnished to applicants, and notice of this action be advertised as required by law.

**CERTIFICATION**

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Planning Board of Upper Deerfield Township at a regular meeting held on June 14, 2010.

**TOWNSHIP OF UPPER DEERFIELD  
PLANNING BOARD**

By: \_\_\_\_\_  
BRUNO A. BASILE, CHAIRMAN

ATTEST: \_\_\_\_\_  
VICKI VAGNARELLI, Secretary

Memorialized: \_\_\_\_\_

**Roll Call**

Bruno Basile –Aye

Robert Comer – Aye

Jody Hirata – Aye

Terry O’Neill – could not vote

Gene Stoms – Absent

Russell Vanella, Alt #1 – A ye

Gary Barbeck, Alt #3 –Absent/Absent

Ed Overdevest – Absent

Ed Fleetwood – could not vote

Ernest Holt – Aye

Bruce Peterson – could not vote

John Timberman, Alt #2 – No Vote

Pauline Smith, Alt # 4 - absent/No Vote

On motion of Ed Fleetwood, seconded by Ernest Holt the following Resolution was memorialized.

RESOLUTION #11-2010

**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:** For Use Variance and Major Site Plan Approval

**Use Variance Hearing:** April 19, and May 17, 2010

**Findings of Fact:**

1. Applicant was represented by Albert K. Marmero, of Long, Marmero & Associates, L.L.P. Esquire, who appeared for the bifurcated use variance hearing with witnesses and exhibits.

2. The Board accepts as factual the plans and documents submitted by and on behalf of applicant:

- a. Tree Management Plan dated February 8, 2010.
- b. Major Site Plan dated February 8, 2010.
- 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.

3. The Board also received and considered the following additional data:

a. March 29, 2010, report of Zoning Code Official, Ed Fleetwood.

b. April 5, 2010, report of Robert C. Dubois, P.E., Engineer.

c. A copy of Senate Bill S-921, signed into law April 22, 2010.

d. A copy of N.J.S. 4:1C-32.4, adopted effective January 16, 2010, and

e. Planner's Report, by Randall Scheule, PP/AICP, dated March 31, 2010.

4. All property owners within 200 feet of applicants' premises were properly served with a Notice of Hearing.

5. Compliance has been had with each of the various requirements of the Open Public Meetings Law, P.L. 1975 c. 231

6. 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.

7. A use variance is required because applicant wishes to install a photovoltaic solar powered electricity production system utilizing approximately 83 acres of the 87 acre tract.

8. Following a Completeness Hearing, this application was deemed complete by the Board at its meeting of March 15, 2010.

9. The Board received evidence in the form of expert testimony from applicant's witnesses, Professional Engineer, Joseph Raday, Professional Planner, Barbara Allen Wooley-Dillon, Nicole Maslanich, who is an Environmental Consultant, and the author of the applicant's Environmental Impact Statement, and Electrical Engineer, Daniel Schaffer.

10. At the public hearing on April 19, 2010, the Board received sworn testimony from members of the public, Sandra Morrissey, Lynn Maun, Dean Hawk, Blake Maloney, Paul Cervone, Roseann Cervone,

Joseph Nicosia, Frank Catalana, Tom Connelly, Jack Williams, Chet Riley, Terry O'Neill, Nancy Ridgway, and Bruce Peterson.

11. At the Board hearing of May 17, 2010, the Board heard additional testimony from members of the public: Blake Maloney, Lynn Maun, Layne Ball, and Sandra Morrissey.

12. At the May 17, 2010, Board hearing, the Board also received expert witness testimony from Applicant's Consulting Arborist, Scott Lussier.

13. The testimony indicated that the subject tract is located in the extreme west-central area of the Township, northwest of the intersection of Silver Lake, and DuBois Roads.

14. The site is void of any buildings or structures.

15. There are freshwater wetlands on the adjacent lot along the western boundary of the property. The rest of the site is uplands.

16. These freshwater wetlands have been recognized by the N.J.D.E.P. as being of exceptional resource value, and therefore, require a 150 foot setback.

17. The subject parcel, and all adjoining properties are located within an R-1 residential district.

18. Evidence indicates that in 2005, the Upper Deerfield Township Planning Board approved a major sub-division for this tract calling for forty-nine residential lots.

19. The 2005 sub-division approval has been extended by gubernatorial executive order and remains viable.

20. In November, 2006, the Township adopted Ordinance No. 580 with respect to the preservation of trees. Ordinance No. 580 does not apply to the forty-nine lot sub-division approved for this parcel in 2005, but would, potentially, apply to the instant application.

