

Franklin Township Land Use Board
December 1, 2022

Roll Call:

Mr. Butler, Mr. Corde, Ms. Payne, Mr. Herzer, Mr. Meltzer, Mr. Santini, Mr. Sigler, Mr. Onembo, Mr. Guth, Mr. Balogh

Mr. Schneider, Mr. Finelli and Mr. Kyle were also present.

A correction to the minutes on page 4 under the Kober Solar Application, 1st paragraph, second sentence, should be they are not improving that access road instead of approving was made by Mr. Schneider.

Motion by Mr. Corde, seconded by Mr. Onembo to approve the minutes of November 3, 2022 as amended.

Roll Call: Ayes-Mr. Corde, Mr. Sigler, Mr. Onembo and Mr. Balogh. Nays: None

OK 4WD Auto

Completeness was considered. There were no representatives present for the applicant at this time. Mr. Finelli indicated his firm issued an initial completeness review report dated November 28, 2022. There are a number of outstanding items and some waivers that are being recommended that should be carried until the applicant is present. In summary, he recommends that the board deem both preliminary and final site plan applications incomplete. A brief explanation of the project was given by Mr. Finelli. Follow up will be made with the applicants' attorney. Mr. Schneider indicated this is a use variance application so the governing body members will be ineligible. Mr. Corde made a motion to deem the application incomplete, seconded by Ms. Payne. Roll Call: Ayes-Mr. Butler, Mr. Corde, Ms. Payne, Mr. Meltzer, Mr. Santini, Mr. Sigler, Mr. Onembo, Mr. Balogh.

Kober Solar Farm Use Variance/Preliminary and Final Site Plan Application

Mr. Santini recused himself from the meeting at this time due to a conflict. Mr. Herzer and Mr. Guth were also excused at this time as members of the governing body.

Mr. Bellin was present on behalf of the applicant. He indicated they are requesting preliminary and final site plan approval with a use variance. He indicated the access is through a parcel in Harmony Township as a conditional use which will be presented in Harmony. Rob Streker from Bohler Engineering was also present and Roger Ferguson who is the LSRP on the site. Mr. Streker was sworn in and accepted as a professional engineer by the board. Exhibit A-1 was presented as an aerial photo of the subject property and the surrounding areas, titled Aerial Exhibit 1 dated December 1, 2022. Exhibit A-2 was presented as a colorized version of sheet C-301 in the package. It is an overall site layout plan. Mr. Streker indicated where the former Kober Auto Salvage Properties are on the map. He showed where the property is split with a municipal boundary between Franklin and Harmony Townships. In Franklin there are 2 lots that comprise of this property which are Lot 11 and Lot 11.01 on Block 9 in the RC district where solar fields such as this are not a permitted primary use which is one of the reasons they are before the board. This is also Highlands preservation area. They have submitted for exemption #4, which is for redevelopment of 125% of the existing impervious footprint. They are reducing the impervious with this project. Mr. Strecker stated that the junk yard was located in Franklin Township, around the perimeter of the junk yard foot print it is heavily wooded on almost all sides. Surrounding uses are farm fields, residential, houses and it is very sparsely developed.