21. Renewable energy facility standards are found in Section 98-40.2, in the Upper Deerfield Zoning and Development Ordinance. Those facilities are not permitted by right in the residential R-1 Zone.

22. The applicant proposes to construct a six-foot chain link fence around the entire site as a means of site security.

23. The applicant introduced testimony regarding the solar panels, earth screws, inverter pads, buffers and the access drive.

24. The Board received input from applicant's experts, and from Board professional staff including Engineer DuBois, and Planner Scheule, regarding impervious coverage and the effect of Senate Bill S-921 being signed into Law on April 22, 2010, exempting solar panels from being classified by local ordinance as impervious coverage.

25. Applicant requested a waiver respecting a DEP letter of interpretation regarding the wetlands. Applicant supplied a letter dated September 14, 2004, which was good, on its face, for five years. Upon recommendation of Engineer DuBois, the Board agreed to hear the application and let the renewal of the D.E.P. letter of interpretation be a condition of approval, since the wetlands are offsite, and probably haven't changed since the 2004 letter was issued.

26. As part of the use variance testimony at both the April 19, 2010, and at the May 17, 2010, hearing, applicant suggested that the number of solar panels could be somewhat reduced, if a higher output and more expensive solar panel was used for part of the project. This, in turn, had the potential to reduce the amount of tree clearing needed as well as enhancing the depth of buffering and screening of the solar panel array.

27. At the conclusion of the testimony on the bifurcated use variance aspect of the application, the Board found and determined that applicant was relieved of showing special reasons because, the solar energy use has been deemed, "inherently beneficial" by State statute.

28. The Planning Board has carefully considered this matter and finds that good cause exists for the granting of the Use Variance for this "inherently beneficial" alternate energy use.

29. The Planning Board further finds that such relief can be granted without substantial detriment to the public good, and that the granting of such Use Variance can be made subject to certain conditions that will serve to prevent substantial impairment of the intended purpose of the Zone Plan and the Zoning Ordinance of the Township of Upper Deerfield. In making this determination, the Planning Board considered the balancing of the benefits and detriments. The Board also considered the testimony of members of the public, including, in particular, property owners immediately adjacent to the parcel in question, all of whom uniformly supported the solar powered electricity production system use over the forty nine lot residential sub division use previously approved for this land.

30. Also, in making the determination regarding the use variance “negative criteria” the Board feels that appropriate conditions can be imposed, in conjunction with major site plan review, so as to balance the detriment to the public good in relation to the degree the positive criteria are satisfied. Conditions can also be imposed limiting the visual, and aesthetic impact, to the public at large, and to nearby residences in particular.

**NOW, THEREFORE, BE IT RESOLVED** that this Board does hereby grant a use variance to Applicant pursuant to N.J.S. 44-55D-70(d) and the provisions of the Upper Deerfield Township Zoning Ordinance provided that the following conditions are met:

- A. That applicant secure major site plan approval from this Board.
- B. That applicant secure any applicable bulk variances from this Board.
- C. That compliance be had with all other applicable requirements of the Upper Deerfield Township Zoning Ordinance and Building Code.

**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 –Aye  
Robert Comer – Aye  
Jody Hirata – absent/no vote  
Terry O’Neill – could not vote  
Gene Stoms –absent/Absent  
Russell Vanella, Alt #1 – Aye  
Gary Barbeck, Alt #3 –Absent/Absent

Ed Overdevest – Absent  
Ed Fleetwood – could not vote  
Ernest Holt – Aye  
Bruce Peterson – could not vote  
  
John Timberman, Alt #2 – Aye  
Pauline Smith, Alt # 4 - Aye

**APPLICANT/DEVELOPMENTS**

P06-10 - SBS Energy Partners LLC- 905/9 - Major SP Setback Variance Solar Energy Facility, represented by attorney, Emily Givens. After testimony from the professionals for the applicant, On motion of Ed Fleetwood, seconded by Jody Hirata the public hearing was opened and on motion of Ed Fleetwood, seconded by Robert Comer was closed. There was no one for or against the applicant.  
On motion of Ed Fleetwood, seconded by Ernest Holt the Board Approved the applicant for Preliminary & Final Major Site Plan for Solar Photovoltaic System.