Mr. Rodger Ferguson was sworn in and accepted by the board as a professional, he is the owner of Penn Jersey Environmental Consulting located in Milford, NJ and is a licensed site remediation professional and he is the LSRP for this site. A 1985 aerial photograph provided by the Kober estate was presented as A-3. Mr. Ferguson discussed what took place at the site at this time. It was a junk yard and also had a truck part component at the time. Exhibit A-4 was a 1995 aerial from the NJDEP showing the outline of the entire property. They are working strictly on the upland property on the site. The Harmony side it goes down the hill, there is a pond, there is swamp. They have applied for an LOI from the NJDEP. The junk down the hill and around the pond will be subject of their investigation at a later date. The development is entirely in Franklin Township. The site investigation has been bifurcated. They are working on the upland portion of the site now, they are waiting for a general permit from the NJDEP to do the work in the wetlands area. Mr. Bellin stated they are working with state and they have removed things. Mr. Ferguson said to date at the request of the NJDEP they have removed 950 tons of baled tires from the far upland portion of the site, they removed 16 55-gallon drums and 2 30-gallon drums containing hazardous materials and a 5-gallon bucket containing an unknown flammable material. They are in the process of negotiating an administrative consent order to rectify the 94 odd violations that are listed in their file now and they were adamant that they wanted the tires removed. The applicant will do the same with the tires that are in the lower wetland portion when they get their LOI confirmed and the general permit to do work in that area. Mr. Bellin explained the ACO is a written agreement/contract between them and the State of NJ where the applicant agrees to remediate property that they want to use in exchange for perhaps some fees and they will close all the open violations and solid waste enforcement will allow the remediation of the brownfield to proceed the remediation program and Mr. Ferguson's license. Mr. Ferguson provided Exhibit A-5 and explained that is the site sample location map, and aerial from 2020. They have established a sampling plan based on the 33 areas of concern identified in their investigation to date and they have collected 100's of soil samples. Exhibit A-6 which is the 200' test pit plan was presented and explained. It was indicated that the site is not a landfill. They do exceed some residential and non-residential standards. The primary chemicals being found are heavy metals. Some may be naturally occurring but also could be related to the automobiles that were on the site. Mr. Onembo asked how the process goes. Is the site cleaned and the DEP gives the green light and then the solar panels go up. Mr. Finelli did comment that remediation is to be completed before construction starts. Mr. Ferguson stated in DEP's definition of remediation it is broad. He projects that there are probably areas requiring excavation and removal. Some areas might need to have a Deed notice filed with the County. A remedial action permit will probably be necessary so it can be regulated. All of that has to happen, DEP signs off on that permit, the Mr. Ferguson writes a response action outcome. Normally that type of capping is done while solar is being constructed. It is all done at one time for efficiency. A remedial action work plan is created and it describes all the details on things proposed to do at construction. Mr. Schneider asked if there was some "trigger" or document submission that is made to DEP, and what is the trigger that allows you to commence construction. Mr. Ferguson stated that the trigger that allows them to commence construction would be the remedial action work plan that is done for the entire site. Mr. Ferguson will give the green light. He does not have to wait for the DEP. As the LSRP the DEP entrusts him to do the work with the license he holds. In NJ only and LSRP can conduct remediation. He is about a year away from the remedial action plan. Mr. Ferguson stated without removing all the soil and the remaining waste it's not useful for agriculture purposes. Mr. Corde asked if after it's remediated, the panels go up, in 30-40 years when the solar might not be worth having and we are selling the land, is the land going to be clean at point. Mr. Ferguson stated the land might still be impaired according to NJDEP standards, which between now and then, it might change. Part of the program is they have a bond to remove the solar filed if 30 years down the road it's not worth rehabbing, the site will be returned to its current

condition. Mr. Bellin stated that they own the property and as ownership it is very feasible it stays as an energy facility to whatever exists at the time. Mr. Finelli returned to comment #25 on page 7 on his report. Mr. Ferguson stated that rather than saying "all remediation has been completed", he proposes "subject to as a condition of approval they will submit to this board the remedial action work plan before starting construction". Mr. Bellin clarified that they might have to do more remedial action at the request of the DEP. He said you might see work taking place now for remedial action now, it will not be construction of the solar site. The hearing was open to the public for any questions to Mr. Ferguson. Bill McCoy, 470 Montana Road, asked if the tires in the front going to be removed. Mr. Ferguson stated those tires are part of the notice of violation from DEP and they will be removed but they need a permit, a letter of interpretation for wetlands. They will get removed. He asked about the old farmhouse that is abandoned. They are in discussions with the estate now, it is not part of the project at this time. Ann McCoy, 470 Montana Road, asked about the common driveway. She has an easement to use that driveway to get to the property where she lives. She purchased Mr. Kober's home and there is a common driveway. Her concern is if they have equipment and there is damage done to the roadway who is going to be responsible for fixing it. Mr. Bellin stated that they would and if there is an easement they have to respect it. She asked about plowing it. Would they plow from Montana Road to the gate. Mr. Bellin stated generally they do not come into the site that often and he doesn't know the answer at this time. If they are under construction then yes they would plow it and maintain it. After construction they will not be in there too often. Mrs. McCoy asked about the back part of her property. She can see the "blue" garage area and she asked if any tree line would be placed there. She was told Mr. Streker will talk about that.

Mr. Streker proceeded to address the board at this time. He reviewed the municipal boundary and indicated where the solar field items will be placed. He stated all the work/improvements are in Franklin Township and reviewed the site plan indicating where everything was located. The solar plan starts about 100 ft. inside the gate. Mr. Streker stated that the trees will remain that separate the Franklin side where the solar field is and what the McCoy's will be looking at as the closest residential neighbor to this. The trees will also be supplemented. All the buildings in Franklin will be removed and they will have a clean slate to start. Mr. Finelli indicated that they required the applicant to go to Harmony since you keep hearing access in Harmony. There is nothing improvement wise happening in Harmony. They have made application in Harmony recently. Mr. Finelli discussed that there is a requirement in the code that does not allow for trees to be removed for solar panels. He indicated that there is a significant number of trees and areas that are being proposed for removal. He asked what the argument was to allow the trees to be cut. C-201 plan was looked at. You can see the trees impacted. Mr. Streker said there are trees that need to come out. Looking at A-5, the trees proposed to come out are within the existing junk yard. They are trees that have managed to grow through the stockpiles of cars, trucks and tires. The perimeter of vegetation around the site is going to remain intact. They are talking about the trees in the junk yard. They may or may not have to be removed as part of the remediation, but the ones that are not will be removed as well. Mr. Finelli stated he hasn't spent a lot of time on site looking at it and he understands that obviously what was said it is part of the old junkyard. Mr. Kyle said Looking at the 1995 photo there are no trees showing and 30 years later the trees have grown up and the important thing is that the mature forest that is the perimeter is not being disturbed, the trees in the wetlands buffers are not being disturbed, there is an open water buffer on Millbrook road that is left intact. He said the ordinance stated that the site should not be clear cut for the installation of solar panels so it's a judgement of the board if they think the removal of these trees constitutes clear cutting and they need relief. Mr. Bellin said there is one other difference, this is a former junkyard, in reality this is not virgin forest and they need every inch of solar panels they can get in order to pay for the cost of the remediation of the site. Mr. Streker stated they are proposing a 28

MW solar facility. The footprint is 50.3 acres which is just under 50% of the lot in Franklin township and it aligns with the code. They layout does not impact buffers, wetlands, common property. It is all upland. There is a net reduction of impervious coverage of 2.7 acres. Setbacks are met, buffer requirements are met along the perimeter. Variances required are long the common municipal property line that splits the site. The fence is setback 25' and the solar panels are setback 50'. The requirement is 100' but there really is not a front yard. The remaining distance between the property line and the fence they are proposing a double row of evergreen trees staggered at 20' on center. They will be 6-7' tall. There are 99 trees of a mixture of evergreen species that will run from the northeast corner of the municipal boundary and will follow the existing hedgerow and set behind it. Between the solar panels and that existing hedgerow will be a new set of trees that will run to the west until they get into the DEP controlled buffer for wetlands where it needs to stop. The setback is 50' to the solar panels and 25' to the fence. Mr. Streker pointed out in addition to the planting, because the ordinance requires a 35' planted buffer, they are asking for the variance because aside from the planting and the existing planting that is being maintained the differences are very significant too. From the edge of the municipal boundary to closest edge of lot 7.01 is 333 feet away. The solar panels are only 6.5' high or less at the highest on a tilted axis. They are post driven without a foundation. The metal tubes are pushed into the ground and then the racking for the solar panels is attached to the tubes. The wires are run underground within the field and are unseen. Access to the site will be through the common driveway to a single-entry point that is double gated with a Knox box and a motion-controlled light that is the only light on the property. It will be surrounded by an 8' tall fence, woven wire fence around the entire solar field. Access is minimal. It is not manned or illuminated. Two to three times a year is projected for access for maintenance. There is no sound. The connection point is being projected down the main driveway so everything will be underground within the solar field, then at there will be a point near the end of the driveway where there will be inverters there. That is the closest inverter to the property line that requires a variance that at 52.4 ft. off of the municipal property line. From that point the connection goes overhead and comes up to poles installed by the applicant run down the driveway out to Montana road where it will tie into the grid. That grid connection point and how it is run is still under review by PJM. The sound generated by the inverter is similar to a desk top computer. That will be several hundred feet away from anyone. It does not run at night. A decommissioning plan will be created in agreement with the municipality and a meeting with training for staff and emergency responders will be provided by the applicant. They will distribute this plan to the Fire Chief. A pollinator meadow mix will be planted on the site. The slopes are 20% or less in the majority of the site. Some grading will need to be done. The steeper slopes are man made from the rows of cars previously on the site and not natural.