**Roll Call**

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

Ed Overdevest – Absent  
Ed Fleetwood – Aye  
Ernest Holt – Aye  
Bruce Peterson – Aye  
  
John Timberman, Alt #2 – Aye  
Pauline Smith, Alt # 4 – No vote

P 09-10 – Kim Sod – Report on Inspection from Engineer Robert DuBois (see below) for Renewal of another 3 year Mining License. On motion of Ed Fleetwood, seconded by Jody Hirata, the Board Approved the Renewal of Mining Permit based on Robert DuBois inspection for 3 years.

**Roll Call**

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

Ed Overdevest – Absent  
Ed Fleetwood – Aye  
Ernest Holt – Aye  
Bruce Peterson – Aye  
  
John Timberman, Alt #2 – Aye  
Pauline Smith, Alt # 4 – No vote

**ROBERT C. DU BOIS, P.E.**  
*CONSULTING ENGINEER*  
933 Franklinville Road, Mullica Hill, NJ 08062-4615

TBL (856) 478-2378

NJ License No. 20000

FAX (856) 478-6104

July 8, 2010

Upper Deerfield Township Planning Board  
P.O. Box 5098  
Seabrook, NJ 08302

attn: Vicki Vagnarelli, Secretary

re: Kim Sod  
Renewal of Land Mining License  
Block 62, Lot 5

Dear Board Members:

I performed a site inspection at the above referenced site and find that the work performed since the last renewal is minimal as stated by the applicant. The site is still in compliance with the approved plans.

I have no objection to the Land Mining License being renewed for another three years.

Should you have any questions please feel free to contact me.

Very truly yours,



Robert C. Du Bois, P.E.  
Planning Board Engineer

Z 02-10 - Comet Land Development, LLC - Lipinski - Principal of Comet Land Development LLC,  
**Continued Public Hearing Major Site Plan** - Block 1101 Lots 13, 14, 18, 21.02 Silver Lake Rd intersection  
of Silver Lake & DuBois –Solar Panels

On motion of Russell Vanella, seconded by Robert Comer the public hearing was open

Lynn Maun comments were as follows:

Prior application of houses was going to be done in 4 stages, Environmental concerned with cutting of tree-  
variance will allow to cut trees, property owner sells home and new owners do not want trees so they take them  
out now screen is gone, spoke with njec not sure if legal to go to homeowner, 4,500 trees need to be replaced on  
property for what is being disturbed, adhere to set back, shade tree commission should work with Comet on  
what trees should be replaced.

Nancy Ridgway asked whether applicant is going to strip total property.

On motion of Robert Comer, seconded by Ernest Holt the public hearing was closed.

On motion of Robert Comer to Deny Variance, seconded by Ernest Holt the Board Denied Variance  
Attorney Ritter stated a Yes vote is to Deny application.

**Roll Call**

Bruno Basile – Nay

Robert Comer –Aye

Jody Hirata – absent/No Vote

Terry O’Neill – No Vote

Gene Stoms –Absent

Russell Vanella, Alt #1 – Aye

Gary Barbeck, Alt #3 –Absent

Ed Overdevest – Absent

Ed Fleetwood – No Vote

Ernest Holt – Aye

Bruce Peterson – No Vote

John Timberman, Alt #2 – Aye

Pauline Smith, Alt # 4 – Aye

P 01-10 - Coombs Properties, LLC - 103/4, 7 – Griers Lane- **Public Hearing** Minor S/D, applicant was  
represent by Attorney Adam Telsey. On motion of Ed Fleetwood seconded by Robert Comer the application  
was Approved by the Board.

**Roll Call**

Bruno Basile –Aye

Robert Comer – Aye

Jody Hirata – Aye

Terry O’Neill – Aye

Gene Stoms –Absent

Russell Vanella, Alt #1 – Aye

Gary Barbeck, Alt #3 –Absent

Ed Overdevest – Absent

Ed Fleetwood – Aye

Ernest Holt – Aye

Bruce Peterson – Aye

John Timberman, Alt #2 – Aye

Pauline Smith, Alt # 4 – No vote

**PROFESSIONALS/COMMITTEE/COMMISSION**

Planner, Randy Scheule – Master Plan Reexamination (if time allows) Board will discuss at a special meeting set  
for July 19.

Township of Upper Deerfield Planning Board

July 12, 2010

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Being no further business on motion of Bruce Peterson, seconded by Robert Comer the meeting adjourned at 9:10pm.

Respectfully Submitted,

Vicki Vagnarelli  
Planning Board Secretary