Mr. Kyle said the board should make a decision first about sites not being clear cut, he said a variance may be required but he thinks it is up to the board to determine if this is considered clear cutting. It was the consensus of the board that it was not and the first item on Mr. Kyles' report was struck. Mr. Kyle discussed front yard and street lines and how it is determined. It was decided that it should just be called a property line and strike item #2. The third bullet related to the inverter pad and proximity to the municipal boundary or lot line on the site 52.4' is proposed and 150' is required from any property line. That is the closest area in where they are making the final run to leave the property and go out and tie into the grid. Mr. Corde asked what if the portions of the lands in Harmony are sold and that could become an actual property line. The applicant said that they own that property. The gate will be back off the Township line. Discussion took place on what would take place on an empty piece of the property. Mr. Bellin said since they are a solar company the idea would be to build solar there in the future at some point. Mr. Meltzer asked if the fence line is at the McCoy turnoff, the inverter building should be within the 150' if the fence line would be expanded. The next item for 54.1C.1 relating to the

critical slope areas greater than 25% was talked about. The disturbances are within the footprint of the current junkyard and are believed to be manmade and relate to the former aisles of the junkyard, relief is requested. The 15% variance was determined not to be required. Relief from the MLUL is required because they do not technically abut a street, it is not a condition they are creating, it's been there for awhile and the utilization of the driveway will be much less than what it was when the junkyard was active. Mr. Kyle said in the MLUL, section 36, gives the Board a basis to grant the relief. Mr. Strecker stated that access is through that common driveway in Harmony and it brings you to Montana Road. Mr. Finelli had in his report also that there is an access easement that is mapped for that. The map location for that easement does not fall overtop the improved easement. On the drawings the Right-Of-Way is dedicated for this driveway for some reason is off of the physical improvement so part of what they agreed to do is to make that correction to that meets and bounds. They will correct the easement and not move the driveway. That completes the D variance list for the use. The applicant does not dispute any of Mr. Finelli's comments.

Mr. Strecker stated that the two lots will be merged in Franklin.

There were no further questions by the Board or public at this time.

Ms. Barbara Ehlen was sworn in by Mr. Schneider. She is a licensed professional planner in the State of NJ. She is employed by Beacon Planning. She was accepted by the Board as a professional.

Exhibit A-7 was marked. Ms. Ehlen had prepared a planning report for the use variance and other variances requested. Ms. Ehlen stated as discussed earlier, the property was formally a salvage yard. The application this evening is seeking to redevelop and bring this site back to life for the community via the utilization of a solar installation. She went over the Master Plan and the ordinances. She believes this is an appropriate location for a solar field. She stated the 1994 Master Plan included the goal of regulating growth in an orderly fashion in appropriate locations. With respect to the rural conservation district (RCD) the master plan states the RCD has been designed to address goals to protect groundwater quality, scenic rural character and promoting continued agricultural use opportunities. This property cannot be returned to agricultural so it cannot fulfill this goal of the RCD but they can bring it back to a more visual pleasing state by removing the cars and providing the additional landscaping. There will be a significant decrease in impervious coverage. Stormwater runoff will be significantly decreased from current conditions. It is located in the NJ Highlands. In 2006 re-examination report notes the Highlands Regional Master Plan and one of the goals of that plan is remediation of existing brownfields and return of use to the property. She stated although the use as a principal solar facility is not permitted as a principal use, the zone does permit for public utility structures and also conditionally permits wireless communication centers, renewable energy sources are permitted as an accessory use, so the use is considered just not necessarily at this scale. Ms. Ehlen brought up the MLUL and reviewed how it meets criteria listed in it including that solar does produce clean renewable energy and allows the applicant to further remediate the existing brownfields site to remove the existing car parts, tires and buildings.

Ms. Ehlen brought up the use variance. The solar facility is not a permitted use in the district so a use variance is required. Solar facilities are incorporated into a group of uses defined as inherently beneficial and she read the meaning of inherently beneficial and she stated they fall under this category. They satisfy the positive criteria for a use variance and she went through all the requirements and indicated how they met them. She discussed the bulk variances. The applicant deviations are requested to their own property on in Harmony Township. The variances previously discussed were reviewed.

There is no clear-cutting variance, there is no front yard variance, the location of the proposed inverter meets the intent of the ordinance, no landscaping or slope variance is required. One of the benefits of the site is it is relatively isolated. Critical slope areas in her report indicated that there is some disturbance but less than 50%, and they are located within the formal salvage area of this site and the parcel is an existing land locked parcel. They meet the positive criteria for bulk variances. In her professional opinion the application for the solar meets the requirements for any and all use and bulk variances requested.

Mr. Schneider stated he had a question to the D-35 variance. As Mr. Kyle indicated in his report that is a function of confirming there is adequate fire fighting access. The Board needs to decide how comfortable are they granting the variance, maybe make it subject to the Fire official. But the crux to the variance is to ensure there is emergency vehicle and fire fighting access as in the Statute.

Mr. Bellin stated that their testimony is that this property has probably been in existence for the past 75 years with a far more intense use as a junk yard and scrap metal yard with commercial vehicles coming in and out on an hourly basis. They are proposing to maintain the same access and are willing as a condition of approval to take their application and seek comments from the Fire Department. They routinely review with Fire Departments and if there are any changes necessary they normally just make those changes.

The meeting was opened to the public at this time. There were no comments heard.

Mr. Corde made a motion to approve the D Variance. Mr. Onembo seconded the motion. Roll Call: Ayes: Mr. Butler, Mr. Corde, Ms. Payne, Mr. Meltzer, Mr. Sigler, Mr. Onembo, Mr. Balogh. Nays: None. Abstained: None.

Board discussion too place for the motion to grant preliminary and final site plan together with the variances as noted with the exception of those that were determined not to be necessary and to grant all variances subject to compliance with all of the recommendations of Mr. Finelli and Mr. Kyle reviewed in their reports and as modified, including specifically the approval of the Fire Official. A condition for the PJM interconnect information should be supplied when established and approved should be included per Mr. Kyle and any other outside agency approvals, proof of Highlands exemption #4 should be provided as a condition of approval and to modify the easement as noted in Mr. Finelli' s report, and subject to the submission and approval of the decommissioning plan, approval from Harmony Township's Land Use Board.

Mr. Bellin and Mr. Strecker agreed they are in agreement with complying with Mr. Finelli and Mr. Kyle's letter except for as otherwise testified and items that have been stricken.

Motion made by Mr. Corde, seconded by Mr. Sigler to grant preliminary and final site plan approval with the bulk variances requested, as modified through testimony today with the conditions set forth on the record. Roll Call: Ayes: Mr. Balogh, Mr. Onembo, Mr. Sigler, Mr. Meltzer, Ms. Payne, Mr. Corde, Mr. Butler.

Broadway Energy, LLC Resolution

Mr. Schneider discussed the resolution. On page 13 the fence line comment will be corrected to read "on the common property line or within 5 feet of same". Discussion of the property to the rear and landscaping was discussed for clarification. Landscaping will be done post installation. On page 13 he

would like to add “as part of a post installation landscaping review and indicate the applicant further agreed to the imposition of a post installation landscaping review to determine if any supplemental landscaping is necessary”.

Motion by Mr. Corde, seconded by Mr. Sigler to adopt the resolution as amended. Roll Call: Ayes: Mr. Butler, Mr. Corde, Mr. Meltzer, Mr. Sigler, Mr. Onembo, Mr. Balogh, Mr. Santini.

Payment of Bills

Motion by Mr. Meltzer, seconded by Mr. Sigler to approve bills presented with one addition of an invoice by Mr. Kyle in the amount of \$1,022.40 for the Kober Solar application. Roll Call: Ayes: Mr. Butler, Mr. Corde, Ms. Payne, Mr. Meltzer, Mr. Sigler, Mr. Santini, Mr. Onembo, Mr. Balogh.

Adjournment

Motion by Mr. Meltzer, seconded by Mr. Onembo to adjourn the meeting. Motion carried by all in favor.

Kelley Smith, LUB Secretary